

Chapter 18

1 tration loans;

2 (13) the portion of first lien real estate mortgages guaran-
3 teed by the Federal Veterans Association;

4 (14) the portions of business and industrial loans made under
5 the Rural Development Act of 1972 which are guaranteed by the Farmer's
6 Home Administration;

7 (15) the guaranteed portion of Farmer's Home Administration
8 loans;

9 (16) notes secured by mortgages of residential real estate if
10 the mortgages are insured by a private mortgage insurance corporation
11 which is authorized to do business in Alaska and has combined capital,
12 surplus and reserves aggregating at least \$20,000,000; the minimum
13 coverage shall be 10 percent for loans having a loan-to-value ratio of
14 less than 90 percent, and the minimum coverage shall be 20 percent for
15 loans having a loan-to-value ratio of 90 percent or more.

16 (h) The board may enter into future contracts for the sale of
17 investments purchased under (g) of this section only for the purpose of
18 hedging an existing equivalent ownership position in these securities.

19 (i) Investments under (g)(8) of this section may not exceed 25
20 percent of the total investments of the Alaska permanent fund. Invest-
21 ments under (g)(16) of this section may not exceed in the aggregate 15
22 percent of the total investments of the Alaska permanent fund.

23 (j) The assets of the Alaska permanent fund may not be used for
24 the purchase of bonds of a corporation, upon which any regular interest
25 payment has been defaulted within five years before purchase, except
26 bonds never in default but which have been outstanding for less than
27 five years.

28 (k) The board shall establish and from time to time as necessary
29 modify guidelines for the investment of the assets of the corporation.

1 Before adoption of any guidelines the guidelines shall be reported to
2 the Legislative Budget and Audit Committee for review and comment.

3 (1) The board shall invest the assets of the corporation in in-
4 state investments to the extent in-state investments are available if
5 the in-state investments

6 (1) have a risk level and expected yield comparable to alter-
7 nate investment opportunities; and

8 (2) are included in the list of permissible investments in
9 (g) of this section.

10 Sec. 37.13.130. GAINS AND LOSSES. At the end of each fiscal year,
11 the total amount of losses on the sales of securities, not offset by
12 gains on the sales of securities during that year, shall be computed,
13 with a portion of these losses to be deducted each fiscal year from the
14 income and the resulting amount of income added to the principal of the
15 Alaska permanent fund. Losses taken on the sales of securities shall be
16 accumulated over a period equal to the average remaining life of the
17 securities sold, unless these losses are offset by gains on future sales
18 of securities. In any fiscal year in which the gains on the sales of
19 securities exceed the losses on the sales of securities, the excess
20 shall be added to the principal of the Alaska permanent fund.

21 Sec. 37.13.140. INCOME. The interest received in a year is the
22 income of the corporation for that year. The income available for
23 disbursement shall be determined on an averaging basis. For the first
24 five years, income will be the simple averaging of the annual current
25 return at cost. Subsequently, there will be a moving average current
26 return, in which the latest fiscal year will replace the oldest year.
27 The income available for disbursement will be the lesser of the latest
28 fiscal year's income, or the average annual current income for the past
29 five fiscal years of the Alaska permanent fund at cost, and after

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1 adjustment for capital losses charged to that fiscal year.

2 Sec. 37.13.150. BOARD BUDGET. The operating budget of the board
3 is from the general fund and is subject to the Executive Budget Act
4 (AS 37.07).

5 Sec. 37.13.160. AUDITS. The Legislative Budget and Audit Committ-
6 tee shall provide for an annual post audit and annual operational and
7 performance evaluations of the corporation's investments and investment
8 programs.

9 Sec. 37.13.170. REPORTS AND PUBLICATIONS. By September 30 of each
10 year, the board shall publish a report of the corporation for distribu-
11 tion to the governor, legislature, and the public. The report shall be
12 written in easily understandable language. The report must include
13 financial statements audited by independent outside auditors, a state-
14 ment of the amount of money received by the Alaska permanent fund from
15 each investment during the period covered, a statement of investments of
16 the corporation including an appraisal at market value, a description of
17 corporation investment activity during the period covered by the report,
18 a comparison of the corporation performance with the intended goals
19 contained in AS 37.13.020, an examination of the impact of the invest-
20 ment criteria of this chapter on the corporation portfolio with recom-
21 mendations of any needed changes, and any other information the board
22 believes would be of interest to the governor, the legislature, and the
23 public. The annual income statement and balance sheet of the corpora-
24 tion shall be published in at least one newspaper in each judicial
25 district. The income statement and balance sheet for the two fiscal
26 years preceding the publication of the election pamphlet under AS 15.57
27 shall be included in that pamphlet.

28 Sec. 37.13.180. TAX EXEMPTION. The corporation is exempt from all
29 taxes and assessments in the state. All security instruments issued by

1 the corporation, their transfer, and their income are exempt from all
2 taxes and assessments in the state.

3 Sec. 37.13.190. POLITICAL ACTIVITIES. The resources of the cor-
4 poration may not be used to finance or influence political activities.

5 Sec. 37.13.200. PUBLIC ACCESS TO INFORMATION. Information in the
6 possession of the corporation is a public record, except that infor-
7 mation which discloses the particulars of the business or affairs of a
8 private enterprise or investor is confidential and is not a public
9 record. Confidential information may be disclosed only for the purposes
10 of an official law enforcement investigation or when its production is
11 required in a court proceeding. These restrictions do not prohibit the
12 publication of statistics presented in a manner that prevents the iden-
13 tification of particular reports, items, persons, or enterprises.

14 Sec. 37.13.210. DEFINITIONS. In this chapter,

15 (1) "board" means the Board of Trustees of the Alaska Per-
16 manent Fund Corporation;

17 (2) "corporation" means the Alaska Permanent Fund Corpora-
18 tion.

19 * Sec. 6. AS 38.05.180(g) is amended to read:

20 (g) The share of the net profit derived from a lease reserved to
21 the state under (f) of this section is royalty sale proceeds for the
22 purposes of the Alaska permanent fund under AS 37.13.010 [AS 37.10.065]
23 and the Alaska renewable resources development fund under AS 37.11.020.

24 * Sec. 7. AS 39.25.110 is amended by adding a new paragraph to read:

25 (22) members of the board of trustees, the executive director,
26 and staff of the Alaska Permanent Fund Corporation.

27 * Sec. 8. AS 39.50.200(9) is amended by adding a new subparagraph to

28 read:

(SS) Board of Trustees and executive director of the

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1 Alaska Permanent Fund Corporation.

2 * Sec. 9. TRANSITION. The commissioner of revenue shall transfer the
3 Alaska permanent fund to the Alaska Permanent Fund Corporation established by
4 this Act after request for transfer is made by the board of trustees of the
5 corporation. Notwithstanding AS 37.10.065(a), the commissioner of revenue
6 may invest the money in the Alaska permanent fund in the investments de-
7 scribed in AS 37.13.120(g) subject to the limitations of AS 37.13.120(h) and
8 (i).

9 * Sec. 10. AS 37.10.065 is repealed.

10 * Sec. 11. Section 10 of this Act takes effect upon transfer of the
11 Alaska permanent fund to the Alaska Permanent Fund Corporation as provided in
12 sec. 9 of this Act. The remainder of this Act takes effect immediately in
13 accordance with AS 01.10.070(c).

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LAWS OF ALASKA

1980

Source

FCCSSB 122

Chapter No.

21

AN ACT

Providing for the payment of Alaska permanent fund income to state residents; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1, LINE 10

Approved by the Governor: April 15, 1980
Actual Effective Date: April 16, 1980 with Sections 1 and 2
retroactive to January 1, 1979.

AN ACT

Providing for the payment of Alaska permanent fund income to state residents; and providing for an effective date.

* Section 1. POLICY, PURPOSES AND FINDINGS. (a) It is the duty and policy of the state with respect to the natural resources belonging to it and the income derived from those natural resources to provide for their use, development, and conservation for the maximum benefit of the people of the state.

(b) The purposes of this Act are

(1) to provide a mechanism for equitable distribution to the people of Alaska of at least a portion of the state's energy wealth derived from the development and production of the natural resources belonging to them as Alaskans;

(2) to encourage persons to maintain their residence in Alaska and to reduce population turnover in the state; and

(3) to encourage increased awareness and involvement by the residents of the state in the management and expenditure of the Alaska permanent fund (art. IX, sec. 15, state constitution).

(c) The legislature finds that the accrual of permanent fund dividends provided in AS 43.23 enacted in sec. 2 of this Act, based on full years of residency since January 1, 1959, fairly compensates each state resident for his equitable ownership of the state's natural resources since the date of statehood. It is in the public interest to distribute a portion of Alaska's

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1 energy wealth to the people of the state.

