

SB

56

File #2

5/24/87



A little bit of bonus history

Since the legislators' work is going to have to take some going over to see who won, who lost and who just got lost, I will leave it alone for a week or so.

A legislative aid in Juneau wrote me asking some questions regarding what the legislature was thinking back when we first considered the longevity bonus. I was asked if the legislature considered things like the constitutionality of the legislation and how it was to be funded?

The constitutionality was considered, and in fact a provision was inserted in the original legislation specifying that if the courts struck down any portion of the bill, the whole program was to be discontinued.

How an attorney general could later consider that paying it to everyone made it legal I'll never know!

I'm not necessarily in disagreement with paying it to everyone over 65; I just feel his ruling was more from the heart than on the law itself.

There are some who think the program has become too expensive, but I'm not so sure that it's not worth keeping regardless of cost. If, for instance, you just compare it to other government programs.

With a population of under five hundred thousand people, do we need as many state employees as we have?

I'm not insinuating they don't work hard and do the best work possible but after reading the local papers, it seems more tears are being shed for the loss of the local pay roll into the economy than the loss of the state work being done.

So, if some of the purpose of payroll is its impact on the economy I think that I, for one, would rather give it to the old folks. For one thing we don't have to pay them when they leave the state as we do with employee retirement and benefits, thus a larger portion stays in Alaska.

The other question asked was why we didn't address the funding in the original legislation. The answer is, we did.

When the state received the first big oil bonanza, some nine hundred million, in a state with an annual budget of one hundred million some of us wanted to save at least a portion of this windfall like the Permanent Fund of today. So the first longevity bonus bill which paid \$150 a month to our pioneers was to be funded from the earnings of one hundred million placed in a Permanent Fund with the understanding that if earnings dropped the pioneers might really receive less than \$150.

But the longevity bonus legislation and the Permanent Fund passed both houses and went to Gov. Miller's office.

Gov. Miller was pushing for the ice road to Prudhoe Bay and wanted to call a special session for this purpose.

A number of us in the leadership took a less than enthusiastic view not only of the cost but of the ice road itself.

George Hohman was chairman of Finance Committee and opposed to both the longevity bonus and the lock up of any funds. To bypass him Sens. John Butrovitch and Bill Ray sent a Senate version of the longevity bonus over to the House hooked to one of their bills, thus bypassing the Finance Committee.

As the funding for the bill did have to go through the Finance Committee the second version of the longevity bonus came out of general fund appropriations instead of the earnings of the Permanent Fund.

Halibut Cove charter boat skipper Clem Tillion is a former president of the Alaska Senate.

QUOTE

"He's not a king and this is not a monarchy."

— Sen. George Mitchell, D-Maine, saying President Reagan is wrong about being exempt from congressional restrictions on aid to Nicaraguan rebels.



Official Business

Alaska State Legislature

Senate

P.O. BOX V
State Capitol
Juneau, Alaska 99811

May 15, 1987

Dear Representative:

Enclosed is a packet of information concerning CSSB 56 (Judiciary); the Annuity/Longevity Bonus bill.

In 1972, the Alaska Legislature instituted the Alaska Longevity Bonus program. The program was brought about to reward the people who built this state out of their own hard labor, and to enable them to remain in Alaska, rather than having to move south for a cheaper cost of living.

We started this program before the big oil years. The availability of large amounts of money was not the motivating factor in beginning the longevity bonus - rather an enlightened approach toward our elders and the realization that our future remains more secure with their knowledge, motivated us.

It is unacceptable to force our senior citizens to live in poverty after they have given their energy, their youth, and their good will to build our state and make our own lives better. The Alaskan senior is justifiably a proud individual. He or she should not be put through the degradation of a welfare program in their waning years of life.

The bill I have proposed will enable us to legally secure the Alaska Longevity Bonus program. Senate Bill 56 represents years of work on behalf of many Alaskans.

Senate Bill 56 was studied in four committees this session and is now in the House as a Senate Judiciary Committee Substitute. The bill will keep senior citizens who are now 65 years old just as they are. The bill will put into place an annuity program that people turning 65 after January 1, 1988, will have the option to join. If a person contributes 100% of his or her Permanent Fund Dividends (or the cash equivalency) into the annuity program, that person will be assured of receiving no less than \$250 a month for life. In all likelihood, the amount will be much more.

The difference between the bottom line of \$250 a month and a senior's individual annuity amount will be made up with a general fund payment. Because the annuity amount will continue

MAY 15, 1987

growing, the general fund amount will decline. This is why the annuity plan will save the state a great deal of money. By about the year 2003, the annuity amount will be high enough that the state will no longer be contributing general fund money. Unless we do something to change our current program, by the year 2005, the state will be paying \$94,900,000 to run it.


The House Finance Committee has proposed that we change the Longevity Bonus program by "stair-stepping" it. This will cut off any senior who turns 65 after January 1, 1988. Under this scenario someone who has been in Alaska only one year but turns 65 before the cut-off date will get the bonus, whereas someone who has been in Alaska for life but turns 65 after the cut-off date won't get the bonus. The inequity of the plan is obvious and Alaskans overwhelmingly rejected this plan at the polls last summer.

The Administration's original plan would turn the bonus into a thinly-disguised welfare program. Even our oldest seniors would not be safe from getting cut off the program. Because the plan would depend on a person's taxable income a person with thousands of tax-free dollars coming in from something like municipal bonds would still be eligible for the bonus, while a person barely eking out an existance would not be eligible.

Senate Bill 56 is the result of a hard look at the best way to continue our Longevity Bonus program. It will save the state money - which in reality is necessary to save the program; but more critical than even the economics of the situation is the fact that it saves our state's dignity in the manner in which we treat our elders.

I hope the information is useful to you in making your important decisions concerning the future of our old-timers' Longevity Bonus program.

Sincerely,



Senator Jay Kerttula



Official Business

Alaska State Legislature

Senate

P.O. BOX V
State Capitol
Juneau, Alaska 99811

DATE: May 8, 1987
SUBJECT: CSSB 56 (Judiciary)
FROM: Senator Jay Kerttula

In 1972, the Alaska State Legislature created the Alaska Longevity Bonus Program. The Longevity Bonus Program recognized the contribution made by Alaskan seniors to our state and set in place a system of rewarding their service.

A person was eligible for a bonus under the original program if he or she

1. Was 65 years old
2. Was "domiciled in the territory" on or before January 3, 1959, and
3. had continuously lived in the state for 25 years.

In 1984, the Alaska Supreme Court ruled in the VEST case that the residency requirements of the Longevity Bonus Program violated the equal protection provisions of the Alaska and United States Constitutions. The Longevity Bonus Program was then changed to give a bonus to anyone who lived in Alaska for one year and was 65.

5/8/87

This is an optional program. People can contribute either their Permanent Fund Dividend or cash. They can make a one time emergency withdrawal.

After much study, this option seems to be the most equitable and saves the state a great deal of money.

THE CURRENT HOUSE BILL - SCHB 151 (FIN)

ANYONE 65 YEARS OF AGE BY JANUARY 1, 1988, (INCLUDING NEW COMERS) RECEIVES AN ANNUITY PAYMENT.

ANYONE NOT 65 YEARS OF AGE BY JANUARY 1, 1988, WOULD NOT.

SECTIONAL CSSB 56 (JUDICIARY)

This bill puts into effect the annuity plan voted on by the people of Alaska in November 1986, which is contained within Chapter 99, SLA 1985. The changes to that annuity plan are contained within Sections 1-5 of this committee substitute.

Section 1

Allows for cash contributions into the annuity accounts

Section 2

If a cash contribution is made, the cash contribution may not exceed the amount of the permanent fund dividend for that year.

Section 3

Conforming language so that a cash contribution can be made.

Section 4

Conforming language so that a cash contribution can be made.

Section 5

Adds language to allow for a emergency withdrawal. The amount withdrawn shall be limited to the amount sufficient only to meet the emergency and may not exceed the amount in the individual's annuity account. Regulated by the Commissioner of Revenue.

Section 6

Repeals the stair-stepping plan contained within Chapter 99, SLA 1985 and adds language insuring a \$250 payment if a 100% of PFD's or cash equivalent are contributed to annuity account.

Section 7

This act apply for only to those permanent fund dividends after December 31, 1987.

Section 8

Immediate Effective Date Clause.



Official Business

Alaska State Legislature

Senate

P.O. BOX V
State Capitol
Juneau, Alaska 99811

FROM SENATOR JAY KERTTULA

COMMITTEE SUBSTITUTE FOR SENATE BILL 56 (JUDICIARY)

INDEX FOR HOUSE STATE AFFAIRS PACKET, MAY 15, 1987

*Date of entry -
what is period of eligibility to
sign up?
close in age - less
cost to recipient.*

A. KERTTULA LETTERS

1. INTRODUCTORY LETTER FROM SENATOR KERTTULA, 5-15-87
2. LETTER TO THE STATE SENATE FROM SENATOR KERTTULA, 5-8-87

B. CSSB-56 (JUDICIARY)

1. CSSB-56 (JUDICIARY)
2. FISCAL NOTE
3. SECTIONAL ANALYSIS

C. COSTS

1. COMPARISON OF ANNUAL COSTS - ORIGINAL SB-56
2. COMPARISON OF ANNUAL COSTS - CSSB-56 (JUDICIARY)

D. YEARLY COMPARISON

1. GRAPH SHOWING WHAT SENIORS TURNING 65 EVERY YEAR WILL RECEIVE

E. KERTTULA SURVEY

1. KERTTULA LONGEVITY BONUS SURVEY

F. ARTICLES, BUDGET AND BALLOT INFORMATION

1. SENIOR VOICE EDITORIAL, MAY, 1987
2. SENIOR PROGRAM, FY 86 - FY 88
3. BALLOT QUESTION, NOVEMBER, 1986
4. SENIOR VOICE GRAPH COMPARISON OF BONUS PLANS
5. SENIOR VOICE ANALYSIS OF CSSB-56 (JUDICIARY) AND ORIGINAL HB-151
6. CLEM TILLION COMMENTARY, 1987
7. SENIOR VOICE OPINIONS, 1987

G. SLA 1985

1. SLA 1985, CHAPTER 99

H. STUDIES

1. TILLINGHAST STUDY, 1983
2. REPORT TO THE 14TH LEGISLATURE, 1985
3. 1986 OMB REPORT CONCERNING BALLOT MEASURE NO. 3

5/7/87

WHAT SRS. TURNING 65
EVERY YEAR WILL RECEIVE.

Fiscal Year	Dividend Received	Annuity Balance at Interest Rate of: 9.0%	Monthly Annuity Payment	Decreasing Longevity Bonus Pymt.
1989	\$787.72	\$840.89		\$250.00
1990	845.00	1,818.61	\$8.30	241.70
1991	887.30	2,929.48	17.96	232.04
1992	869.34	4,121.15	28.92	221.08
1993	857.54	5,407.48	40.69	209.31
1994	907.67	6,863.09	53.39	196.61
1995	961.63	8,507.31	67.76	182.24
1996	1,018.74	10,360.47	83.99	166.01
1997	1,079.58	12,445.36	102.29	147.71
1998	1,143.49	14,786.12	122.87	127.13
1999	1,209.69	17,408.21	145.98	104.02
2000	1,278.38	20,339.62	171.87	78.13
2001	1,349.65	23,610.94	200.81	49.19
2002	1,423.66	27,255.68	233.11	16.89
2003	1,500.35	31,310.32	269.09	0
2004	1,580.11	35,815.02	309.13	0
2005	1,662.65	40,813.25	353.60	0

Estimates of monthly annuity payments based on March 19, 1987 Permanent Fund Dividend Corporation projects of dividend amounts, an interest rate of 9 percent and a life expectancy of 15.9 years for 65 year-olds.

LONGEVITY BONUS SURVEY, JANUARY TO MAY, 1987

During this session Senator Kerttula's office did a longevity bonus survey of seniors receiving the longevity bonus.

Attatched is a copy of the survey sent and the results as of May 6, 1986.

There were 1,456 surveys sent.

860 surveys were returned.

The survey was sent without return postage. The seniors themselves paid the 22¢ to return them to Senator Kerttula.

LONGEVITY BONUS SURVEY

Please take a moment to answer the survey and drop it in the mail. You do not need to put your name on the survey. Answers to the questions will help provide information to legislators.

1. How many years have you lived in Alaska? _____

2. For which of the following do you use your Longevity Bonus?

_____ Food _____ Housing _____ Utilities
_____ Taxes _____ Auto Expenses _____ Medication
_____ Doctor _____ Children/Grandchildren _____ Travel

3. Are there other things for which you use your Longevity Bonus?

Comments: _____

4. The Governor is proposing to reduce Longevity Bonus payments from \$250.00 down to \$200.00. You will be eligible for \$200.00 if your taxable income is less than \$20,000 annually.

_____ oppose the reduction _____ agree with reduction
Comments: _____

5. Is your taxable income more or less than \$25,000?

_____ Over \$25,000 _____ Less than \$25,000
Comments: _____

6. The Governor is proposing to base Longevity Bonus payments on need. Those individuals who have a taxable income over a certain amount would no longer receive the bonus.

_____ Agree with the needs based program.
_____ Disagree with the needs based program.

7. Another proposal would reduce the bonus payments \$25.00 each year until it would be eliminated. Next year they would be reduced to \$225.00 the following year \$200.00, and so on until payments are completely eliminated.

_____ oppose this idea _____ agree with this idea

LONGEVITY BONUS SURVEY

May 6, 1987

1. Years in Alaska.....least # 1 1/2 most # 89

2. Use of Money.....

Food...654	Housing...341
Taxes...206	Utilities...566
Auto...272	Medication...426
Doctor...358	Child/grand...79
Travel...60	

3. Other Uses.....Many comments but mostly "none left over".

4. Governor's reductions.....Yes.....37 No.....723

5. Income level.....Over 25m...118 Under 25m..649

6. Needs Based.....Agree...37 Disagree...730

7. Phasing out.....Oppose...734 Agree...41

Survey shows how seniors use bonus money

by Rebecca Goodman

Within days after Sen. Jay Kerttula (D-Palmer) and his staff aides sent out more than 1,450 surveys to Longevity Bonus recipients in Southcentral Alaska, piles of responses were returned in the mail.

By mid-April more than 750 people had taken time to fill out the seven-question survey, affix a 22-cent postage stamp and return the blue form to Juneau.

Kerttula, sponsor of the Longevity Bonus annuity bill CSSB 56, said his aim in distributing the survey was to collect information about seniors' needs and their use of the bonus payments.

"No statistics have been collected or made public concerning seniors in Alaska for several years," he said. "Some people feel seniors are already comfortably well off and are saving their bonus money or

spending it on vacations or frivolous things. This is one of the hurdles we've had to get around in justifying the Longevity Bonus."

So how do seniors use their bonus payments?

"The message is pretty clear: They need those bonus checks for the basic necessities of life," said Joyce Kerttula, who serves as her husband's legislative aide and has spent hours poring over the responses.

Survey questions and responses included:

•How many years have you lived in Alaska? Length of residency answers ranged from 1.5 to 89 years. The average length for respondents was 37 years.

•For which of the following do you use your Longevity Bonus? Food purchases, 611; utilities, 523; medications, 399; doctors' expenses, 333; housing, 320; auto expenses, 257; taxes, 192; child/grandchild assistance, 75; travel, 53.

•Are there other things for which you use your Longevity Bonus? Most common response: "No money left over." Some said the bonus helped pay for warm clothes. One individual wrote, "Yes, with money left over I have a beer now and then." Another wrote that the bonus money was "saved up to buy two hearing aids and eyeglasses."

•The governor is proposing to reduce Longevity Bonus payments from \$250 down to \$200. You will be

eligible for \$200 if your taxable income is less than \$20,000 annually. Opposed to the reduction were 656; in agreement were 34.

'They need those bonus checks for the basic necessities of life.'

—Joyce Kerttula
Legislative aide

•Is your taxable income more or less than \$25,000? Over \$25,000 were 107; under \$25,000 were 590. Many respondents added comments indicating their combined Social Security and Longevity Bonus payments, together amounting to \$7,000 or less per year, comprised their total yearly income. More than 50 respondents refused to answer the income question.

•The governor is proposing to base Longevity Bonus on need. Those individuals who have a taxable income over a certain amount would no longer receive the bonus. In agreement with the needs-based program were 18; disagreeing were 679. Several respondents wrote, "Needs based? NO! NO! NO! NO! NO!" One individual wrote: "I know several older people who are eligible for food

stamps and welfare but won't apply. Basing the bonus on need would have the same results."

•Another proposal would reduce bonus payments \$25 each year until it would be eliminated. (Since the survey was mailed, this plan has been shelved.) Opposed to the \$25 reductions were 667; in agreement were 38.

Many respondents went beyond answering the survey questions and attached emotional letters filled with concerns over illnesses and high health care costs, fears of losing the bonus payments and fears of losing homes and being forced into poverty.

One respondent wrote: "The governor has no feelings for the aged. He cannot comprehend what it is like to grow old. Older people were in the workforce when wages were low..."

Another said: "Please, please let us low-income seniors on fixed incomes live above poverty level..."

A 52-year resident of Alaska wrote: "I have only a small Social Security and the Longevity Bonus as my income. The Longevity is my lifeline..."

And one worried: "I really don't think I could meet my obligations and would have to consider leaving. That would hurt as my granddaughter lives with me and goes to school here."

Kerttula plans to share results of the survey with other lawmakers.

IGNORE YOUR BACKACHE & SUFFER THE CONSEQUENCES

Back pain, however insignificant it seems, is frequently the beginning of serious, painful problems. Problems such as pinched nerves, slipped disc, neuralgia, neuritis, (and sometimes arthritic type pains), tuberculosis and even paralysis.

The spine is a complex system of nerves, muscles, bones, ligaments & cartilage which are interconnected to control specific areas of the body. When the bones, or VERTEBRAE are misaligned, they pinch the surrounding nerves, obstructing the flow of energy to other parts of the body. This often results in complications which can be severe & permanent.

Doctors of Chiropractic are experienced in treating patients with back pain. They can restore spinal vertebrae to their proper position, relieving pain and avoiding further serious complications.

For immediate appointments call

562-5366

COMMUNITY
CHIROPRACTIC CLINIC

550 EAST TUDOR ROAD
ANCHORAGE, ALASKA 99503

Senior Citizens Discount/24 hr. emergency care

Longevity Bonus: Can it be solved?

Senior Voice
May, 1987

It's been four long years and five legislative sessions since the courts struck down the Alaska Longevity Bonus 25-year residency requirement and lawmakers first began grooving with how to cut — or pay for — the ~~existing~~ expanded program.

And now we're hearing in session rumors, once again, that a Longevity Bonus replacement solution will be put off for another year.

That's a shame. After voters gave approval on the advisory vote last fall to an annuity program

COMMENTS

based on voluntary Permanent Fund check contributions, we thought this session might be the one to solve it.

But now we wonder, can it be solved?

We ran the question by a white-haired friend (her own description) the other day, and her answer was interesting.

"I happen to think it *can* be solved," she told us. "And the annuity plan proposed in the Senate is the way to do it."

What about all the objections to the plan that have been raised by Gov. Steve Cowper and members of the House?

Let's take them one at a time, she proposed.

First, they object to it because the state's up-front costs are too high. Solution? Make current recipients of the Longevity Bonus ante up, just as those who go on the program in later years will have to do, she suggested. Perhaps these folks could give up their Permanent Fund Dividend check the first year of the program. Perhaps they'd have to give it up every year, just like later annuity participants will have to do.

Second, some House members and Gov. Cowper claim basing the annuity on individuals contributing their Permanent Fund Dividend each year is risky, because there might not be Permanent Fund Dividend checks in the future.

