

HB

323

STATE OF ALASKA
FISCAL NOTE

Revision Date 6/14, 1983

I. REQUEST

Bill/Resolution No: SCSCSHB 323 (SA)
Title: Residency and residency re-
quirements
Sponsor: State Affairs Committee
Requestor: Senate Judiciary

II. FISCAL DETAIL

Agency Affected: Revenue
Program Category Affected: Coll. & Mgmt.
BRU, Program of Subprogram(s) Affected:
Administration & Support

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	0	1.0	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	0	3.0	1.3	1.4	1.5	-
500 EQUIPMENT	0	2.0	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC.	-	-	-	-	-	-
TOTAL OPERATING	0	6.0	1.3	1.4	1.5	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	6.0	1.3	1.4	1.5	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-
Sport Fish Fund	0	(18.2)	(38.5)	(40.8)	(43.4)	-
Game Fund	0	(14.1)	(30.0)	(31.8)	(33.6)	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Cecilia A. Wagoner
Division: Revenue - Fish and Game

Phone: 465-2376
Date: 6/13/83

Approved by Commissioner: *Joseph J. ...*
Department: Revenue

Date: 6/14/83

Distribution:

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- Copy to Office of Management and Budget (for Legislature introduced bills)
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IV. Analysis of SCSCSHB 323 (State Affairs)

Three thousand is needed to initially design and print applications and the permanent I.D. card and to order enough laminating jackets for the fiscal year. Each subsequent fiscal year we will have the cost of additional laminating jackets. The equipment cost is for three laminating machines; one for the Public Services Counter in Anchorage, one for Fairbanks, and one for Juneau. The travel expenditure is for the Records & Licensing Supervisor to go to Anchorage and Fairbanks and instruct the counter employees.

According to data received from the Department of Labor and the Committee for Older Alaskans, the percentage rate of senior citizens in our state is fairly stable from year to year.

Using FY 82 as the base, it is estimated that there will be a six percent increase in resident sales every year. It is also estimated that three percent of the resident sales are sold to residents sixty years or older.

We are recommending that this bill be amended to include an effective date of January 1, 1984, because license changes traditionally take place at the beginning of a calendar year. If implemented in the middle of the year, some licensees who could be eligible would have already purchased their license and it wouldn't be fair to them. Middle of the year implementation would also require special printing and mailing costs. Time is also needed to properly inform the public of the new law so that all who are eligible can apply.

Assuming that the bill goes into effect 1/1/84, there will be no effect in FY 83. There will be losses to both the Sport Fish and Game Funds in each subsequent fiscal year. FY 84 has a much smaller loss because only half of the fiscal year will be effected.

STATE OF ALASKA
FISCAL NOTE

Revision Date June 13, 1983

I. REQUEST

Bill/Resolution No.: SCS CS HB323(SA)
 Title: "Residency & Residency Requirements"
 Sponsor: State Affairs Committee
 Requestor: Senate State Affairs Committee

II. FISCAL DETAIL

Agency Affected: FISH AND GAME
 Program Category Affected: Fisheries & Game
 BRU, Program of Subprogram(s) Affected: Sport Fisheries and Game

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING						
CAPITAL						
REVENUE	-0-	(80.6)	(88.0)	(95.5)		

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

General Fund - in light of declining General Fund revenue, this may be very difficult.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Beverly Reaume *Beverly Reaume* Phone: 465-4120
 Division: Administration *0* Date: _____
 Approved by Commissioner: Don W. Collinsworth *[Signature]* Date: 6/13/83
 Department: Fish and Game *[Signature]*

Distribution:

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SCS CS HB 323 (SA)

The 1980 Census showed 19,640 Alaskans ages 60 and over. It also showed 32,260 Alaskans 55 and over. Assuming the age spread is even, 2524 Alaskans will reach age 60 each year between 1980 and 1985. Population estimates adding the Alaskans reaching 60 and an overall 5% population growth would be as follows:

FY 84	28,573
FY 85	31,223
FY 86	33,873

Using a conservative estimate, assume that 15% of the population fishes and 11% hunts, we would forego the following revenue:

	<u>Sport Fish</u> \$10 license	<u>Game</u> \$12 license
FY 84	42.9	37.7
FY 85	46.8	41.2
FY 86	50.8	44.7

HOUSE JOURNAL SUPPLEMENT

May 14, 1983

No. 61

HB
323

FISCAL NOTE

Revision Date May 2, 1983

(Page 1 of 2)

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>I. REQUEST</p> <p>Bill/Resolution No.: <u>CS HB 323 (SA)</u></p> <p>Title: <u>"Residency & Residency Requirements"</u></p> <p>Sponsor: <u>State Affairs Committee</u></p> <p>Requestor: <u>House Judiciary Committee</u></p> | <p>II. FISCAL DETAIL</p> <p>Agency Affected: <u>FISH & GAME</u></p> <p>Program Category Affected: <u>Fisheries & Game</u></p> <p>BRU, Program of Subprogram(s) Affected: <u>Sport Fisheries and Game</u></p> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 86	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING						
CAPITAL						
REVENUE	-0-	(80.6)	(88.0)	(95.5)		

FUNDING: (Thousands of Dollars)

	FY 83	FY 86	FY 85	FY 86	FY 87	FY 88
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 86	FY 85	FY 86	FY 87	FY 88
FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

General Fund - in light of declining General Fund revenue, this may be very difficult.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: <u>Neverly Reams</u>	Phone: <u>465-4120</u>
Division: <u>Administration</u>	Date: <u>May 7, 1983</u>
Approved by Commissioner: <u>Don W. Collinsworth</u>	Date: <u>5-2-83</u>
Department: <u>FISH & GAME</u>	

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3/0/83

CS HB 323(SA) (Page 2 of 2)

The 1980 Census showed 19,640 Alaskans ages 60 and over. It also showed 32,260 Alaskans aged 55 and over. Assuming the age spread is even, 2524 Alaskans will reach age 60 each year between 1980 and 1985. Population estimates adding the Alaskans reaching 60 and an overall 5% population growth would be as follows:

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	<u>Sport Fish</u> \$10. license	<u>Game</u> \$12 license
FY 84	42.9	37.7
FY 85	46.8	41.2
FY 86	50.8	44.7

FISCAL NOTE

Revision Date 1983

I. REQUEST
 Bill/Resolution No: HB 323 Page 1 of 2
 Title: Residency & Residency Requirements
 Sponsor: House State Affairs
 Requestor: House State Affairs

II. FISCAL DETAIL
 Agency Affected: Revenue
 Program Category Affected: Coll. & Mgt.
 BRU, Program of Subprogram(s) Affected: Administration & Support

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	1.0	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	3.0	1.3	1.4	1.5	-
500 EQUIPMENT	-	2.0	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC.	-	-	-	-	-	-
TOTAL OPERATING	-0-	6.0	1.3	1.4	1.5	-

CAPITAL	-	-	-	-	-	-
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REVENUE	-	-	-	-	-	-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	6.0	1.3	1.4	1.5	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-
Sport Fish Fund	-0-	(18.2)	(38.5)	(40.8)	(43.4)	-
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POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysts.

Prepared By: Cecilia A. Wagener Phone: 465-2376
 Division: Public Services Date: 4/13/83
 Approved by Commissioner: Robert D. Heath Date: 4/14/83
 Department: Revenue

Distribution:

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IV. ANALYSIS (HB 323) Page 2 of 2

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We are recommending that this bill be amended to include an effective date of January 1, 1984, because license changes traditionally take place at the beginning of a calendar year. If implemented in the middle of the year, some licensees who could be eligible would have already purchased their license. Middle of the year implementation would also require special printing and mailing costs. Time is also needed to properly inform the public of the new law so that all who are eligible can apply.

Assuming that the bill goes into effect 1/1/84, there will be no effect in FY 83. There will be losses to both the Sport Fish and Game Funds in each subsequent fiscal year. FY 84 has a much smaller loss because only half of the fiscal year will be effected.

GROSS & BURKE

A PROFESSIONAL CORPORATION
424 NORTH FRANKLIN STREET
JUNEAU, ALASKA 99801

AVRUM M. GROSS
SUSAN A. BURKE

907) 586-2777

March 22, 1983

MEMORANDUM

TO: Honorable Mitch Abood
Chairman, House State Affairs Committee

FROM: Susan A. Burke *SAB*

RE: Residency Requirements

You have asked me to review the Alaska statutes that presently impose residency requirements and to recommend to the Committee the amendment or repeal of those residency requirements that more than likely would be held unconstitutional if challenged in court. You have also asked me to draft a statute defining "bona fide" residence. That draft is attached, along with comments.

In reviewing the residency requirements imposed under current law, I was primarily concerned with two questions -- first, whether it is constitutionally permissible to impose any kind of residency requirement having the effect of excluding nonresidents, and second where the statute imposes a durational residency requirement longer than 30 days, whether the period of residency specified is within

constitutional limits.^{1/} The statutes which contain residency provisions fall into several broad subject matter categories. Attached is a chart prepared by the Department of Law which lists all of the statutes containing residency requirements, with the statutes organized according to subject matter. The chart also includes an assessment of the constitutional problems, if any, presented by each statute. Rather than duplicate this work, I have used this chart as the basis for my review. The review will discuss the statutes listed in each subject matter category in the chart prepared by the Department of Law.

I. Residency Requirements for Eligibility to Hold Public Office

The durational residency requirements established for public office holding range from six months in the case of magistrates (AS 22.15.160(b)) to 10 years for members of the Judicial Qualifications Commission (Alaska Const. art IV, sec. 10; AS 22.30.010). Durational residency requirements for public

^{1/} In general, a person is entitled to claim residency in Alaska if the person is physically present in the state with the intent to remain here indefinitely and make a home here. With rare exceptions, a durational residency requirement will be valid only if it used as a way of testing whether the person actually has the necessary "residential" intent. For some programs, like welfare or medical care, and for fundamental rights such as voting, the state may impose only the shortest durational period necessary to make residency determinations. This period has been held to be no more than 30 days for voting and welfare. For other programs, as discussed below, a longer period of residency is permissible to require.

office holding have been challenged both in Alaska and elsewhere.^{1a/} These durational residency requirements have almost universally been upheld (even fairly lengthy ones), on the theory that they are a legitimate way to measure whether a person has sufficient knowledge of local problems and concerns to be qualified for public office and to insure that the voters have had a sufficient period of time in which to become familiar with the candidate. This same rationale would apply with equal force to durational residency requirements imposed for eligibility to serve on certain boards and commissions. While some questions

^{1a/} Gilbert v. State, 526 P.2d 1131 (Alaska 1974); Chimento v. Start, 414 U.S. 802 (1973).

might be raised as to the reasonableness of the length of residency required in a particular instance, it is probable that none would be struck down if challenged. I do not recommend that any amendments be made to these statutes.

II. Residency Requirements for Occupational Licensing

With only a few exceptions, I agree with the conclusions contained in the Department of Law's survey as to the serious constitutional problems presented by the statutes which require persons to be residents in order to be licensed to engage in certain professions. The recent Alaska Supreme Court decision in Noll v. Alaska Bar Association, 649 P.2d 241 (Alaska 1982), makes it almost certain that these requirements would be struck down if challenged. Close review of the statutes, however, suggests that in some instances, the residency requirements may have been prompted by perfectly legitimate concerns -- such as the difficulty or added expense of disciplining nonresident practitioners. Further, it appears that in some instances residency requirements may have been imposed as a "quick" way of insuring that persons who practiced certain professions in the state had some degree of "local" knowledge. After Noll, it seems likely that even though these are legitimate problems, they may not be solved by simply barring nonresidents from licensure. By the same token, there may be ways of dealing with these problems that do not raise constitutional questions. For instance, in the case of disciplining nonresidents, a higher fee could be charged to nonresidents to

offset additional costs that may be associated with disciplining nonresidents. "Local knowledge" concerns could be addressed through additional testing procedures. In any event, despite the serious constitutional problems with these statutes, it may be undesirable simply to repeal the residency requirements without providing solutions to whatever problems may be posed by granting licenses to nonresidents. The Committee might want to consider repealing the residency requirements, but having a delayed effective date until perhaps June 30 of 1984. Persons who wish to recommend alternative ways of addressing the kinds of concerns I have suggested would then have time to bring their recommendations to the legislature next year before the repeal of the residency requirements took effect.