2 (d) The legislature also finds that state residents have been paying
3 increasingly high prices for fossil fuels, while few have received direct
4 monetary benefits from the production and development of fossil fuels belong-
5 ing to them as Alaskans. It is in the public interest to return to state
6 residents a portion of the state's income from oil, gas, and other mineral
7 production to help offset rising fuel costs.

8 (e) The legislature also finds that there exists in the state a serious
9 problem of population turnover. A substantial portion of the state's popu-
10 lation is comprised of individuals who reside in Alaska for only a relatively
11 short time. This constant turnover in population leads to political, eco-
12 nomic, and social instability and is harmful to the state. It is in the
13 public interest for the state to promote a stable resident population by
14 providing an incentive to encourage Alaskans to maintain their residency in
15 the state.

16 * Sec. 2. AS 43 is amended by adding a new chapter to read:

17 CHAPTER 23. PERMANENT FUND DIVIDENDS.

18 Sec. 43.23.010. ELIGIBILITY FOR PERMANENT FUND DIVIDEND. (a) An
19 individual who is eligible under (b) of this section is entitled to one
20 permanent fund dividend for each full year that the individual is a
21 state resident after January 1, 1959.

22 (b) For each year, an individual is eligible to receive payment of
23 the permanent fund dividends for which he is entitled under this section
24 if he

25 (1) is at least 18 years of age; and

26 (2) is a state resident during all or part of the year for
27 which the permanent fund dividend is paid.

28 (c) To determine the number of permanent fund dividends to which
29 an individual is entitled under (a) of this section, a year in which the

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1 individual is a state resident for less than 12 months may not be
2 counted, but a payment of a permanent fund dividend may be made for that
3 year under (f) of this section. A year for which an individual was
4 entitled to payment of a dividend but failed to file a claim may be
5 counted to determine the number of dividends under (a) of this section.

6 (d) An individual may receive payment of a permanent fund dividend
7 in a single payment or in 12 equal installments paid monthly by the
8 department.

9 (e) An individual eligible to receive payment of a permanent fund
10 dividend may elect to defer receipt of that payment. The commissioner
11 shall adopt by regulation a plan which, to the extent permitted under
12 federal law, will allow an individual to defer payment of federal and
13 state income taxes on the payment of permanent fund dividends until the
14 individual actually receives the payment.

15 (f) If an individual who is eligible under (b) of this section was
16 a state resident for less than 12 months during the year immediately
17 preceding the year in which a claim is filed, the individual is entitled
18 to payment of one prorated dividend. If that individual is also en-
19 titled to dividends under (a) of this section based on previous years as
20 a state resident, he is entitled to receive a prorated payment for the
21 total number of permanent fund dividends to which he is entitled under
22 (a) of this section. A prorated dividend or prorated payment under this
23 subsection shall be prorated on the basis of the number of months that
24 the individual was a state resident during the year immediately pre-
25 ceding the year in which the dividend is claimed.

26
27 Sec. 43.23.020. PROOF OF ELIGIBILITY. (a) The commissioner shall
28 adopt regulations under the Administrative Procedure Act (AS 44.62) for
29 determining the eligibility of individuals. The commissioner may re-
30 quire an individual to provide proof of eligibility, or he may use other

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1 information available to him from other state departments or agencies to
2 determine the eligibility of individuals. The commissioner may estab-
3 lish procedures for paying the permanent fund dividends along with other
4 payments of money or state benefits.

5 (b) The department may prescribe and furnish an application form
6 for claiming a permanent fund dividend which contains

7 (1) a statement of eligibility and a certification of resi-
8 dency in substantially the following form:

9 I certify that I am a state resident on the date of this applica-
10 tion and I have been a state resident for _____ full years and that
11 I understand that my claim for a permanent fund dividend is deter-
12 mined by the length of my residence in the state after January 1,
13 1959. I also understand that a false claim of residency to obtain
14 a permanent fund dividend is a criminal offense and that if con-
15 victed I will forfeit all permanent fund dividends and that I must
16 repay all permanent fund dividends which have been paid to me. I
17 understand that this penalty is in addition to any criminal penal-
18 ties imposed.

19 _____
20 (signature of individual).

21 and

22 (2) a statement advising the individual that he may choose to
23 receive the payment of a permanent fund dividend in a single payment or
24 in 12 installments payable monthly and a space where the individual may
25 indicate his choice of payment.

26 Sec. 43.23.030. AMOUNT OF DIVIDEND. By December 1 of each year
27 the commissioner shall give public notice of the value of each permanent
28 fund dividend to be paid in the following year. The commissioner shall
29 determine the value of a permanent fund dividend by

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1 (1) determining the amount of income of the Alaska permanent
2 fund transferred to the dividend fund under AS 43.23.050(b) in the
3 current year, less the amount, if any, to be repaid in the current year
4 to the general fund under AS 43.23.050(c);

5 (2) determining the number of permanent fund dividends paid
6 during the current year; and

7 (3) dividing the amount determined in (1) of this section by
8 the amount determined in (2) of this section.

9 Sec. 43.23.040. PENALTIES AND ENFORCEMENT. (a) In addition to
10 any criminal penalties imposed by state law, if an individual is con-
11 victed of unsworn falsification for a statement made in a certification
12 of residency made for purposes of this chapter, and the conviction is
13 not reversed, that individual is not, and may never become, eligible for
14 a permanent fund dividend, and he forfeits all permanent fund dividends
15 paid to him.

16 (b) If the commissioner determines that a permanent fund dividend
17 should not have been claimed by or paid to an individual, he may use any
18 collection procedures or remedies available under this title to recover
19 the payment of a permanent fund dividend which was improperly made.

20 Sec. 43.23.050. DIVIDEND FUND ESTABLISHED. (a) The dividend fund
21 is established as a separate fund in the state treasury. The dividend
22 fund shall be administered by the commissioner and may be invested by
23 the commissioner in the same manner provided for the investment of the
24 Alaska permanent fund under AS 37.13.120. Money in the dividend fund
25 and any interest earned from investment of money in the dividend fund
26 shall be used to pay permanent fund dividends annually and to repay
27 loans from the general fund as provided in (c) of this section.

28 (b) Each year the commissioner shall transfer to the dividend fund
29 50 percent of the income of the Alaska permanent fund which was earned

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during the fiscal year ending on June 30 of the preceding year and which is available for distribution under AS 37.13.140.

(c) The legislature may annually appropriate money from the general fund to the dividend fund if there is not enough money in the dividend fund to pay each eligible individual an annual permanent fund dividend valued at \$50. One-fifth of the amount transferred to the dividend fund each year under (b) of this section shall be annually withdrawn from the dividend fund by the commissioner and deposited in the general fund to repay appropriations made under this subsection.

Sec. 43.23.060. DUTIES OF THE DEPARTMENT. The department shall

(1) by the 10th day of each regular legislative session, present a request to the legislature for an appropriation from the general fund to the dividend fund to satisfy the requirements of AS 43.23.050;

(2) annually pay permanent fund dividends from the dividend fund;

(3) adopt regulations under the Administrative Procedure Act (AS 44.62) which establish procedures and time limits for claiming a permanent fund dividend; the department shall set the time limit for applications for permanent fund dividends so that single-payment permanent fund dividends for a year are paid before October 15 of the following year and so that installment-payment permanent fund dividends for a year begin by October 15 of the following year; and

(4) assist residents of rural areas who because of language, illness, old age, or inaccessibility to public transportation need assistance to establish eligibility and to apply for permanent fund dividends.

Sec. 43.23.070. EXEMPTION OF PERMANENT FUND DIVIDENDS. (a) An eligible individual may assign, pledge, or encumber not more than 50

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percent of the annual permanent fund dividends which are due and payable or which may become due and payable to the individual.

(b) Fifty percent of the annual permanent fund dividends payable to an individual is exempt from levy, execution, garnishment, attachment, and any other remedy for the collection of a debt.

(c) Fifty percent of the annual permanent fund dividends paid to an individual which are not held separately from other money of the individual is exempt from levy, execution, garnishment, attachment and any other remedy for the collection of a debt.

Sec. 43.23.080. ELIGIBILITY FOR STATE PUBLIC ASSISTANCE PAYMENTS.

In determining the eligibility of an individual for old age assistance under AS 47.25.430 - 47.25.610, aid to the blind under AS 47.25.620 - 47.25.780, or aid to the permanently and totally disabled under AS 47.25.790 - 47.25.970, the Department of Health and Social Services may include as income of the individual only the amount of the permanent fund dividends in excess of \$1,500 paid to the individual for a year.

Sec. 43.23.090. TAX EXEMPTION. Permanent fund dividends provided under this chapter are exempt from taxation under AS 43.20.