But the current bill has taken care of that, she said, since it allows people to place an equivalent amount — if not the check itself — into the annuity program each year.

Third, she said, the argument that the annuity would run a poor second to IRAs as an investment choice for many may disappear with the new tax laws in which IRAs lose most of their tax advantages.

And finally, she said, is the argument that young people won't buy in to the annuity.

"So then we *educate* them, she explained. "We go out and talk to them. We volunteer to speak wherever we can to "young" gatherings." And what do we tell them, we asked?

We teach them, and we remind ourselves, she said, that seniors are important to the state of Alaska.

"We need to quit thinking of the Longevity Bonus as a handout and start thinking of it as a investment," she said.

"The state is putting out \$50 million a year to retain a \$500 million investment — the worth of Alaska's seniors in terms of the cash they put into the economy each year."

Perhaps it's time for all of us to carry our debate beyond the senior centers, beyond the legislative halls, beyond the governor's office. Perhaps we'll then raise enough ruckus to get the issue off dead center and decided once and for all.

Senior

I noted with interest proposed '87 budget Department of Admition groups the Alaska Longevity Bonus, P.O. Homes and Older A. Commission together the heading "social se

This reorganizat sneaky, unnecessary, handed and without hearings, due process releases.

It reflects an acute unawareness, a disregard for the pu well as the elderly of.

I refer you to page: Governor's Operating

'Caught

I seem to be caught the middle because of My sister and I came in 1955 with her tv boys. We worked a homesteaded by our 1959 and bought a sm in Anchorage so we have a place for us in age (ha!) because v Alaska so much.

But my sister began in 1975, has been in home five times since then I became disabled and couldn't work n

In search

Alaska Public Tele Anchorage (KA researching the life of Sidney Laurence documentary.

We have been information for quit and are beginning together parts of Syrence's fascinating have found many stories in *My Life with Laurence* by Jeanne *The Man and the Mc*

Medicare pro

I have had oxygen hours a day since heart failure in August I also have emphysema very bad lungs.

Medicare says I c oxygen and have Abbey Medical at time. The bill is now am 81 and a 43-year resident. How about that in the *Seni* Nothing else has he

Ru

2

Senior Programs FY86-FY88 (General Funds)

Dept.	Program	FY 86 Actual	FY87 Auth	FY87 Final	FY88 Gov	FY88 Rev	FY 87 Collection
ADMIN							
	Longevity Bonus	44,468.0	47,503.2	47,447.2	31,945.5	37,777.3	15,710.3
	Pioneer Homes	20,469.2	19,916.3	19,694.3	17,665.9	17,895.6	503.4
	Older Alaskans Comm	4,534.8	4,207.3	4,132.0	3,735.1	3,735.1	13,000
H & SS							
	Old Age Assist	6,026.2	6,797.4	6,927.4	7,882.6	7,463.5	2,412.7
	OAA-ALB Hold Harmless	1,241.0	2,112.5	2,614.7	0.0	1,940.6	374.4
	Personal Care Attendants	0.0	514.5	514.5	514.5	764.5	
	Home Health	808.2	824.6	802.9	793.5	793.5	
	Public Health Nursing *	418.7	502.8	405.1	401.0	401.0	
	Adult Homemaker Services	1,008.0	1,050.8	893.2	893.2	893.2	
	Medicaid **	9,167.8	9,507.6	9,507.6	8,000.0	12,671.8	
	Manilaq Homemaker Service	126.2	119.9	104.9	99.7	99.7	
	Manilaq Senior Center	972.8	925.0	818.7	706.6	706.6	
	Norton Sound Homemaker	189.2	179.6	157.1	149.2	149.2	
C&RA							
	Senior Citizen Tax Exemption	3,958.6	3,184.2	2,866.3	0.0	0.0	0.0
	Renter's Equivalency Rebate	308.7	245.8	221.2	0.0	0.0	0.0
TOTAL		93,697.4	97,591.5	97,107.1	72,786.8	85,291.6	

*Estimate of Public Health Nursing services for the elderly.

** FY88 Revised figure is estimated.

30 2/28/87 per mail

THIS WAS THE BALLOT QUESTION NOVEMBER, 1986.

THE VOTE WAS: 99,222 FOR; 65,789 AGAINST.

**Ballot Language For
Advisory Vote on Longevity
Bonus Annuity Program**

The Fourteenth Alaska State Legislature considered two alternatives to the present longevity bonus program. Both were adopted into law, but neither will take effect unless the legislature chooses one of them. The legislature has asked for an advisory vote of the public on the annuity option which is described below.

The annuity option provides that every individual who reaches age 65 by January 1, 1988, including those already receiving the bonus, would receive a longevity bonus payment of \$250 per month. In addition, a person under age 65 on January 1, 1988, could participate in an optional annuity program by depositing all or part of his or her permanent fund dividends in an account held by the state. Upon reaching age 65, a person would receive a monthly payment in an amount determined by how much was contributed to the account. The annuity payments would be supplemented with declining longevity bonus payments paid for with general funds until the annuity accounts were large enough to provide monthly payments of \$250 a month.

The second option provides that every individual who is 65 years old by January 1, 1988, including those already receiving the bonus, will receive a longevity bonus payment of \$250 per month, but that anybody younger than age 65 by January 1, 1988, would not be eligible for benefits.

Should the legislature adopt the annuity option?

YES () NO ()

Comparing bonus plans: Which does what?

BILL	What will be the cost to the state?	What happens if I turn 65 before 1/1/88?	What happens if I turn 65 on or after January 1, 1988?				
<p>CSSD 56¹ (Sen. Jay Keritula) Bill sets up annuity retirement account based on yearly Permanent Fund Dividend contributions into account</p>	<p>\$49.9 million in 1988, \$7.46 million from 1988-2001. (projected)</p>	<p>\$250 monthly bonus will continue. You will be able to keep your yearly Permanent Fund Dividend Check.</p>	<p>If you decide <i>not</i> to participate in the annuity, you will get a bonus, but the amount will decrease each year.</p>	<p>If you decide to participate in the annuity, you will get a monthly check after age 65. This check will be a combination of moneys from the bonus and annuity programs.</p>	<p>If you decide to participate, you will contribute all or a portion of your yearly Permanent Fund Dividend check to the annuity program.</p>	<p>If you decide to participate, upon your death your existing equity in the annuity program becomes a part of your estate.</p>	<p>If you decide to participate, you may make a one-time emergency withdrawal from your annuity account.</p>
<p>HB 151 and SB 145² (Gov. Steve Cowper) Companion bills would set up a "needs-based" bonus, placing an income cap on eligibility and limiting it to those who reach age 65 by January 1, 1988.</p>	<p>\$43.1 million in 1988, \$34.3 million from 1988-2001. (projected)</p>	<p>You will get a \$200 monthly bonus check if your income is under \$20,000 (\$40,000 for married couples). You'll get a smaller bonus if your income is \$20,000 to \$25,000 (\$40,000 to \$51,000 for married couples). No bonus if your income is over these amounts.</p>	<p>You will receive no bonus and no annuity.</p>				

CSSB 56 ¹
(Sen. Jay Kerttula)

¹ CSSB 56 would give \$250 per month to qualified seniors who reach age 65 before January 1, 1988. These seniors would keep their yearly Permanent Fund Dividend check and would not participate in the annuity account portion of the program.

Those who turn 65 AFTER January 1, 1988, could participate in SB 56's optional annuity program based on yearly contributions of Permanent Fund Dividend checks to an individual annuity account.

This bill set up a dual program which links the gradually declining bonus program with the individual annuity account program. Here's one way to view these dual programs: Picture two side-by-side elevators. One elevator, the Longevity Bonus program, is now on the top floor offering current recipients \$250 per month. (Current recipients will hang out on the top floor.) For Alaskans who turn 65 after January 1, 1988, the Longevity Bonus elevator will begin inching down toward the ground floor - a complete phase-out sometime after the year 2000.

At the same time, the individual annuity account "elevator" - now on the ground floor - would rise as individuals opted to deposit all or part of their yearly Permanent Fund Dividend checks into their personal annuity accounts. The more dividend checks you deposit, the higher your annuity account "elevator" rises.

In other words, if you had participated in the annuity account program over the years, you would, at age 65 receive two different checks: a gradually decreasing Bonus check and an annuity payment based on the amount of yearly dividend checks you had deposited into your account.

HB 151 and SB 145 ²
(Gov. Steve Cowper)

² HB 151 and SB 145 would require seniors now on the bonus program and any who reach age 65 before January 1, 1988, to annually submit copies of their federal income tax returns as proof of income qualification. Under Cowper's plan, the *maximum* amount of monthly bonus of \$200 would be available only to those seniors whose income (excluding the bonus and Permanent Fund Dividend income) is less than \$20,000 (or whose joint income, for a married couple, is less than \$40,000). For individuals with higher incomes, the amount of the bonus decreases, until at the income level of \$25,500 (or joint income of less than \$51,000) an individual would not receive a bonus.

Don't turn Longevity Bonus into welfare

by Clem Tillion

I see that one of the governor's task forces has recommended that the old timers' bonus, the \$250 a month for those over 65, be converted to a welfare system.

For the most part, I have liked the course set by our new man in Juneau. But making charity cases out of our old Alaskans under the guise of saving money is a joke!

Number one, it will not save money. It will make liars out of a lot of good people and make jobs for a lot of "do gooders" in the welfare department.

The percentage of those over 65 here in Alaska who couldn't figure a way to stay on the program under a welfare (needs) system is so small that the cost of screening them out would exceed the savings.

If the cost of the program is too great for the state to bear, then shorten the months that an Alaskan can be gone from the state each year and prune a few more "snow birds" off the list.

When the Longevity Bonus Program was first envisioned, one of the basic purposes was to keep winners as well as losers here in Alaska.

As the population of our state had such a

low percentage of those over 65, there were many who thought that keeping grandmother and grandfather near the rest of the family had a great many beneficial side effects. The reason the cost of living bonus was paid without regard to people's income was twofold. One, with less than 10 percent of our 65-year-olds in the non-needy category, it was far cheaper to pay all than set up a bureaucracy to screen all the old folks.

Now, I'm sure you will hear some welfare types say, "We could screen for less than 10 percent of the program." All I can ask is, "Then why didn't they?"

At the time the first Longevity Bonus was passed, 49 percent of the money appropriated for Old Age Assistance here in Alaska was used by the bureaucracy to administer the program or an amount that just about equalled the Federal Matching Funds then received by the state for the program.

I'm sure that to get their hands on that amount of money, welfare would promise anything. But it's a rare program indeed that they administer for less than 20 percent of the appropriation. It's why the legislature put the program under the Department of

Administration instead of letting the bleeding hearts get it to "do good" with. When I say this, I'm thinking of the old families of Hawaii. The saying goes: "Their ancestors came to 'do good' and they did very well indeed."

The second reason that need was not a requisite part of the first legislation was simple. We wanted to keep as many of life's winners as possible here in Alaska. Fishing is an on and off thing, oil and timber depends on the fluctuations of international politics and world price. Of all incomes, retirement income tends to be more stable than most.

With exceptions, of course, most people over 65 are not into making great fortunes. They spend their money either on their own comfort or on those around them. They don't cause problems with the police or their neighbors and they often have income retirement from a number of sources, be it teachers' retirement or railroad retirement as well as property amassed long years ago.

Be they rich or poor they are well worth keeping in Alaska.

Clem Tillion, Halibut Cove, is former president of the Alaska Senate. His column originally appeared in the Anchorage Times.

Many seniors can't live on Cowper budget cuts

Action: Gov. Steve Cowper submits his budget proposal to the legislature. It calls for slicing Longevity Bonus payments by \$50 per month for all, axing bonus payments completely for those with incomes over \$20,000 and eliminating property tax exemptions and renter's rebates.

Reaction: Seniors are scared. Fearful. What next? they ask. Will they be able to keep their homes? Will they have to move outside where the cost of living is cheaper? How will they pay medical bills? And what happened to the promises of the past that said current bonus recipients would keep their \$250 per month payments no matter what was decided for future seniors?

State-gathered statistics show the median income for older Alaskans is \$10,000. That's \$833 per month. If you figure rent at \$400 or more per month, you have \$433 or less to pay for such trifles as food, doctor's bills, heat, lights and transportation. A challenge to make ends meet each month? You bet. Try getting along, now, on \$50 less per month. No wonder there's fear out there.

And then add the \$700 you'll have to pay under Cowper's budget plan for property taxes — or subtract the \$400 in income you won't get from the renter's rebate this year.

It all adds up to too little money.

We've said it before: These programs were put in place before the oil boom by a thoughtful populace which wanted to do right by its senior citizen population, which wanted to keep its retirees — and their retirement pensions and assets (big and small) — in Alaska.

Despite the need to cut the state budget, seniors should not be made to bear such a large share of the burden.

Long-running bonus debate heats up

by Rebecca Goodman

The loud and long-running debate over the Longevity Bonus program grew even louder in March with the first legislative hearing on Gov. Steve Cowper's "needs-based" bonus plan, HB 134.

Cowper's legislation — both the House bill and an identical Senate companion, SB 145 — have three key parts which would dramatically change the current bonus program:

- a cut-off of eligibility for the bonus to those who reach age 65 on or after January 1, 1988;
- a reduction of the maximum amount of the bonus to \$200 per month; and
- an income cap on eligibility for the bonus so that the

full bonus amount of \$200 would be available only to those whose annual income (excluding the bonus and Permanent Fund Dividend income) is less than \$20,000 (or whose joint income, for a married couple, is less than \$40,000). As an individual's income goes up, the amount of the bonus paid out would go down, until, at the income level of \$25,500 (or \$51,000 of joint income) an individual would not receive a bonus payment.

Under the current bonus program, any Alaskan who is 65 or older and has lived in the state at least one year receives \$250 per month. More than 15,500 persons participate in the \$50 million program.

"We can no longer afford to provide this substantial benefit to an ever-increasing population of senior citizens," Cowper told lawmakers.

Cowper's plan is expected to cost \$43.1 million for fiscal year 1988.

Senior advocates have called Cowper's plan unfair. They have argued the current bonus program is affordable and the \$3,000 per-person annual payments help older Alaskans stay in Alaska and in their own homes, out of costly institutions.

Senior Voice

OPAG

Older Persons Action Group, Inc. Vol. 10, No. 4 April 1987

Bonus debate heated, long-running

"The question isn't whether or not I need the \$250. It's the philosophical point: If I were to approach state employees and ask them to take a \$250 cut in their monthly state retirement pay, I'd be hung in effigy," said Rep. Red Boucher (D-Anchorage) during a House committee meeting in early March.

Rep. Fran Ulmer (D-Juneau) argued: "There's no question this is a good program. The question is how much of this good program can we actually afford now?"

In the Senate, the bonus debate is proceeding more rapidly following a series of

statewide teleconferences on Sen. Jay Kerttula's (D-Palmer) Longevity Bonus/annuity bill, CSSB 56.

Kerttula's bill would put in place an annuity retirement account plan approved by voters last November in an advisory vote. That plan would establish a tandem program which includes a gradually phased-out bonus program and an optional annuity program allowing Alaskan residents to deposit their annual Permanent Fund Dividend checks into a retirement account available to them at age 65. Those already 65 would continue to receive \$250 bonus checks and Permanent Fund Dividend checks.

Now in its third Senate committee, Kerttula's bill has gar-

nered support from many senior advocates. But Cowper administration officials see both flaws in the annuity plan.

"One problem with SB 56 is that it assumes Permanent Fund Dividend checks continue forever," Division of Policy Director Mary Halloran told senators during a recent committee hearing.

"We really shouldn't go to the bank on this. It's dangerous to build a long-term retirement program on the Permanent Fund."

Another problem Cowper officials point to is the plan's lack of "hold-harmless" protection. Following federal rulings in 1984 that the bonus would be counted as income for any "new" bonus recipients who received federal public assistance payments, the

legislature enacted a clause that assures needy elderly who receive a bonus payment do not lose either the bonus or federal assistance payments such as Medicaid.

But Kerttula argued the "hold-harmless" problem in SB 56 could be adjusted with a minor amendment.

Cowper's bonus plan, however, would require more state administrators to oversee the income eligibility requirements of the plan, Kerttula said.

"Governor Cowper's needs-based program would require 16 administrators, or one administrator to every 200 recipients," Kerttula said. "The annuity program would require only one administrator to every 1,000 recipients."

MAR 17 1983

THE LONGEVITY BONUS PROGRAM:
OPTIONS UNDER THE VEST SETTLEMENT

JON K. TILLINGHAST
Birch, Horton, Bittner, Pestinger & Anderson

March 8, 1983

TABLE OF CONTENTS

I.	Introduction	2
A.	Description of the Alaska Longevity Bonus	2
B.	The Individuals Covered By the Alaska Longevity Bonus	5
C.	The Effects of Zobel and Vest on the Alaska Longevity Bonus Program	7
D.	Scope and Intent of this Report	12
E.	Alternatives Included in this Report	13
II.	Constraints on the Choice of Options	14
A.	Constitutional Constraints	14
B.	Varying Goals of Several Longevity Bonus Options	20
C.	Consequential Effects of Any Amendment To the Longevity Bonus Program	22
III.	Discussion of Alternatives	24
A.	Expanding the Class of Alaska Longevity Bonus Recipients To Include All Elderly With One-year's Residency	24
B.	Phase Out The Existing Longevity Bonus Program	25
C.	Phase Out the Existing Longevity Bonus Program With a Contemporaneous Increase In State Assistance Levels	26
D.	Retaining a Modest Longevity Bonus, While Providing a "Need Based" Supplement	30
E.	Gradual Increase In The Age of Eligibility	32
F.	Self-Sustaining Annuities	33
G.	State Social Security System	43
H.	Health Insurance For the Elderly	48
I.	Longevity Bonus Premised On Individualized Relocation Hardship	54
J.	Grandfathering	57
IV.	Conclusion	58

I. INTRODUCTION

On June 14, 1982, the United States Supreme Court ruled that the cumulative residency requirements of Alaska's permanent fund dividend distribution program violated the Equal Protection Clause of the United States Constitution.¹ Shortly thereafter, Alaska's Longevity Bonus ("ALB") Program was challenged on equal protection grounds.² On August 9, 1982, the Department of Law, with the approval of the Alaska Legislative Council, entered into a stipulation in the Vest case which stayed all proceedings pending adjournment of this legislative session, in order to afford the legislature an opportunity to address the constitutional problems with the existing program.

The purpose of this report is to analyze some 10 options available to the legislature in amending the Alaska Longevity Bonus Program. This report is a first step in a process which must be completed by the end of this session. As subparts (C) and (D) of this section discuss, the likely consequence of failing to enact remedial legislation this session is that the ALB program will be judicially terminated.