III. Public Rights and Benefits

A. General

I agree with the Department of Law's conclusion that a one year durational residency requirement for annulment of marriage may be unconstitutional, though I would rate this as "probably" rather than "maybe" unconstitutional. The Alaska Supreme Court in 1974 struck down a one year durational requirement for obtaining a divorce. State v. Adams, 522 P.2d 1125 (Alaska 1974). The state's interests in requiring one year residence to obtain an annulment of a marriage are more than likely identical to those advanced in support of the one year requirement for divorce. The court did not find

those interests sufficiently important to justify a one year requirement for divorce. Although the Alaska Supreme Court seems to be moving toward a much less restrictive view of durational residency requirements,^{2/} it is unlikely that it would overrule its earlier decision in Adams, if the annulment statute were challenged. I would recommend that this statute be amended to require that a person simply be a resident.

I also agree with the Department's assessment of the other statutes listed in the "General" category, which impose one year durational requirements, and recommend that these statutes be amended to require that a person simply be a resident.

B. Loan and Grant Programs

The statutes governing the various loan programs impose durational residency requirements ranging from one to five years. I agree that the five year requirements are almost

^{2/} In State v. Adams, 522 P.2d 1125, 1131 (Alaska 1974), the Alaska Supreme Court stated:

. . . all such [durational residency] requirements are prima facie invalid and will be countenanced only when they serve a compelling state interest.

However, in Williams v. Zobel, 619 P.2d 448 (Alaska 1980) (permanent fund dividends), the court retreated from its earlier view in Adams, and indicated that unless the requirement affected fundamental rights (such as voting) or basic necessities of life (like welfare or medical care), the court would henceforth use a "balancing" approach to durational residency statutes. The importance of the state's interests will be weighed against the importance of the benefit denied or delayed by the durational requirement.

certainly unconstitutional.^{3/} The question is whether a durational requirement beyond 30 days would be constitutional, and if so, what is the maximum length that could be imposed within constitutional limits. Apart from public office holding, the United States Supreme Court has upheld durational residency requirements of up to one year in two cases -- eligibility for preferential resident tuition at state universities, and as a prerequisite to filing for divorce.^{4/} These cases were decided under the United States Constitution, and the Alaska Supreme Court may, and has, interpreted the Alaska Constitution in similar cases as imposing stricter requirements.^{5/} As noted above, the Alaska Supreme Court has until recently maintained the view that any durational residency requirement will be struck down unless the state can demonstrate that the requirement is necessary to further a compelling state interest. This is an extremely difficult burden to meet, and except in very rare instances it is an impossible burden. Because it appears that the Alaska court

^{3/} A different question is presented by the five year local mining experience requirement for mining loans under AS 27.09.020. This may be a permissible requirement, particularly if it is demonstrated that it does not operate as a practical matter to exclude persons who are currently residents, but who gained their Alaska mining experience as nonresidents.

^{4/} Vlandis v. Kline, 412 U.S. 441 (1973) (university tuition); Sosna v. Iowa, 419 U.S. 393 (1975) (divorce).

^{5/} For example, the Alaska court struck down a one-year residency requirement for divorce under the Alaska constitution, State v. Adams, 522 P.2d 1125 (Alaska 1974). One year later the U.S. Supreme Court upheld an identical requirement in Iowa's statute. Sosna v. Iowa, supra, note 4.

is moving toward a less restrictive approach toward durational residency, our court would probably uphold durational residency requirements of reasonable length for loan programs.

Under this less restrictive approach, the Alaska Court would balance the state's interests in imposing a durational residency requirement for a state loan against the importance of the challenger's interest in obtaining a loan before the requirement had been met. In the case of the loan programs, the state's interest is in assuring that state funds are not used to benefit nonresidents. Since resident status depends in large part on a person's state of mind, it is extremely difficult to know with certainty whether a recent arrival in fact has the requisite "residential" intent, and it is extremely difficult to disprove a false claim of residency. Further, it is costly to require the state to make individualized determinations of residency. There are in most instances alternative sources of loan funds through commercial lenders, and it is likely that our court would find that the state's interest in assuring that its benefits are not granted to persons who are not bona fide Alaska residents outweigh the slight inconvenience that a newly arrived resident might suffer by having to wait for some period of time in order to qualify for a state loan.

A more difficult question is what period of residency would be permissible. The state is currently in litigation in the Federal District Court in Alaska, defending the two

year durational residency requirement under the student loan program. The state has argued that the two year requirement is reasonable in light of the transience of student populations, the generous loan amounts under the Alaska program and the fact that there is no requirement that the loan funds be used at an Alaska institution. The plaintiff in that case has conceded that a one year requirement would be reasonable. Assuming the Alaska Supreme Court continues in its present trend in durational residency cases, a one year durational residency requirement for the loan program would more than likely be upheld.^{5/} A two year requirement might be upheld, but it carries a much higher risk of being struck down than would a one year requirement. The Committee may want to defer proposing any amendments to the two year residency requirement for student loans until the pending litigation is resolved. The Committee may also want to defer action on the other loan programs until after the Alaska Supreme Court renders its decision on the one year residency requirement for participation in the Kenai land disposal lottery (Gilman v. Martin). That decision may provide some indication as to how our court would rule on a one year residency requirement for state loans. . .

^{6/} The one loan program for which a one year residency requirement would most likely not be upheld is the AHFC program for home mortgages -- at least as long as there continues to be a requirement that the loans will be made only for owner-occupied dwellings. As has been noted earlier in this memorandum, with rare exceptions, durational residency requirements may be used only as a way of measuring whether a person has the intent to remain in the state and make his or her home there. Purchasing a dwelling under a loan program requiring owner occupancy as a condition of the loan is such a strong indication that a person's claimed residential intent actually exists, that a court would most likely find that there was no valid state purpose in imposing an additional one year residency requirement.

I would, however, recommend that the sliding scale preference for accepting student loan applications that is based on years of residency be repealed, even though it has apparently never been applied. This provision is so similar to the dividend plan struck down in Zobel v. Williams that it is virtually certain to be struck down on the same constitutional grounds. On the other hand, the provisions of AS 14.40.763(j), providing for graduated forgiveness of portions of student loans based on continued residence in Alaska after graduation seem to be based on an entirely different rationale. Those provisions are not based on past residency, but seek to affect future behavior. Providing graduated loan forgiveness seems closely tied to the purpose of encouraging students to return to or remain in Alaska after they have received their educations. I believe that that provision would most likely be upheld if it were to be challenged, and that there is no need to repeal it because of constitutional vulnerability.

C. Land Disposal Programs

As mentioned above, the Alaska Supreme Court now has under consideration a case in which the Kenai land disposal program has been challenged. (Gilman v. Martin.) The Kenai ordinances governing its program are almost identical to the state's land lottery provisions in AS 38.05.057 and AS 38.05.058. Thus, the decision in Gilman will almost

certainly answer any constitutional questions that might be raised concerning the state's program. I agree with the assessment of the constitutional problems with these statutes contained in the Department of Law's chart. I believe that a one year residency requirement to participate in either the land lottery or the homesite entry program would probably be upheld. I have serious doubts about the constitutionality of the provision under which discounts of the purchase price are granted based on years of residency in the state. The committee may, however, wish to defer proposing amendments to this provision until after the decision in Gilman is rendered, since the residency based discounts are also at issue in that case.

D. Special Old Age Programs

I also agree with the assessment made by the Department of Law as to the durational residency requirements contained in the programs providing benefits or preferences to older residents of the state. With respect to the one year residency requirement for the senior citizen special assessment exemption under AS 29.63.065(d)(1), I have doubts about whether that requirement would be upheld, for the same reasons I outlined concerning a one year residency requirement for AHFC loans in footnote 6, above. A one year requirement for the senior citizen exemption from the fishing license requirement would probably be upheld; a 30 year requirement is clearly unconstitutional.

I also agree that the residency requirements for the longevity bonus are almost certainly unconstitutional. There are arguments that could be made in defense of the Pioneers' Home residency provisions, but it is far from certain that those requirements would be upheld. (The arguments in support of the Pioneers' Home residency requirements are contained in the November 26, 1982 opinion by Wilson Condon, a copy of which is among the Committee's files.) However, any recommendation as to how the residency requirements for these two programs might be amended to meet constitutional requirements necessarily has tremendous fiscal implications. The residency questions in these two programs are so intertwined with the structure and operation of the programs, that they cannot be dealt with separately, but can be addressed only as part of a total structural and operational review of those programs. That kind of review is, as I understand it, beyond the scope of the work that the Committee has asked me to perform.

SAB:yw

5/26
jin

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS HB 323 (Finance)
 Title Relating to residency and residency requirements
 Requested by House Finance Committee Date 5/25/83

II. FISCAL DETAIL

Agency Affected Revenue, Fish and Game
 Program Category Affected _____
 BRU, Program, Or Subprogram(s) Affected _____
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Due to the changes made in the House Finance CS, the fiscal notes originally requested by the Departments of Fish & Game and Revenue are no longer necessary. The CS grandfathers those seniors who currently enjoy the hunting, trapping and fishing license exemption, and then repeals the program. Thus, there is no fiscal impact.

IV. DATE 5/25/83 PREPARED BY Al Adams, Chair
 AGENCY House Finance Committee
 PHONE 465-3706
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/82)

ADA

FISCAL NOTE

Revision Date 1983

I. REQUEST
 Bill/Resolution No: HB 323 Page 1 of 2
 Title: Residency & Residency Requirements
 Sponsor: House State Affairs
 Requestor: House State Affairs

FISCAL DETAIL
 Agency Affected: Revenue
 Program Category Affected: Coll. & Mgt. BRU, Program of Subprogram(s) Affected: Administration & Support

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	1.0	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	3.0	1.3	1.4	1.5	-
500 EQUIPMENT	-	2.0	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC.	-	-	-	-	-	-
TOTAL OPERATING	-0-	6.0	1.3	1.4	1.5	-

CAPITAL	-	-	-	-	-	-
----------------	---	---	---	---	---	---

REVENUE	-	-	-	-	-	-
----------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	6.0	1.3	1.4	1.5	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-
Sport Fish Fund	-0-	(19.2)	(38.5)	(40.8)	(43.4)	-
Game Fund	-	(14.1)	(30.0)	(31.8)	(33.6)	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Cecilia A. Wagener Phone: 465-2376
 Division: Public Services Date: 4/13/83
 Approved by Commissioner: Robert D. Heath Date: 4/14/83
 Department: Revenue

Distribution:

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IV. ANALYSIS (HB 323) Page 2 of 2

Three thousand is needed to initially design and print applications and the permanent I.D. card and to order enough laminating jackets for the fiscal year. Each subsequent fiscal year, we will have the cost of additional laminating jackets. The equipment cost is for three laminating machines; one for the Public Services Counter in Anchorage, one for Fairbanks, and one for Juneau. The travel expenditure is for the Records & Licensing Supervisor to go to Anchorage and Fairbanks and instruct the counter employees.

According to data received from the Department of Labor and the Committee for Older Alaskans, the percentage rate of senior citizens in our state is fairly stable from year to year.

Using FY 82 as the base, it is estimated that there will be a six percent increase in resident sales every year. It is also estimated that three percent of the resident sales are sold to residents sixty years or older.

We are recommending that this bill be amended to include an effective date of January 1, 1984, because license changes traditionally take place at the beginning of a calendar year. If implemented in the middle of the year, some licensees who could be eligible would have already purchased their license. Middle of the year implementation would also require special printing and mailing costs. Time is also needed to properly inform the public of the new law so that all who are eligible can apply.

Assuming that the bill goes into effect 1/1/84, there will be no effect in FY 83. There will be losses to both the Sport Fish and Game Funds in each subsequent fiscal year. FY 84 has a much smaller loss because only half of the fiscal year will be effected.