Sec. 43.23.100. DEFINITIONS. In this chapter,

- (1) "Alaska permanent fund" means the fund established by art. IX, sec. 15, of the state constitution;
- (2) "commissioner" means the commissioner of revenue;
- (3) "department" means the Department of Revenue;
- (4) "dividend fund" means the fund established by AS 43.23.-050;
- (5) "individual" means a natural person;
- (6) "permanent fund dividend" means a right to receive a payment of money from the dividend fund;
- (7) "state resident" means an individual who is physically

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1 present in the state with the intent to remain permanently in the state
2 or, if he is not physically present in the state, intends to return to
3 the state and he is absent for the following reasons:

4 (A) vocational, professional or other special education
5 for which a comparable program was not reasonably available in the
6 state,

7 (B) postsecondary education,

8 (C) military service,

9 (D) medical treatment,

10 (E) service in Congress, or

11 (F) other reasons which the commissioner may establish

12 by regulation under the Administrative Procedure Act (AS 44.62);

13 (8) "year" means a calendar year.

14 * Sec. 3. For 1979 the value of a permanent fund dividend is \$50. The
15 payment of permanent fund dividends for 1979 shall be made from an appropria-
16 tion from the general fund to the dividend fund for that purpose. The amount
17 appropriated from the general fund to pay permanent fund dividends for 1979
18 less 50 percent of the income of the Alaska permanent fund earned during the
19 fiscal year ending June 30, 1978, is a loan to the dividend fund from the
20 general fund which shall be repaid as provided in AS 43.23.050(c) enacted by
21 sec. 2 of this Act. The Department of Revenue shall by July 1, 1980, pre-
22 scribe and make available an application form for claiming permanent fund
23 dividends for 1979. The Department of Revenue shall mail the form to each
24 individual who, before July 1, 1980, filed a resident or part-year resident
25 Alaska net income tax return for the 1979 tax year under AS 43.20. An eli-
26 gible individual may receive payment of permanent fund dividends for 1979 if
27 he applies to the Department of Revenue on the form prescribed by the de-
28 partment no later than September 1, 1980. The application must be accom-
29 panied by a statement of eligibility as required by AS 43.23.020 enacted in

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1 sec. 2 of this Act.

2 * Sec. 4. If any provision enacted in sec. 2 of this Act is held to be
3 invalid by the final judgment, decision or order of a court of competent
4 jurisdiction, then that provision is nonseverable, and all provisions enacted
5 in sec. 2 of this Act are invalid and of no force or effect.

6 * Sec. 5. Sections 1 and 2 of this Act are retroactive to January 1,
7 1979.

8 * Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-
9 070(c).

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1981

MEMORANDUM

State of Alaska

TO: Ron Lehr, Director
Div. of Budget & Management

DATE: December 22, 1981

ATTN: Jeff Morrison
Program Budget Analyst

FILE NO: J-66-260-82

TELEPHONE NO: 465-3600

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Payment of permanent
fund dividends with-
out appropriation

By: *L. Davis*
Laura L. Davis
Assistant Attorney General

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In response to your request of September 25, 1981, it is our opinion that the payment of dividends from the dividend fund established by AS 43.23.050 does not require an appropriation. Our opinion dated March 19, 1980 (Op. Atty. Gen. No. 3, 1980, p. 8) stated that income of the fund could be distributed as dividends or reinvested in the fund without appropriation, but that another use of the fund, not as intimately related to the history of the fund itself, might not be made without an appropriation. A copy of that opinion is attached. */

As our earlier opinion indicates, it is not clear to what extent the language of article IX, section 15, of the Alaska Constitution "unless otherwise provided by law" should be interpreted to allow the expenditure of income from the permanent fund by the legislature without an appropriation. In the light of the general constitutional prohibition against dedicated funds, art. IX, § 7, it may be proper to interpret the exception for the permanent fund narrowly. A broad interpretation of that exception to allow the use of income of the fund without appropriation for any purpose chosen by the legislature could create a very large gap in our governmental finance system, particularly as the balance of the fund and its income increase. Since the legislature has not indicated any desire to use the income of the fund without appropriation for any purpose other than dividends to state residents, we will defer rendering an opinion thoroughly reviewing this subject until the question is directly presented.

LLD/pjg
Enc.

*/ This is consistent with the apparent legislative intent in creating the dividend fund. The statute provides for transfer to the dividend fund of 50 percent of the permanent fund income and for additional appropriation from the general fund if necessary to cover the distribution of dividends. AS 43.23.-050(b), (c).



LAWS OF ALASKA

1982

Chapter No.

Source

CSSSSB 684(Fin) am

81

AN ACT

Relating to the investment and management of the Alaska permanent fund and to the computation of the income of the fund available for distribution; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1, LINE 11

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: June 3, 1982
Actual Effective Date: July 1, 1982

AN ACT

Relating to the investment and management of the Alaska permanent fund and to the computation of the income of the fund available for distribution; and providing for an effective date.

* Section 1. AS 37.13.050 is amended to read:

Sec. 37.13.050. COMPOSITION AND QUALIFICATIONS OF BOARD OF TRUSTEES. (a) The Board of Trustees of the Alaska Permanent Fund Corporation consists of six members appointed by the governor. Two [THREE] of the members shall be heads of principal departments of state government, one of whom shall be the commissioner of revenue. Four [THREE] members shall be appointed by the governor from the public and may not hold any other state or federal office, position or employment, either elective or appointive, except as a member of the armed forces of either the United States or of this state. [MEMBERS OTHER THAN THE COMMISSIONER OF REVENUE SHALL BE SEPARATELY CONFIRMED BY A MAJORITY OF THE MEMBERS OF THE LEGISLATURE IN JOINT SESSION.]

(b) The four [THREE] public members of the board shall have recognized competence and wide experience in finance, investments, or other business management-related fields.

(c) The board shall annually elect a chairman from among its members.

* Sec. 2. AS 37.13.060 is amended to read:

Sec. 37.13.060. TERM OF OFFICE. The public members of the

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1 board shall be appointed for terms of four [THREE] years, and they may
2 be reappointed [SUBJECT TO CONFIRMATION BY A MAJORITY OF THE MEMBERS OF
3 THE LEGISLATURE IN JOINT SESSION]. The terms of the public members
4 [TERMS] shall be staggered so that no more than one term of a public
5 member expires each year. [INITIAL TERMS FOR MEMBERS OTHER THAN THE
6 COMMISSIONER OF REVENUE SHALL BE TWO MEMBERS SERVING FOR ONE YEAR, TWO
7 MEMBERS SERVING FOR TWO YEARS, AND ONE MEMBER SERVING FOR THREE YEARS.]

* Sec. 3. AS 37.13.070 is amended to read:

9 Sec. 37.13.070. REMOVAL AND VACANCIES. (a) The governor may
10 remove a member of the board from office. [HOWEVER, THE REMOVAL OF A
11 MEMBER OF THE BOARD IS SUBJECT TO DISAPPROVAL BY A VOTE OF A MAJORITY OF
12 THE MEMBERS OF THE LEGISLATURE AT THE FIRST JOINT SESSION HELD 10 OR
13 MORE DAYS AFTER THE LEGISLATURE RECEIVES NOTICE OF THE REMOVAL FROM THE
14 GOVERNOR.] A removal by the governor shall be in writing and shall
15 state the reason for the removal. A member who is removed by the
16 governor may not participate in board business and may not be counted
17 for purposes of establishing a quorum after [BETWEEN THE TIME] he re-
18 ceives written notice of his removal from the governor [AND THE TIME
19 THAT THE LEGISLATURE'S POWER TO DISAPPROVE THE REMOVAL UNDER THIS SUB-
20 SECTION EXPIRES. IF THE LEGISLATURE DISAPPROVES THE REMOVAL OF A BOARD
21 MEMBER, THE BOARD MEMBER SHALL BE REINSTATED].

22 (b) A vacancy on the board shall be promptly filled by appointment
23 by the governor [AND CONFIRMATION BY A MAJORITY OF THE MEMBERS OF THE
24 LEGISLATURE IN JOINT SESSION]. An appointee to a vacancy shall hold
25 office for the balance of the term for which his predecessor on the
26 board was appointed. [IF A VACANCY ARISES ON THE BOARD WHILE THE LEGIS-
27 LATURE IS NOT IN SESSION, THE GOVERNOR MAY APPOINT AN INTERIM BOARD
28 MEMBER WHO SHALL EXERCISE THE POWERS OF A BOARD MEMBER UNTIL THE LEGIS-
29 LATURE FAILS TO CONFIRM THE APPOINTMENT OF THE INTERIM BOARD MEMBER.]