A. Description Of The Longevity Bonus Program

Predecessors of the existing ALB program can be traced to 1915. In that year, the Territorial Legislature authorized a monthly allowance of \$12.50 for needy elderly Alaskans of 10 years

¹Zobel v. Williams, 72 L. Ed. 2nd 672 (1982)

²Vest v. Shafer, 1 JU-82-1103 Civ. (1st Jud. Dist., 1982)

residency who chose not to enter the newly-created Pioneers' Homes.³ The current program was enacted in 1972⁴ as a result of legislation introduced by Senators Butrovich and Ray.⁵ Quite unlike the "need-based" focus of its predecessors, the 1972 legislation was to:

"... provide all law-abiding Alaskans capable of managing their own affairs who have maintained a domicile in the state for at least 25 years and have reached a retirement age of 65, an incentive to continue uninterrupted residency in the state. Under no circumstances shall this chapter be considered a form, type, or manner, of public relief. The bonuses made under this chapter are not predicated on need even though they may appear to provide supplemental income to some qualified persons who would otherwise be forced to become responsibilities of the state. The Legislature further finds and states that this legislation recognizes the economic hardships suffered by many elderly Alaskans, Alaskans who through their tenacity and perseverance molded Alaska as we know it through skillful application of their talents. These pioneers are the same Alaskans who, in the prime of their life, were in effect treated as second class citizens by the federal government and who paid much of their hard earned income to a government in which they did not have the right to participate through the power of the ballot. The legislature also is aware of the fact that many of these pioneers have been forced to live out their retirement years in areas far away from the land they loved and nurtured and thereby also suffering, in many cases, the loss of familial relationship with their own kin, an experience that is sad and frustrating to them as well as depriving new generations of Alaskans the benefit of their wisdom and experience. This legislation hopefully will provide our pioneers with the economic means to remain in and continue to serve their state and to enjoy the opportunity of aiding

³Chapter 54, SLA 1915.

⁴Chapter 205, SLA 1972; AS 47.45.010 et. seq.

⁵SB 211, 7th Leg., 2nd Sess.

the new Alaskan in making the state truly "The Great Land." §1, Ch. 205, SLA 1972.

The ALB program, then, has several purposes:

1. providing an incentive for a particular class of senior citizens to remain in the state;
2. compensating for the hardships faced by retirement in Alaska;
3. rewarding the past contributions of Alaska's elderly;
4. compensating for past hardships suffered by Alaska's pioneers; and
5. retaining the wisdom and experience of Alaska's pioneers.

Originally, the bonus was \$100 per month. Over the years, the amount has gradually increased to its current \$250 per month.⁶ A person is eligible for a bonus if he or she:

1. is 65 years of age or older;
2. was "domiciled in the territory" on or before January 3, 1959; and
3. has been continuously domiciled in the state for 25 years.⁷

Additionally, if a person is absent from the state for more than 30 days, he will not receive another bonus until he returns. AS 47.45.030. If the person is absent for a continuous period in excess of 180 days, he is ineligible for a bonus for the next 12 calendar months following his return. Id.

⁶Chapter 13, SLA 1981

⁷AS 47.45.010

Exceptions are made if the absence "is beyond the control of the recipient." Id.

The longevity bonus is taxable under the Internal Revenue Code. However, it is almost universally excluded in calculating income eligibility for state and federal assistance programs.⁸

3. The Individuals Covered by The Alaska Longevity Bonus Program.

There are currently some 9,425 Alaskans receiving some \$23.4 million in longevity bonus payments. Sketching an accurate portrait of the state's ALB recipients is difficult, because the ALB application form requires little personal information. In 1976, the Alaska Department of Health and Social Services conducted a random survey of ALB recipients,⁹ and, in conjunction with the Vest

⁸Under 42 U.S.C. §1382(a)(b)(2)(B), which governs eligibility for federal Supplemental Security Income, and by reference also controls other federal programs such as Medicaid and energy assistance, the following is excluded from the definition of income:

"monthly (or other periodic) payments received by any individual under a program established prior to July 1, 1973, if such payments are made by the State of which the individual receiving such payments is a resident, and if eligibility of any individual for such payments is not based on need and is based solely on attainment of age 65 and duration of residence in such state by such individual."

⁹"Alaska Longevity Bonus Impact Survey," Alaska Department of Health and Social Services (1976) (hereinafter "ALB Survey")

settlement, the Department of Law conducted a non-random survey of some 1,396 participants.

From those surveys, it is apparent that a large percentage of ALB recipients are Alaska Natives living in rural areas of the state.¹⁰ Moreover, and in large part because of the ineligibility of many rural residents for social security, the longevity bonus is often the primary source of income for rural residents. For example, 41% of the elderly in Southwest Alaska, and 66% in Northwest Alaska, rely on the longevity bonus as their primary source of income.¹¹

Available evidence suggests that a large percentage of ALB recipients have incomes only marginally above the current state welfare assistance level of \$546 per month. The Department of Law's 1982 survey -- which was skewed toward the more needy recipients of the ALB -- found that 81.4% of the 1,396 recipients sampled had monthly incomes of \$750 or less. The 1976 ALB survey found that half of the ALB recipients had a monthly income, "including that of their spouse," of under \$500 per month.¹² Another

¹⁰In 1976, 41% of the ALB recipients lived in rural areas of the state and 24.1% were Alaska Natives. ALB Survey at 14-15.

¹¹"An Assessment of the Status and Needs of Alaska's Elderly," Department of Sociology, College of Arts & Sciences, University of Alaska (1981) (hereinafter "Assessment.")

¹²ALB Survey, op. cit. n. 9 at 18-19.

44% had incomes of less than \$1,000 per month. A 1981 University of Alaska survey indicated that roughly half of Alaska's elderly had monthly incomes of less than \$800.00.¹³

The 1976 ALB survey suggests that, in light of the high percentage of bonus recipients in the 65-70 age group, the bonus has had a material effect in allowing older citizens to remain in the state after retirement.¹⁴ The report also indicates that the ALB program has allowed a significant percentage of the elderly to remain off various public assistance programs -- including food stamps and state Old Age Assistance.¹⁵

One significant characteristic of Alaska's elderly in general warrants note -- one that will become quite significant in our analysis of alternatives. Only 10% of Alaska's elderly have resided in the state for 10 years or less.¹⁶

C. The Effects of Zobel And Vest On The ALB Program.

In reviewing the 1972 legislation creating the Longevity Bonus Program, the Department of Law concluded that "... the classification predicated upon being domiciled in the territory on or before January 3, 1959, bears little, if any, rational relationship to any legitimate legislative purpose which this bill is conceivably designed to serve and thus is in

¹³Assessment, op. cit. n. 11 at 31.

¹⁴ALB Survey, op. cit. n. 9 at 12.

¹⁵Id. at 10, 13.

¹⁶Assessment, op. cit. n. 11 at 12.

all probability unconstitutional."¹⁷

Nonetheless, the ALB program remained unchallenged until 1982, following the U.S. Supreme Court's decision in Zobel v. Williams (hereafter "Zobel III").¹⁸

The law in issue in Zobel III (AS 43.23.010 et. seq.) provided for the distribution of a permanent fund dividend of \$50.00 for each year of accumulated Alaska residency. The Court ruled, 8-1, that the cumulative residency requirement of the program was not rationally related to the goals of the statute -- a ruling which is discussed in more detail in section II(A), post.

The permanent dividend fund distribution program, in part, was intended to reward Alaskans for prior contributions to the state, a goal which: (1) three justices believed was constitutionally impermissible;¹⁹ and (2) five justices believed was a permissible goal, but was not rationally furthered by a scheme

¹⁷Memorandum, Havelock to Egan, Re: FCCS HCS CSSB 211 at 17 (June 29, 1972).

¹⁸In Williams v. Zobel, 619 P.2d 422 (Alaska 1980) ("Zobel I"), the Alaska Supreme Court invalidated the state's graduated personal income tax repeal. In Williams v. Zobel, 619 P.2d 448 (Alaska 1980) ("Zobel II"), the court upheld the cumulative residency requirement of Alaska's permanent fund dividend distribution plan -- a ruling reversed by the U.S. Supreme Court in Zobel III.

¹⁹Opinion of the Court, 72 L. Ed. 2nd at 679.

which awarded dividends solely on the basis of residency.²⁰

Beyond the ruling of the case, the various opinions -- particularly those of the concurring justices -- are rich in forboding language suggesting that any durational residency requirement may receive "intensified scrutiny" by the Court, and will be justified only in "rare" circumstances.²¹

As is more fully discussed in Part II(A), post, the impact of the Zobel decision upon the ALB program was apparent. Two major goals of the existing ALB program are to reward elderly Alaskans for their prior contributions, and to compensate for past hardships and suffering -- ends which are implemented by a durational residency requirement more severe than that at issue in Zobel. A challenge to the ALB program was not long in coming. On July 6, 1982, one Rodney G. Vest challenged the ALB program in Superior Court in Juneau.²² Mr. Vest is an elderly Alaskan whose residency in the state commenced three months after statehood. His complaint sought declaratory and injunctive relief striking the durational and statehood residency requirements of the act.

The State's response was colored by §2 of the legislation, which provided, inter alia, that:

²⁰See Brennan conc., 72 L. Ed.2nd at 684; O'Connor conc., 72 L. Ed. 2nd at 685.

²¹Brennan conc., 72 L. Ed. 2nd at 681, 684.

²²See n. 2, ante.

"if any provision of this act, or the application of a provision of this act to any person or circumstance is held invalid, this entire act shall be considered invalid."

As the Department of Law explained in reviewing the 1972 law:

"It is clear that the intent of the Legislature expressed in Section 2 of the bill is to forestall the possibility that a partial declaration of unconstitutionality would result in broadening the coverage of the bill to include additional clauses. This would be the case, for example, if either the 25 year waiting period requirement or the January 3, 1959 cutoff date were declared invalid, and the bill was expressly or impliedly severable."²³

Thus, invalidation of the Longevity Bonus Program would result not in expanding the number of ALB recipients, but rather in the abrupt termination of the entire program.

Facing that grim probability, the State, with the approval of the Alaska Legislative Council, entered into an agreement with Vest, a copy of which is attached as Appendix A. The essence of the agreement is as follows:

1. Proceedings in the Vest case are stayed through the conclusion of this legislative session. Because that case has been subsequently certified as a class action,²⁴ existing ALB recipients are not in jeopardy at least through adjournment of this session;
2. The Alaska Legislative Council promised to use its "best efforts" to secure the enactment of legislation which created equally "all persons 65 years or older as of July 1, 1982, who have been bona fide Alaska residents for at least one year prior to that date";

²³Op. cit. n. 17 at 5.

²⁴Order Certifying Class and Directing Notice to Class Members, Oct. 1, 1982.

3. If legislation of this sort were enacted this session, the suit would be dismissed; and

4. Recognizing that the Council could not bind the legislature, if legislation is not enacted, Mr. Vest may pursue his case, with the probable result that the program will be terminated.

There are three aspects of the settlement which warrant note. First, obviously, are the severe time constraints under which the legislature is operating. Second, there is the settlement's intentionally broad litmus test of acceptable legislation. All the legislature need do is treat all elderly, one-year Alaskan residents "equally." The standard could be met by any number of options, including repeal of the program. Third, there is the inescapable financial impact of the settlement itself. In order to treat all elderly Alaskans who were one-year residents as of July 1, 1932 equally, it will be necessary to fund retroactive longevity bonus payments under the existing program to the some 3,300 elderly Alaskans who would have qualified. The necessary retroactive appropriation is approximately \$11.4 million.

Of course, the legislature itself is not "bound" to pass any particular kind of legislation, or any legislation or appropriation at all. While a "best efforts" clause is enforceable, that obligation runs only to the Alaska Legislative Council, which has already demonstrated both good faith and diligence in attempting to meet the obligations of the order and settlement.

D. Scope And Intent Of This Report.

The purpose of this report is not to recommend particular amendments to the Alaska Longevity Bonus Program. As Section II, post makes plain, any "recommendation" is a function of the goals which the legislature seeks to achieve through this exercise.

Rather, the goal of this report is to assemble a comprehensive list of alternatives proposed by various interested parties, and to analyze the alternatives in light of:

1. constitutional constraints;
2. fiscal impacts;
3. practicability; and
4. the effect of any changes on the elderly's eligibility for other programs.²⁵

In developing a list of alternatives, this report has included five options examined by the Sheffield Administration, and five alternatives developed by the authors of this report. The information presented with respect to each option is intended to be sufficient for a threshold determination of feasibility. The report attempts to anticipate the major problems and issues surrounding each option; however, it is not intended to exhaust the details of every proposal.

Rather, the report should be used as a basis for the Senate Judiciary Committee's preliminary indication of

²⁵See Section II.(C) post.

preference. We are recommending that the committee choose two or three primary options. We will then prepare implementing legislation and a detailed analysis of the primary options. Under this approach, the committee will not be required, at this early point, to make an "all or nothing" choice. It will also afford the committee flexibility in the event that, for some presently unforeseeable reason, one option becomes impracticable.

Draft implementing legislation and a detailed analysis of the committee's choices can be transmitted within two to three weeks, depending on the options chosen.

E. Alternatives Included in This Report.

The options included in this report, which are analyzed in turn in Section III, are:

1. expand the Alaska Longevity Bonus Program to include all elderly Alaskans with one-year's residency;
2. phase out the Alaska Longevity Bonus Program by gradually reducing benefits;
3. phase out the Alaska Longevity Bonus Program by gradually reducing benefits, while contemporaneously raising the eligibility limits for general state assistance;
4. providing a minimal base payment under the Alaska Longevity Bonus Program based solely on one-year's residency, with supplemental payments made on the basis of need;
5. phase out the Alaska Longevity Bonus Program by increasing the age eligibility each year;
6. create an annuity plan, with the annuity corpus consisting of permanent fund distributions. This option would necessitate a transition program for those persons 40 years and older;

7. fund the Alaska Longevity Bonus Program through a "pay as you go" social security system, funded by approximately 25% of the existing permanent fund dividend distributions;

8. replacing the Alaska Longevity Bonus Program with a comprehensive health insurance program for elderly Alaskans;

9. condition eligibility for a longevity bonus upon a demonstration of hardship which would be suffered by being unable to continue Alaska residency; and

10. open the Alaska Longevity Bonus Program to all one-year residents, and terminate the program -- giving FY 1984 recipients a grandfather right to continued bonuses.

II. CONSTRAINTS ON THE CHOICE OF OPTIONS

There are four basic considerations in choosing a package of amendments to the Alaska Longevity Bonus Program. The purpose of this section is to provide an overview of the constraints and policy choices which should play a role in this committee's decision.

A. Constitutional Constraints.

The obvious and primary constraint on any set of amendments to the Alaska Longevity Bonus Program lies in the equal protection clauses of the United States (Amendment 14) and Alaska (Art. 1, §1) constitutions. The existing Alaska Longevity Bonus Program discriminates between Alaska residents based on their duration of residency; moreover, all of the alternatives considered by this report involve some durational residency requirement.

Under both the federal and Alaska constitutions, a durational residency requirement which conditions or denies either a "fundamental right" or a "basic necessity of life" is valid only if the discrimination is necessary to further a compelling state interest. Zobel II, 519 P.2d at 448; Memorial Hospital v. Maricopa County, 415 U.S. 250, 259 (1974). "Fundamental rights" involve such things as voting,²⁶ while "basic necessities of life" include basic medical care²⁷ and welfare.²⁸

The so called "right to travel" -- which any durational residency requirement arguable affects -- is not a fundamental right automatically triggering the compelling state interest test. Zobel II, 519 P.2d at 425-426, Zobel III, 72 L.Ed. 2nd at 677-673.²⁹

We are confident in concluding that longevity bonus is not a "basic necessity of life." The program is not welfare -- it is not based on need. Basic indigent assistance -- including both income supplements and Medicaid -- are available to the

²⁶Dunn v. Blumstein, 405 U.S. 330 (1972).

²⁷Memorial Hospital v. Maricopa County, 415 U.S. 450 (1974).

²⁸Shapiro v. Thompson, 394 U.S. 613 (1969).

²⁹One of the oddities of Justice Brennan's concurrence in Zobel III was his view that the "right to travel" is a "fundamental" right (id. at 682) -- although impairment of that right by a durational residency requirement should be tested under the deferential "rationally related" standard (see text, post) or at worst "intensified ... scrutiny." Id. at 681.

needy in this state.³⁰ The longevity bonus program seems more akin to the permanent fund dividend, which the Alaska Supreme Court held in Zobel II was not a "basic necessity of life." 619 P.2d at 443. As the Court of Appeals for the Ninth Circuit has observed:

"Deprivations which are only uncomfortable are not enough, such as conditioning lower tuition at state institutions of higher education upon a one-year residency requirement." Fisher v. Reiser, 610 F.2d 629, 639 n. 5 (1979), cert. denied 447 US 930.

Under the federal constitution, then, any durational residency requirement imposed by amendments to the ALB program need only be "rationally related" to a legitimate governmental purpose. Zobel III, 72 L.Ed. 2nd at 678. As this section will discuss, however, that standard is occasionally more deferential in its terms than in its application.

Conversely, under the Alaska Constitution, a durational residency requirement will withstand scrutiny only if it is "fairly and substantially related" to a legitimate governmental purpose. Zobel I, 619 P.2d at 427. The more the balance tips in favor of the individual, the more necessary the discrimination must be in order to further the law's purpose. Id.

From these standards, the following ground rules can be extracted from applicable case law:

³⁰See Memorial Hospital v. Maricopa County, 415 U.S. at 261

1. Unquestionably, the "length of residence may be used to test the bona fides of citizenship." Zobel III, 72 L.Ed. 2d at 634 (Brennan conc.). In other words, the state may, by a durational residency requirement, "make virtually certain (that the recipients of the program are) bona fide residents of the state ..." Vlendis v. Kline, 412 U.S. 441, 453-454 (1973).

As a general rule, attorneys have assumed that in cases not involving the "compelling state interest" standard, a one-year durational residency requirement is permissible as a presumption of domiciliary. See, Starns v. Malkerson, F. Supp. 326, 234 (Minn. 1970), affid. mem. 401 U.S. 985 (1971). Moreover, the State of Alaska has taken the position that in cases involving either particularly attractive benefits, or particularly transient populations, a durational residency requirement in excess of one year is constitutionally permissible. See Motion For Summary Judgment, September 8, 1982, Andress v. Baxter, et al., No. A82-307 Civil, U.S. District Court, (D. Alaska 1982).

For the purposes of the Longevity Bonus Program, there are three reasons why it makes little sense to attempt a multi-year durational residency requirement as a presumption of domiciliary. First, the attempt would lack substantial

precedential support. Second, it would be contrary to the August 9, 1932 settlement in the Vest case. Finally, and as noted previously, a durational residency requirement would not begin to exclude significant numbers of elderly Alaskans unless it was in excess of 10 years.

2. Durational residency requirements may be permissible for reasons other than presuming domiciliary, although at least four justices of the United States Supreme Court believe that those situations are "rare." Zobel III, 72 L.Ed. 2d at 684.³¹

At the outset, a state cannot use a lengthly durational residency requirement to reward long time residents for their prior contributions to the state. To a majority of the court, while the purpose itself is permissible, a durational residency requirement is irrationally tailored to that goal -- a point bluntly made by Justice O'Connor in her concurrence:

"A multitude of native Alaskans -- including children and paupers -- may have failed to contribute to the state in the past. Yet the state does not dock paupers for their prior failures to contribute, and it awards every person over the age of 18 dividends equal to the number of years that person has lived in the state." 72 L.Ed.2d at 689.

The flip side of rewarding a person for prior contributions is compensating a person for prior hardships. That, as noted previously, is a second major goal of the

³¹One "rare" example cited by the four concurring justices was qualification of public office. Id.

existing ALB program. If it is irrational to assume that all long time residents "contributed" to the state, it may be equally irrational to assume that all long time residents suffered substantial past hardship.

There is one universal hardship which equates with territorial residency -- the lack of franchise. It is conceivable that a Longevity Bonus Program intended to compensate for that lack of representation would be constitutionally permissible. However, that rationale would only justify the January 3, 1959 residency requirement -- not the 25-year continuous residency provision of the act.