HOUSE JOURNAL SUPPLEMENT

May 14, 1983

No. 61

HB
323

FISCAL NOTE

Revision Date May 2, 1983

(Page 1 of 2)

I. REQUEST

Bill/Resolution No.: CS HB 323 (SA)
 Title: "Residency & Residency Requirements"
 Sponsor: State Affairs Committee
 Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: FISH & GAME
 Program/Category Affected: Fisheries & Game
 BRU, Program or Subprogram(s) Affected: Sport Fisheries and Game

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING						
CAPITAL						
REVENUE	-0-	(88.6)	(88.0)	(95.5)		

FUNDOING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

General Fund - In light of declining General Fund revenue, this may be very difficult.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Beverly Reame *Beverly Reame* Phone: 465-4120
 Division: Administration Date: May 2, 1983
 Approved by Commissioner: Don W. Collinsworth *Don W. Collinsworth* Date: 5-2-83
 Department: FIS & GAME

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3/8/83

CS HB 323(SA) (Page 2 of 2)

The 1980 Census showed 19,640 Alaskans aged 60 and over. It also showed 32,260 Alaskans aged 55 and over. Assuming the age spread is even, 2524 Alaskans will reach age 60 each year between 1980 and 1985. Population estimates adding the Alaskans reaching 60 and an overall 5% population growth would be as follows:

FY 84	28,573
FY 85	31,223
FY 86	33,873

Using a conservative estimate, assume that 15% of the population fishes and 11% hunts, we would forego the following revenue.

	<u>Sport Fish</u> \$10. license	<u>Game</u> \$12. license
FY 84	42.9	37.7
FY 85	46.8	41.2
FY 86	50.8	44.7

HB 323

SENATE JOURNAL - PAGE 1177- 2 6/ 2/83

(CS FOR HOUSE BILL NO. 323 (FIN) am) by the Finance Committee, entitled:

"An Act relating to residency and residency requirements; and providing for an effective date."

was read the first time and referred to the State Affairs Committee and the Judiciary Committee.

HB 323

SENATE JOURNAL - PAGE 1278- 3 6/13/83

The State Affairs Committee considered (CS FOR HOUSE BILL NO.) (323 (FIN) am) (residency and residency requirements) and recommended it be replaced with

SENATE CS FOR CS FOR HOUSE BILL
NO. 323 (SA)

with a majority do pass. The report was signed by Senator Vic Fischer, Chairman and concurred in by Senators Sturgulewski and Rodey.

CS FOR HOUSE BILL NO. 323 (FIN) am was referred to the Judiciary Committee.

HB 323

SENATE JOURNAL - PAGE 1335- 2 6/16/83

The Judiciary Committee considered (CS FOR HOUSE BILL NO. 323) ((FIN) am) (residency and residency requirements) and recommended it be replaced with

SENATE CS FOR CS FOR
HOUSE BILL NO. 323 (JUD)

and do pass. The report was signed by Senator Ray, Chairman and concurred in by Senators Ziegler, Josephson, Petty, John and Eliason.

CS FOR HOUSE BILL NO. 323 (FIN) am was referred to the Rules Committee.

VIC:

RE: FLOOR BRIEFING ON HE 323

RESIDENCY



1. Changes between Senate State Affairs version and Senate Finance:

Senate Finance version eliminates sections:

Sec.9 - dealing with sport fishing, hunting or trapping licenses for residents 60 years or older.

Sec.15 - "submit proof acceptable to the commissioner that the applicant is a resident of the state at the time of application, and that the applicant has been a resident of the state for not less than one year immediately preceding the the date the application was submitted"

Sec.17 - relating to the two-year residency requirement for scholarship loans.

2. Otherwise I think your aware of whats up with this bill. Enclosed file contains each version of the bill, fiscal notes, analysis, and backup.

/gb
6/19/83
10 p.m.

PS: SENATE STATE AFFAIRS COMMITTEE REPORT SIGNED "DO PASS" BY RODEY, YOU, AND STURG. NO OTHER COMMITTEE MEMBERS SIGNATURES APPEAR ON THE COMMITTEE REPORT.

Offered: 5/14/83
Referred: Finance

Original sponsor: State Affairs Committee

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 323 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to residency and residency require-
7 ments; and providing for an effective date."

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

9 * Section 1. AS 01.10 is amended by adding a new section to read:

10 Sec. 01.10.055. RESIDENCY. (a) A person establishes residency
11 in the state by being physically present in the state with the intent
12 to remain in the state indefinitely and to make a home in the state.

13 (b) A person demonstrates the intent required under (a) of this
14 section

15 (1) by maintaining a principal place of abode in the state
16 for at least 30 days or for a longer period if a longer period is
17 required by law or regulation; and

18 (2) by providing other proof of intent as may be required
19 by law or regulation, that may include proof that the person is not
20 claiming residency outside the state or obtaining benefits under a
21 claim of residency outside the state.

22 (c) A person who establishes residency in the state remains a
23 resident during an absence from the state unless during the absence
24 the person establishes or claims residency in another state, territory
25 or country, or performs other acts or is absent under circumstances
26 that are inconsistent with the intent required under (a) of this
27 section to remain a resident of this state.

28 * Sec. 2. AS 08.04.110 is repealed and reenacted to read:

29 Sec. 08.04.110. PERSONAL REQUIREMENTS. An applicant for the

Use this version

① typo on p. 10

② policy re H&K licenses p. 6

③ add student loans section

1 certified public accountant certificate shall be at least 19 years of
2 age and of good moral character.

3 * Sec. 3. AS 08.04.260 is amended to read:

4 Sec. 08.04.260. TEMPORARY CERTIFICATE AS CERTIFIED PUBLIC
5 ACCOUNTANT. If an applicant for a certificate as a certified public
6 accountant meets all the requirements for a certificate and the appli-
7 cant's application is pending or if an applicant meets all the require-
8 ments for a certificate except [THE RESIDENCE REQUIREMENT, OR] the
9 requirement that the applicant have a place of business in the state
10 or be an employee regularly employed in this state, the board may
11 issue a temporary certificate as a certified public accountant. The
12 certificate is effective until the board notifies the applicant that
13 the applicant's application has been granted or rejected. A temporary
14 certificate is effective for a period not exceeding six months. No
15 fee may be charged for the issuance of a temporary certificate.

16 * Sec. 4. AS 08.08.207(a) is amended to read:

17 (a) Every person who desires subsequently to qualify as a gen-
18 eral applicant for admission to the Alaska Bar without having been
19 graduated from an approved law school shall register as a law clerk as
20 provided by this section. The person [MUST BE A BONA FIDE RESIDENT OF
21 THE STATE AND] shall present satisfactory proof that the person has
22 been granted a bachelor's degree (other than bachelor of laws) by a
23 college or university offering the degree on the basis of a four-year
24 course of study and has successfully completed the first year of
25 studies at a law school.

26 * Sec. 5. AS 08.42.050(a)(4) is amended to read:

27 (4) have completed at least one year of apprenticeship as a
28 [RESIDENT] trainee under a licensed embalmer.

29 * Sec. 6. AS 08.42.110(4) is amended to read:

1 (4) "[RESIDENT] trainee" means a person who has met the
2 qualifications set out in AS 08.42.050(a)(1) and (2) and is engaged
3 in learning the practice of embalming under the direction and control
4 of a person properly licensed to practice embalming, or a person who
5 has met the qualifications set out in AS 08.42.050(b)(1) and (2) and
6 is engaged in learning the practice of funeral directing under the
7 direction and control of a person properly licensed to practice
8 funeral directing.

9 * Sec. 7. AS 08.88.171 is amended to read:

10 Sec. 08.88.171. ENTITLEMENT TO LICENSE. (a) A person is enti-
11 tled to a real estate broker license [IF THE PERSON IS A RESIDENT OF
12 THE STATE,] if the person passes the real estate brokers examination,
13 if the person applies for a license within six months after the person
14 has taken the real estate brokers examination, if the person has had
15 at least 24 months of active and continuous experience as a licensed
16 real estate salesman, if the person is not under indictment for, or
17 seven years have elapsed since the person has completed a sentence
18 imposed upon conviction of, forgery, theft, extortion, conspiracy to
19 defraud creditors, or any other felony involving moral turpitude, and
20 if the person is an owner of a real estate business or employed as a
21 real estate broker by a corporation or a partnership, and if that
22 corporation or partnership does not have an existing licensed broker.
23 Unless the broker fails to pay the biennial renewal fee or unless the
24 broker's license is suspended or revoked under AS 08.88.071(a)(3), the
25 real estate broker's license continues in effect so long as the broker
26 is an owner of a real estate business, or the broker is employed as a
27 real estate broker by a corporation or a partnership. If the broker
28 stops being an owner of a real estate business, or stops being em-
29 ployed as a real estate broker by a corporation or partnership, the

1 broker's license is suspended from the time the broker stops until

2 (1) the broker again becomes an owner of a real estate
3 business or is again employed as a real estate broker by a corporation
4 or a partnership; or

5 (2) the broker is employed by a licensed real estate broker
6 as an associate real estate broker, in which case the real estate
7 broker license is returned to the commission, and the commission
8 issues the broker an associate real estate broker license.

9 (b) A person is entitled to an associate real estate broker
10 license [IF THE PERSON IS A RESIDENT OF THE STATE,] if the person
11 passes the real estate brokers examination, if the person applies for
12 a license within six months after the person has taken the examina-
13 tion, if the person has had at least 24 months of active and continu-
14 ous experience as a licensed real estate salesman, if the person is
15 not under indictment for, or five years have elapsed since the person
16 has completed a sentence imposed upon conviction of, forgery, theft,
17 extortion, conspiracy to defraud creditors, or any other felony in-
18 volving moral turpitude, and if the person is employed by a licensed
19 real estate broker as an associate real estate broker. Unless the
20 associate broker fails to pay the biennial renewal fee or unless the
21 associate broker's license is suspended or revoked under AS 08.88.-
22 071(a)(3), the associate real estate broker's license continues in
23 effect so long as the associate broker is employed by a licensed real
24 estate broker as an associate broker. If the associate broker stops
25 being employed by a licensed real estate broker, the associate brok-
26 er's license is suspended from the time the associate broker stops
27 until

28 (1) the associate broker again is employed by a real estate
29 broker as an associate broker; or

1 (2) the associate broker becomes an owner of a real estate
2 business, in which case the associate broker's associate real estate
3 broker license is returned to the commission, and the commission
4 issues the associate broker a real estate broker license.

5 (c) A person is entitled to a real estate salesman license [IF
6 THE PERSON IS A RESIDENT OF THE STATE,] if the person passes the real
7 estate salesman examination, if the person applies for a license
8 within six months after the person has taken the examination, if the
9 person is at least 19 years old, if the person is not under indictment
10 for forgery, theft, extortion, conspiracy to defraud creditors, or any
11 other felony involving moral turpitude, or, if convicted of such an
12 offense, the person has completed the sentence imposed upon conviction,
13 and if the person is employed by a real estate broker. Unless
14 the salesman fails to pay the biennial renewal fee or unless the real
15 estate salesman's license is suspended or revoked under AS 08.88.-
16 071(a)(3), a real estate salesman's license continues in effect so
17 long as the salesman is employed as a salesman by a licensed real
18 estate broker. If the salesman stops being employed as a real estate
19 salesman, the real estate salesman's license is suspended from the
20 time the salesman stops until the salesman [HE] again is employed as a
21 salesman by a licensed real estate broker.

22 (d) A licensee shall promptly inform the commission of a change
23 in business association that affects the status of the licensee's
24 license under this section.

25 * Sec. 8. AS 09.55.130 is amended to read:

26 Sec. 09.55.130. RESIDENCE REQUIREMENTS FOR ACTION TO DECLARE
27 MARRIAGE VOID. When a marriage has been solemnized [IN THE STATE] and
28 the plaintiff is a resident of the state, an action to declare the
29 marriage void may be brought at any time. [IF THE MARRIAGE HAS NOT

1 BEEN SOLEMNIZED IN THE STATE, THE ACTION MAY BE MAINTAINED ONLY WHEN
2 THE PLAINTIFF HAS BEEN A RESIDENT FOR AT LEAST ONE YEAR BEFORE THE
3 COMMENCEMENT OF AN ACTION.]