(c) A vacancy on the board does not impair the authority of a quorum of the board to exercise all the powers and perform all the duties of the board.

* Sec. 4. AS 37.13.090 is amended to read:

Sec. 37.13.090. COMPENSATION OF BOARD MEMBERS. Public members of the board receive an honorarium of \$400 for each day spent at a meeting of the board or at a meeting of a subcommittee of the board or at a public meeting as a representative of the board. Members [MEETING DAY IF THEY ATTEND THE MEETING. ALL MEMBERS] of the board are entitled to per diem and travel allowances as provided by law for members of state boards and commissions.

* Sec. 5. AS 37.13.120(g) is amended to read:

(g) Subject to the limitations contained in [(h) AND (i) OF] this section, the board may invest corporation assets at such competitive national market rates or prices as are applicable to each investment only in

(1) obligations of, or obligations insured by or guaranteed by, the United States or agencies or instrumentalities of the United States;

(2) obligations secured by reserves paid in by the United States or agencies or instrumentalities of the United States or obligations of corporations in which the United States is a shareholder or member;

(3) certificates of deposit and term deposits of [ISSUED BY] United States domestic banks which are members of the Federal Deposit Insurance Corporation and [FOR] which may be readily sold in a [GENERALLY RECOGNIZED] secondary market at prices reflecting fair value [EXISTS] or which are fully secured at all times as to payment of principal and interest as [BY INVESTMENTS] described in (m) [(1), (2), (8) OR (12) -

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(16) of this section [SUBSECTION; THE SECURITY PLEDGED UNDER THIS PARAGRAPH SHALL BE AT LEAST EQUAL TO THE FACE VALUE OF THE DEPOSIT AND THE BOARD MAY REQUIRE SUBSTITUTION OF COLLATERAL];

(4) certificates of deposit and term deposits [SHARES] of federally chartered savings and loan [LOANS] associations in Alaska which may be readily sold in a secondary market at prices reflecting fair value or which are fully secured at all times as to payments of principal and interest as [BY INVESTMENTS] described in (m) [(1), (2)] of this section [SUBSECTION];

(5) [SAVINGS] certificates of deposit and term deposits of [ISSUED BY] state chartered savings and loan associations in Alaska which may be readily sold in a secondary market at prices reflecting fair value or which are fully secured at all times as to payments of principal and interest as [BY INVESTMENTS] described in (m) [(1), (2)] of this section [SUBSECTION];

(6) certificates of deposit and term deposits of [DEPOSITS WITH] mutual savings banks in Alaska which may be readily sold in a secondary market at prices reflecting fair value or which are fully secured at all times as to payments of principal and interest as [BY INVESTMENTS] described in (m) [(1), (2)] of this section [SUBSECTION];

(7) fixed-term certificates of indebtedness of federally insured credit unions in Alaska which may be readily sold in a secondary market at prices reflecting fair value or which are fully secured at all times as to payments of principal and interest as [BY INVESTMENTS] described in (m) [(1), (2)] of this section [SUBSECTION];

(8) corporate debt securities which are rated AA or better by a nationally recognized rating service;

(9) short-term corporate promissory notes of the highest ratings assigned by a nationally recognized rating service;

1 (10) bankers' acceptances drawn on and accepted by United
2 States banks each of which have a combined capital and surplus aggregating at least \$200,000,000;

3
4 (11) repurchase agreements, the securities underlying the
5 agreements being any of the items in (1) - (3) and (8) - (10) of this
6 subsection;

7 (12) the guaranteed portion of Federal Small Business Administration
8 loans;

9 (13) the portion of first lien real estate mortgages guaranteed
10 by the Federal Veterans Administration [ASSOCIATION];

11 (14) the portions of business and industrial loans made under
12 the Rural Development Act of 1972 which are guaranteed by the Farmers
13 Home Administration;

14 (15) the guaranteed portion of Farmers Home Administration
15 loans;

16 (16) notes secured by mortgages granting a first lien on commercial or [OF] residential real estate improved by completed buildings
17 if the mortgages are insured by a private mortgage insurance corporation
18 which is authorized to do business in Alaska and has combined capital
19 and [,] surplus [AND RESERVES] aggregating at least \$20,000,000, and if
20 loan-to-value ratios do not exceed 75 percent for commercial mortgages
21 and 90 percent for residential mortgages; however, [THE MINIMUM COVERAGE
22 SHALL BE 10 PERCENT FOR LOANS HAVING A LOAN-TO-VALUE RATIO OF LESS THAN
23 90 PERCENT, AND THE MINIMUM COVERAGE SHALL BE 20 PERCENT FOR LOANS
24 HAVING A LOAN-TO-VALUE RATIO OF 90 PERCENT OR MORE.]

25 (A) no mortgage insurance is necessary for commercial
26 loans having loan-to-value ratios of less than 50 percent and the
27 minimum coverage of other commercial loans shall be 10 percent for
28 those having a loan-to-value ratio of 50 - 60 percent and 15 percent
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for those having a loan-to-value ratio greater than 60 percent but no more than 75 percent, and

(B) no mortgage insurance is necessary for residential loans having a loan-to-value ratio of less than 70 percent and the minimum coverage of other residential loans shall be 10 percent for those having a loan-to-value ratio greater than 70 percent but less than 90 percent and 20 percent for those having a loan-to-value ratio of 90 percent;

(17) notes secured by mortgages granting a first lien on commercial real estate improved by completed buildings if the originating financial institution retains at least 25 percent of the mortgage until maturity;

(18) preferred and common stock of corporations incorporated in the United States;

(19) certificates of deposit, term deposits, or bankers' acceptances, which are issued by a United States bank or trust company located in a foreign country and are denominated in United States currency, if either (A) they may be readily sold in a secondary market at prices reflecting fair value, or (B) the issuing bank or trust company has capital and surplus at the date of issue equaling at least \$500,000,000; investments made under this paragraph are not subject to the collateral requirements for domestic certificates under (m) of this section;

(20) equity interests in, and debt obligations secured by mortgages granting a first lien on, real estate improved by completed and substantially rented buildings and located in the United States, if these investments are made

(A) in a corporation, partnership, trust, or other entity in which, at the conclusion of each investment transaction,

at least 60 percent of the beneficial ownership interests are held by other institutional investors, and which is organized and operated for the purpose of making real estate investments by a bank, insurance company, or other manager of institutional funds which has had at least five years of experience in the management of real estate investments of institutional investors; or

(B) in conjunction with and on substantially the same terms as an entity described in (A) of this paragraph.

* Sec. 6. AS 37.13.120(i) is repealed and reenacted to read:

(i) At the time of each investment, the aggregate investment of the Alaska permanent fund in each stated category of investment may not exceed the following stated percentage of the total investments of the fund: mortgages under (g)(16) of this section, 15 percent; real estate investments under (g)(20) of this section, 15 percent; foreign certificates of deposit or the equivalent under (g)(19) of this section, 20 percent; corporate stocks and debt securities under (g)(8), (9), and (18) of this section, 50 percent. The Alaska permanent fund may at no time own more than five percent of the voting stock of a corporation. Domestic stocks, except for bank and insurance company stocks, must be listed at the date of purchase on an exchange registered with the Securities and Exchange Commission.

* Sec. 7. AS 37.13.120 is amended by adding a new subsection to read:

(m) Certificates of deposit or the equivalent instruments which are not of a quality that may be readily sold in a secondary market at prices reflecting fair value must be secured by a pledge as collateral of investments authorized for the Alaska permanent fund under (g)(1), (2), (8), or (12) - (17) of this section, which investments have value at least equal to the face value of the certificate of deposit. The board may require substitution of collateral in order to ensure continued

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satisfaction of the requirements set out in this subsection.

* Sec. 8. AS 37.13.140 is repealed and reenacted to read:

Sec. 37.13.140. INCOME. Net income of the corporation must be computed annually as of the last day of the fiscal year in accordance with generally accepted accounting principles, excluding any unrealized gains or losses. Income available for distribution equals the average net income of the corporation for the last five fiscal years, including the fiscal year just ended, but may not exceed net income of the corporation for the fiscal year just ended plus the balance in the undistributed income account described in AS 37.13.145.

* Sec. 9. AS 37.13 is amended by adding a new section to read:

Sec. 37.13.145. DISPOSITION OF INCOME. At the end of each fiscal year, an amount sufficient to offset the effect of inflation on principal of the Alaska permanent fund during that year, as measured by a nationally recognized index, shall be transferred from net income as defined in AS 37.13.140, excluding income on the undistributed income account in the Alaska permanent fund, to the principal of the Alaska permanent fund for reinvestment. The balance of the net income as defined in AS 37.13.140 shall be transferred to the undistributed income account in the Alaska permanent fund. Money in the undistributed income account shall be invested in investments authorized under AS 37.13.120. Income from the investment of the undistributed income account shall be treated as an addition to that account.