A much closer question is posed by the program's goal of allowing elderly Alaskans to remain in the state who would suffer particularly severe hardship if they were financially required to relocate. Justices Dimond and Matthews of the Alaska Supreme Court believe this may be a constitutionally permissible goal substantially furthered by a durational residency requirement:

"... a state Longevity Bonus ... require(s) lengthy residency. Both those programs, however, are apparently designed to help those individuals who would like to retire in the state but cannot afford to do so because of the high cost of living. The state might well want to limit the benefits to those that would suffer the most hardship by being forced to leave, and it seems reasonable to suppose that a long period of residency would be some indicia of close ties to Alaska and the disruption that leaving might cause." Zobel II, 619 P.2d at 469 n. 13 (Dimond dissenting).

The Department of Law, in fact, has concluded that the Pioneers' Home may be constitutionally defensible as a reasonable means of accomplishing precisely this goal.³² Indeed, one option considered in this report would award longevity bonuses on the basis of hardship caused by relocation -- which in turn would be measured in part by length of residence. By making length of residency "some indicia" (619 P.2d at 469) of the hardship of relocation, the option would avoid the indictment of overbreadth which was fatal to the permanent dividend fund distribution program in Zobel III.

Finally, as to the ALB program's goal of providing an incentive for a specific subclass of Alaska's elderly to remain in the state, the courts in all likelihood would view that purpose as merely discrimination for its own sake. See Zobel III, 72 L.Ed. 2d at 673-679. Presuming that only long-time residents have the requisite "wisdom and experience" to warrant subsidization is hardly likely to impress the U.S. Supreme Court.

B. Varving Goals of Several Longevity Bonus Options.

There is a substantial difference of opinion as to what an amended ALB program should accomplish. As noted previously, the legislature may wish to retain one of the major goals of the existing program -- allowing those elderly with the closest ties to Alaska to continue to live here.

³²1982 Op. Atty. Gen. ____ (November 26, 1982) at 25.

Alternatively, the fiscal consequences of the various alternatives may be the primary consideration. As previously discussed, if legislation in conformity with the Vest settlement is enacted, an additional \$11 million must be appropriated as retroactive bonus payments to July 1, 1982. Several of the options which propose to phase out the program, or which propose a conversion to permanent fund earnings, are partially or primarily directed at this end.

The primary goal of the legislation may also be to protect those currently most dependent upon the bonus. The current Old Age Assistance income level is \$546.00 per month and there are approximately 2,300 elderly Alaskans receiving state assistance. Since the longevity bonus is not included in the calculation of income for state assistance, the practical consequence of a phase out or termination of the program would be to materially reduce the available income of the poorest elderly Alaskans. Moreover, as noted in Section I(3), ante, there are a large number of elderly Alaskans who are currently only marginally above the existing state poverty level.

There are two options particularly sensitive to this goal -- the phase out of the ALB program in conjunction with a correlative rise in state assistance levels, and the option of compensating those who would suffer the most hardship by relocation.

With respect to this goal, however, it should be stressed that the existing ALB program has been purposefully structured so as to not be a "welfare program." Precisely for that reason, the program is administered by the Department of Administration, rather than the Department of Health and Social Services, and any conversion to a "need-based" program will undoubtedly offend the dignity of many elderly Alaskans.

Finally, there is the possible goal of providing a long term, stable bonus program which frees the general fund from increasing commitments. The annuity and state social security options are primarily directed at this goal.

C. Consequential Effects of Any Amendment To The Longevity Bonus Program.

Any change to the Longevity Bonus Program may have two consequences which must be considered: (1) the continued eligibility of ALB recipients for other state or federal assistance programs; and (2) tax consequences on participants.

As noted in Section I(A), ante, under federal law the ALB is excluded from the definition of "income" for many federal assistance purposes.³³ As long as any amendments to the ALB program continue to base eligibility "solely on attainment of age 65 and duration of residency," and remain sufficiently similar to the existing program so as to be fairly called "a program established prior to July 1, 1973," the exemption would be retained.

³³See n. 3, ante.

Obviously, any material changes in eligibility requirements or structure of the program raise the risk that the new benefit will be included as "income," and many elderly Alaskans will be terminated from the applicable federal program. The Department of Health and Social Services has estimated the impacts from a loss of the longevity bonus exclusion. Those estimates appear at Appendix 3 of this report.

Anticipating the same problem with permanent fund dividends, the legislature, in the 1982 Special Session, provided that the state would substitute lost benefits for a period of four months.³⁴ Obviously, and to the extent possible, any amendments to the ALB program should either be tailored to the existing exception, or fall within another separate statutory income exclusion such as a "need based" payment.³⁵

The tax consequences of amendments to the existing ALB program become particularly important with respect to this report's annuity option -- which is treated in detail in Section III (F), post. At the outset, it is sufficient to note that:

1. The existing longevity bonus program is taxed under the Internal Revenue Code;
2. Any ALB program which is based on need, or could be characterized as a "social benefit program for the promotion of the general welfare," would in all likelihood not be taxed by the IRS; and³⁶

³⁴AS 43.23.073.

³⁵See 42 U.S.C. §1382(a)(b)(6).

³⁶See IRS Revenue Rulings, 63-136, 1963-2 C.B. 19; 68-33, 1968-1 C.B. 446; 72-340, 1972-2 C.B. 31; 73-170, 1973-1 C.B. 24.

3. On February 27, 1981, the Internal Revenue Service ruled that dividends distributed under the state's prior permanent dividend fund legislation -- the statute invalidated in Zobel III -- were taxable under the Internal Revenue Code.³⁷ While the IRS has yet to rule on the existing dividend program, it is likely that taxation of the permanent fund dividend could be deferred if it is used to fund the annuity or social security options discussed in this report.

III. DISCUSSION OF ALTERNATIVES

A. Expanding The Class Of Alaska Longevity Bonus Recipients To Include All Elderly With One-year's Residency.

There are currently some 9,425 Alaskans who receive bonuses totaling \$23.23 million. This proposal would require additional appropriations for (1) bonuses for an additional 3,803 people; and (2) additional clerical support in the Department of Administration. The additional costs would total \$12 million in FY 1984, increasing to \$13.7 million in FY 1985.³⁸

These appropriations are in addition to the \$11.4 million retroactive award required under the Vest settlement.

The advantages of this option are two-fold. First, it is one of the constitutionally "safest" options. Second, since eligibility would remain dependent on "duration of residence" -- albeit only one-year -- in all likelihood it would fall within the existing ALB exclusion to federal assistance programs.

³⁷IRS Index Nos. 0061.40-00; 0451.20.00; 0102.00-00.

³⁸Department of Administration draft fiscal note, January 11, 1983.

Additionally, while theoretically any "one-year" elderly Alaskan could take advantage of this program, the demographics of Alaska's elderly (see Section 1(B), ante) are such that the primary beneficiaries of this option would be those who have lived in the state from 10 to 25 years. Whether such a program would encourage in-migration is problematical.

In addition to obvious fiscal disadvantages, this alternative would dilute the dignity and recognition attendant the current bonus to the point of non-recognition.

3. Phase Out The Existing Longevity Bonus Program.

One of the options analyzed by the Sheffield administration would phase out the ALB Program by reducing benefits by \$50.00 each year beginning with FY 1984. By paying \$200.00 a month to 13,223 recipients rather than \$250.00 to 9,425, the net increase to the program in FY 1984 would be \$2.1 million. In fiscal year 1985, however, when the bonus is reduced to \$150.00, there will be a net decrease of \$8.7 million in program costs.

This option has been unfavorably viewed by the administration, and apparently was prepared only as a point of comparison. Despite its fiscal benefits, the proposal protects no one. The poorest of Alaska's elderly would suffer the most. Since, as discussed previously, Alaska longevity bonuses are not counted in existing state and federal assistance income limits, the needy elderly person in Alaska receives, currently, a

subsidized monthly income of \$546 for Old Age Assistance, plus \$250 from the ALB program. This option would thus materially reduce state assistance levels.

C. Phase Out The Existing Longevity Bonus Program With A Contemporaneous Increase In State Assistance Levels.

The apparent "preferred" option of many with the Sheffield administration is to gradually increase state Old Age Assistance levels while at the same time gradually decreasing the amount of the longevity bonus. The program would function in the following manner:

CHART 1.

YEAR	OLD AGE ASSISTANCE LEVEL	ALASKA LONGEVITY BONUS
FY 1983	\$546	\$250
FY 1984	\$596	\$200
FY 1985	\$646	\$150
FY 1986	\$696	\$100
FY 1987	\$746	\$ 50
FY 1988	\$796	\$ 0

In analyzing the fiscal impacts of this alternative, assumptions must be made about how many elderly Alaskans will become eligible for Old Age Assistance as the OAA income level increases, and how many of the newly eligible will be inclined to seek assistance as their longevity bonus gradually diminishes.

Regardless of which assumptions are used, the impacts upon the longevity bonus program, are, of course, identical to the "phase out" option. Those impacts would be as follows:

CHART 2.

ADDITIONAL COST (SAVINGS) TO THE ALE PROGRAM (in millions)

FY 1984	2.1
FY 1985	(3.7)
FY 1986	(19.2)
FY 1987	(30.9)
FY 1988	(44.1)

The fiscal impact upon the Department of Health and Social Services' OAA program is far more difficult to determine. The Department of Administration has used two alternative assumptions -- (1) that of the 13,223 elderly in Alaska, 5% will become eligible and apply for public assistance as the income level is increased to \$796 in FY 1988; or (2) that 25% of the elderly will become eligible and apply for assistance during that period.

We believe that the 25% possibility may be closer to the truth. Approximately 30% of Alaska's elderly have monthly incomes marginally above existing assistance levels -- from \$500-\$300 per month.³⁹ If those figures are accurate, as many as 3,968 will become eligible for public assistance -- in addition to the 2,300 currently on the OAA program.

The second variable involves the size of the benefits which the new clientele will receive. The Department of Health and Social Services has assumed that each new recipient will receive the mean benefit currently given or projected for

³⁹Assessment, op. cit. n. 11 at 31.

existing recipients -- \$295 in FY 1984.

In computing the fiscal impacts for this option, we have used the following three assumptions:

(1) Of the 3,968 elderly whom current data suggest could be eligible for the increased OAA program, 2500 will in fact apply. This figure arbitrarily discounts both those who will decline to apply for psychological reasons, and those who will not apply because the minimal benefits to them are simply not worth the bother;

(2) Because we have discounted those who will receive minimal benefits, we have retained the "mean benefit" assumption employed by the Department of Health and Social Services; and

(3) The new recipients will be evenly distributed over each of the five years -- so that in each year an additional 500 recipients will be added to the OAA program.

Additionally, persons who become eligible for Old Age Assistance will also become eligible for Medicaid. The State's Medicaid budget for FY 1983 is \$65 million dollars. 48% of that figure -- or \$31.2 million -- is paid by the State. Some 23% of that budget -- or \$7.17 million dollars -- is attributable to those currently on Old Age Assistance. If the OAA population doubles over the next five years -- as our assumptions presume that it will -- there will be an additional cost of \$7.17 million (not adjusted for inflation) to this option, chargeable in equal portions to each of the next five fiscal years.

With these assumptions, the following chart illustrates the possible net fiscal impact of this option:

CHART 3

<u>Year</u>	<u># Add. on OAA</u>	<u>Mean Benefit</u>	<u>-----IN MILLIONS-----</u>		
			<u>Added Medicaid Costs</u>	<u>Added ALB Costs (Savings)</u>	<u>Net</u>
FY 1984	500	\$295.02	1.4	2.1	3.27
FY 1985	1000	345.02	2.8	(3.7)	(1.75)
FY 1986	1500	395.02	4.2	(19.2)	(5.90)
FY 1987	2000	445.02	5.6	(30.9)	(14.60)
FY 1988	2500	495.02	7.0	(44.1)	(29.30)

Thus, even with fairly liberal assumptions regarding the number of additional OAA clients and Medicaid costs, this option will begin saving money in FY 1985.

Moreover, for those elderly in the \$500 - 800 per month income range who pay some federal taxes, the option would have advantages, since increased need based assistance, unlike the longevity bonus, should not be taxed under the Internal Revenue Code.

One obvious disadvantage of this option is that it transforms the longevity bonus program into a welfare scheme. Persons who currently receive \$796 or less per month -- including the bonus -- will indeed be "held harmless" under the option, but only at the expense of applying for assistance to the Department of Health and Social Services.

Moreover, those current elderly bonus recipients whose monthly incomes (excluding the bonus) exceed \$796 per month will receive no protection under this option.

Finally, because welfare payments are generally viewed by the courts as involving "basic necessities of life" (see §II(A), ante), the durational residency requirement for increased old age assistance must be dropped from one year to 30 days.⁴⁰ The minimum national old age assistance level under the federal Supplemental Security Income system -- which OAA supplements -- is \$234.30/mo.. A person with \$600 a month income in a "minimum benefit" state is presumably ineligible for old age assistance (including Medicaid) in that state, but could become eligible under the Alaska system upon 30 days residency. While the mere prospect of an additional \$196 per month (in FY 1988) is unlikely to induce people to retire in Alaska, the concomitant provision of Medicaid services -- including full nursing home coverage -- may have that effect. If a person can obtain free nursing home coverage -- valued at between \$40 - \$60,000 per year -- simply by spending the month of August in Anchorage, the State may face a rather remarkable in-migration problem indeed.

D. Retaining A Modest Longevity Bonus, While Providing A "Need Based" Supplement.

This option is largely a variant of option C, and has been discussed by the Sheffield Administration as a means of

⁴⁰Shapiro v. Thompson, 394 U.S. 613 (1969).

retaining some longevity bonus payment which could not be considered "welfare."

Under this option, the longevity bonus, as with Option C, would be gradually reduced to, say, \$100.00 per month. As the fiscal information for alternatives B and C suggest, this alternative would result in a savings to the longevity bonus program of \$19.2 million by FY 1986.

To compensate for the loss of \$150.00/mo. to the needy, either State OAA limits could be increased by \$150, or a separate "need based bonus supplement" could be established by the Department of Administration.

The advantage of the latter option is that although based on "need," applicants will not be dealing with the Department of Health and Social Services, and may view the supplement less as a form of welfare. Additionally, since the supplement will be provided under a program other than State OAA, its recipients would not be entitled to Medicaid (including nursing home coverage) unless they are otherwise eligible for OAA under existing limits.

Additionally, the "need" is not necessarily limited to financial need. As this report's discussion of Option I indicates, longevity bonuses may be apportioned according to the hardship which the elderly would face by being forced to retire outside Alaska.

The disadvantage of a separate "need based" program in the Department of Administration is, of course, the necessary creation of a parallel bureaucracy in state government.

The fiscal costs of this option have not been developed by the administration or this report because of the variables involved -- the size of the remaining "basic" longevity bonus, and the question of administration. Costs of administration aside, the net savings to the State should be substantially similar to the FY 1986 figures for Option C -- in which the declining longevity bonus payment would be \$100.00 per month. The projected net savings of \$5.9 million would certainly exceed the costs of even a parallel bureaucracy within the Department of Administration.

E. Gradual Increase In The Age Of Eligibility.

Another option explored by the Administration would reduce the durational residency requirement for a bonus to one year, but raise the eligibility age each fiscal year. For FY 1984, the age would be raised to 66; to 67 in FY 1985; and so on.

This option would have a substantial fiscal impact until fiscal year 1988, at which time mortality would have reduced the class of beneficiaries below existing levels. For FY 1984, the option would cost an additional \$9.5 million dollars beyond existing funding levels, according to the Department of Administration.

This option has been quite unfavorably received. It has been facetiously but not unfairly referred to as the "newcomer's bonus program." A recent migrant born prior to June 30, 1913 would receive a longevity bonus for life, while a long-time Alaskan born subsequent to that date would receive nothing.

F. Self-Sustaining Annuities.

The prior five options were developed by members of the administration, although the administration has not formally "sponsored" any particular approach. Moreover, several of the options -- particularly the "graduated age" and "phase out" options -- were developed more as comparative conversation pieces than as actual proposals.

The following five options -- commencing with the self-sustaining annuity -- were prepared by the authors of this report.

Under the self-sustaining annuity option, individuals would no longer receive a permanent fund dividend under AS 43.23. Rather, those dividends would form the corpus of a self-sustaining annuity account from which the individual would receive an annuity commencing at the age of 65.

According to Department of Revenue projections, the permanent fund dividend payment for FY 1984 will be \$365.00, rising gradually throughout the remainder of this century to \$952 in the year 2000.

Given this level of contribution to the corpus, a self-sustaining annuity account will produce an annuity roughly equivalent to the existing longevity bonus (with a 3 percent annual cost of living adjustment) for those who are currently 40 years or younger, and who will be residents of Alaska each of the next 20 years. For various age groups, the annuity entitlements at age 65 as a percentage of the "target" annuity (\$3000/yr. plus 3% per annum) would be roughly as follows:

Current age	Annuity as a % of target annuity
25	353%
35	161%
40	100%
45	66
55	21

Obviously, some transition measure is necessary for those who are simply incapable of accruing a sufficient corpus by the age of 65 to be entitled to the "target annuity". The general fund, simply put, will be required to make up the difference, although, over time, that "differential" will decrease as annuity accounts assume some significance.

Many of the options explored in this report could suffice as a 20-25 year shrinking general fund obligation. One option particularly tailored to the annuity approach would be to allow those who are at or near the age of 65 to continue to receive their permanent fund dividends in cash, with the PFD being subtracted from the longevity bonus amount. For those in

the 40-50 year age group, the general fund would simply fund the difference between their annuity and the "target" figure.

Under this "transitional measure", the general fund "residual" payment would be based on the amount necessary to supplement the annuity corpus assuming that an individual received a permanent fund dividend every year. There would seem, in this regard, no obligation on the part of the state to give a larger general fund supplement to someone with two PFD credits than to someone with 15.

Thus, in fiscal year 1994, when current 55-year olds first receive their annuity, they would receive a state supplemental of 79 percent of the target annuity -- regardless of the actual PFD credit any individual has accrued.

The remaining question, obviously, is what to do about the person who is currently 55. If that individual's supplement is the same in 1994 as a new annuitant -- 79% -- he will in fact receive less than the new annuitant since he will have only his permanent dividend, rather than a 21% annuity, to make up the difference. Conversely, if the grandfathered PFD recipient received a full target annuity in 1994, he would be at a substantial advantage over the new annuitant. The reason is this: while the new annuitant has earned a substantial portion of his target annuity by foregoing his cash dividend each year, the "grandfathered" recipient has both enjoyed the dividend, and its earning power, over that same period of time.

The question is largely one of equity for the legislature. Either approach is defensible. While the latter scenario would seem to discriminate in favor of the existing elderly, the Alaska Supreme Court has recognized the legitimacy of creating preferential grandfather rights for those who have come to depend upon an existing state program.⁴¹

In either case, the difficulty with this "transition" option is that the longevity bonus program continues to be a substantial drain on the general fund for 20-25 years to come. Under the transition option described above, the FY 1984 budget for the ALB program would be increased by \$6 million dollars over existing funding levels.⁴²

Through Aetna Insurance Co., we investigated the alternative of simply purchasing a lifetime annuity for all those currently 65 or older. Unfortunately, the cost of a lifetime annuity for all Alaskans 65 or older would be prohibitive -- in the neighborhood of \$300 to \$400 million.

Finally, the Legislature should consider using the administration's options C and/or D as a transition measure. The short term fiscal impacts of those options are superior to those of a simple general fund supplement.

⁴¹Commercial Fisheries Entry Commission v. Apokadak, 606 P.2d at 1259-61.

⁴²Assuming that the ALB of the "grandfathered class" is reduced by the \$365 permanent fund dividend, each of 13,223 persons will receive a payment of \$2,635 this year -- totaling \$34 million dollars.