4 * Sec. 9. AS 16.05.400(b) is amended to read:

5 (b) A sport fishing, hunting or trapping license is not required
6 of a resident who is 60 years of age or more and has been a resident
7 for one year [30 CONSECUTIVE YEARS] or more. The commissioner of
8 revenue shall issue a permanent identification card without charge to
9 persons who qualify by age and residence and who complete the forms
10 required by the commissioner for implementation of this subsection. A
11 person who is issued a permanent identification card under this sub-
12 section shall have it in [HIS] possession while sport fishing, hunting
13 or trapping.

14 * Sec. 10. AS 16.35.130 is amended to read:

15 Sec. 16.35.130. BOUNTY NOT TO BE PAID. No bounty may be paid
16 under AS 16.35.050 - 16.35.120 to a person who does not maintain [FOR
17 THE IMMEDIATELY PRECEDING YEAR HAS NOT MAINTAINED] a permanent place
18 of abode inside the game management unit or part of the game manage-
19 ment unit in which the animal was taken and a bounty is paid, or to a
20 person who does not maintain [HAS NOT CONTINUALLY MAINTAINED HIS]
21 legal residence in the state, or to a salaried employee of a federal
22 or state agency which is engaged in fish or game protection, manage-
23 ment, research activity, or to any person whose bounty claim results
24 from a trophy hunt as publicly declared by the Department of Fish and
25 Game.

26 * Sec. 11. AS 18.56.101 is amended to read:

27 Sec. 18.56.101. ELIGIBILITY FOR VETERANS' INTEREST RATES. The
28 following persons are eligible veterans for the purposes of AS 18.56.-
29 098(g) and (h):

1 (1) a person who served in the armed forces of the United
2 States for 90 days or more, or whose service was for less than 90 days
3 because of injury or disability incurred in the line of duty, after
4 April 6, 1917,

5 [(A) WHO AT THE TIME OF INDUCTION INTO THE SERVICE WAS
6 A RESIDENT OF THE TERRITORY OR STATE, WHO HAD BEEN A RESIDENT FOR
7 NOT LESS THAN ONE YEAR IMMEDIATELY BEFORE HIS INDUCTION, AND WHO
8 RETURNED TO THE TERRITORY OR STATE WITHIN ONE YEAR AFTER DIS-
9 CHARGE AS A RESIDENT WITH THE INTENTION OF REMAINING IN THE
10 TERRITORY OR STATE; OR

11 (B) WHO, NOT BEING A BONA FIDE RESIDENT OF THE TERRI-
12 TORY OR STATE AT THE TIME OF ENTRY INTO THE SERVICE, HAS BEEN A
13 RESIDENT OF THE TERRITORY OR STATE FOR AT LEAST ONE YEAR AT THE
14 TIME OF THE LOAN APPLICATION AND HAS BEEN A RESIDENT TO THE
15 TERRITORY OR STATE FOR AT LEAST FIVE YEARS; AND

16 (C)] whose discharge was under honorable conditions;

17 (2) the widow or widower of a member of the armed forces or
18 an eligible veteran; if

19 [(A) THE MEMBER OR VETERAN WAS A RESIDENT OF THE TERRI-
20 TORY OR STATE FOR ONE YEAR BEFORE INDUCTION INTO THE SERVICE;

21 (B)] the member or veteran served in the armed forces
22 for at least 90 days after April 6, 1917 [;] and

23 [(C)] the veteran's [HIS] discharge was under honorable
24 conditions;

25 (3) a person who has served for not less than five years in
26 the Alaska Army National Guard, the Alaska Air National Guard, [OR]
27 the Alaska Naval Militia, or [WHO HAS SERVED IN] a reserve unit of the
28 United States armed forces [IN ALASKA] if the reserve unit required,
29 as a minimum, one weekend each month of duty and 15 consecutive days

1 of active duty training each year [FOR NOT LESS THAN FIVE YEARS] and
2 whose discharge was under honorable conditions.

3 * Sec. 12. AS 21.27.090(a)(2) is amended to read:

4 (2) if for a resident agent's or broker's license: be a
5 bona fide resident [FOR A PERIOD OF NOT LESS THAN ONE YEAR OF CON-
6 TINUOUS RESIDENCY, IMMEDIATELY] before issuance of license, and ac-
7 tually residing in Alaska; or if a corporation, be other than an
8 insurer and maintain a permanently established place of business in this
9 state, except as provided in AS 21.27.270;

10 * Sec. 13. AS 26.10.080(d)(1)(B) is amended to read:

11 (d) In this section "veteran" means

12 (1) a person who is serving or has served in a branch of
13 the armed services of the United States.

14 (B) who, not being a bona fide resident of the terri-
15 tory or state at the time of entry into the service, had been a
16 resident of the territory or state for at least one year at the
17 time of death [AND HAD BEEN A RESIDENT OF THE TERRITORY OR STATE
18 FOR AT LEAST FIVE YEARS]; and

19 * Sec. 14. AS 26.15.130(a) is amended to read:

20 (a) Qualifications for loans under AS 26.15.010 - 26.15.160 are:

21 (1) persons who served in the armed forces of the United
22 States for 90 days or more, or whose service was for less than 90 days
23 because of injury or disability incurred in the line of duty, between
24 April 6, 1917, and November 11, 1918, and beginning September 16,
25 1940, to November 7, 1975, or in a combat zone during any period of
26 armed conflict, who were separated from the armed forces with a dis-
27 charge other than dishonorable, and

28 (A) who, at the time of induction into the service,
29 were residents of the territory or state, who had been residents

*Christie
Finnell
SFD
6/25/75*

1 for not less than one year immediately before their induction,
2 and who returned to the territory or state after discharge as
3 residents with the intention of remaining in the territory or
4 state; or

5 (B) who, not being bona fide residents of the terri-
6 tory or state before their entry into the service, have been
7 residents of the territory or state for one [FIVE] or more years;

8 (2) persons who were dependent on a member of the armed
9 forces or a veteran of World War II at the time of the member's or
10 veteran's death, if

11 (A) the member or veteran was a resident of the terri-
12 tory or state for one year before induction into the service; and

13 (B) the member or veteran [HE] served in the armed
14 forces for at least 90 days between September 16, 1940, and July
15 25, 1947, but no benefits for loans accrue to dependents of an
16 enlistee or re-enlistee for time served after November 1, 1945,
17 regardless of whether the enlistment or reenlistment was before
18 or after November 1, 1945; and

19 (C) the member or veteran [HE] died before the offi-
20 cial date of the termination of that war; and

21 (D) the member's or veteran's [HIS] discharge was not
22 dishonorable;

23 (3) persons who have served in the Alaska Army National
24 Guard or the Alaska Air National Guard or the Alaska Naval Militia for
25 not less than six years and who have not received a discharge other
26 than honorable.

27 * Sec. 15. AS 38.08.030(a)(2) is amended to read:

28 (2) submit proof acceptable to the commissioner that the
29 applicant [HE] is a resident of the state at the time of application,

1 and that the applicant [HE] has been a resident of the state for not
2 less than one year [THREE YEARS] immediately preceding the date the
3 [HIS] application was submitted [, OR THAT HE HAS BEEN A RESIDENT FOR
4 20 YEARS CUMULATIVELY];

5 * Sec. 16. AS 44.81.210(a)(20) is amended to read:

6 (20) make loans to individual commercial fishermen for
7 limited entry permits; a loan under this paragraph may be made only to
8 an individual commercial fisherman who has been a state resident for a
9 continuous period of two [FIVE] years immediately preceding the date
10 of application for the loan and who has had a crewmember or commercial
11 fishing license under AS 16.05.480 or a permit under AS 16.43 for the
12 year immediately preceding the date of application and any other two
13 [ANY ONE] of the past five years, and who has actively participated in
14 the fishery during that period; loans made under this paragraph are
15 subject to the provisions of AS 44.81.230;

16 * Sec. 17. The following laws are repealed: AS 08.24.110(1); ~~AS 08.~~

17 ~~54.110(1)~~, ^{guide license} 08.54.110(2), ^{asst guide} 08.54.140(2), ^{transporter license} 08.54.142(a)(1), ^{rel. residency} 08.54.240(3)(B);

18 ^{student loans} AS 14.43.130; ^{ASHA housing} AS 18.55.470(4); ^{insurance solicitor license} AS 21.27.220(1); AS 29.63.065(d)(1); ^{land discount} AS 38.-

19 ^{homesite permits} 05.058; AS 38.08.040(b); AS 39.25.155(g); ^{industrial incentive tax credits} AS 43.26.095(b)(3).

20 * Sec. 18. This Act takes effect immediately in accordance with AS 01.-
21 10.070(c).

*vocational substitution
in state employment*

*municipal service area of
special assessment exemption*

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



June 9, 1983
3:00 p.m.

Butrovich Room

Members Present

Senator Vic Fischer, Chair
Senator Bill Ray, Vice Chair
Senator Pat Rodey
Senator Arliss Sturgulewski

Agenda

HB 209 Classification of Personnel

HB 323 Residency

HB 413 Capital Area Historic Properties Advisory Commission

HB 209 Classification of Personnel

Terry Cramer, Executive Director, Blue Ribbon Commission on State Personnel, testified against the portion of the bill which would put correctional superintendents into the partially exempt service.

Mary Halloran, Department of Natural Resources, testified in favor of Sec. 1 of the bill. She said that the Department cannot maintain a financially viable summer youth employment program unless the participants are placed in the partially exempt service.

Kevin Bruce, Special Assistant to the Governor, testified in favor of the provision which Ms. Cramer opposed.

Bill Huston, Superintendent of the Juneau Correctional Center, testified against the provision supported by Mr. Bruce. He felt that under a properly managed corrections system those who fail to perform in their jobs can be fired notwithstanding the fact that they are classified personnel.

Cherie Shelly, A.P.E.A., testified that the organization supports Mr. Huston's position.

Senator Ray moved and asked unanimous consent that lines 15 and 16 of the bill be deleted. There was no objection. He then moved and asked unanimous consent that the bill pass from committee with individual recommendations. There was no objection.

HB 323 Residency

Senator Fischer presented a proposed committee substitute.

Robert Maynard, Department of Law, testified for the committee substitute. He said it corrects constitutional problems with a variety of residency statutes. He explained the current state of the law on residency.

Senator Ray moved and asked unanimous consent to amend the committee substitute to raise the age for obtaining a free hunting and fishing license from 60 years old to age 65. There was no objection.

Senator Rodey moved and asked unanimous consent to adopt the committee substitute and pass it from committee with individual recommendations. There was no objection.

HB 413 Capital Area Historic Properties Advisory Commission

Mike Scott, Aide to Senator Ferguson, testified for the bill. He said that it formalizes an informal group which is studying the preservation of the Capitol Building and the Governor's Mansion.

Senator Rodey moved and asked unanimous consent that the bill pass from committee with a do pass recommendation. There was no objection.

The meeting was adjourned at 4:15 p.m.

LAW OFFICES
GROSS & BURKE
A PROFESSIONAL CORPORATION
424 NORTH FRANKLIN STREET
JUNEAU, ALASKA 99801

AVRUM M. GROSS
SUSAN A. BURKE

(907) 586-2777

March 22, 1983

MEMORANDUM

TO: Honorable Mitch Abood
Chairman, House State Affairs Committee

FROM: Susan A. Burke *SAB*

RE: Residency Requirements

You have asked me to review the Alaska statutes that presently impose residency requirements and to recommend to the Committee the amendment or repeal of those residency requirements that more than likely would be held unconstitutional if challenged in court. You have also asked me to draft a statute defining "bona fide" residence. That draft is attached, along with comments.