* Sec. 10. AS 37.13.150 is amended to read:

Sec. 37.13.150. CORPORATION [BOARD] BUDGET. The revenues generated by the corporation's investments must be identified as the source of the operating budget of the corporation in the state's operating budget under [BOARD IS FROM THE GENERAL FUND AND IS SUBJECT TO] the Executive Budget Act (AS 37.07). The unexpended balance of the corporation

tion's annual operating budget does not lapse at the end of the fiscal year but shall be treated as income under AS 37.13.140.

* Sec. 11. AS 37.13.160 is amended to read:

Sec. 37.13.160. AUDITS. The Legislative Budget and Audit Committee may [SHALL] provide for an annual post audit and annual operational and performance evaluations of the corporation's investments and investment programs.

* Sec. 12. AS 37.13 is amended by adding a new section to read:

Sec. 37.13.205. REGULATIONS. The board may adopt regulations under the Administrative Procedure Act (AS 44.62) to interpret and implement this chapter.

* Sec. 13. AS 37.13.130 is repealed.

* Sec. 14. Transition to four-year terms for members of the Board of Trustees of the Alaska Permanent Fund Corporation as provided in AS 37.13.060 as amended in sec. 2 of this Act shall be implemented as follows: at the expiration of the present term of each public member, the governor shall appoint a replacement, or reappoint the present member, for a term of four years. Within 90 days after the effective date of this Act, the governor shall appoint a public member to replace one of the two present heads of principal departments other than the commissioner of revenue, to serve for a term of four years or less, which term expires in a year when no other public member's term expires. The head of a principal department who is to be replaced shall continue to serve on the board until the appointment of a replacement.

* Sec. 15. TRANSITION. (a) All income earned by the Alaska permanent fund before the effective date of this Act that is not income available for disbursement shall be transferred to the undistributed income account established in AS 37.13.145 added by sec. 9 of this Act. However, the amount transferred under this section shall be reduced by an amount equal to one-

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1 half of the income available for disbursement for fiscal year 1983.
2 (b) The amount equal to the reduction in income under (a) of this
3 section shall be transferred to the general fund.

4 (c) In this section "income available for disbursement" shall be deter-
5 mined as set out in AS 37.13.140 before amendment by this Act.

6 * Sec. 16. This Act takes effect July 1, 1982.

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LAWS OF ALASKA

1982

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Chapter No.

102

AN ACT

Providing for permanent fund dividends; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1, LINE 9

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: June 16, 1982
Actual Effective Date: Sections 1 and 22 take effect
August 13, 1982; sections 6 - 13, 15 - 21, 24 and 26 take
effect June 17, 1982; sections 2 - 5, 14, 23 and 25 do not
take effect.

AN ACT

Providing for permanent fund dividends; and
providing for an effective date.

* Section 1. AS 43.23 is amended by adding new sections to read:

Sec. 43.23.005. ELIGIBILITY. (a) An individual is eligible to receive one permanent fund dividend each year in an amount to be determined under AS 43.23.025 if the individual applies to the department, and if on the date of application the individual

(1) is a state resident; and

(2) has been a state resident for a period of at least six consecutive months immediately preceding the date of application.

(b) In determining the minimum period of an individual's residency required under (a)(2) of this section, the department may include months of residency both in the current year and in the immediately preceding year.

(c) A parent, guardian, or other authorized representative may claim a permanent fund dividend on behalf of an unemancipated minor or on behalf of an incompetent individual who is eligible to receive a payment under this section.

Sec. 43.23.015. APPLICATION AND PROOF OF ELIGIBILITY. (a) The commissioner shall adopt regulations under the Administrative Procedure Act (AS 44.62) for determining the eligibility of individuals for permanent fund dividends. The commissioner may require an individual to provide proof of eligibility, and the commissioner may use other infor-

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mation available from other state departments or agencies to determine the eligibility of an individual.

(b) The department shall prescribe and furnish an application form for claiming a permanent fund dividend. The application must contain a statement of eligibility and a certification of residency in substantially the following form:

I certify that

() I am a state resident on the date of this application and I have been a state resident for at least six months immediately preceding the date of this application; or

() (name), the individual on whose behalf I am applying, is a state resident and has been a state resident for at least six months immediately preceding the date of this application.

I understand that a false claim of residency to obtain a permanent fund dividend for myself or for another is a criminal offense and that if convicted I will forfeit future permanent fund dividends and that I must repay all permanent fund dividends that have been paid to me. I understand that this penalty is in addition to any criminal penalties imposed.

(signature of individual, parent, guardian, or other authorized representative)

(c) Except as provided in (d) of this section or as may be provided by regulations adopted by the department, an individual must personally

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sign the application for permanent fund dividends, including the certification of residency required under (b) of this section.

(d) The application and certification of residency of an unemancipated individual under 18 years of age or of an incompetent individual must be signed by the individual's parent, legal guardian, or other authorized representative.

(e) If a public agency claims a permanent fund dividend on behalf of an individual, the public agency shall hold the dividend in trust for the individual. Money held in trust under this subsection shall be invested by the commissioner in accordance with AS 37.10.070.

(f) A minor or an incompetent individual may not maintain a claim against the state or an officer or employee of the state based on the manner in which the parent, guardian, or authorized representative other than a public agency of the state managed or disposed of permanent fund dividends received on behalf of the minor or incompetent individual.

(g) If an individual is aggrieved by a decision of the department determining the individual's eligibility for a permanent fund dividend or the individual's authority to claim a permanent fund dividend on behalf of another, the individual may appeal that decision to the superior court in accordance with AS 44.62.560. An appeal under this section does not entitle the aggrieved individual to a trial de novo. The appeal shall be based on the record of the administrative proceeding from which appeal is taken and the scope of appeal is limited to matters contained in the record of the administrative proceeding.

(h) The penalty and enforcement provisions of AS 43.23.035 apply to an individual who claims a permanent fund dividend on behalf of another.

Sec. 43.23.025. AMOUNT OF DIVIDEND. By September 1 of each year the commissioner shall give public notice of the value of each permanent

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fund dividend for that year. The commissioner shall determine the value of a permanent fund dividend by

(1) determining the amount of income of the Alaska permanent fund transferred to the dividend fund under AS 43.23.045(b) during the current year;

(2) determining the number of individuals eligible to receive a dividend payment for the current year; and

(3) dividing the amount determined in (1) of this section by the amount determined in (2) of this section.

Sec. 43.23.035. PENALTIES AND ENFORCEMENT. (a) In addition to any criminal penalties imposed by state law, if an individual is convicted of a crime in connection with a false statement made in a certification required under AS 43.23.015, and the conviction is not reversed, that individual forfeits all permanent fund dividends paid and is not eligible for a future permanent fund dividend.

(b) If the commissioner determines that a permanent fund dividend should not have been claimed by or paid to an individual, the commissioner may use all collection procedures or remedies available for collection of taxes under this title to recover the payment of a permanent fund dividend that was improperly made. A notice of an improperly paid dividend must be sent to the individual within 10 years after the improper payment. If notice is not sent within the 10-year period, proceedings may not be commenced in court for recovery of the improper payment.

Sec. 43.23.045. DIVIDEND FUND. (a) The dividend fund is established as a separate fund in the state treasury. The dividend fund shall be administered by the commissioner and shall be invested by the commissioner in the same manner as provided in AS 37.10.070.

(b) Notwithstanding any contrary provision of law, each year the

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commissioner shall transfer to the dividend fund 50 percent of the income of the Alaska permanent fund earned during the fiscal year ending on June 30 of the current year and available for distribution.

(c) The department may adopt by regulation a plan that, to the extent permitted by federal law, will allow an individual who elects to participate in the plan to select an optional disbursement of the dividend payment that would have the effect of deferring payment of all or a portion of federal income taxes on the receipt of a permanent fund dividend.

Sec. 43.23.055. DUTIES OF THE DEPARTMENT. The department shall

(1) annually pay permanent fund dividends from the dividend fund;

(2) adopt regulations under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for claiming a permanent fund dividend; the department shall set the time limit for applications for permanent fund dividends so that the number of eligible applicants is determined by September 1 and permanent fund dividends for a year are paid before December 31 of that year;

(3) adopt regulations under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for an individual upon emancipation or upon reaching majority to apply for permanent fund dividends not received during minority because the parent, guardian, or other authorized representative did not apply on behalf of the individual; and

(4) assist residents of the state, particularly in rural areas, who because of language, disability, or inaccessibility to public transportation need assistance to establish eligibility and to apply for permanent fund dividends.