For all of the short term problems of an annuity program, the long term advantages should receive equal time. First, in a period of 20-25 years, the general fund will no longer be encumbered with the longevity bonus program. Second, the eventual size of one's annuity payments would be a function of the number of permanent fund dividend contributions that have been credited to the annuitant's account. We seriously doubt that a successful durational residency claim could be made to this aspect of the program. An annuitant with three years contributions could no more claim that he is due an annuity based on 20 years contribution than could a 1996 resident claim not merely the \$737 cash dividend available that year, but rather some \$6,000 which his predecessors had amassed by being residents of Alaska since 1984.⁴³

We believe that there is a strong case for distributing annuities only to persons who are residents of Alaska at the

⁴³Because future annuities are a direct function of actual past payments to the program, the program does not "reward" presumed contributions but simply returns actual investments. cf. Zobel I, 619 P.2d at 435 (Rabinowitz conc.) Nor is the option akin to a situation where prior tax contributors are excused from funding the present needs of government, as with the tax repeal scheme at issue in Zobel I. At any point in time, each Alaskan is treated quite equally -- being entitled to an annuity credit if he or she resided in the state for six months during the pertinent year.

time. Partially for reasons discussed below, no individual will have a "vested right" to an annuity in the future. A purpose of the annuity program will be to alleviate the particular financial hardships caused by retirement in Alaska -- a purpose which we believe is constitutional. This goal would be served only by confining actual annuity payments to Alaska residents. Second, and particularly if the program is properly viewed as conferring an economic benefit not upon the crediting of an annuity account, but rather upon annuity distribution, the state certainly possesses the right to prefer its own residents in the disposition of its resources.⁴⁴

There are, of course, other issues surrounding the annuity option. Many Alaskans will undoubtedly wish to retain the existing cash benefits of the permanent fund distribution. Alaskans will not be, however, totally without recompense. An annuity account for younger Alaskans in particular -- at least for those planning to stay in the state -- will one day lead to substantial benefits.

Of course, the prospect of a lucrative retirement account is a product of the legislature's continued willingness and ability to devote 25% of permanent fund earnings to the

⁴⁴Reeves, Inc. v. State, 65 L.Ed. 2d 244, (1980); see also White v. Massachusetts Council of Construction Employees, U.S., No. 31-1003 (U.S.S.Ct., Feb. 28, 1933)(distinguishing Hicklin v. Orbeck, 437 U.S. 513 (1978)).

annuity program. Unquestionably, at some point in time, a material percentage of the permanent fund's earnings will be necessary for general government expenses. The point at which that will require access to more than 75% of the fund's earnings is problematical.

The tax consequences of an annuity program warrant detailed discussion. As noted previously, the Internal Revenue Service may well rule that permanent fund cash distributions are taxable. Conversely, if credits to an annuity account equal to the permanent fund dividend are not tax exempt, the real economic value and perceived political worth of an annuity option is substantially lessened.

The annuity program envisioned by this report is not employer/employee related, and therefore would not qualify as an exempt plan under the Internal Revenue Code.⁴⁵ Nor was serious consideration given to qualifying this annuity option as an Individual Retirement Account -- because (1) the state is not a qualified financial institution to administer such an account; (2) the required terms of an IRA were not compatible with the option considered; and (3) any "state required" IRA -- even if possible -- would severely impinge on the tax planning flexibility of individual Alaskans.⁴⁶

Nonetheless, it is our opinion that the annuity option should result in the deferral of both the permanent fund

⁴⁵cf. 26 U.S.C. §401-404

⁴⁶See 26 U.S.C. §403.

dividend contributions and accrued interest under the Internal Revenue Code. The courts and the IRS have generally ruled that contributions to an unqualified "annuity," "retirement" or "deferred compensation" plan are nonetheless tax deferred if the individual is not in "constructive receipt" of the annuity contributions, and the contributions do not represent a present "economic benefit."⁴⁷

Combining the standards of that doctrine with the attributes of the proposed annuity program, the program should be taxed deferred for the following reasons:

1. If the State were to purchase individual annuities with each permanent fund dividend, with each resident being the beneficiary, the resident would have a vested and secured interest in the contribution, and would thus have received a current "economic benefit." If, however, the State were to merely give the annuitant an unsecured promise of payment, purchasing an annuity account with itself as the beneficiary in order to provide a funding source for that promise, there would be no "current economic benefit" and taxation would be deferred.⁴⁸ This is one customary means by which employers obtain tax deferral of an unqualified plan;

2. A person is in "constructive receipt" of an annuity contribution if he has current access to the

⁴⁷U.S. v. Goldsmith, 536 F.2d 810 (Ct.Cl. 1973).

⁴⁸Id.

contributions without substantial terms and limitations.⁴⁹ Under this report's option, under no circumstances would an annuitant be entitled to withdraw anything until annuities are actually distributed;

3. To underscore the contingent nature of the annuity -- such that the IRS could not reasonably conclude that it represents a "current economic benefit" -- the annuity will only be received if the person is an Alaska resident at the time of the pertinent distribution.

Our only hesitancy in this regard is the February 27, 1981 ruling of the IRS that even if an individual chooses to defer receipt of his permanent fund dividend, it is taxable in the year that it could have been received. The ruling, however, "may not be used or cited as precedent," and, even if of precedential value, is distinguishable from this situation. The ruling is consistent with the proposition that the individual cannot have unfettered discretion in choosing the year in which income will be taxed. While an individual does have unbridled choice in determining when to take a permanent fund dividend, he will have no choice as to the time of receipt of his annuities. Moreover, where a person would have an absolute right to a deferred dividend, he will have no right to annuity distribution unless he is an Alaska resident at the time.

For tax reasons, then, the annuity option must be carefully structured. The former permanent fund dividend must

⁴⁹Id.

be used by the State to purchase an annuity for its own account, with itself as the beneficiary. The annuity income received by the State will then be used as the funding source for the annuity payments -- although technically and necessarily the annuity income could be used for any fiscal purpose.

A far closer question arises with respect to the effect of this option on other public assistance programs. Generally, annuity income is included in the calculation of income for various assistance programs.⁵⁰ If, however, this option can be characterized as a continuation of the longevity bonus program, then the existing longevity bonus income exclusion⁵¹ may persist. If -- consistent with tax considerations -- the only "annuity" is the one purchased by the State as a funding source, then the existing longevity bonus program can be retained in both name and substance, with the amount of the bonus still dependent upon residency history. After all, under the option, (1) a person must be a six month resident in order to obtain a single PFD, and must be eligible for the annuity at the time of distribution;⁵² (2) the amount of annuity is dependent upon the number of PFD's, credited to the individual's account; and (3) the "grandfathered" class of existing elderly would presumably be required to meet a one-year durational residency requirement.

⁵⁰See, 42 U.S.C. §1332(a)(a)(2)(B).

⁵¹See 42 U.S.C. §1332(a)(b)(2)(B).

⁵²See n. 8, ante.

The above, of course, is an argument -- it is not necessarily the law, which in final measure will be largely determined by the federal officials involved. The exposure to existing assistance programs -- at least for those not within the grandfathered transition class -- must be considered a risk of this option.

Even if, however, annuity distributions are considered "income" to various assistance programs, the corpus of the annuity account will not be. A person may be disqualified from a federal assistance program not only if his income exceeds a certain level, but as well if he has alternative available resources which he can upon from at any time. However, in this instance, a true "annuity corpus" does not exist -- since the only annuity runs for the benefit of the State. Moreover, even if federal officials were to view the "corpus" as belonging to the individual, it cannot be withdrawn prior to actual distribution.

G. State Social Security System.

In large part because of the need for a lengthy transition period with a self-sustaining annuity plan, this report also considered the possibility of a state social security system funded by a portion of the permanent fund dividends distributed under AS 43.23.

Under this system, a sufficient portion of each resident's permanent fund dividend would be withheld each year

to fund a retirement program designed to pay each Alaska resident of 65 years or older with one-year's residency \$250 per month, with a moderate cost of living adjustment each year.

In assessing the feasibility of this option, the most important variable was the projected growth in Alaska's elderly population. The difficulties facing the federal social security system are due in part to an increasingly large percentage of elderly in the population.

For fiscal year 1983, the Alaska Department of Labor projects that there will be some 13,672 elderly in Alaska -- approximately 3% of Alaska's population.⁵³ The Department has projected that that population, as a percentage of all Alaskans, will remain relatively static through the year 2000, when, out of a population of 831,000 people, there will be 25,158 elderly.⁵⁴

We believe that those projections are overly conservative, and do not take into account the significant nationwide trend of increased elderly population. Nor do those projections include the retirement years of the post World War II "baby boom" generation -- which will begin about the year 2010.

Accordingly, in projecting the long term impact of this option on permanent dividend distribution, we have used the

⁵³Alaska Population Overview, Alaska Department of Labor, 1981

⁵⁴Id.

national growth patterns projected by the federal Social Security Administration, which are as follows:

<u>YEAR</u>	<u>% OF ELDERLY POPULATION</u>
1950	3.1
2000	13.1
2025	19.5
2050	21.3

Using those assumptions, Travelers' Insurance Co., on our behalf, calculated the percentage of permanent fund dividends which would be required to fund a "pay as you go" system.

For fiscal year 1933, the calculations are relatively straight-forward. Given an aggregate distribution of some \$169 million in permanent fund dividends this year, approximately 25% would be needed to fund a "pay as you go system."

However, even assuming a 3% cost of living adjustment in the payment each year, the percentage needed to fund the program decreases. This is because permanent fund earnings will increase at a rate substantially higher than inflation. From the year 1933 to 2000, the average funding required would be 15 to 19 percent of the distributions, while, in the years 2000 to 2025 (and assuming continued growth in permanent fund earnings) the funding amount would be 10-12 percent.

Thus, if the withholding remains static at 25% over the course of several years, the resultant excess would begin to build a savings account of substantial magnitude, which at some

point in the future would make the program partially, or perhaps totally self-sustaining.

One obvious advantage of this option is that it frees the general fund from ALB obligations immediately. Conversely, by materially reducing the annual permanent fund dividend, it obviously raises some political difficulties.

Additionally, the social security option could likewise be tied to contribution history -- although not in the precise manner of the annuity option. The federal social security system currently fully covers any individual who had "not less than one quarter of coverage ... for each calendar elapsing after 1950 ... except that in no case shall an individual be a fully insured individual unless he has at least 6 quarters of coverage."⁵⁵ Because, in the future, some portion of the benefits will be paid by the "savings account" resulting from the static 25% contribution, we believe that a similar contribution history requirement could be established in the legislation.

Even more so than the annuity option, there would be no "current economic benefit" from the program. By reducing the permanent fund distribution by 25%, and funding a retirement program from which the individual may or may not ultimately benefit, we believe it extremely unlikely that the IRS would conclude that the reduced sum is in some manner taxable.

⁵⁵42 U.S.C. §414(a)(1)

Moreover, we believe there is a substantial likelihood that the existing ALB exemption in federal law could be retained. Indeed, stripped to its essence this option does little more than alter the funding source of the ALB program.

The primary risk of the program is all the more apparent in light of the current difficulties with the federal social security system. While option F would be funded by a currently purchased annuity, younger Alaskans would be contributing to this option on the mere hope that the requisite amount of permanent fund earnings would remain available for the program well into the 21st century. The "savings account" created by the static 25% withholding is intended to alleviate that problem; however, regardless of the rate of growth of that account, there is plainly some risk in this option.⁵⁶

⁵⁶For example, under our population projections, there will be 30,747 elderly in Alaska in the year 2000. The permanent fund distributions for that year under AS 43.23 are estimated by the Department of Revenue to be \$792 million, of which, under our static 25% withholding, \$198 million would be placed in the social security fund. In that year, with a 3% COLA, the maximum monthly bonus will be approximately \$390. Even if every elderly Alaskan is eligible for full benefits under the law's contribution requirements, the maximum payments would be \$120 million -- with a savings account deposit being made in that year alone of \$70 million. Of course, many of these elderly may not be fully eligible, and some who are eligible may not be residing in Alaska during that year.

Finally, there is some advantage to the existing elderly in this system over the annuity option. The existing elderly would have a net loss of only 25% of their permanent fund dividend, rather than the entirety of the benefit under the annuity approach.

H. Health Insurance For The Elderly.

The state of health insurance for the elderly, and indeed for all Alaskans, has already been the subject of considerable study,⁵⁷ and legislative activity.⁵⁸ Because of the obvious critical importance of adequate health care coverage for Alaska's elderly, the option of providing comprehensive health insurance for Alaska's older citizens in lieu of the longevity bonus was included in this report as an option.

While the Department of Law report found that health expenses were a major use of the longevity bonus for only 5.5% of its sample, the 1976 longevity bonus study found that 29% of the bonus recipients used at least a portion of the ALB for medical care, while 11% used a portion of the bonus for "insurance of all kinds."⁵⁹

⁵⁷Alaska Comprehensive Health Care Financing Study, Batelle Human Affairs Research Center (1981)

⁵⁸HB 641, 12th Leg. 1st Sess. (1981)

⁵⁹ALB Survey, op. cit. n. 9 at 22

In fact, almost all of Alaska's elderly receive some kind of public or private health coverage assistance -- either through Medicare, Medicaid, public and private retirement programs, Veteran's benefits or the Indian Health Service/Public Health Service.

When assessing the health insurance option, the two obvious questions are: (1) how severe are the gaps in existing coverage; and (2) how much would it cost to fill those gaps?

The major source of health insurance coverage for the elderly in Alaska is obviously Medicare -- a federal insurance plan which provides hospitalization for those eligible for social security⁵⁰ and medical insurance for an additional fee of \$12.20 per month.

Both the hospital and medical insurance contain substantial deductibles, i.e. the first \$304 of the hospital bill -- and co-payment requirements (20% in the case of medical insurance.)

Nursing home coverage under Medicare is severely limited -- confined to post-hospital care in a "skilled nursing facility" for short periods of time.

It is difficult to determine how many resident Alaskan elderly are on Medicare -- available statistics are bloated by Medicare claims submitted by tourists. There are some 9,323

⁵⁰42 U.S.C. §§ 426, 1395(c). A person ineligible for Social Security may obtain Medicare hospitalization insurance for \$113 per month

retired persons in Alaska receiving social security -- and hence eligible for Medicare.⁶¹

The largest group of elderly Alaskans ineligible for Medicare are rural residents, primarily Natives, who do not have a sufficient wage earning history to qualify for social security. All Alaska Indians, Aleuts and Eskimos are eligible for IHS -- which provides a broad range of services depending upon available facilities. IHS is, however, primarily a direct provider of facilities -- it does not make cash payments for services such as custodial care in a nursing home. Moreover, it is currently facing severe cutbacks in areas such as reimbursement for health-related travel expenses⁶².

The most comprehensive health coverage in Alaska is, of course, Medicaid. To be eligible for Medicaid, one must meet the State public assistance income limitations. As noted previously, there are currently some 2300 elderly Alaska citizens on Medicaid. Medicaid does cover virtually unlimited nursing home residency.

The most glaring deficiency in Alaska health care for the elderly is the lack of coverage for institutionalization in custodial environments such as nursing homes. Nursing home

⁶¹Interview Ms. P. Eubanks, Field Rep. Social Security Admin. (Feb. 24, 1983)

⁶²Interview, Ms. P. Roberts IHS, (Feb. 23, 1983)

rates in Alaska run from \$90 to \$172 per day⁵³. The costs are simply prohibitive for anyone not on Medicaid -- indeed, of the 467 elderly Alaskans currently residing in State nursing homes (other than the Pioneers Homes), all but 31 are there under Medicaid, or Alaska's General Relief Medical Assistance.

Conversely, nursing home rates in Washington, for example, have been estimated by the Department of Health & Social Services to vary from \$50-560 per day. It is not known how many elderly Alaskans are institutionalized in lower forty-eight custodial care facilities; however, it is apparent that unless one is eligible for Pioneer Home placement, a nursing home can be afforded if, at all, only by relocating to the lower forty-eight.

Three private organizations were asked to estimate the premium amount required to supplement Medicare and other coverage for Alaska's elderly to provide health insurance equivalent to the existing Public Employees' Retirement System's retiree coverage, and to include comprehensive nursing home coverage. Neither Travelers Insurance, nor Aetna Insurance felt capable of providing an estimate.

However, insurance consultants frequently used by the state for matters such as the public employees Supplemental Benefits System estimated that to provide supplemental coverage

⁵³Alaska Nursing Home Census, Alaska Department of Health & Social Service, 12/31/82

for Medicare, insurance could be provided at a premium of approximately \$70 per individual per month. This would include comprehensive nursing home coverage.

Medicare is currently a primary insurer -- that is, the State could provide for Supplemental coverage without endangering basic Medicare eligibility. Moreover, and in all likelihood, supplemental State coverage could properly provide otherwise uninsured Alaska Natives with those costs not covered by the Indian Health Service.

The major difficulty is Medicaid. Medicaid eligibility is very much contingent upon the unavailability of "resources".⁶⁴ Currently, the State only pays 48% of a Medicaid's patient bills. If a State health insurance policy was considered a "resource" the State could find itself footing the entirety of a Medicaid patient's bill.

Of course, the State would hardly need to "supplement" any Medicaid coverage -- Medicaid coverage itself being essentially inclusive. The statute, could simply exempt Medicaid recipients from the coverage of the policy. The issue posed by such an enactment is whether the State would be frustrating the Congressional goals behind Medicaid -- which is to provide a health coverage means of last resort -- thereby running afoul of the Supremacy Clause.⁶⁵

⁶⁴42 U.S.C. §1332(g)(1)(B)

⁶⁵Florida Lime & Avocado Growers v. Paul, 373 U.S. 132 (1963)

Assuming that the State could continue to merely supplement Medicare, IHS facilities and existing private and retiree coverages, and that the consultants' figures are accurate, there remain two difficulties with the health insurance option. First, it is of no benefit to Alaska's needy elderly -- who will merely continue with Medicaid coverage at the price of their longevity bonus.

Secondly, there is the potentially severe problem of in-migration. If a year's residency in Alaska⁶⁶ were all that were required for free and unlimited nursing home coverage, the potential of in-migration may be severe. There are two potentially justifiable components of the program which could mitigate this potential:

1. If a purpose of the health insurance option is to allow Alaska residents to continue to reside in the state even if nursing home coverage is required, nursing home coverage could be limited to Alaska institutions, just as many states

⁶⁶It is possible, although we believe unlikely, that a court would rule that supplemental health insurance coverage would constitute a "basis necessity of life" -- dropping the maximum possible durational residency requirement to 30 days. The program would be supplemental to a host of existing assistance insurance programs, and would not be based on need. See Memorial Hospital v. Maricopa County, 415 U.S. at 261.

limit resident tuition discounts to in-state universities.⁶⁷ The difficulty, obviously, is that existing Alaskan nursing home capacity is limited. Whether unlimited nursing home coverage for all Alaskans would result in the expansion of existing facilities is debatable;

2. For the reasons cited with respect to the annuity and social security options, eligibility for health insurance coverage might properly be based upon contribution history if (a) a portion of the individual's permanent fund dividend is used to help fund the insurance program; and (b) the funding is in excess of current needs, in order to amass the same type of "savings account" envisioned with respect to the social security option.

I. LONGEVITY BONUS PREMISED ON INDIVIDUALIZED
RELOCATION HARDSHIP.

As noted in Section II(A), ante, there is some judicial support for the view that it is permissible for Alaska to establish a program intended to benefit those who would suffer the most hardship by financially-coerced relocation from the state, and to measure that hardship in part by duration of residence.