In reviewing the residency requirements imposed under current law, I was primarily concerned with two questions -- first, whether it is constitutionally permissible to impose any kind of residency requirement having the effect of excluding nonresidents, and second where the statute imposes a durational residency requirement longer than 30 days, whether the period of residency specified is within

constitutional limits.^{1/} The statutes which contain residency provisions fall into several broad subject matter categories. Attached is a chart prepared by the Department of Law which lists all of the statutes containing residency requirements, with the statutes organized according to subject matter. The chart also includes an assessment of the constitutional problems, if any, presented by each statute. Rather than duplicate this work, I have used this chart as the basis for my review. The review will discuss the statutes listed in each subject matter category in the chart prepared by the Department of Law.

I. Residency Requirements for Eligibility to Hold Public Office

The durational residency requirements established for public office holding range from six months in the case of magistrates (AS 22.15.160(b)) to 10 years for members of the Judicial Qualifications Commission (Alaska Const. art IV, sec. 10; AS 22.30.010). Durational residency requirements for public

^{1/} In general, a person is entitled to claim residency in Alaska if the person is physically present in the state with the intent to remain here indefinitely and make a home here. With rare exceptions, a durational residency requirement will be valid only if it used as a way of testing whether the person actually has the necessary "residential" intent. For some programs, like welfare or medical care, and for fundamental rights such as voting, the state may impose only the shortest durational period necessary to make residency determinations. This period has been held to be no more than 30 days for voting and welfare. For other programs, as discussed below, a longer period of residency is permissible to require.

office holding have been challenged both in Alaska and elsewhere.^{1a/} These durational residency requirements have almost universally been upheld (even fairly lengthy ones), on the theory that they are a legitimate way to measure whether a person has sufficient knowledge of local problems and concerns to be qualified for public office and to insure that the voters have had a sufficient period of time in which to become familiar with the candidate. This same rationale would apply with equal force to durational residency requirements imposed for eligibility to serve on certain boards and commissions. While some questions

^{1a/} Gilbert v. State, 526 P.2d 1131 (Alaska 1974); Chimento v. Start, 414 U.S. 802 (1973).

might be raised as to the reasonableness of the length of residency required in a particular instance, it is probable that none would be struck down if challenged. I do not recommend that any amendments be made to these statutes.

II. Residency Requirements for Occupational Licensing

With only a few exceptions, I agree with the conclusions contained in the Department of Law's survey as to the serious constitutional problems presented by the statutes which require persons to be residents in order to be licensed to engage in certain professions. The recent Alaska Supreme Court decision in Noll v. Alaska Bar Association, 649 P.2d 241 (Alaska 1982), makes it almost certain that these requirements would be struck down if challenged. Close review of the statutes, however, suggests that in some instances, the residency requirements may have been prompted by perfectly legitimate concerns -- such as the difficulty or added expense of disciplining nonresident practitioners. Further, it appears that in some instances residency requirements may have been imposed as a "quick" way of insuring that persons who practiced certain professions in the state had some degree of "local" knowledge. After Noll, it seems likely that even though these are legitimate problems, they may not be solved by simply barring nonresidents from licensure. By the same token, there may be ways of dealing with these problems that do not raise constitutional questions. For instance, in the case of disciplining nonresidents, a higher fee could be charged to nonresidents to

offset additional costs that may be associated with disciplining nonresidents. "Local knowledge" concerns could be addressed through additional testing procedures. In any event, despite the serious constitutional problems with these statutes, it may be undesirable simply to repeal the residency requirements without providing solutions to whatever problems may be posed by granting licenses to nonresidents. The Committee might want to consider repealing the residency requirements, but having a delayed effective date until perhaps June 30 of 1984. Persons who wish to recommend alternative ways of addressing the kinds of concerns I have suggested would then have time to bring their recommendations to the legislature next year before the repeal of the residency requirements took effect.

III. Public Rights and Benefits

A. General

I agree with the Department of Law's conclusion that a one year durational residency requirement for annulment of marriage may be unconstitutional, though I would rate this as "probably" rather than "maybe" unconstitutional. The Alaska Supreme Court in 1974 struck down a one year durational requirement for obtaining a divorce. State v. Adams, 522 P.2d 1125 (Alaska 1974). The state's interests in requiring one year residence to obtain an annulment of a marriage are more than likely identical to those advanced in support of the one year requirement for divorce. The court did not find

those interests sufficiently important to justify a one year requirement for divorce. Although the Alaska Supreme Court seems to be moving toward a much less restrictive view of durational residency requirements,^{2/} it is unlikely that it would overrule its earlier decision in Adams, if the annulment statute were challenged. I would recommend that this statute be amended to require that a person simply be a resident.

I also agree with the Department's assessment of the other statutes listed in the "General" category, which impose one year durational requirements, and recommend that these statutes be amended to require that a person simply be a resident.

B. Loan and Grant Programs

The statutes governing the various loan programs impose durational residency requirements ranging from one to five years. I agree that the five year requirements are almost

^{2/} In State v. Adams, 522 P.2d 1125, 1131 (Alaska 1974), the Alaska Supreme Court stated:

. . . all such [durational residency] requirements are prima facie invalid and will be countenanced only when they serve a compelling state interest.

However, in Williams v. Zobel, 619 P.2d 448 (Alaska 1980) (permanent fund dividends), the court retreated from its earlier view in Adams, and indicated that unless the requirement affected fundamental rights (such as voting) or basic necessities of life (like welfare or medical care), the court would henceforth use a "balancing" approach to durational residency statutes. The importance of the state's interests will be weighed against the importance of the benefit denied or delayed by the durational requirement.

certainly unconstitutional.^{3/} The question is whether a durational requirement beyond 30 days would be constitutional, and if so, what is the maximum length that could be imposed within constitutional limits. Apart from public office holding, the United States Supreme Court has upheld durational residency requirements of up to one year in two cases -- eligibility for preferential resident tuition at state universities, and as a prerequisite to filing for divorce.^{4/} These cases were decided under the United States Constitution, and the Alaska Supreme Court may, and has, interpreted the Alaska Constitution in similar cases as imposing stricter requirements.^{5/} As noted above, the Alaska Supreme Court has until recently maintained the view that any durational residency requirement will be struck down unless the state can demonstrate that the requirement is necessary to further a compelling state interest. This is an extremely difficult burden to meet, and except in very rare instances it is an impossible burden. Because it appears that the Alaska court

^{3/} A different question is presented by the five year local mining experience requirement for mining loans under AS 27.09.020. This may be a permissible requirement, particularly if it is demonstrated that it does not operate as a practical matter to exclude persons who are currently residents, but who gained their Alaska mining experience as nonresidents.

^{4/} Vlandis v. Kline, 412 U.S. 441 (1973) (university tuition); Sosna v. Iowa, 419 U.S. 393 (1975) (divorce).

^{5/} For example, the Alaska court struck down a one-year residency requirement for divorce under the Alaska constitution, State v. Adams, 522 P.2d 1125 (Alaska 1974). One year later the U.S. Supreme Court upheld an identical requirement in Iowa's statute. Sosna v. Iowa. supra, note 4.

is moving toward a less restrictive approach toward durational residency, our court would probably uphold durational residency requirements of reasonable length for loan programs.

Under this less restrictive approach, the Alaska Court would balance the state's interests in imposing a durational residency requirement for a state loan against the importance of the challenger's interest in obtaining a loan before the requirement had been met. In the case of the loan programs, the state's interest is in assuring that state funds are not used to benefit nonresidents. Since resident status depends in large part on a person's state of mind, it is extremely difficult to know with certainty whether a recent arrival in fact has the requisite "residential" intent, and it is extremely difficult to disprove a false claim of residency. Further, it is costly to require the state to make individualized determinations of residency. There are in most instances alternative sources of loan funds through commercial lenders, and it is likely that our court would find that the state's interest in assuring that its benefits are not granted to persons who are not bona fide Alaska residents outweigh the slight inconvenience that a newly arrived resident might suffer by having to wait for some period of time in order to qualify for a state loan.

A more difficult question is what period of residency would be permissible. The state is currently in litigation in the Federal District Court in Alaska, defending the two

year durational residency requirement under the student loan program. The state has argued that the two year requirement is reasonable in light of the transience of student populations, the generous loan amounts under the Alaska program and the fact that there is no requirement that the loan funds be used at an Alaska institution. The plaintiff in that case has conceded that a one year requirement would be reasonable. Assuming the Alaska Supreme Court continues in its present trend in durational residency cases, a one year durational residency requirement for the loan programs would more than likely be upheld.^{6/} A two year requirement might be upheld, but it carries a much higher risk of being struck down than would a one year requirement. The Committee may want to defer proposing any amendments to the two year residency requirement for student loans until the pending litigation is resolved. The Committee may also want to defer action on the other loan programs until after the Alaska Supreme Court renders its decision on the one year residency requirement for participation in the Kenai land disposal lottery (Gilman v. Martin). That decision may provide some indication as to how our court would rule on a one year residency requirement for state loans.

^{6/} The one loan program for which a one year residency requirement would most likely not be upheld is the AHFC program for home mortgages -- at least as long as there continues to be a requirement that the loans will be made only for owner-occupied dwellings. As has been noted earlier in this memorandum, with rare exceptions, durational residency requirements may be used only as a way of measuring whether a person has the intent to remain in the state and make his or her home there. Purchasing a dwelling under a loan program requiring owner occupancy as a condition of the loan is such a strong indication that a person's claimed residential intent actually exists, that a court would most likely find that there was no valid state purpose in imposing an additional one year residency requirement.

I would, however, recommend that the sliding scale preference for accepting student loan applications that is based on years of residency be repealed, even though it has apparently never been applied. This provision is so similar to the dividend plan struck down in Zobel v. Williams that it is virtually certain to be struck down on the same constitutional grounds. On the other hand, the provisions of AS 14.40.763(j), providing for graduated forgiveness of portions of student loans based on continued residence in Alaska after graduation seem to be based on an entirely different rationale. Those provisions are not based on past residency, but seek to affect future behavior. Providing graduated loan forgiveness seems closely tied to the purpose of encouraging students to return to or remain in Alaska after they have received their educations. I believe that that provision would most likely be upheld if it were to be challenged, and that there is no need to repeal it because of constitutional vulnerability.

C. Land Disposal Programs

As mentioned above, the Alaska Supreme Court now has under consideration a case in which the Kenai land disposal program has been challenged. (Gilman v. Martin.) The Kenai ordinances governing its program are almost identical to the state's land lottery provisions in AS 38.05.057 and AS 38.05.058. Thus, the decision in Gilman will almost

certainly answer any constitutional questions that might be raised concerning the state's program. I agree with the assessment of the constitutional problems with these statutes contained in the Department of Law's chart. I believe that a one year residency requirement to participate in either the land lottery or the homesite entry program would probably be upheld. I have serious doubts about the constitutionality of the provision under which discounts of the purchase price are granted based on years of residency in the state. The committee may, however, wish to defer proposing amendments to this provision until after the decision in Gilman is rendered, since the residency based discounts are also at issue in that case.

D. Special Old Age Programs

I also agree with the assessment made by the Department of Law as to the durational residency requirements contained in the programs providing benefits or preferences to older residents of the state. With respect to the one year residency requirement for the senior citizen special assessment exemption under AS 29.63.065(d)(1), I have doubts about whether that requirement would be upheld, for the same reasons I outlined concerning a one year residency requirement for AHFC loans in footnote 6, above. A one year requirement for the senior citizen exemption from the fishing license requirement would probably be upheld; a 30 year requirement is clearly unconstitutional.

I also agree that the residency requirements for the longevity bonus are almost certainly unconstitutional. There are arguments that could be made in defense of the Pioneers' Home residency provisions, but it is far from certain that those requirements would be upheld. (The arguments in support of the Pioneers' Home residency requirements are contained in the November 26, 1982 opinion by Wilson Condon, a copy of which is among the Committee's files.) However, any recommendation as to how the residency requirements for these two programs might be amended to meet constitutional requirements necessarily has tremendous fiscal implications. The residency questions in these two programs are so intertwined with the structure and operation of the programs, that they cannot be dealt with separately, but can be addressed only as part of a total structural and operational review of those programs. That kind of review is, as I understand it, beyond the scope of the work that the Committee has asked me to perform.