Sec. 43.23.065. EXEMPTION OF PERMANENT FUND DIVIDENDS. Fifty

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percent of the annual permanent fund dividend payable to an individual is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual. No exemption is available under this section for permanent fund dividends taken to satisfy child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 - 47.23.220.

Sec. 43.23.075. ELIGIBILITY FOR PUBLIC ASSISTANCE. (a) In determining the eligibility of an individual under a public assistance program administered by the Department of Health and Social Services in which eligibility for assistance is based on financial need, the Department of Health and Social Services may not consider a permanent fund dividend as income or resources received by the recipient of public assistance or by a member of the recipient's household unless required to do so by federal law or regulation. The Department of Health and Social Services shall notify all recipients of public assistance of the effects of receiving a permanent fund dividend.

(b) An individual who is denied medical assistance under Title XIX of the federal Social Security Act (42 U.S.C. 1396 et seq.) solely because of the receipt of a permanent fund dividend by the individual or by a member of the individual's household is eligible for state-funded medical assistance under the general relief assistance program (AS 47.25.120 - 47.25.300). The individual is entitled to receive, for a period not to exceed four months, the same level of medical assistance as the individual would have received under Title XIX of the federal Social Security Act had there been no permanent fund dividend program.

(c) An individual who is denied assistance solely because permanent fund dividends received by the individual or by a member of the indivi-

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dual's household are counted as income or resources under federal law or regulation is eligible for cash assistance under the general relief assistance program (AS 47.25.120 - 47.25.300). Notwithstanding the limit in AS 47.25.130, the individual is entitled to receive, for a period not to exceed four months, the same amount as the individual would have received under other public assistance programs had there been no permanent fund dividend program.

Sec. 43.23.085. ELIGIBILITY FOR STATE PROGRAMS. No program administered by the state or any of its instrumentalities or municipalities, the eligibility for which is based on financial need, shall consider a permanent fund dividend as income or resources unless required to do so by federal law or regulation.

Sec. 43.23.095. DEFINITIONS. In this chapter,

(1) "Alaska permanent fund" means the fund established by art. IX, sec. 15 of the state constitution;

(2) "commissioner" means the commissioner of revenue;

(3) "department" means the Department of Revenue;

(4) "dividend fund" means the fund established by AS 43.-23.045;

(5) "individual" means a natural person;

(6) "permanent fund dividend" means a right to receive a payment from the dividend fund;

(7) "state resident" means an individual who is physically present in the state with the intent to remain permanently in the state or, if the individual is not physically present in the state, intends to return to the state and is absent only for any of the following reasons:

(A) vocational, professional, or other specific education for which a comparable program was not reasonably available in the state;

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- (B) secondary or postsecondary education;
- (C) military service;
- (D) medical treatment;
- (E) service in Congress; or
- (F) other reasons which the commissioner may establish

by regulation;

(8) "year" means a calendar year.

* Sec. 2. AS 43.23.010(a) is amended to read:

(a) An individual who is eligible under (b) of this section is entitled to one permanent fund dividend for each full year that the individual is a state resident after January 1, 1982 [1959].

* Sec. 3. AS 43.23.010(b) is amended to read:

(b) For each year, an individual is eligible to receive payment of the permanent fund dividends for which the individual [HE] is entitled under this section if the individual [HE]

(1) IS AT LEAST 18 YEARS OF AGE; AND

(2) is a state resident during all or part of the year for which the permanent fund dividend is paid.

* Sec. 4. AS 43.23.010 is amended by adding a new subsection to read:

(g) A parent, guardian, or other authorized representative may claim a permanent fund dividend on behalf of an unemancipated minor or on behalf of an incompetent individual who is eligible to receive a payment under this section.

* Sec. 5. AS 43.23.020 is repealed and reenacted to read:

Sec. 43.23.020. APPLICATION AND PROOF OF ELIGIBILITY. (a) The commissioner shall adopt regulations under the Administrative Procedure Act (AS 44.62) for determining the eligibility of individuals for permanent fund dividends. The commissioner may require an individual to provide proof of eligibility, and the commissioner may use other informa-

tion available from other state departments or agencies to determine the eligibility of an individual.

(b) The department shall prescribe and furnish an application form for claiming a permanent fund dividend. The application must contain a statement of eligibility and a certification of residency in substantially the following form:

I certify that

() I am a state resident on the date of this application and I have been a state resident for _____ full years; or

() (name), the individual on whose behalf I am applying, is a state resident and has been a state resident for _____ full years.

I understand that this claim for a permanent fund dividend is determined by the length of residency in the state after January 1, 1982.

I understand that a false claim of residency to obtain a permanent fund dividend for myself or for another is a criminal offense and that if convicted I will forfeit future permanent fund dividends and that I must repay all permanent fund dividends that have been paid to me. I understand that this penalty is in addition to any criminal penalties imposed.

(signature of individual, parent, guardian, or other authorized representative)

(c) Except as provided in (d) of this section or as may be provided by regulations adopted by the department, an individual must personally

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1 sign the application for permanent fund dividends, including the certi-
2 fication of residency required under (b) of this section.

3 (d) The application and certification of residency of an unemanci-
4 pated individual under 18 years of age or of an incompetent individual
5 must be signed by the individual's parent, legal guardian, or other
6 authorized representative.

7 (e) If a public agency claims a permanent fund dividend on behalf
8 of an individual, the public agency shall hold the dividend in trust for
9 the individual. Money held in trust under this subsection shall be
10 invested by the commissioner in accordance with AS 37.10.070.

11 (f) A minor or an incompetent individual may not maintain a claim
12 against the state or an officer or employee of the state based on the
13 manner in which the parent, guardian, or authorized representative other
14 than a public agency of the state managed or disposed of permanent fund
15 dividends received on behalf of the minor or incompetent individual.

16 (g) If an individual is aggrieved by a decision of the department
17 determining the individual's eligibility for a permanent fund dividend
18 or the individual's authority to claim a permanent fund dividend on
19 behalf of another, the individual may appeal that decision to the super-
20 ior court in accordance with AS 44.62.560. An appeal under this section
21 does not entitle the aggrieved individual to a trial de novo. The
22 appeal shall be based on the record of the administrative proceeding
23 from which appeal is taken and the scope of appeal is limited to matters
24 contained in the record of the administrative proceeding.

25 (h) The penalty and enforcement provisions of AS 43.23.040 apply
26 to an individual who claims a permanent fund dividend on behalf of
27 another.

28 * Sec. 6. AS 43.23 is amended by adding a new section to read:
29 Sec. 43.23.014. PAYMENTS FOR PRIOR YEARS. (a) Beginning with

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application for permanent fund dividends filed during 1983 and for each year after that, an individual who becomes 18 years of age on or before the last day for filing an application during a year may file a claim for and receive permanent fund dividends for all prior years in which the individual would have been eligible under AS 43.23.010 if the individual had then been 18 years of age. This section creates a right to receive permanent fund dividends for prior years that vests in an individual when the individual becomes 18 years of age.

(b) A claim for permanent fund dividends for prior years under this section may be filed even if the individual is not a state resident at the time the individual makes the claim.

(c) In order to receive a permanent fund dividend for a prior year, an individual must file a claim for all prior dividends within one year after reaching the age of 18 and within the time limits established under AS 43.23.060(3) for the current year's application. Failure to file a claim for permanent fund dividends for prior years within this period waives all entitlement to those dividends. The department shall prescribe and make available forms for claims for permanent fund dividends for prior years, and may require proof of eligibility in addition to that required for a current year under AS 43.23.020(a).

(d) The value of a permanent fund dividend for a prior year is the value published by the commissioner under AS 43.23.030 for that prior year. Interest on permanent fund dividends paid for a prior year under this section is computed and paid from January 1 of the year following that year, using the average rate of return earned since that time by the dividend fund established in AS 43.23.050.

(e) Nothing in this section prevents an individual from claiming and receiving a permanent fund dividend under AS 43.23.010 during the current year in which the individual is eligible.

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* Sec. 7. AS 43.23.020 is amended by adding new subsections to read:

(c) Beginning with application for a permanent fund dividend filed during 1983 and each year after that, an individual who is a parent or legal guardian of a minor child who is a resident of the state shall provide to the department the following information with respect to each minor child:

- (1) full name;
- (2) date of birth;
- (3) current address if different from the parent's or guardian's address; and

(4) other information required by the department relating to the future eligibility of the child to claim a prior year permanent fund dividend.

(d) The department shall maintain a record of the information provided under (c) of this section for each minor child until the time for that child to file a claim for prior year permanent fund dividends has expired. The information required in (c) of this section may be used only to estimate the number of future claims for prior year dividends and to verify the eligibility of individuals who have filed claims for prior year dividends. This information may be used in place of other proof of eligibility permitted under (a) of this section and under AS 43.23.014(c). The failure of a parent or guardian to provide the information required by (c) of this section does not affect the child's eligibility in the future to receive payment for a prior year dividend.