This option relies upon that support, and involves three steps:

⁶⁷Scarns v. Malkerson, 326 F.Supp. 234 (D. Minn. 1970), affa mem. 401 U.S. 985 (1971)

1. cataloging those criteria which would differentiate those Alaska elderly who would suffer relatively more hardship by being forced to retire outside the state, and who need financial assistance in order to remain in-state;

2. translation of those subjective criteria to a point system similar to that used by the Alaska Commercial Fisheries Entry Commission; and⁵⁸

3. structuring of that point system such that (a) administrative costs are minimized; and (b) successful applicants are confined to a pool roughly equivalent in number to existing bonus recipients.

Indeed, the structure of this option is similar to the Alaska Limited Entry Act -- which translates certain very subjective criteria -- such as "economic dependence on the fishery" -- into an objective point system. It does so, of course, at a bureaucratic price -- approximately \$2.5 million a year for a pool of applicants originally roughly equivalent to those which this option would affect. It also does so at other costs, which will be discussed below.

It is not difficult to catalog the criteria which would set our "relocation hardship" pool aside. Duration and continuity of residence would be one criteria, as would, perhaps:

1. income;
2. location of family;

⁵⁸See AS 16.43

3. location of property; and
4. ethnic, religious, and cultural ties.

Although income and duration of residency would play a role in determining eligibility, no one factor alone would be dispositive.

It would not be difficult to translate these factors into a point system; nor would it be particularly difficult to structure that point system to limit the class of successful applicants. The proposal, however, does suffer from the following disadvantages:

1. Since most Alaskan elderly have lived here more than 10 years most Alaska elderly will suffer some demonstrable hardship from relocating elsewhere -- although a certain percentage obviously do not require a longevity bonus to remain;

2. The alternative also involves the establishment and funding of a new bureaucracy -- an intrinsically unworthwhile undertaking, but one which nonetheless would cost far less than simply opening the class to all elderly Alaskans;

3. Perhaps the most obvious disadvantage is the burden that it would place upon elderly Alaskans themselves. There would presumably be a lengthy application form, together with evidentiary requirements, and in some cases, adjudicatory hearings. The Limited Entry Commission is currently involved in some 120 judicial appeals -- a number which is either at or below historic levels. According to the Commission's FY1984

budget presentation, there is a current backlog of some 325 administrative adjudications.

Attorneys will be required -- regardless of what efforts are undertaken to make the process simple and informal. The difficulties facing the elderly applicant are thus rather apparent.

J. GRANDFATHERING

This report closes with one of the simpler alternatives -- opening the class of longevity bonus recipients to all elderly Alaskans with one year's residency, and terminating the program for the future. Persons eligible or becoming eligible this year will be "grandfathered" and will receive a longevity bonus for life. The fiscal impacts of this alternative are, for FY1984, identical to option A, and will obviously decline in the future due to mortality and relocation.

The obvious advantage of this program is that it protects those currently on the longevity bonus program. Equally, it deprives those approaching the age of 65 with any expectation of receiving a bonus.

We believe that this option is constitutionally permissible. The Alaska Supreme Court shares the general view of the constitutionality of grandfathering laws -- as long as the grandfathered class itself is constitutionally defined.⁶⁹ Plainly, the state legislatures

⁶⁹Commercial Fisheries Entry Commission v. Apokadak, 606 P.2d at 1259-61.

have the right to terminate social programs while protecting those who have come to rely on their benefits.

4. CONCLUSION

As noted at the outset, the purpose of this report is merely to provide a threshold feasibility review of various options for amending the longevity bonus program. Through discussions with administration officials, legislative staff members, consultants and private industry, we have attempted to highlight the major issues surrounding each alternative, and provide at least rough information on each question raised. If, after the Judiciary Committee has identified two or three relatively attractive options, the effort expended over the past three weeks on 10 proposals can be condensed into the pursuit of three, proposed legislation and a more intricate analysis of the preferred options can be promptly transmitted.

copy
P.S.

REPORT
TO THE FOURTEENTH LEGISLATURE - FIRST SESSION
AND
TO GOVERNOR BILL SHEFFIELD
FROM
THE STATE SPECIAL COMMITTEE ON THE
ALASKA LONGEVITY BONUS PROGRAM



February 1, 1985

REPORT TO THE FOURTEENTH LEGISLATURE - FIRST SESSION
AND TO GOVERNOR BILL SHEFFIELD FROM THE STATE SPECIAL
COMMITTEE ON THE ALASKA LONGEVITY BONUS PROGRAM

together with

DISSENTING VIEWS AND ADDITIONAL COMMENTS

February 1, 1985

TABLE OF CONTENTS

	<u>PAGE</u>
Introduction	3
Recommendation: Annuity Approach	3
Other Options Considered	7
Major Features	17
1. <u>Front-loading</u>	17
2. <u>The 3% Escalator</u>	23
3. <u>Administrative Costs of the Program</u>	23
4. <u>Choice of Benefits</u>	24
5. <u>Setting the Amount of the Longevity Bonus</u> <u>Payment</u>	24
6. <u>Residency Questions</u>	25
7. <u>Federal Income Tax Considerations</u>	25
8. <u>Annuity Credits Are Not a Vested Right</u>	27
9. <u>Protection of Alaska's Existing Elderly</u>	28
10. <u>Possible Participation Rates</u>	30
11. <u>Impact on OAA and Medicaid</u>	32
12. <u>Costs of Various ALB Alternatives</u>	35
The Benefit Concepts' Proposal	41
The Alaska Pioneers' Home	43
Conclusion	44
Dissenting Views	after 45

Introduction.

In June, 1984, the Alaska Longevity Bonus Program (AS 47.45) was declared unconstitutional because it required recipients to have resided in Alaska both prior to statehood and for 25 consecutive years. The Thirteenth Legislature, 2nd Sess., repealed these lengthy residency requirements, thus opening the program to new participants. Ch. 38, SLA 1984. However, the amended law, by its own terms, is to be repealed effective June 30, 1985. Id., Sec. 11.

The legislation also established the State Special Committee on the Alaska Longevity Bonus Program to "determine the feasibility of replacing the longevity bonus program, as amended by this Act, with an annuity program, a needs-based program, or other longevity program." Id., Sec. 7. This is the committee's report.

Recommendation: Annuity Approach.

The committee has developed a proposal which would phase out the existing longevity bonus program and replace it with individual annuity accounts funded primarily by the permanent fund dividends of participants. 1/ The proposal has been

1/ Three different annuity approaches were initially considered by the committee: (1) SB 465, introduced in the 1984 legislature by several senators; (2) an amended version of HB 700, also introduced in that legislature; and (3) a draft bill prepared by Senator Bill Ray (D., Juneau). The Ray bill became the vehicle for the Committee's proposal. All three proposals involved

introduced in this legislature as SB 56. Under the committee bill, Alaskans who choose to participate in the program will receive monthly benefits, after reaching age 65, of at least the \$250 which is currently provided by the bonus program, inflated by three percent annually.

The program is available to those who reach age 65 after 1985. Under the bill, Alaska's existing elderly will receive their current \$250 bonus, inflated by three percent annually, without having to forego their permanent fund dividends.

The committee bill provides that each year every Alaskan (except those who are 65 or older before 1986) will receive his or her permanent fund dividend in the form of a credit to an annuity account, unless the individual affirmatively elects to receive cash. 2/ Section 2 of the bill envisions that the

foregoing a permanent fund dividend in return for some type of future annuity benefit.

SB 465 would have paid \$16.50 per month to each elderly Alaskan for every permanent fund dividend foregone -- to a limit of \$250 per month.

HB 700 would have given each Alaskan one annuity share for each foregone dividend. Each year, one third of the money available for permanent fund dividends would then be divided by the number of annuity shares held by those over the age of 65. Each elderly Alaskan would receive a portion of that annuity fund commensurate with the number of shares held.

The committee was advised by legal counsel that HB 700 and SB 465 created greater constitutional risks than did the Ray proposal; the committee therefore focused on the concept embodied in Senator Ray's bill.

2/ This aspect of the committee proposal reflects a change from

legislature may, at least in the early years, "front-load" the program by appropriating additional funds into the annuity account, which will be attributed to individual accounts on a prescribed formula. Under that formula, state contributions are greatest for those approaching retirement age, and decline for younger Alaskans. Beginning at age 65, a participant receives an annuity based on his contributions and any front-loading -- plus earnings accumulated on those amounts. 3/

Even with front-loading, it will be years before annuity payments are sufficient to replace the longevity bonus. The ALB program is thus retained at a level which, for those turning 65 after 1985, will be reduced annually. 4/ Under the bill, a "target amount" for the ALB is established (Section 8), which is \$250 per month (in FY 1986) inflated by 3% each year. That target amount is then reduced by the maximum possible annuity which would be available to a 65-year old who has participated in

earlier annuity bills, which required an election to forego cash payment. Because, in the future, the annuity program will be the only state source of non-need-based retirement assistance, the committee believes that each Alaskan should be required to come to grips with the long-term consequences of a decision to take the dividend in cash.

3/ Under the committee bill a participant who dies before age 65 will forfeit his accumulated annuity credits (see the discussion of survivor options at 17, post); the amounts forfeited will be reallocated to surviving participants and thus will increase their annuities.

4/ The longevity bonus itself is, of course, available to all elderly Alaskans whether or not they have also established annuity accounts.

the program in each year since the program's inception. For example, if the inflated ALB "target" for a particular year is \$280, and a person turning 65 who received an annuity credit in each year of the program would be entitled to an annuity of \$100 per month, the ALB payment for all recipients would be \$180. That \$180 will not vary according to the actual participation histories of individual ALB recipients.

Over the years, individual annuity accounts will become greater, and each year the longevity bonus payable to new recipients becomes correspondingly smaller. By the year 2003, the committee projects that the maximum possible annuity will be sufficient to bring an end to the general-funded ALB program, except for those relatively few who were 65 or older before 1986, and are still receiving ALB payments in that year. This is best illustrated by the following chart:

/////

/////

/////

/////

/////

/////

/////

/////

/////

/////

/////

Maximum Possible Annuity 5/ ALB (for all new recipients)

1986	4.37	\$245.63
1990	32.50	248.88
1995	106.27	219.92
2000	255.70	122.45
2005	533.39	-0-

Other Options Considered

The committee invited its members, and others, to suggest alternatives other than an annuity program. Only one was advanced -- a "means test" program under which elderly Alaskans earning less than \$25,000 per year would receive a payment of \$250 per month. Those earning more than \$25,000 would receive a payment of \$100 per month. To qualify for the \$250 bonus, the applicant would be required to submit his or her tax return to the Department of Administration.

This program is intended as a permanent replacement for the ALB. However, the program envisions that the size of the payments, and the \$25,000 income limit, remain constant over the years. In terms of real income, the effect is as follows:

5/ Annuity projections are without "front-loading."

	<u>Maximum Income Eligibility for Bonus (year)</u>	<u>Amount of Bonus</u>	<u>Size of Alternate Bonus</u>
1986	\$25,000	\$250	\$100
2000	\$10,569	\$104	\$41.60
2010	\$ 5,902 <u>6/</u>	\$ 59	\$23.60

It is estimated that, initially, 80% of Alaska's elderly will be eligible for the \$250 bonus. Because that maximum income requirement drops each year in terms of real income, so too does the percentage of eligible elderly. Thus, less than half of Alaska's elderly will be eligible for the bonus in the year 2000, and only 30% will be eligible in the year 2010.

The committee rejected this means test proposal for the following reasons:

1. Any welfare program is contrary to the intent of the ALB program and is vigorously opposed by Alaska's elderly. The Longevity Bonus Program now says to Alaska's elderly that they are a precious human resource, and that it is in the state's interest to provide them with the wherewithall to remain in Alaska after retirement. The means test payment, on the other hand, carries with it quite different, and less favorable connotations.

6/ This is below Alaska's \$7032/year poverty level.

2. Of those who are potentially eligible for the \$250 means test payment, many may not apply because of its welfare connotations. This is strongly suggested by available statistics. Currently, nearly 6,700 ALB recipients -- or 40% of all recipients -- have incomes below the current eligibility limit for existing Old Age Assistance and Medicaid benefits. These benefits are substantial -- averaging \$2,640 per year for OAA and an additional \$2,500 per year for Medicaid. Yet, of the income-eligible, only 2,526 -- or roughly 38% -- have in fact applied for OAA and Medicaid. Certainly, some of the remaining income-eligible have not applied because they have more assets than current law allows. Nonetheless, these statistics manifest an aversion to need-based assistance which has deterred many of Alaska's apparently eligible elderly from applying for substantial benefits.

3. Thus, while 20% of Alaska's elderly will be ineligible for the \$250 bonus, an additional percentage of existing ALB recipients will lose their current benefits because of their unwillingness to participate in a welfare program. For these reasons, this means test proposal fails a threshold test which should be a cornerstone of any longevity bonus legislation. Any ALB alternative, the committee believes, should provide those who have received the ALB over the years with the same benefits as under current law.

4. The proposal hurts both existing and new ALB recipients in another way. Because the real value of both the benefits and

the income ceiling will decrease over the years, fewer elderly will find themselves eligible, and those who are eligible will receive smaller benefits. By the year 2000, for example, less than half of Alaska's elderly will be eligible for a benefit with a real value of \$104 per month, while the majority will receive a token payment with a real value of \$41.60.

5. The proposal is substantially more expensive than the committee bill. Even though: (1) the committee bill protects existing elderly, while this means test proposal does not; and (2) the committee bill inflates the ALB annually, while the means test proposal does not, enactment of this means test proposal would cost nearly \$2 billion more than the committee bill over the next 50 years. Moreover, that cost would be born when the state could least afford it -- after the turn of the century, when oil revenues are projected to rapidly decline. It is important to the committee to develop an ALB alternative which phases out general fund obligations after the year 2000. As part 12 of this report discusses, while post-1999 costs under the committee bill are projected to be \$285 million, 21st century costs under the means test proposal would be roughly \$2.28 billion.

6. The committee has several concerns regarding the \$100 payment for which all elderly would be eligible. First, the committee does not know what that payment is intended to accomplish. It is doubtful that \$100 per month is a sufficient sum to allow any elderly to remain in the state who would

otherwise be financially required to leave. The payment may thus at once be too small to accomplish any social goal, and yet large enough to constitute a substantial drain on the state treasury.

Additionally, many elderly may view the \$100 payment as tokenism. If that is not the case now, it will certainly become so in the future when the real value of that payment shrinks to \$41 (2000) and \$23 (2010).

Finally, since the \$100 and \$250 payments are fundamentally different in purpose, the committee believes that they should be administered under separate programs. The \$100 payment is apparently intended as a residual ALB. On the other hand, the \$250 payment is a form of welfare. This payment, the committee believes, should be administered by the Department of Health and Social Services under the state's welfare laws. Otherwise, the state will, in essence, be creating two welfare bureaucracies -- one for Old Age Assistance, and one for the mis-named "longevity bonus."

7. Fewer people will meet the \$25,000 eligibility requirement as the years go by. Thus, by the year 2010, only 30% of Alaska's elderly will be eligible for this means test payment. Why, it might fairly be asked, are 80% of today's elderly in "critical" need of the higher payment, while only 30% will require the payment in years hence? For one who is currently denied the larger payment, or who may be denied it in the future solely because of inflation, this precise question will invariably be asked, and may be asked in the courts.

8. Finally, in requiring one year's residency in order to receive the \$250 means test payment, the proposal raises a substantial constitutional issue. The current ALB's one-year durational residency requirement is constitutional because the bonus is not dependent upon "need." Under both the federal and Alaska constitutions, if a program provides "the basic necessities of life," a 30-day residency requirement is the maximum constitutionally permissible. Memorial Hospital v. Maricopa County, 415 U.S. 250, 259 (1974); Shapiro v. Thompson, 394 U.S. 618 (1969). Generally, benefits which are accorded on the basis of the recipient's income tend to be viewed by the courts as involving "basic necessities." For example, in Jeffrey v. Colorado State Department of Social Services, 599 P.2d 874 (Col. 1979), the Colorado Supreme Court struck down the lengthy durational residency requirement of that state's old age pension program, and held that the program provided basic necessities of life. The state argued, unsuccessfully, that its program was more akin to an income supplement, rather than a form of welfare. The court, however, ruled that because the size of the pension was a function of the applicant's other income, a 30-day residency requirement was required:

[The state] attempt[s] to avoid the strict scrutiny - compelling state interest test mandated by Shapiro by characterizing the old age pension program as an 'annuity.' However, unlike true annuity or pension programs which are unaffected by a recipient's other income, the old age pension benefit is directly and proportionately reduced by the amount of other income. Thus, the characterization of the old age pension program as an "annuity" puts form over substance and

disregards the nature of the program, which is to fulfill basic needs and not to supplement separate income.

599 P.2d at 879. Emphasis added.

The means test proposal has been defended because of its high income limits. This does make the program different from that involved in Jeffrey, and the committee agrees that this defense could be made in good faith. To the committee, however, that is not enough. Early in the committee's deliberations, the committee agreed to develop a proposal which would avoid serious new constitutional issues and the threat of continued litigation. While any legislation which treats some people differently than others may result in litigation, the means test proposal raises a serious and substantial residency discrimination issue, and therefore does not meet the committee's goal. 7/

For these reasons, the committee does not believe that the means test proposal is a viable alternative to the existing ALB program.

The committee was also aware of the "stair-stepping approach," under which the ALB program is slowly phased out through an annual increase in the eligibility age. Under legislation which passed the House of Representatives during the

7/ Additionally, it should be noted that the issue will become more serious in future years. This is because while the income level is high at the outset, it shrinks dramatically, and in real value falls below the state's existing poverty level in the year 2008.

previous legislature, the eligibility age would begin to rise above 65 in 1991. Although no "stairstepping" proposal was ever advanced by anyone for formal committee review or action, the committee is aware of some continued interest in developing this concept outside of this committee's deliberations. The proposal thus warrants some comment.

First, the term "stairstepping" is a misnomer, since it connotes a gradual phasing out of the ALB program. In truth, the stairstepping approach causes the most abrupt program termination of any option considered, and also results in the most severe discrimination between groups of Alaskans. Under the stairstepping approach, if a person was born on or before June 30, 1925, the state would pay him or her \$250 per month for life. For persons born on July 1, 1925 and thereafter, the state would pay nothing. And, it is irrelevant whether that person is now an Alaskan. A current non-resident who is now 62 would receive \$250/month when he or she moved to Alaska, while a current 59-year old Alaskan would receive nothing. There is thus nothing gradual, or "stairstepped," about this process.

The stairstepping approach would be more expensive than the committee bill, 8/ and much of this added expense would be born after the turn of the century when the state can least afford it. See Section 12. Yet, despite its high cost, stairstepping would

8/ Assuming, of course, that the two had similar provisions dealing with the erosion of the real value of the bonus.

benefit fewer Alaskans. For example, some have assumed that participation in the annuity program is necessary in order for future elderly to benefit from the committee bill. This is not true. Under stairstepping, a person turning 65 in 1991 would receive no ALB whatsoever, while that same person would receive a 1991 ALB of \$222.61 under the committee bill, even if that person had never participated in the annuity program. Thus, for similar total costs, and substantially lower 21st century costs, the committee bill extends the benefits of the ALB program to many more Alaskans.

Most fundamentally, the committee believes that there is a need for future state participation in the building of retirement security that is not recognized in the stairstepping approach standing alone. Apart from the ALB, the principal form of non-need based assistance is, of course, Social Security. Yet Alaska's elderly receive the same Social Security payments as those who reside where the cost of living is much lower. Moreover, Alaska has a uniquely high percentage of elderly who are ineligible for Social Security because of a lack of wage-earning history. Thus, in one area of the state -- Northwest Alaska -- 66% of the region's elderly reported the ALB as their principal source of income.

As oil revenues decline, and economic activity in the state becomes more uncertain, it is entirely possible that the state's future elderly will find themselves in a more precarious position

than today. And, at that point, the state -- for these same economic reasons -- may be unable to help.