SAB:yw

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House Committee on State Affairs

The enclosed chart on durational residency, originally prepared by former Attorney General Wilson Condon and Assistant Attorney General Bob Maynard, in 1982, has been used extensively in the preparation and drafting of "An Act relating to residency and residency requirements; and providing for an effective date." The Committee, staff and consultants would like to extend their appreciation to the invaluable research done by Mr. Condon and Mr. Maynard.

To help clarify the statutory changes contained in the House State Affairs' residency bill, we have included these changes as they apply to the programs appearing on Mr. Condon's chart. - They are:

- 1) The left-hand margins reflect the section numbers found in the residency bill.
- 2) material enclosed by brackets and asterisks (** . **), indicate effect of the residency bill on the various programs listed.

After an exhaustive review we have come up with the attached eight page table and accompanying appendix setting forth the durational residence requirements imposed by Alaska State law. The table is organized into three main parts, I PUBLIC OFFICE HOLDING, II LICENSES, and III PUBLIC RIGHTS AND BENEFITS. The five columns in the table speak for themselves. With respect to the column "Constitutional Problem" some explanation is required. If "No" appears under Constitutional Problem, it is the opinion of the Department of Law that the durational residence requirement is constitutionally sound. Where the word "Maybe" appears in that column, it is the opinion of the Department of Law that that durational residence requirement is also constitutionally sound; however, we believe that it is possible someone might initiate litigation challenging the requirement. Where the term "Probably" appears in the Constitutional Problem column, we believe there is more than a remote possibility a court might find this durational residence requirement unconstitutional. Where "Yes" appears in the Constitutional Problem column, we believe it is highly likely that a court would find the durational residence requirement unconstitutional.

Because of the Alaska Supreme Court's recent ruling in the case of Noll v. Alaska Bar Association, ___ P.2d ___, Op. No. 2546. (August 13, 1982), we have also included all residence requirements, whether durational or not, which apply to eligibility for entrance into regulated occupations in Alaska. After the Noll decision it would appear that any residence requirement for entrance into a regulated occupation in Alaska will be held unconstitutional except in the most unusual circumstances.

TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE
<u>General</u>				
1. Governor	7 Years	Alk. Const. art. III, § 2	No	--
2. Lieutenant Governor	7 Years	Alk. Const. art. III, §§ 2 & 7	No	--
3. Board of Education Member	3 Years	AS 14.07.075	No	--
4. Legislator	3 Years	Alk. Const. art. II, § 2 AS 24.05.030	No	--
5. Supreme Court Justice	5 Years	AS 22.05.070	No	--
6. Court of Appeals Judge	5 Years	AS 22.07.040	No	--
7. Superior Court Judge	5 Years	AS 22.10.090	No	--
8. District Court Judge	5 Years	AS 22.15.160(a)	No	--
9. Magistrate	6 Months	AS 22.15.160(b)	No	--
10. Ombudsman	3 Years	AS 24.55.030	No	--
11. Borough Mayor	Up to 3 Years	AS 29.23.130(b)	No	--
12. Borough Assembly	Up to 3 Years	AS 29.23.050	No	--
13. City Mayor	Up to 3 Years	AS 29.23.250(a)	No	--
14. City Council	Up to 3 Years	AS 29.23.200(b)	No	--
15. Municipal Charter Commission	3 Years	AS 29.13.010	No	--

TITLE	RESIDENCE REQUIREMENT	AUTHORITY	PROBLEM	PENDING, IF APPLICABLE
<p><u>Boards and Commissions other than Occupational Licensing Boards.</u> There are 98 Boards and Commissions, other than Occupational Licensing Boards, which are a part of or affiliated with state government. There is a durational residence requirement for membership on seven of those boards and commissions. */</p>				
1. Rural Affairs Commission	5 Years	AS 44.19.102	Maybe **/	None
2. Board of Fisheries	1 Year	AS 16.05.221 AS 16.05.940	No	--
3. Board of Game	1 Year	AS 16.05.221 AS 16.05.940	No	--
4. Judicial Qualifications Commission	10 years practice in Alaska	Ak. Const. art. IV, § 10 AS 22.30.010	Maybe **/	--
5. Municipal Bond Bank Authority	30 days (qualified voter)	AS 44.85.030	No	--
6. Personnel Board	30 days (qualified voter)	AS 39.25.060	No	--
7. Alaska Power Authority	30 days (qualified voter)	AS 44.83.020	No	--

This list includes only boards and commissions which have express durational residency requirements. Many boards have ex officio members who must meet residency requirements for those offices or positions. These boards include:

- (1) Alcohol Beverage Control Board (certain licensees);
- (2) Capital Site Planning Commission (borough mayors);
- (3) Coastal Policy Council (mayors, assembly and council members);
- (4) Code Revision Commission (members of legislature);
- (5) Citizens Advisory Commission on Federal Management Areas in Alaska (governor and other public officers);
- (6) Commission on Conference of the Law of the Sea (members of legislature);
- (7) Rural Development Council (members of legislature);
- (8) Teacher's Retirement Board (resident who is receiving retirement benefits);
- (9) Tourism Advisory Board (members of legislature); and
- (10) Governor's Commission on the Administration of Justice (judicial officers, legislators and municipal officials)

It is difficult to imagine someone complaining about any possible constitutional problems here.

Occupational Licenses. The State of Alaska requires occupational licenses in 28 separate occupational areas. Residence requirements are imposed for the receipt of these licenses in seven of these occupational areas. For reasons set forth in Appendix A, we believe any residence requirement, even of zero durational length, will in most cases be unconstitutional.

TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE
Public Accountant (**delete residency requirement**)	1 Year (rebuttable)	AS 08.04.280 12 AAC 04.170	Yes	None
Attorney (** no change **)	Residence	Bar Rule 5(1)(a)	Yes	Declared unconstitutional in Noll v. Alaska Bar Ass'n 8/13/82
Law Clerk (**delete residency requirement **)				
Collection Agencies (** no change **)	1 Year, but non-resident may receive license on same basis as resident, except fee for branch offices is higher	AS 08.24.110 AS 08.24.370	No	
Morticians (** no change **)	1 Year in state apprenticeship	AS 08.42.110	Yes	None
Guides				
Master Guide (** no change needed; comes in through registered guide reference **)	Residence plus hunted 10 years	AS 08.54.100	Yes	None
Registered Guide (** deleted **)	Resident	AS 08.54.110(2)	Yes	None
Class A Assistant Guide (** no change **)	20 years experience in guide district in which he is to be employed although not a specific residence requirement.	AS 08.54.120	Yes	None
Assistant Guide (** deleted **)	Resident	AS 08.54.140 (2)	Yes	None
(** deleted **)	Resident	AS 08.54.142 (a)(1)	Yes	None

	TITLE	RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE
<u>Occupational Licenses (Cont.)</u>					
	6. Junk Dealer & Metal Scrapper (**no change*)	No resident requirement, but defines "resident" as present for one year.	AS 08.60.030	No	--
ec. 4	7. Real Estate Brokers and Salesmen (** delete residency requirement. **)	Resident	AS 08.88.171	Yes	None
ec. 9	8. Insurance Brokers, Agents and Solicitors (**delete residency requirement.		No fee change -- keep differential **)		
	' Resident Insurance Salesmen or Broker (non residents can be licensed but may pay a higher fee)	1 year	AS 21.27.090 (a)(2) res.	No	--
			AS 21.06.250 fees (no change)		--
ec. 13	Insurance Solicitor ** deleted ** (residency requirement)	1 year	AS 21.27.220 (1)	Yes	None
<u>B. Other Licenses</u>					
	1. Alcoholic Beverage License (**no change**)	1 year	AS 04.11.390	Maybe	None
	2. Resident Fish and Game License (resident license costs less than non-resident license) (** no change **)	12 consecutive months	AS 16.05.940	Maybe	None
<u>III. PUBLIC RIGHTS AND BENEFITS</u>					
<u>A. General</u>					
	1. Voting (** no change **)	30 days	AS 15.05.510	No	--
ec. 5	2. Annulment of Marriage (** delete 1 yr. retain 30 days **)	1 Year	AS 09.55.130	Maybe	None

	TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE	
<u>General (Cont.)</u>						
Sec. 13	3. Low-Cost Housing Preference (** delete 1 yr. retain 30 days **)	1 Year	AS 18.55.330 AS 18.55:470(4) ** deleted	Probably	None	
Sec. 13	4. Vocational Substitution Program (** " " *)	1 Year	AS 39.25.155(g)	Probably	None	
Sec. 13	5. Industrial Incentive Tax Credits (* " " *)	Depends on % of 1-year residents	AS 43.26.095(b)(3)	Probably	Program is for all practical purposes no longer operating.	
Sec. 8	6. Bounties for Certain Animals (* " " *)	1 year abode in Unit plus "continually maintained residence in the state"	AS 16.35.130	Yes	The program is a dead letter because it has not been funded for several years.	
B.	<u>Loan and Grant Programs.</u> Approximately 41 loan programs are provided for under Alaska Statutes. 35 of these are currently active programs. Of these 35, seven have some sort of durational residency feature. The dormant programs are inactive because of lack of funding. The state has one grant program requiring a period of residency for eligibility.					
	1. Fisherman's Note and Mortgage Program	NOTE: this was repealed in 1982.	5 Years	AS 16.10.680(a)	Yes	AG opinion pending
	2. Commercial Fishing Loan	See HB 15 which deleted 5 yrs. & used 2 years.	5 Years	AS 16.10.310(a)	Yes	AG opinion pending
Sec. 12	3. Limited Entry Permit Loans (CFAB) (** delete 5 yrs.; insert 2 years **)	5 Years	AS 44.31. ²¹⁰ (a)(20)	Yes	Program inactive pending Court determination of legality of limited entry program in State v. Ostrosky.	
	4. Agriculture and Fishing Loan (CFAB) (** no change **)	1 Year	Board Policy	Maybe	None	
Sec. 8	5. Alaska Housing Finance Corp. One Percent Veterans' Housing Loan Rate Reduction (** delete 5 yrs., insert 2 years. **)	5 Years	AS 18.56.101(β)	Yes	AG opinion 7/14/82 instructed agency not to enforce.	
Sec. 10	6. Veterans Loans (** delete 5 yrs., insert 2 years. **)	5 Years	AS 26.15.130(1) (a)	Yes	Inactive because not currently funded.	

TITLE	RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE
<u>Grant Programs (Cont.)</u>				
1. Mining Business Loans (** no change **)	Residency and 5 Years Mining Experience in State.	AS 27.09.020	Maybe	None
2. Memorial Scholarship Loan Fund (** no change **)	No durational requirement to apply. 1/5 loan forgiven for each year employed in specialized field in Alaska.	AS 14.40.825(e)	No	- - -
<u>Student Loan Program</u>				
(a) eligibility to apply (** no change **)	1 Year	AS 14.40.765(b)	Probably	Issue pending in Address v. Baxter
(b) 1/10 forgiven for each year of residency after education up to 50% of loan. (** no change **)	- -	AS 14.40.763(1)	Maybe	May be covered by Gilman v. Martin which is now pending in Alaska Supreme Court
(c) Point Preference System for loan applicants (**repealed **)	1 Point; 2-5 Years 2 Points; 5-10 Years 3 Points; 10+ Years	AS 14.40.767 renumber to 14.43.130	Yes	Point system has not previously been utilized as Legislature has always funded all applicants.
10. Alaska Educational Incentive Grant (** no change **)	2 Years	Application form	Probably	Issue will be decided by result in Address v. Baxter
<u>Land Disposal Programs</u>				
1. Land Disposal by Lottery (** no change **)	1 Year	AS 38.05.057(b)(2)	Maybe	Should be decided by Gilman v. Martin.
2. Land Purchase Price Discount Program (** repealed **)	5% per year discount for each year of residency	AS 38.05.058	Probably	Should be decided by Gilman v. Martin.

TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING IF APPLICABLE
<u>Disposal Programs (Cont.)</u>				
3. Homesite Entry Program (** delete 3 yrs. and 20 yrs. require 1 year. **)	3 years (or 20 years of earlier residency) to apply	AS 38.08.030(a)(2)	Yes	AG opinion pending
	Priority given longest resident	AS 38.08.040(b) Sec. 13 **repealed**		
4. Remote Parcel Leasing Program (** no change **)	1 Year	AS 30.08.077(1)(2)	Maybe	Should be decided by Gilman v. Martin.
<u>Special Old Age Programs</u>				
1. Longevity Bonus Program (** no change in this bill **)	25 years and presence in State at or before statehood.	AS 47.45.010(a)	Yes	Issue Pending in Vest v. Schafer
2. Pioneers' Home Program (** no change in this bill **)	15 years immediately before application, or 30 years cumulative	AS 47.25.020(a) AS 47.25.035	Yes.	None
3. Senior Citizen Special Assessment Exemption (** delete 1 yr and retain 30 days. **)	12 months	AS 29.63.065(d)(1)	Maybe	None
4. Senior Citizen Exemption from Fishing License Requirement (** delete 30 years and insert 1 year **)	30 years total residence	AS 16.05.400	Yes	None

The federal constitution's Privileges and Immunities Clause seeks to prevent discrimination against nonresidents, to further the concept of federalism, and to create a national economic unit. Sheley v. Alaska Bar Ass'n, 620 P.2d 640, 642 (Alaska 1980) ("Sheley"). Although the Clause does not preclude some disparity of treatment between residents and nonresidents, it does protect activities which are "fundamental rights": i.e., "basic and essential activities, interference with which would frustrate the purposes of the formation of the Union." Baldwin v. Fish & Game Comm'n, 436 U.S. 371, 388 (1978).

One such "fundamental right" is the right to engage in "common callings" and to pursue "ordinary livelihoods." Toomer v. Witsell, 334 U.S. 385, 403 (1948). This includes "professional occupations." Sheley, 620 P.2d at 643.

In order to discriminate against nonresidents when a fundamental right is involved, there must be: (1) some showing that nonresidents are "a peculiar source of the evil" which the residence requirement is meant to remedy; and (2) the discrimination against nonresidents must "bear a substantial relationship to the particular 'evil' they are said to present." Hicklin v. Orbeck, 437 U.S. 518, 526-527 (1978). For example, there cannot be less restrictive means to combat the problems attempted to be solved by the residency requirement. Sheley, 620 P.2d at 645.

A good example is the recent Alaska Supreme Court case Noll v. Alaska Bar Ass'n, ___ F.2d ___, Op. No. 2546 (August 13, 1982). In Noll, a nonresident challenged the constitutionality of Alaska Bar Rule 5(1)(a), which required that an applicant for admission to the state bar be domiciled in Alaska when he or she was actually admitted. The bar association argued that the residency requirement was needed:

(1) to assure the competency of the members of the bar;

(2) to assure familiarity with local practice and local issues;

(3) to facilitate service of process and communication with other attorneys; and

(4) to assure that members of the state bar are readily amenable to discipline and fee arbitration and are available for service on the committees that administer those procedures.

The Alaska Supreme Court rejected each and every reason offered. Although recognizing the legitimacy of those goals, the court either found these goals were not "substantial" enough to justify the discrimination, could be attained by other nondiscriminatory means, or were not furthered by the discrimination. As can be seen, this constitutional test is difficult to meet. Consequently, all residency requirements for occupational licensing are called into substantial doubt.

fundamental right is involved. There must be some showing that the requirements are necessary to the public interest, and that the requirements are not arbitrary and discriminatory. The court found that the residency requirements were not necessary to the public interest and were arbitrary and discriminatory. The court also found that the requirements were not necessary to the public interest and were arbitrary and discriminatory.

TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING IF APPLICABLE
<u>Land Disposal Programs (Cont.)</u>				
Sec. 11 3. Homesite Entry Program (** delete 3 yrs. and 20 yrs.) require 1 year. **	3 years (or 20 years of earlier residency) to apply	AS 38.08.030(a)(2)	Yes	AG opinion pending
	Priority given longest resident	AS 38.08.040(b)	Sec. 13 **repealed **	
4. Remote Parcel Leasing Program (** no change **)	1 Year	AS 38.08.077(1)(2)	Maybe	Should be decided by Gilman v. Martin.
<u>D. Special Old Age Programs</u>				
1. Longevity Bonus Program (** no change in this bill **)	25 years and presence in State at or before statehood.	AS 47.45.010(a)	Yes	Issue Pending in Vest v. Schaffer
2. Pioneers' Home Program (** no change in this bill **)	15 years immediately before application; or 30 years cumulative	AS 47.25.020(a) AS 47.25.035	Yes.	None
Sec. 13 3. Senior Citizen Special Assessment Exemption (** delete 1 yr and retain 30 days. **)	12 months	AS 29.63.065(d)(1)	Maybe	None
Sec. 6 4. Senior Citizen Exemption from Fishing License Requirement (** delete 30 years and insert 1 year **)	30 years total residence	AS 16.05.400	Yes	None

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

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SECTIONAL ANALYSIS OF: SCSCS HB 323 (SA)

"An Act relating to residency and residency requirements; and providing for an effective date."

Section 1 amends AS 01.10 by adding a new section defining bona fide residency in the State of Alaska. A person establishes residency in the State by being physically present in Alaska with the intent to remain in Alaska indefinitely and to make a home in the State. Under (b)(1) in the section, a person must maintain a principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation.

Section 2 repeals and reenacts AS 08.04.110 relating to the personal requirements of certified public accountants. The present residency requirement has been deleted.

Section 3 amends AS 08.04.260 relating to temporary certificates for certified, public accountants. The present residency requirement has been deleted.

Section 4 amends AS 08.08.207 (a) by removing the requirement that an individual be a resident of Alaska in order to be a law clerk.

Section 5 amends AS 08.42.050(a)(4) by eliminating the residency requirement for embalmer trainees.

Section 6 amends AS 08.42.110(4) to conform the definition of "trainee" to the change made in Section 5, above.

Section 7 amends AS 08.88.171 relating to qualifications for a real estate broker's license, an associate broker's license, or a real estate salesman's license. The one-year residency requirement has been deleted.

Section 8 amends AS 09.55.130 by deleting the one-year residency requirement for the annulment of a marriage. Under current law, if a person was not married in Alaska, that marriage can only be annulled if the plaintiff had been a resident for at least one year prior to the commencement of an action.

Section 9 amends AS 16.05.400(b) by changing the 30-year consecutive residency requirement to a one-year requirement for a hunting, fishing or trapping license exemption for persons 60 years of age or older.

Section 10 amends AS 16.35.130 by deleting the one-year residency requirement in the section dealing with the non-payment of bounty on certain animals. Presently, in order for a bounty to be paid, an individual is required to maintain a place of abode inside the game management unit or in part of the game management unit for one year preceeding the time the animal is taken and the bounty paid. In addition, no bounty is paid to a person who has not continually maintained legal residence in Alaska. The one-year residency requirement has been replaced by a 30-day requirement.

Section 11 amends AS 18.56.101 (1)(B), dealing with the eligibility for the one percent veteran's interest rates reduction or AHFC loans, by deleting the five-year residency requirement and substituting a one-year requirement. The present law requires a veteran who was not a resident of Alaska at the time of entry into the service, to be a resident of Alaska for one year at the time of the date of application for a loan and also requires the applicant to have been a resident of Alaska for five years.

Section 12 amends AS 21.27.090 (a)(2), dealing with the qualifications for insurance agent and broker licenses, by deleting the one-year residency requirement and substituting a 30-day requirement. There is no change in fee differential.

Section 13 amends AS 26.10.080(d)(1)(13), relating to veteran's burial allowances, by reducing the residency requirement from five years to one year at the time of death for veterans who were not residents at the time of entry into service.

Section 14 amends AS 26.15.130 (a), dealing with the eligibility for veteran's loans, by deleting the five-year residency requirement and inserting a one-year requirement. To receive a loan under current law a veteran who was not a bona fide resident of the State or Territory of Alaska at the time of entry into the service, is required to have been a resident of the State or territory for five years.

Section 15 amends AS 38.08.030 (a)(2), dealing with applications for the homesite entry, by deleting the three-year residency requirement and the 20-year requirement, and substituting a one-year requirement. Under current law an individual must submit proof that he/she has been a resident of Alaska for three years immediately preceding the date of application, or, that the person has been an Alaskan resident for a total of 20 years.

Section 16 amends AS 44.81.210 (a)(20), dealing with limited entry permit loans (CFAR), by deleting the five-year residency requirement and substituting a two-year requirement. Under current law, a person must be a resident of Alaska for a continuous period of five years immediately preceding the date of application for the loan and who has had a crew member or commercial fishing license under AS 16.05.480 or a permit under AS 16.43.010 - 380, for any one of the past five years. That person must also have actively participated in the fishery during that period.

Section 17 grants authority to the Commission on Postsecondary Education to adopt the most stringent residency requirements allowable under the Constitution if the current two year residency for scholarship loans is declared unconstitutional by a court of competent jurisdiction.

Section 18 repeals the residency requirements for:

driver's license, AS 08.24.110(1)

guide license, AS 08.54.110(2)

assistant guide licenses, AS 08.54.140(2)

transporter license, AS 08.54.142(a)(1)

definition of "resident" in the chapter regulating guides,
AS 08.54.210(3)(B)

granting student loans based on accumulated points determined by
length of residency, AS 14.43.130

ASHA low-cost housing, AS 18.55.470(4)

insurance solicitor license, AS 21.27.220(1)

(CONT)

Section 18 repeals the residency requirements for:

senior citizen special assessment exemption, AS 29.63.065(d)(1)

state land sale discounts, AS 38.05.058

homesite entry permits, AS 38.08.040(b)

vocational substitution program, AS 39.25.155(g)

industrial incentive tax credits, AS 43.26.095(b)(3)

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Alaska State Legislature



Representative Mitch Aboud
CHAIRMAN

House Committee on State Affairs

The enclosed chart on durational residency, originally prepared by former Attorney General Wilson Condon and Assistant Attorney General Bob Maynard, in 1982, has been used extensively in the preparation and drafting of "An Act relating to residency and residency requirements; and providing for an effective date." The Committee, staff and consultants would like to extend their appreciation to the invaluable research done by Mr. Condon and Mr. Maynard.

To help clarify the statutory changes contained in the House State Affairs residency bill, we have included these changes as they apply to the programs appearing on Mr. Condon's chart. They are:

- 1) The left-hand margins reflect the section numbers found in the residency bill.
- 2) material enclosed by brackets and asterisks (** **), indicate effect of the residency bill on the various programs listed.

TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE
A. <u>General</u>				
1. Governor	7 Years	Alk. Const. art. III, § 2	No	--
2. Lieutenant Governor	7 Years	Alk. Const. art. III, §§ 2 & 7	No	--
3. Board of Education Member	3 Years	AS 14.07.075	No	--
4. Legislator	3 Years	Alk. Const. art. II, § 2 AS 24.05.030	No	--
5. Supreme Court Justice	5 Years	AS 22.05.070	No	--
6. Court of Appeals Judge	5 Years	AS 22.07.040	No	--
7. Superior Court Judge	5 Years	AS 22.11.090	No	--
8. District Court Judge	5 Years	AS 22.15.160(a)	No	--
9. Magistrate	6 Months	AS 22.15.160(b)	No	--
10. Ombudsman	3 Years	AS 24.55.030	No	--
11. Borough Mayor	Up to 3 Years	AS 29.23.130(b)	No	--
12. Borough Assembly	Up to 3 Years	AS 29.23.050	No	--
13. City Mayor	Up to 3 Years	AS 29.23.250(a)	No	--
14. City Council	Up to 3 Years	AS 29.23.200(b)	No	--
15. Municipal Charter Commission	3 Years	AS 29.13.010	No	--

TITLE

AUTHORITY

TITLE	DURATIONAL, RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE
B. <u>Boards and Commissions other than Occupational Licensing Boards.</u> There are 53 Boards and Commissions, other than Occupational Licensing Boards, which are a part of or affiliated with state government. There is a durational residence requirement for membership on seven of those boards and commissions. */				
1. Rural Affairs Commission	5 Years	AS 44.19.102	Maybe **/	None
2. Board of Fisheries	1 Year	AS 16.05.221 AS 16.05.940	No	--
3. Board of Game	1 Year	AS 16.05.221 AS 16.05.940	No	--
4. Judicial Qualifications Commission	10 years practice in Alaska	Alk. Const. art. IV, § 10 AS 22.30.010	Maybe **/	--
5. Municipal Bond Bank Authority	30 days (qualified voter)	AS 44.85.030	No	--
6. Personnel Board	30 days (qualified voter)	AS 39.25.060	No	--
7. Alaska Power Authority	30 days (qualified voter)	AS 44.83.020	No	--

*/ This list includes only boards and commissions which have express durational residency requirements. Many boards have ex officio members who must meet residency requirements for those offices or positions. These boards include:

- (1) Alcohol Beverage Control Board (certain licensees);
- (2) Capital Site Planning Commission (borough mayors);
- (3) Coastal Policy Council (mayors, assembly and council members);
- (4) Code Revision Commission (members of legislature);
- (5) Citizens Advisory Commission on Federal Management Areas in Alaska (governor and other public officers);
- (6) Commission on Conference of the Law of the Sea (members of legislature);
- (7) Rural Development Council (members of legislature);
- (8) Teacher's Retirement Board (resident who is receiving retirement benefits);
- (9) Tourism Advisory Board (members of legislature); and
- (10) Governor's Commission on the Administration of Justice (judicial officers, legislators and municipal officials)

*/ It is difficult to imagine someone complaining about any possible constitutional problem here.