* Sec. 8. AS 43.23.030(1) is amended to read:

- (1) determining the amount of income of the Alaska permanent fund transferred to the dividend fund under AS 43.23.050(b) in the current year [, LESS THE AMOUNT, IF ANY, TO BE REPAID IN THE CURRENT YEAR TO THE GENERAL FUND UNDER AS 43.23.050(c)];

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* Sec. 9. AS 43.23.030(2) is amended to read:

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(2) determining the number of permanent fund dividends paid during the current year and an estimate of the number of permanent fund dividends for the current year that individuals under 18 years of age will be eligible to claim in the future as dividends for a prior year under AS 43.23.014; and

* Sec. 10. AS 43.23.040 is repealed and reenacted to read:

Sec. 43.23.040. PENALTIES AND ENFORCEMENT. (a) In addition

to any criminal penalties imposed by state law, if an individual is convicted of a crime in connection with a false statement made in a certification required under AS 43.23.020, and the conviction is not reversed, that individual forfeits all permanent fund dividends paid and is not eligible for a future permanent fund dividend.

(b) If the commissioner determines that a permanent fund dividend should not have been claimed by or paid to an individual, the commissioner may use all collection procedures or remedies available for collection of taxes under this title to recover the payment of a permanent fund dividend that was improperly made. A notice of an improperly paid dividend must be sent to the individual within 10 years after the improper payment. If notice is not sent within the 10-year period, proceedings may not be commenced in court for recovery of the improper payment.

* Sec. 11. AS 43.23.050(a) is amended to read:

(a) The dividend fund is established as a separate fund in the state treasury. The dividend fund shall be administered by the commissioner and may be invested by the commissioner in the same manner provided for the investment of the Alaska permanent fund under AS 37.13.-120. Money in the dividend fund and any interest earned from investment

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of money in the dividend fund shall be used to pay permanent fund dividends annually [AND TO REPAY LOANS FROM THE GENERAL FUND AS PROVIDED IN (c) OF THIS SECTION].

* Sec. 12. AS 43.23.050(b) is amended to read:

(b) Notwithstanding any contrary provision of law, each [EACH] year the commissioner shall transfer to the dividend fund 50 percent of the income of the Alaska permanent fund [WHICH WAS] earned during the fiscal year ending on June 30 of the current [PRECEDING] year and [WHICH IS] available for distribution [UNDER AS 37.13.140].

* Sec. 13. AS 43.23.050 is amended by adding new subsections to read:

(d) Each year the department shall pay from the dividend fund all permanent fund dividends payable to eligible individuals for the current year and all permanent fund dividends for prior years, including interest, payable that year to eligible individuals. The money remaining each year after these payments are made, and any interest earned from investment of money in the dividend fund, remains in the fund to pay claims for prior year permanent fund dividends.

(e) The department shall review the status of the dividend fund every four years beginning in 1985 to determine whether there is sufficient money in the fund to pay future claims for prior year permanent fund dividends. On August 1 of the year of a review the commissioner shall certify the amount of excess or deficient funds, as the case may be. If there is an excess, the amount of income described in AS 43.23.030(1) shall be increased by the amount of the excess for purposes of determining the value of a permanent fund dividend under AS 43.23.030 to be paid in the following year. If there is a deficiency, the amount of income described in AS 43.23.030(1) shall be reduced by the amount of the deficiency for purposes of determining the value of a permanent fund dividend under AS 43.23.030 to be paid in the following year.

* Sec. 14. AS 43.23.060 is amended by adding a new paragraph to read:
(5) adopt regulations under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for an individual upon emancipation or upon reaching majority to apply for permanent fund dividends not received during minority because the parent, guardian, or other authorized representative did not apply on behalf of the individual.

* Sec. 15. AS 43.23.070 is amended by adding a new subsection to read:
(d) No exemption is available under this section for permanent fund dividends taken to satisfy child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 - 47.23.220.

* Sec. 16. AS 43.23.080 is repealed and reenacted to read:
Sec. 43.23.080. ELIGIBILITY FOR STATE PROGRAMS. No program administered by the state or any of its instrumentalities or municipalities, the eligibility for which is based on financial need, shall consider a permanent fund dividend as income or resources unless required to do so by federal law or regulation.

* Sec. 17. AS 43.23 is amended by adding a new section to read:
Sec. 43.23.087. ELIGIBILITY FOR PUBLIC ASSISTANCE. (a) In determining the eligibility of an individual under a public assistance program administered by the Department of Health and Social Services in which eligibility for assistance is based on financial need, the Department of Health and Social Services may not consider a permanent fund dividend as income or resources received by the recipient of public assistance or by a member of the recipient's household unless required to do so by federal law or regulation. The Department of Health and Social Services shall notify all recipients of public assistance of the effects of receiving a permanent fund dividend.

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Chapter 102

1 (b) An individual who is denied medical assistance under Title XIX
2 of the federal Social Security Act (42 U.S.C. 1396 et seq.) solely
3 because of the receipt of a permanent fund dividend by the individual or
4 by a member of the individual's household is eligible for state-funded
5 medical assistance under the general relief assistance program (AS 47.-
6 25.120 - 47.25.300). The individual shall receive, for a period not to
7 exceed four months, the same level of medical assistance as the indi-
8 vidual would have received under Title XIX of the federal Social Security
9 Act had there been no permanent fund dividend program.

10 (c) An individual who is denied assistance solely because permanent
11 fund dividends received by the individual or a member of the individual's
12 household are counted as income or resources under federal law or regu-
13 lation is eligible for cash assistance under the general relief assis-
14 tance program (AS 47.25.120 - 47.25.300). Notwithstanding the limit in
15 AS 47.25.130, the individual is entitled to receive, for a period not to
16 exceed four months, the same amount as the individual would have re-
17 ceived under other public assistance programs had there been no permanent
18 fund dividend program.

19 * Sec. 18. LOANS FORGIVEN. Any loans made to the dividend fund from the
20 general fund under AS 43.23.050(c), repealed in sec. 21 of this Act, out-
21 standing on the effective date of sec. 21 of this Act, are forgiven.

22 * Sec. 19. 1982 PERMANENT FUND DIVIDEND DISTRIBUTION. (a) An individual
23 is eligible to receive one permanent fund dividend for 1982 if the individual
24 applies to the Department of Revenue, and if on the date of application the
25 individual

26 (1) is a state resident; and

27 (2) has been a state resident for a period of at least six con-
28 secutive months immediately preceding the date of application.

29 (b) The amount of each dividend for 1982 is \$1,000.

(c) The requirement of application to the Department of Revenue under (a) of this section is satisfied if

(1) an individual before the effective date of this section and during 1982 filed an application with the department under AS 43.23.010;

(2) an individual files an application with the department under this section within the time limits established by the department in regulations adopted under (e) of this section; or

(3) a parent, guardian, or other authorized representative claims a permanent fund dividend on behalf of an unemancipated minor or an incompetent individual who is eligible to receive a payment under this section.

(d) A minor or an incompetent individual may not maintain a claim against the state or an officer or employee of the state based on the manner in which the parent, guardian, or authorized representative other than a public agency of the state managed or disposed of permanent fund dividends received on behalf of the minor or incompetent individual.

(e) As soon as possible after the effective date of this section, the Department of Revenue shall issue warrants for permanent fund dividends to eligible individuals who before the effective date of this section and during 1982 filed applications with the department under AS 43.23.010. The Department of Revenue shall make application forms available to all other applicants and may continue to use the application forms prepared under AS 43.23.020(b) for applications under this section. The Department of Revenue shall adopt emergency regulations under AS 44.62.250 procedures and time limits for claiming a permanent fund dividend under this section. The deadline for claiming a permanent fund dividend under this section may not be later than 20 days after the effective date of this section. Payments shall be made as soon as possible after the Department of Revenue determines that an applicant is eligible for the payment.

(f) The provisions of this section and AS 43.23.015, 43.23.035, 43.23.-

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1 055(3), 43.23.065, 43.23.075, 43.23.085, and 43.23.095 as set out in sec. 1
2 of this Act apply to the distribution of permanent fund dividends during
3 1982, notwithstanding any contrary provisions of AS 43.23 and notwithstanding
4 the fact that those provisions may not be enacted into law before the effec-
5 tive date of this section.

6 (g) Income of the Alaska permanent fund for fiscal year 1982 transferred
7 to the dividend fund may not be used for payment of permanent fund dividends
8 during 1982, but must remain in the dividend fund and be used for payment of
9 permanent fund dividends during 1983 along with the fiscal year 1983 earnings
10 of the Alaska permanent fund transferred to the dividend fund.