One obvious impact of abolishing the ALB program through "stair-stepping" is an increased Old Age Assistance case load. Certainly, when those near the poverty line are denied \$250 per month, they will simply turn to the welfare system, and the state will realize no net saving. Moreover, and as discussed previously, many ALB recipients who are apparently eligible for OAA and Medicaid have in fact not applied for these benefits. Over the years, the ALB program has been defended on the ground that it has enabled many Alaskan elderly to remain off the welfare roles. Statistics bear this out, indicating that many of those ALB recipients who are eligible for OAA and Medicaid have been able to remain off these programs because of the bonus.

For these reasons, stair-stepping by itself is also not being recommended to the legislature.

On the other hand, the principal advantage of "stair-stepping" is the protection which it affords those who are currently on the ALB program, and who have come to rely on both the Longevity Bonus and the permanent fund dividend to sustain themselves. The committee concluded that forcing Alaska's existing elderly to forego their Permanent Fund Dividend in order to assure continued receipt of the "target" Longevity Bonus might work a hardship on these older Alaskans. As a result, the committee decided to include in the bill a so-called "grandfathering" provision which allows those reaching age 65

before 1986 to take their Permanent Fund Dividend in cash and still receive a full Longevity Bonus for the remainder of their lives. The committee legislation, then, is intended to blend the most salutary aspects of both an annuity approach and "stair-stepping."

The virtue of an annuity approach is that it enables the state and each individual Alaskan to set aside funds now for those perhaps more difficult years ahead. It is a program designed to substitute private thrift for public largesse. The committee also believes that the permanent fund dividend is an appropriate source of funds for the annuity program. The purpose of the annuity program is much like the purpose of the permanent fund itself. Moreover, one purpose of the dividend program -- to give each Alaskan a stake in the management of the permanent fund -- will be enhanced if Alaskans' retirement security is at least in part dependent on wise stewardship of that fund.

Major Features.

1. Front-loading. The committee envisions that the legislature may add additional sums to individual annuity accounts. Under "front-loading," a person will receive an annuity account credit greater -- and perhaps substantially greater -- than the amount of cash he or she could have received. It is the committee's hope that the legislature will consider front-loading for each of the program's first three years.

The committee initially analyzed the annuity concept without front-loading. Even without front-loading, annuity payments eventually replace longevity bonus payments from the general fund. Nonetheless, the committee feared that because annuity payments were low in the early years, those Alaskans who are now near retirement age would not participate in the program. Moreover, general fund contributions did not begin to see significant reductions for about 10 years.

Front-loading provides a substantial incentive to individuals to forego immediate cash in favor of retirement security. While it costs more in the initial years, that cost is incurred in years in which oil revenues are expected to remain high. Moreover, general fund contributions to the ALB program taper off rapidly. In other words, because front-loading causes the maximum possible annuity payment to increase, residual longevity bonus payments decrease more rapidly. Thus, dollars invested in early years through front-loading result in a decrease in general fund obligations in later years.

Under the committee bill, substantial front-loading now would actually result in a net savings over the life of the ALB program -- at least in nominal dollars. Thus, if \$79 million were appropriated for front-loading over the next three years, that investment would result in a return of \$82 million in reduced ALB payments over the next 25 years. In constant 1986 dollars, the ultimate cost of investing \$79 million now is \$30 million.

Additionally, front-loading serves other important purposes which the committee believes warrant the cost in constant dollars:

(1) The committee bill will work only if Alaskans participate. If they do not, Alaska's future elderly may still place demands on the general fund; and

(2) A premium may fairly be placed on the current availability of funds. If \$1.00 of general funds front-loaded now returns 75¢ (in constant dollars) years hence, the fact that the general fund has that \$1.00 now, but may not have the 75¢ later, is of some relevance.

Whether front-loading extends beyond the three-year period envisioned by the committee depends on the availability of funds, actual participation rates, and the projected rate of return on subsequent front-loading investments. If front-loading has succeeded in creating substantial participation, continuation would seem unnecessary, since those Alaskans already in the annuity program would be unlikely to drop out. On the other hand, if participation is low, the legislature may wish to consider inducements other than front-loading.

The committee settled on a front-loading concept weighted in favor of older Alaskans. Several other options were also considered. The first was a per-capita contribution made to each Alaskan who chose an annuity credit. Under this option, the annuity accounts of those near retirement age did not increase enough to substantially increase the "maximum possible annuity."

Thus, it did not significantly reduce long-term general fund obligations. Nor did it satisfy the goal of providing the greatest incentives to those who may need them most.

To better accomplish this goal, the committee next considered a straight \$10 incremental increase in front-loading based on age: that is, participants would receive \$10 for each year that they were older than age 17 -- up to age 65. ^{9/} This option produced a better result in terms of reduced general fund obligations, but it still did not increase annuity payments fast enough to be a significant incentive -- to older Alaskans in particular -- to participate in the program.

Finally, projections were run on the option embodied in the bill: persons 18-34 years old would receive a base amount of front-loading in addition to the dividend -- for example, \$50. Those over 34 would receive a percentage increase (for example, 10%) for each year of age over 34, up to age 65. Under this option, front-loading increases on a curve rather than a straight line -- increasing dramatically as an individual approaches age 65. Thus, a \$50 base with 10% per year increases results in a 34 year old receiving \$50, a 50 year old \$211, and a 64 year old approximately \$800.

The incentive to join the program, then, increases dramatically as retirement age approaches. It is this aspect

^{9/} Thus, an 18 year old would receive \$10, a 38 year old \$210, and a 65 year old \$480.

which is most appealing to the committee, for the following reasons:

First, older Alaskans are most in need of incentives to participate. Because initial annuity payments are small, many may be tempted to take a cash payment which is larger than the annual annuity which it will yield. Then, years later, that person will suffer materially reduced benefits because of that short-sighted decision. On the other hand, younger Alaskans need not participate in the program every year in order to build a sizeable annuity. Based upon projections available to the committee, a 47 year old (in 1986) would be required to participate every year in order to achieve the target annuity when he reaches 65 in the year 2004 -- the year the ALB program disappears. Recognizing that financial circumstances may require a cash election in some years, and that some individuals may be ineligible for a dividend in some years, the committee concluded that additional incentives are appropriate beginning at age 35 in order to help ensure that the maximum possible number of Alaskans will achieve the target annuity.

Second, while older Alaskans will receive more at the outset, the front-loading given younger Alaskans will be invested for a longer period of time. To the extent that the percentage differential is commensurate with account earnings, the eventual return to both old and young will be quite similar.

Finally, this option actually costs less in front-loading dollars than the straight line approach -- even though the now-elderly receive larger amounts.

Two additional points regarding front-loading warrant note. First, and as discussed earlier, under the committee bill those who reach age 65 before 1986 do not participate in the annuity program because they are guaranteed a full longevity bonus for life. As a result, in 1985, there will be no front-loading for any individual over the age of 64. In future years, the incremental increase in front-loading will end at age 65, and those over age 65 will receive the same amount of front-loading as a 65-year-old.

Second, the committee bill envisions that the source of front-loading funds may be the earnings of the undistributed income account of the Alaska permanent fund. In past years, permanent fund earnings have exceeded the amount necessary to pay dividends and inflation-proof the fund itself. The resulting surplus comprises the undistributed income account, which has a current balance of \$557 million. That account itself yields annual earnings which are greater than that necessary to provide front-loading, and which are available for appropriation.

The committee concluded that these earnings are an appropriate source of funds for front-loading for one obvious reason: as with the basic structure of the annuity program itself, this aspect of the bill will devote current permanent fund earnings in a manner which will substantially decrease

general fund obligations in later and perhaps leaner years. Once again, however, only earnings are involved. It must be stressed that nothing in the committee bill in any way impairs the integrity of the permanent fund itself.

2. The 3% Escalator.

Since the beginning of the ALB program in 1972, the original \$100 payment has been periodically increased to its current \$250 limit. While that increase seems large, it has, in fact, roughly kept pace with inflation. If the ALB is retained, the committee believes that it is unreasonable to assume that no increase in the ALB will ever be made. The persistent erosion in the real value of the ALB would at some point become so severe that relief would be necessary. For example, assuming a 6% inflation rate, a \$250 ALB now will be worth only \$104 in 15 years.

There are two ways of dealing with the gradual erosion of the value of the ALB. The first is to leave the problem to future legislatures. The second is the approach taken in the committee bill, which provides a modest 3% annual adjustment intended not to precisely keep pace with inflation, but rather to provide certainty in the amount of the payment.

3. Administrative Costs of the Program. The committee bill provides that the legislature may appropriate funds from the annuity account to pay the administrative costs of the annuity

program. 10/ Thus, the costs of the program will be borne by the annuity participants, whether the funds are privately placed or not.

The bill states that administrative costs will be "equitably allocated" among annuity accounts; it is the committee's intent that an equitable allocation will take into account such factors as numbers of participants, age, and relative account balances.

4. Choice of Benefits. Most annuity programs offer participants a choice of options, such as joint and survivor benefits. The primary reason for survivor benefits in employment annuity programs is that among married couples there is often only one wage earner. Survivor benefits are thus available to insure that the dependent spouse is not left without income. Since the annuity program is available to both spouses, just as is the present longevity bonus program, the committee opted for simplicity and did not include a choice of benefits. 11/

5. Setting the Amount of the Longevity Bonus Payment. Section 8 of the bill provides that the longevity bonus payment -- for those who have not reached 65 before 1986 -- is determined by deducting from that payment the maximum possible annuity

10/ If the states chooses to place the funds with private carriers, any costs shifted to the carrier under the contract would also be paid from the annuity accounts.

11/ A death benefit for those who die prior to reaching age 65 has been included in the Senate State Affairs Committee substitute for SB 56.

available to a person who turns 65 in the year in question. The bill uses the annuity available to a 65-year-old because that annuity is the smallest available (among those who have received the maximum possible credits). A 75-year-old with the identical contribution of a 65-year-old will receive a larger annuity because his life expectancy is shorter, and his capital will be returned faster. Thus, some Alaskans will receive more than the target amount during the early years of the program, and no elderly Alaskans (with full participation) will receive less.

6. Residency Questions. The bill has no residency requirements for receipt of annuity payments. Permanent fund dividends are, of course, only available to Alaska residents -- so that an individual must be an Alaskan to contribute to an annuity account. 12/

7. Federal Income Tax Considerations. Currently, both the permanent fund dividend, and the ALB, are taxable as ordinary income under the Internal Revenue Code. The committee engaged tax counsel to determine whether the result would be any different under the committee bill. Specifically, the committee asked whether a person will be taxable on the cash he could have received as a dividend even though, under the new program, he is only credited with the right to receive a future annuity from the state. Counsel advised the committee that, because the annuity

12/ The longevity bonus program will still require that an individual be a one-year resident to receive a bonus.

program is unique, there is no legal precedent which provides a definite answer.

Based on analogous federal tax authorities, tax counsel believes that a crucial factor in determining whether or not an Alaskan receiving an annuity credit will avoid current federal income taxation is the amount with which the legislature "front-loads" the annuity credit in the year the credit is granted. If the legislature provides a substantial front-load to the annuity credit for a particular year, an Alaskan receiving a credit that year should not be subject to tax until annuity payments are actually made on retirement. However, if the legislature provides little or no front-loading in a particular year, there would be a substantial risk that those receiving annuity credits would be taxable immediately on the amount of cash they could have elected in lieu of the credit.

Tax counsel also advised the committee that available precedent does not provide firm guidance on the minimum front-load necessary to support deferred tax treatment of annuity credits. There is an example in the IRS regulations which suggest that a front-load of 25% or more of the annuity credit would be sufficient; however, tax counsel believes that a lesser amount may suffice. Because of this uncertainty, tax counsel suggests that if the committee proposal is enacted, it would be in the state's best interest to obtain an advance ruling from the Internal Revenue Service on the question.

The uncertainty surrounding the tax status of annuity credits, and the substantial risk of taxability when front-loading ends, did not weigh heavily in the committee's recommendation. This is because, at worst, Alaskans would be required to pay taxes on the amount of the dividend just as they do now. Moreover, the committee saw its job as finding an alternative to the ALB program which met the basic goals expressed in this report. It was not charged with simply finding a tax shelter.

Finally, apart from the potential taxability of a permanent fund dividend credited to an annuity account, two favorable tax aspects of the committee proposal should be mentioned:

1. All interest income credited to individual annuity accounts would, under current IRS regulations, be taxable only as it is paid out after reaching age 65; and

2. Front-loading credits would not be currently taxable.

8. Annuity Credits Are Not a Vested Right. The committee bill provides that an individual does not receive a vested or property right to an annuity payment until that payment is made. Funds must be appropriated annually by the legislature from the annuity account to make annuity payments. Although the clear legislative intent of the bill is to provide annuity payments to those who have participated in the program, the committee bill neither binds future legislatures nor creates a dedicated fund. Thus, the legislature may legally appropriate annuity funds for any public purpose. An individual's right to an annuity payment

prior to dispersal is an unfunded, unsecured promise of the state. Thus, a future annuitant is in no better legal position than any unsecured creditor of the state.

As a result, the bill is silent with regard to the garnishment of annuity credits. Prior to annuity payments, there is nothing to garnish or attach, nor anything that can properly be regarded as "income" or an "asset."

9. Protection of Alaska's Existing Elderly. As noted previously, persons who reach the age of 65 before 1986 will not be required to forego their permanent fund dividend in order to receive a \$250 per month Longevity Bonus, inflated 3% annually. The committee decided to integrate this aspect of "stair-stepping" because it concluded that many retired Alaskans have come to rely upon both the ALB and the permanent fund dividend, and -- since they are now retired -- would be unable to make adequate arrangements to mitigate the impact of an abrupt denial (or reduction) in either payment.

Under last session's House bill, those who had reached the age of 60 before 1986 would have received a full ALB for life, although the amount of that bonus would not be increased in future years. The committee considered and rejected the option of extending this protection to 60-year-olds for three reasons:

1. Assuming a retirement age of 65, those under that age will have 1-5 years to make necessary arrangements to accommodate either the loss of a cash dividend, or incremental reductions in the ALB payment. Current retirees, on the other hand, have

little or no ability to alter their financial condition. Thus, while any age group might be said to have some "expectancy" to both an ALB and a cash dividend, that "expectancy" is more immediate, and more critical, for existing retirees;

2. Exempting 60-year-olds from the ALB reduction of the committee bill would not simply postpone the inevitable financial disparity between two groups of Alaskans -- it would aggravate it. Under the House bill, the first reduction in payments would occur in 1991. Because of the growth in the "maximum possible annuity" by that time, the initial difference in monthly ALB payments between an exempt recipient, and a non-exempt recipient who did not forego his dividend, would be \$67.21 per month. Conversely, under the committee bill, differential payments will begin in 1986, and will initially be \$11.92 per month. The committee felt that if some smaller differential were felt immediately, the need to begin participation in the program now would be more apparent to non-exempt recipients. In other words, immediate "stair-stepping" may well encourage higher annuity participation, which in turn will reduce the actual differential treatment between exempt and non-exempt recipients; and

3. The ALB program cannot go on forever. Indeed, it has been a goal of the committee to develop a proposal which phases out general fund obligations near the turn of the century -- when oil revenues are predicted to dramatically decline. If the bill were to protect existing 60-year-olds, the committee projects that the state would still be making general-fund ALB payments of

\$74.9 million in the year 2000, and general fund obligations would not end until the year 2029. Moreover, extending the bill's protection to 60-year-olds would cost an additional \$330 million over the life of the program. In drawing the necessary dividing line between those who can continue to receive the full benefits of existing law, and those who cannot, economic feasibility plays an appropriate role. For the reasons above-stated, the committee believes that the line is best drawn at age 65.

10. Possible Participation Rates. The committee attempted to estimate likely participation rates for the legislation's annuity program. Currently, participation rates in certain voluntary employee retirement plans exceed 50%. There are, however, differences between those plans, and the annuity program established by the committee's bill. Under most employee plans, contributed funds can be withdrawn upon termination, or in case of substantial hardship. Under the committee bill, however, no benefits can accrue until retirement. Additionally, high participation rates in employee plans are, in large part, a function of intensive educational efforts which cannot be duplicated on a statewide basis -- particularly in Alaska. Finally, participation rates for employee plans may be irrelevant in predicting participation by the jobless and very poor.

On the other hand, with front loading, matching contributions which participants receive may be, at least for older Alaskans, substantially more than typical matching payments

by employers. Additionally, under any employee plan, an employee must dedicate a portion of his or her regular monthly salary -- each dollar of which may already have been budgeted for regular family needs. The permanent fund dividend, on the other hand, is an irregular source of income which (for some Alaskans) is not a component of the regular family budget, and hence more readily disposable.

Given these differences, and the unique nature of the annuity program established by this bill, the committee does not believe that any meaningful projection, or even range of projections, can be provided.

If participation rates are very high, by the year 2003 state Old Age Assistance payments may be substantially decreased. Indeed, it is conceivable that a successful annuity program could virtually eliminate the need for old age welfare payments. For example, by the year 2010, every elderly Alaskan who has fully participated in the program will be receiving a monthly annuity of \$1,047.88.

On the other hand, if participation is very low, the state may experience increased old age assistance obligations as the residual longevity bonus phases out.

The only way to guard against future increases in OAA clientele is either to maintain the existing ALB program -- an option which the committee believes is cost-prohibitive -- or convert the ALB itself into a form of welfare. Other options studied (including stairstepping) would not simply threaten, but

inevitably lead to higher OAA obligations. The committee bill, on the other hand, offers Alaska's future elderly at least the opportunity to ultimately avoid the need for OAA assistance -- an opportunity which at least some Alaskans will accept. In other words, even with modest levels of participation, the result would be better than under "stair-stepping."

11. Impact Upon Eligibility For Old Age Assistance and Medicaid.

If an elderly Alaskan earns \$586 or less per month, he or she is eligible to receive federal Supplemental Security Income and/or state Old Age Assistance. There are currently some 2,450 elderly receiving this assistance, and the average benefit is \$240 per month.

Elderly who are eligible for OAA are also eligible for Medicaid. Medicaid benefits are accessed by almost half of the OAA recipients, and the average non-nursing home benefit is \$2,500 per year.

If an elderly Alaskan earns less than \$900 per month, he or she is eligible for nursing home benefits under Medicaid. These benefits are substantial -- averaging \$135 per day, or \$50,000 per year for each individual.

Until 1984, and by virtue of a specific exclusion in federal law, ALB payments did not count as "income" in determining eligibility for SSI or Medicaid. See 42 U.S.C. §1982a(b)(2)(B). However, when the ALB program was changed in

-1984, Congress also amended the exclusion to protect only those who:

1. are 65 years of age on or before September 30, 1985; and
2. have 25 years of continuous residency in Alaska by that date.

This change in federal law has had the following effect on the SSI, OAA and Medicaid eligibility in Alaska:

1. Some 750 current recipients of OAA will experience a loss or reduction in benefits because they are now eligible to receive the ALB, but fall outside the amended federal exclusion. These individuals have not, however, suffered a net loss in cash benefits, since ALB payments have merely replaced previous OAA/SSI payments. While these individuals are the subject of discrimination, since they cannot retain both their ALB and their previous OAA/SSI benefits (as can long-time Alaskans), that discrimination is solely the product of federal law. If the state undertook to cure this discrimination by replacing lost federal SSI benefits, \$1.4 million would be required for FY 1986.

2. Some 314 of the 750 affected OAA/SSI recipients will also lose non-nursing home Medicaid coverage -- a benefit which averages \$2,500 per year. This is a substantial loss which is not compensated for by the ALB program. The amount of lost federal Medicaid benefits to these 314 individuals is only \$413,847 for FY 1986. The state could therefore compensate for these lost federal benefits at relatively small cost.