II. LICENSES

TITLE	DURATION, RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE
<p>A. <u>Occupational Licenses.</u> The State of Alaska requires occupational licenses in 28 separate occupational areas. Residence requirements are imposed for the receipt of these licenses in seven of these occupational areas. For reasons set forth in Appendix A, we believe any residence requirement, even of zero durational length, will in most cases be unconstitutional.</p>				
Sec.2	1. Public Accountant (**delete residency requirement**)	1 Year (rebuttable)	AS 08.04.280 12 AAC 04.170	Yes None
	2. Attorney (** no change **)	Residence	Bar Rule 5(1)(a)	Yes Declared unconstitutional in Moll v. Alaska Bar Ass'n 8/13/82
Sec.3	Law Clerk (**delete residency requirement **)			
	3. Collection Agencies (** no change **)	1 Year, but non-resident may receive license on same basis as resident, except fee for branch offices is higher	AS 08.24.110 AS 08.24.370	No --
	4. Morticians (** no change **)	1 Year in-state apprenticeship	AS 08.42.110	Yes None
	5. Guides			
	Master Guide (** no change needed; comes in through registered guide reference **)	Residence plus hunted 10 years	AS 08.54.100	Yes None
Sec.13	Registered Guide (** deleted **)	Resident	AS 08.54.110(2)	Yes None
	Class A Assistant Guide (** no change **)	.20 years experience in guide district in which he is to be employed although not a specific residence requirement.	AS 08.54.120	Yes None
Sec: 13	Assistant Guide (** deleted **)	Resident	AS 08.54.140 (2)	Yes None
Sec. 13	Transporter (** deleted **)	Resident	AS 08.54.142 (a)(1)	Yes None

	TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE
<u>Occupational Licenses (Cont.)</u>					
	6. Junk Dealer & Metal Scrapper (**no change*)	No resident requirement, but defines "resident" as present for one year.	AS 08.60.030	No	--
Sec. 4	7. Real Estate Brokers and Salesmen (** delete residency requirement. **)	Resident	AS 08.88.171	Yes	None
Sec. 9	8. Insurance Brokers, Agents and Solicitors (**delete residency requirement.		No fee change -- keep differential **)		
	' Resident Insurance Salesmen or Broker (non residents can be licensed but may pay a higher fee)	1 year	AS 21.27.090 (a)(2) res.	No	--
			AS 21.06.250 fees (no change)		--
Sec. 13	Insurance Solicitor ** deleted ** (residency requirement)	1 year	AS 21.27.220 (1)	Yes	None

B. Other Licenses

	1. Alcoholic Beverage License (**no change**)	1 year	AS 04.11.390	Maybe	None
	2. Resident Fish and Game License (resident license costs less than non-resident license) (** no change **)	12 consecutive months	AS 16.05.940	Maybe	None

III. PUBLIC RIGHTS AND BENEFITS

A. General

	1. Voting (** no change **)	30 days	AS 15.05.510	No	--
Sec. 5	2. Annulment of Marriage (** delete 1 yr. 1 Year retain 30 days **)		AS 09.55.130	Maybe	None

	TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE	
<u>General (Cont.)</u>						
Sec. 13	3. Low-Cost Housing Preference (** delete 1 yr. retain 30 days **)	1 Year	AS 18.55.330 AS 18.55.470(4) ** deleted	Probably	None	
Sec. 13	4. Vocational Substitution Program (* " " *)	1 Year	AS 39.25.155(g)	Probably	None	
Sec. 13	5. Industrial Incentive Tax Credits (* " " *)	Depends on 7 of 1-year residents	AS 43.26.095(b)(3)	Probably	Program is for all practical purposes no longer operating.	
Sec. 7	6. Bounties for Certain Animals (* " " *)	1 year reside in Unit plus "continually maintained residence in the state . . ."	AS 16.35.130	Yes	The program is a dead letter because it has not been funded for several years.	
B. <u>Loan and Grant Programs.</u> Approximately 41 loan programs are provided for under Alaska Statutes. 35 of these are currently active programs. Of these 35, seven have some sort of durational residency feature. The dormant programs are inactive because of lack of funding. The state has one grant program requiring a period of residency for eligibility.						
	1. Fisherman's Note and Mortgage Program	NOTE: this was repealed in 1982	5 Years	AS 16.10.680(a)	Yes	AG opinion pending
	2. Commercial Fishing Loan	5 Years	AS 16.10.310(a)	Yes	AG opinion pending	
Sec. 12	3. Limited Entry Permit Loans (CFAB) (** delete 5 yrs., insert 2 years **)	5 Years	AS 44.81. ²¹⁰ (a)(20)	Yes	Program inactive pending Court determination of legality of limited entry program in State v. Ostrosky.	
	4. Agriculture and Fishing Loan (CFAB) (** no change **)	1 Year	Board Policy	Maybe	None	
Sec. 8	5. Alaska Housing Finance Corp. One Percent Veterans' Housing Loan Rate Reduction (** delete 5 yrs., insert 2 years. **)	5 Years	AS 18.56.101(p) (a)	Yes	AG opinion 7/14/82 instructed agency not to enforce.	
Sec. 10	6. Veterans Loans (** delete 5 yrs., insert 2 years. **)	5 Years	AS 26.15.130(1)	Yes	Inactive because not currently funded.	

TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE
<u>Loan and Grant Programs (Cont.)</u>				
7. Mining Business Loans (** no change **)	Residency and 5 Years Mining Experience in State.	AS 27.09.020	Maybe	None
8. Memorial Scholarship Loan Fund (** no change **)	No durational requirement to apply. 1/5 loan forgiven for each year employed in specialized field in Alaska.	AS 14.40.825(e)	No	- - -
9. Student Loan Program				
(a) eligibility to apply (** no change **)	1 1/2 Years	AS 14.40.765(b)	Probably	Issue pending in <i>Andress v. Baxter</i>
(b) 1/10 forgiven for each year of residency after education up to 50% of loan. (** no change **)	- -	AS 14.40.763(1)	Maybe	May be covered by <i>Gilman v. Martin</i> which is now pending in Alaska Supreme Court
Sec. 13 (c) Point Preference System for loan applicants (**repealed **)	1 Point; 2-5 Years 2 Points; 5-10 Years 3 Points; 10+ Years	renumber to 14.43.130 AS 14.40.767	Yes	Point system has not previously been utilized as Legislature has always funded all applicants.
10. Alaska Educational Incentive Grant (** no change **)	2 Years	Application form	Probably	Issue will be decided by result in <i>Andress v. Baxter</i>
C. <u>Land Disposal Programs</u>				
1. Land Disposal by Lottery (** no change **)	1 Year	AS 38.05.057(b)(2)	Maybe	Should be decided by <i>Gilman v. Martin</i> .
Sec. 13 2. Land Purchase Price Discount Program (** repealed **)	5% per year discount for each year of residency up to 10 years	AS 38.05.058	Probably	Should be decided by <i>Gilman v. Martin</i> .

TITLE

DURATIONAL RESIDENCE REQUIREMENT

AUTHORITY

CONSTITUTIONAL PROBLEM

ACTION TAKEN OR PENDING IF APPLICABLE

Land Disposal Programs (Cont.)

Sec. 11 3. Homesite Entry Program
(** delete 3 yrs. and 20 yrs. require 1 year. **)

3 years (or 20 years of earlier residency) to apply

AS 38.08.030(a)(2)

Yes

AG opinion pending

Priority given longest resident

AS 31.03.040(b) Sec. 13 **repealed**

4. Remote Parcel Leasing Program
(** no change **)

1 Year

AS 38.08.077(1)(2)

Maybe

Should be decided by Gilman v. Martin.

D. Special Old Age Programs

1. Longevity Bonus Program
(** no change in this bill **)

25 years and presence in State at or before statehood.

AS 47.45.010(a)

Yes

Issue Pending in Vest v. Schafer

2. Pioneers' Home Program
(** no change in this bill **)

15 years immediately before application; or 30 years cumulative

AS 47.25.020(a)

Yes.

None

AS 47.25.035

Sec. 13 3. Senior Citizen Special Assessment Exemption (** delete 1 yr and retain 30 days. **)

12 months

AS 29.63.065(d)(1)

Maybe

None

Sec. 6 4. Senior Citizen Exemption from Fishing License Requirement
(** delete 30 years and insert 1 year **)

30 years total residence

AS 16.05.400

Yes

None

Appendix A

- The federal constitution's Privileges and Immunities Clause seeks to prevent discrimination against nonresidents, to further the concept of federalism, and to create a national economic unit. Sheley v. Alaska Bar Ass'n, 620 P.2d 640, 642 (Alaska 1980) ("Sheley"). Although the Clause does not preclude some disparity of treatment between residents and nonresidents, it does protect activities which are "fundamental rights": i.e., "basic and essential activities, interference with which would frustrate the purposes of the formation of the Union." Baldwin v. Fish & Game Comm'n, 436 U.S. 371, 388 (1978).

One such "fundamental right" is the right to engage in "common callings" and to pursue "ordinary livelihoods." Teemer v. Witsell, 334 U.S. 385, 403 (1948). This includes "professional occupations." Sheley, 620 P.2d at 643.

In order to discriminate against nonresidents when a fundamental right is involved, there must be: (1) some showing that nonresidents are "a peculiar source of the evil" which the residence requirement is meant to remedy; and (2) the discrimination against nonresidents must "bear a substantial relationship to the particular 'evil' they are said to present." Hicklin v. Orbeck, 437 U.S. 518, 526-527 (1978). For example, there cannot be less restrictive means to combat the problems attempted to be solved by the residency requirement. Sheley, 620 P.2d at 645.

A good example is the recent Alaska Supreme Court case Noll v. Alaska Bar Ass'n, ___ P.2d ___, Op. No. 2546 (August 13, 1982). In Noll, a nonresident challenged the constitutionality of Alaska Bar Rule 5(1)(a), which required that an applicant for admission to the state bar be domiciled in Alaska when he or she was actually admitted. The bar association argued that the residency requirement was needed:

(1) to assure the competency of the members of the bar;

(2) to assure familiarity with local practice and local issues;

(3) to facilitate service of process and communication with other attorneys; and

(4) to assure that members of the state bar are readily amenable to discipline and fee arbitration and are available for service on the committees that administer those procedures.

The Alaska Supreme Court rejected each and every reason offered. Although recognizing the legitimacy of those goals, the court either found these goals were not "substantial" enough to justify the discrimination, could be attained by other nondiscriminatory means, or were not furthered by the discrimination. As can be seen, this constitutional test is difficult to meet. Consequently, all residency requirements for occupational licensing are called into substantial doubt.