11 (h) The permanent fund dividend distribution under this section is in
12 place of any distribution under AS 43.23 for the years 1979 - 1981.

13 * Sec. 20. Section 4, ch. 21, SLA 1980, is repealed.

14 * Sec. 21. AS 43.23.010(d) and 43.23.050(c) are repealed.

15 * Sec. 22. AS 43.23.010, 43.23.014, 43.23.020, 43.23.030, 43.23.040, 43.-
16 23.050, 43.23.060, 43.23.070, 43.23.080, 43.23.090, and 43.23.100 are re-
17 pealed.

18 * Sec. 23. Sections 6, 7, 9, 13, and 14 of this Act are repealed.

19 * Sec. 24. (a) This section applies only to the determination of the
20 value of a permanent fund dividend to be paid in 1983 and applies only if
21 permanent fund dividends are distributed under sec. 19 of this Act on or
22 after July 15, 1982, and if, after that date, the United States Supreme Court
23 decides that AS 43.23.010 is valid.

24 (b) Notwithstanding any contrary provisions of AS 43.23.030, by
25 December 1, 1982, the commissioner of revenue shall give public notice of the
26 value of each permanent fund dividend to be paid in 1983. The commissioner
27 shall determine that value by

28 (1) determining the amount of income of the Alaska permanent fund
29 for fiscal year 1982 and fiscal year 1983 transferred to the dividend fund

under AS 43.23.050(b);

(2) determining the number of permanent fund dividends that would have been paid during 1982 if sec. 19 of this Act had not taken effect and an estimate of the number of permanent fund dividends for a prior year under AS 43.23.014; and

(3) dividing the amount determined in (1) of this subsection by the amount determined in (2) of this subsection.

* Sec. 25. If secs. 2 - 5 and 14 of this Act take effect under the provisions of sec. 27 of this Act, then all other provisions of AS 43.23, as enacted in ch. 21, SLA 1980 and as amended in secs. 8, 10 - 12, and 15 - 17 of this Act, remain in effect.

* Sec. 26. Notwithstanding the provisions of AS 43.23.014(c), enacted in sec. 6 of this Act, which require an individual to file an application for prior year permanent fund dividends within one year after reaching 18 years of age, an individual may file a claim during 1983 for permanent fund dividends for all prior years for which the individual is eligible if that individual has turned 18 years of age on or before the last day for filing an application during 1983.

* Sec. 27. Sections 2 - 5, 14, 23, and 25 of this Act take effect 60 days after the date that the United States Supreme Court decides that AS 43.23.010 is invalid but also decides that AS 43.23.010 would not violate the United States Constitution if the amount of a permanent fund dividend were determined by accumulated years of residency in the state beginning on or after January 1, 1979.

* Sec. 28. Sections 1 and 22 of this Act take effect 60 days after the date that the United States Supreme Court decides that AS 43.23.010 is invalid because the amount of a permanent fund dividend is determined by accumulated years of residency in the state whether those years are counted before or after January 1, 1979.

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1 * Sec. 29. Sections 6 - 13, 15 - 18, 20, 21, 24, and 26 of this Act take
2 effect immediately in accordance with AS 01.10.070(c).

3 * Sec. 30. Section 19 of this Act takes effect on the date that the
4 United States Supreme Court decides that AS 43.23.010 is for any reason
5 invalid or on July 15, 1982, if the United States Supreme Court has not
6 reached a decision as to the validity of AS 43.23.010 by that date.

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STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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November 30, 1982

ATTY GEN OP #13

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Honorable Carole J. Burger
Commissioner
Department of Administration
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Re: The dedicated funds
prohibition applied to various
funds and accounts. Our Files
Nos. J66-785-81 and J66-649-80

Dear Mr. Wilkerson and Commissioner Burger:

You have both asked for a broad review of the application of the constitutional dedicated funds prohibition to various state funds and accounts. Alaska Const. art. IX, § 7. Because of the factual complexities presented by the various funds, accounts, and appropriations and because of the paucity of judicial precedent, we are not able to advise you with absolute certainty regarding the constitutionality of state practices. However, some of the issues raised by your request may be resolved in litigation which is now pending concerning the administration of

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certain appropriations and funds by the Alaska Power Authority. 1/

In response to your request, we have identified and analyzed several categories of funds, accounts, and transactions which raise dedication questions. Our approach in dealing with these questions will be to first discuss the purpose and meaning of the dedication prohibition. We will then focus on the implications of a recent Alaska Supreme Court case that deals specifically with the dedicated funds prohibition. Next we will consider the probable legal status of several general categories of funds, accounts, and appropriations which raise dedication questions. Lastly, we will consider the dedication prohibition in reference to specific funds and appropriations.

We should point out that the advice given in this opinion could have a significant effect upon the state budget. This results from the recent adoption of Article IX, section 16 of the Alaska Constitution (the spending limit). Under the reasoning of this opinion, it may be that income earned by a loan fund or public enterprise must be appropriated to that fund or

1/ The legal issues in this litigation are the validity of the deposit of interest and principal payments on loans in a revolving loan fund and of the appropriation to the Power Development Fund of interest to be received on specific amounts appropriated to that fund (§ 1 ch. 90, SLA 1981 as reenacted by § 69 ch. 69 SLA, 1981 and amended by § 236 ch. 141, SLA 1982.). Trustees for Alaska, et al. v. State of Alaska and Alaska Power Authority, No. 3AN-492-82 Civ. (Alaska Super., Jan. 21, 1982)

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enterprise if that income is to be retained by it. If the Alaska Supreme Court adopts that reasoning, the necessity for these appropriations would have to be considered by the administration and the legislature in developing a state budget which conformed to the spending limit. This concern would also become important if independent authorities for operation of entities like the State Ferry System or the Alaska Railroad were to be considered.

I. THE PURPOSE OF THE PROHIBITION

Article IX, Section 7 provides:

DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article [establishing the Permanent Fund] or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

There are essentially two views of the meaning of this provision. Under the first interpretation the dedicated funds prohibition would require that every dollar received by the state be deposited and remain unrestricted in the general fund until it is withdrawn pursuant to an appropriation authorizing the expenditure of a specific dollar amount for a specific pur-

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pose (absent a contrary federal requirement or a statutory dedication which existed prior to ratification of the Constitution). This is known as the strict interpretation view.

Under the strict view, the phrase "proceeds of any state tax or license" would encompass every dollar paid to the state (or to a public corporation or authority established by the state) for whatever purpose. State loan repayments (both principal and interest), enterprise receipts (e.g., airport lease revenues, parking garage receipts, etc.), program receipts (e.g., Ferry System ticket sales, University of Alaska tuition receipts, etc.), as well as all other revenues (e.g., taxes, natural resource revenues such as royalties, etc.), would be required to be deposited in the state treasury and retained there until the expenditure is authorized by appropriation of a specific dollar amount.

An argument can certainly be made that this is the proper interpretation of the dedicated funds prohibition. As set out in 1975 Op. Atty. Gen. No. 9 at 2 (Alaska May 2, 1974), "Section 7 of Article IX had two interrelated purposes: (1) to prevent any future dedication of revenues for special purposes [i.e., 'earmarking'] and (2) to prevent the creation of new special funds separate from the general fund." The rationale underlying each of these two purposes is "that the widespread existence of dedicated revenues lodged in special funds deprives

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both the governor and the legislature of 'any real control over the finances of the state.'" Id. at 3 (citation omitted). Requiring all monies received by the state to be deposited into the general fund clearly would satisfy both interrelated purposes of the prohibition. The strict interpretation view of the dedication prohibition would preclude the use of public monies to establish a standing or revolving loan fund or any other program which would be self-sustaining. 2/

However, a second approach in interpreting the meaning of Article IX, section 7 is also very plausible. Under this view, the dedication prohibition is not to be construed to require a blanket prohibition of self-sustaining programs set up by the legislature. As noted in 1975 Op. Atty. Gen. No. 9 at 6-8 (Alaska, May 2, 1975), the constitutional framers substituted the phrase "[t]he proceeds of any state tax or license" for the phrase "[a]ll public revenues" to avoid having to state a number of intended exceptions to the prohibition on dedicated funds. Examples of these exceptions were pointed out in a January 4, 1956, 3/ memorandum by the Public Administration Service (PAS) to

2/ Of course, even under the strict view, there would be some kinds of monies received by the state which it could not, for independent legal reasons, deposit into the general fund. These monies would include trust funds, restricted gifts, and funds subject to restrictions by contract.

3/ The actual date shown on the memorandum is "January 4, 1955". However, considering the timing of the constitutional convention, this was certainly a typographical error.