3. The most substantial impact of the recent federal law change is upon nursing home patients. 36 elderly Alaskans who are currently in nursing homes may lose their Medicaid nursing home coverage as a result of this change. To pay these individuals' nursing home costs entirely through state funds would require a \$720,000 additional appropriation in FY 1986.

The committee bill neither alleviates nor aggravates the problems associated with OAA/SSI benefit reductions, or reductions in non-nursing home Medicaid payments. Unless the legislature were to adopt a needs-based ALB program, virtually any option which the legislature might chose would leave the affected elderly in the same position as under current law. 13/

The committee proposal would, however, probably benefit existing nursing home residents. Under the bill, persons residing in a nursing home are ineligible to receive the ALB. This exclusion, the committee believes, is consistent with and furthers the intent of the ALB program. Its effect is to benefit existing nursing home residents who will lose access to the \$250 a month ALB, but at the same time will retain their eligibility for \$50,000 per year nursing home payments.

13/ Under current federal law, payments which are predicated on need are not counted as "income" for federal assistance purposes. Thus, the means test proposal discussed earlier may avoid the problems discussed in this section -- assuming that federal officials were willing to treat a \$25,000 income limit as truly differentiating the "needy" from the "non-needy."

12. Costs of Various ALB Alternatives. The committee has estimated the costs of various alternatives. Although population figures (and hence program costs) in future years are difficult to predict, several of the alternatives studied -- including the stair-stepping approach and the means test proposal -- envision general fund expenditures well into the next century. The committee felt that it was particularly important to at least estimate costs beyond the year 2000 for two reasons.

First, it has been a goal of the committee to develop a program which phases out general obligations after the turn of the century -- when oil revenues are projected to dramatically decline. Estimating post-2000 expenditures is thus particularly important.

Second, some options envision higher immediate investment in return for lower long term obligations. Others involve smaller near-term expenditures -- an attribute which is paid for in the years to come. A fair comparison, then, can only be made by looking at total expenditures over the life of each alternative.

Chart 1 indicates the costs of making continued ALB payments under four alternatives. This chart assumes that -- whatever program is chosen -- an escalation in the ALB payment will be made as the years go by. As the chart indicates, the cost of continuing the current, expanded ALB program is prohibitive. The second option, the "Annuity Program," reflects the committee bill without grandfathering Alaska's existing elderly. Under this

option, in order to receive the target amount, existing elderly would be required to forego their permanent fund dividends.

The third option -- the "Annuity Program w/1986 Stairstep" -- reflects the ALB costs of the committee bill itself. The "Stairstep" approach refers to last session's legislation, which would begin stair-stepping in FY 1991. Finally, projections on the means test proposal which assume escalation have not been run.

Assuming that the legislature provides a 3% per annum increase in the ALB payment, the ALB costs of the options considered are as follows:

Chart 1

ALB COSTS THROUGH 2034
WITH 3% ESCALATOR (in millions)

	<u>Nominal \$</u>	<u>Constant \$</u>	<u>Present Value</u> ^{14/}
Current Law	13,087	2,501	1,393
Annuity Program	964	605	496
Annuity Program w/1986 Stairstep	1,290	735	584
Stairstep	1,455	745	577
Means Test	N/A	N/A	N/A

14/ The term "Nominal \$" is self-explanatory. The term "Constant \$" refers to costs expressed in 1986 dollars -- assuming 6% annual inflation. The term "Present Value" refers to the amount of money which, if invested now, would endow the various options through the duration of each.

Conversely, if the legislature held the amount of the ALB constant over the years instead of providing a regulator escalator, the ALB costs of the option would be:

Chart 2

ALB COSTS THROUGH FY 2034
WITHOUT ESCALATION (in millions)

	<u>Nominal \$</u>	<u>Constant \$</u>	<u>Present Value</u>
Current Law	5,419	1,391	880
Annuity Program	619	432	369
Annuity Program w/1986 Stairstep	864	539	444
Stairstep	1,040	586	470
Means Test	3,199	945.9	634.9

In addition to the general fund costs of (1) continuing the current ALB for existing recipients, and (2) providing a gradually reduced ALB for new recipients, the committee bill envisions that individual annuity accounts will be "front loaded" with funds drawn from the earnings of the undistributed income account of the Alaska permanent fund.

Estimating the costs of "front loading" is a three step process. First, the committee assumed that the legislature would provide sufficient front loading to allow those 35 and younger to receive a \$50 base supplement, and those over 35 to receive a supplement which is increased 10% for each year of age up to 65. Second, the committee assumed that participation rates would be very low in younger Alaskans, and extremely high for those older Alaskans receiving the greatest front-loading. The cost of "front load payments" under those assumptions -- with and without

the grandfathering of existing recipients are reflected in Chart 3.

Finally, the effect of front loading is to more rapidly reduce the "target" ALB, and hence reduce general fund obligations. Thus, the net cost of any front loading must be offset by "ALB savings," which are also reflected in Chart 3:

Chart 3

EFFECT OF 3-YEAR FRONT LOADING
(in millions)

	<u>Nominal \$</u>	<u>Constant \$</u>	<u>Present Value</u>
<u>Annuity Program (3% Esc.)</u>			
Front-Load Payments	113	101	96
(ALB Savings)	<u>(126)</u>	<u>(69)</u>	<u>(31)</u>
Net Cost (Savings)	(13)	32	65
<u>Annuity Program (No Esc.)</u>			
Front-Load Payments	113	101	96
(ALB Savings)	<u>(91)</u>	<u>(57)</u>	<u>(46)</u>
Net Cost (Savings)	22	44	50
<u>Annuity & 1986 Stairstep (3% Esc.)</u>			
Front-Load Payments	79	71	67
(ALB Savings)	<u>(82)</u>	<u>(41)</u>	<u>(31)</u>
Net Cost (Savings)	(3)	30	36
<u>Annuity & 1986 Stairstep (No Esc.)</u>			
Front-Load Payments	79	71	56
(ALB Savings)	<u>(56)</u>	<u>(30)</u>	<u>(23)</u>
Net Cost Savings	23	41	44

The net costs (or savings) of front loading for any particular program can then be added (or subtracted) from the appropriate column of Charts 1-2. From that exercise, it is

apparent that front loading does not materially affect the cost ranking of any of the options considered.

Finally, under stair-stepping, those who do not reach age 65 by FY 1990 will receive no longevity bonus. Of those who are denied the bonus in the future, a portion will apply for state Old Age Assistance. As noted previously, a number of current ALB recipients are apparently eligible for OAA and Medicaid but have not applied because of the bonus. There is thus a segment of Alaska's elderly who are now eligible for OAA and Medicaid, and who might apply for benefits under those programs if the ALB were denied.

It is difficult to predict the number of elderly who would actually turn to state welfare assistance if and when the ALB program were terminated. Currently, one out of every 2.65 income-eligible ALB recipients actually applies for OAA. Under the "moderate low" scenario of Chart 4, one half of those elderly would apply for OAA. Under the "moderate high" scenario, two-thirds of the eligible elderly would apply for assistance once the bonus program were terminated. Cumulative costs, 15/ in increased OAA and Medicaid benefits, through the year 2010 under these two scenarios are as follows:

15/ The cost estimates in Chart 4 should be viewed as substantially equivalent to constant 1986 dollar estimates. Although they are technically nominal dollars, they assume no increase in OAA or Medicaid benefits as the years go by. If one assumes that OAA and Medicaid benefits keep close pace with inflation, these estimates would then better reflect constant

Chart 4

INCREASED OAA/MEDICAID COSTS THROUGH 2010
(in millions)

Moderate Low

81.3

Moderate High

150.2

It is possible that increased OAA costs would also result from the committee bill. Although, under the bill, the ALB is gradually phased out, rather than abruptly terminated, those new elderly who have not participated in the annuity program may eventually find themselves in need of welfare assistance. The degree of that problem, of course, is a function of participation rates -- which are difficult to determine. However, because -- under the committee bill -- the ALB is phased out, rather than abruptly terminated, 16/ and because a portion of Alaska's population will participate in the annuity program, the committee believes that -- even with low participation rates -- the impact of the bill upon old age assistance programs is likely to be less severe than under the stairstepping approach.

Finally, the committee looked at the cost of various options after 1999. As noted previously, it has been a goal of the

dollar costs.

16/ Thus under stairstepping, a person turning 65 in 1991 would receive no ALB whatsoever. On the other hand, under the committee bill, a person turning 65 in 1991, and who has not participated in the annuity program, will still receive a longevity bonus of \$222.61 per month.

committee to develop a longevity bonus program in which general fund obligations would be minimized as oil revenues declined. Chart 5 indicates the cost of stairstepping, the means test proposal and the annuity program with and without stairstepping, which would be incurred in the 21st century:

Chart 5

COSTS INCURRED AFTER YEAR 1999
(in millions: Nominal \$)

<u>3% Escalation</u>	
Annuity Program	69.9
Annuity Program w/1986 Stairstep	285.3
Stairstep	588.3
Means Test	N/A
 <u>No Escalation</u>	
Annuity Program	0
Annuity Program w/1986 Stairstep	128.4
Stairstep	291
Means Test	2,486.2

The Benefit Concept's Proposal

The committee investigated an approach proposed by Benefit Concepts, Inc. and Kidder Peabody & Co., Inc. The proposal is essentially an investment program for endowing the longevity bonus program. That is, a substantial investment (approximately \$350 million) would be made in the initial years of the program, and the return from that investment is estimated to be sufficient

to make the declining longevity bonus payments required under the committee's annuity approach. 17/

Benefit Concepts proposes that the state invest in single premium whole life insurance policies (SPL's) taken out on Alaska's elderly. The state would be the owner and beneficiary of the policies. Benefit Concepts' projections indicate that this type of investment would be superior to other options which they believe would be appropriate for such an investment plan, such as guaranteed investment contracts (GIC's), corporate bonds or government securities.

The Benefit Concepts proposal was analyzed by the actuarial firm of Johnson & Higgins at the committee's request. That firm concluded that (1) the costs of the program may be understated when compared with data used by OMB (see footnote); (2) should the state consider "endowing" the ALB program, it should not limit its choices to the low risk alternatives considered by

17/ Subject to available funds, the state could "endow" any program by investing enough cash to produce the revenue to pay the costs of the program. Indeed, the concept of "endowment" is implicit in the "present value" calculations made by the Office of Management and Budget for the longevity bonus alternatives analyzed. Two points deserve attention. First, in order to avoid dedicated fund problems, the income from any such investment would be deposited in the general fund, and subject to annual appropriation to pay program costs. Second, the assumptions used by Benefit Concepts in making their cost estimates differ in two important respects from the assumptions used by OMB. Benefit Concepts used different population projections, and assumed a different interest environment. Both these differences understate the cost of their proposal when compared with programs using OMB estimates. The committee, therefore, cautions against direct cost comparisons.

-Benefit Concepts, but should also examine other investment options; and (3) the primary advantage of the SPL approach over other low risk investments is the substantial tax advantage available to some insurance companies in providing this type of policy. These tax advantages are under scrutiny by the federal Treasury Department, and could well be eliminated through revisions to the Internal Revenue Code in the near future. It would be likely that an insurance company would insist on passing any tax changes through to the policy holder, thus removing the advantage of this type of investment.

The committee is unable to make a firm recommendation regarding this proposal to the legislature but believes that the concept may warrant further consideration by the state's financial experts.

The Alaska Pioneers' Home

On July 30, 1984, Governor Sheffield requested the committee to consider expanding its inquiry to include Alaska's Pioneers' Home Program. Because of time constraints, and the fact that the committee developed an alternative to the ALB program which has no application to the Pioneers' Home, the committee was unable to consider alternatives to this program in any depth.

The committee, however, shares Governor Sheffield's concerns over the program. Under AS 47.25.030, an individual must have resided in Alaska for 15 consecutive years, or 30 total years, in


order to be eligible for admission to the homes. Plainly, that requirement raises substantial constitutional questions.

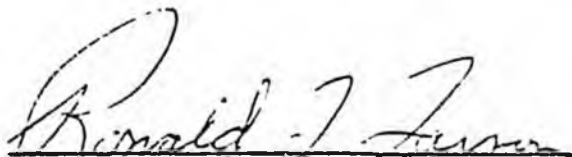
To date, no one has filed suit over the Pioneers' Home eligibility requirements. It is this committee's recommendation that the legislature develop and consider alternatives to the existing residency requirements during this session. The pressure and tension created by the Vest litigation has made it more difficult, over the past 2½ years, to develop a sound replacement for the ALB program. That experience need not, and should not be repeated for the Pioneers' Homes.

One alternative for replacing the current residency requirements warrants note. The legislature may wish to develop a point system that would determine eligibility for Pioneers' Home admission based upon the hardship that would be suffered if the applicant were forced to seek housing out of state. Location of home, family and friends would all be relevant to assessing that hardship; yet hard and fast residency rules would be avoided.

Conclusion

The undersigned members of the committee respectfully recommend that the legislature consider and enact the annuity proposal discussed in this report.


Governor Jay S. Hammond


Representative Ronald Larson

Bill Ray
Senator Bill Ray

Olga T. Steger
Olga T. Steger

~~Valmar M. Kerttula~~
Senator Valmar M. Kerttula

Robert C. Kallenberg
Robert C. Kallenberg

JAN 12 1985

IN THE _____

BY _____

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act amending the longevity bonus program and the permanent fund dividend program in order to establish an annuity program; and providing for an effective date."

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

* Section 1. FINDINGS AND PURPOSE. The legislature finds and declares that

(1) it is in the public interest to continue the longevity bonus program. However, as oil reserves decline over the years, it will become increasingly difficult to provide the benefits of the longevity bonus program through the general fund. As a result, that program must be phased out over the years;

(2) it is appropriate that individuals save for their own retirement, and it is also appropriate that the state establish both means and incentives for Alaska residents to set aside retirement funds. Accordingly, it is a purpose of this legislation to create an annuity program, and to encourage Alaskans to participate in that program by authorizing general fund supplements which would result in annuity payments which are larger than an individual could earn through private investment of the permanent fund dividend;

(3) many retired Alaskans have made their retirement plans in reliance on the availability of both the existing longevity bonus and the permanent fund dividend. Accordingly, the legislature finds that it is appropriate to continue both those programs for these individuals;

(4) the most suitable source of funds for the annuity program created by this Act are those permanent fund earnings currently distributed as dividends. This Act applies the annual permanent fund dividend of younger Alaskans to annuity accounts unless the individual alternatively elects to receive cash. In so doing, this Act will promote wise stewardship of the permanent fund by giving each participant a direct financial stake in its long-term profitability; and

(5) neither the longevity bonus program, nor the annuity program, should be viewed as a form of welfare. Other state and federal programs are available to meet the basic necessities of life, and amounts received by any individual under this Act are not calculated on the basis of need.

* Sec. 2. AS 43.23.005 is amended to read:

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

* Sec. 3. AS 43.23.005 is amended by adding a new subsection to read:

(d) A person who is eligible to receive a permanent fund dividend under this section, or who is authorized to claim a dividend on behalf of another under (c) of this section, may elect to receive cash in lieu of an annuity share. Alternatively, a person may elect to receive not less than 25 percent of his dividend in cash and the remainder as an annuity credit. A person exempt under AS 47.45.015(b) will automatically receive cash without the necessity of election.

* Sec. 4. AS 43.23.015 is amended to read:

Sec. 43.23.015. APPLICATION AND PROOF OF ELIGIBILITY. (a) The commissioner shall adopt regulations under the Administrative Procedure Act (AS 44.62) establishing the process for determining the eligibility of individuals for permanent fund dividends. The

commissioner may require an individual to provide proof of eligibility, and the commissioner may use other information available from other state departments or agencies to determine the eligibility of an individual.

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

I certify that

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

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

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

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

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

including the certification of residency required under (b) of this section.

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

(e) If a public agency claims a cash [PERMANENT FUND] dividend on behalf of an individual under (i) of this section, the public agency shall hold the dividend in trust for the individual. Money held in trust under this subsection shall be invested by the commissioner in accordance with AS 37.10.070.

(f) A minor or an incompetent individual may not maintain a claim against the state or any officer or employee of the state based either on the manner in which the parent, guardian, or authorized representative other than a public agency of the state managed or disposed of permanent fund dividends received on behalf of the minor or incompetent, or any election made or not made on that individual's behalf under AS 43.23.005(d).

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

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

(i) The permanent fund dividend application form shall be prepared to allow an applicant, other than a person exempt under AS 47.45.015(b), to elect to receive cash in lieu of a permanent fund dividend.

* Sec. 5. AS 43.23.035 is amended to read:

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

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

(c) If the commissioner determines that a permanent fund dividend should not have been credited to an individual's annuity account, the commissioner may after notice and opportunity for hearing, direct the commissioner of administration to debit the individual's annuity account for the amount wrongly credited. If the

credit is the fault of the individual, the debit must be made within 10 years. If the credit is the fault of the state, the debit must be made within three years.

* Sec. 6. AS 43.23.055 is amended to read:

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

(1) annually [PAY PERMANENT FUND DIVIDENDS FROM THE DIVIDEND FUND] make payments to exempt individuals under AS 47.45.015(b) and those who elect cash under AS 43.23.005(d);

(2) adopt regulations under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for claiming a permanent fund dividend or for making election under AS 43.23.005(d); the department shall set the time limit for applications for permanent fund dividends so that the number of eligible applicants is determined by October 1 of the year for which the dividend is declared and permanent fund dividends for a year are paid before April 30 of the year following the year;

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

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

(5) provide the commissioner of administration with information necessary to maintain individual annuity account records and administer the annuity program.

* Sec. 7. AS 43.23.065 is amended to read:

Sec. 43.23.065. EXEMPTION OF PERMANENT FUND DIVIDENDS. (a) Fifty percent of a cash payment received under AS 43.23.005(d) [THE ANNUAL PERMANENT FUND DIVIDEND PAYABLE TO AN INDIVIDUAL] is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual. An exemption is not available under this section for cash payments [PERMANENT FUND DIVIDENDS] taken to satisfy (1) child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 -- 47.23.220; (2) a debt owed by an eligible individual to an agency of the state, unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has not expired, or (3) court ordered restitution under AS 12.55.045 -- 12.55.051 or AS 12.55.100. A child support obligation under (1) of this section has priority over a debt owed to an agency of the state, and a permanent fund dividend may not be taken to satisfy a debt under (2) of this section until any portion of the dividend necessary to satisfy a child support obligation has been taken.

(b) When an individual owes a past due debt described in (a)(1) of this section, the department shall require that the individual take his or her permanent fund dividend in cash.

(c) The courts of this state may, as a condition of any civil judgment or restitution order under AS 12.55.045 -- 12.55.051 or AS 12.55.100, require the defendant to take his or her permanent fund dividend in cash.

* Sec. 8. AS 43.23.075 is amended to read:

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

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

(c) An individual who is denied assistance solely because permanent fund dividends credited to or received by the individual or by a member of the individual's household are counted as income or resources under federal law or regulation is eligible for cash assistance under the general relief assistance program (AS 47.25.120 -- 47.25.300). Notwithstanding the limit in AS 47.25.130, the individual is entitled to receive, for a period not to exceed four months, the same amount as the individual would have

received under other public assistance programs had there been no permanent fund dividend program.

* Sec. 9. AS 37 is amended by adding a new chapter to read:

CHAPTER 16: ANNUITY PROGRAM

Sec. 37.16.010. ANNUITY INVESTMENT FUND. (a) The annuity investment fund is established as a separate fund in the state treasury. Notwithstanding the provisions of AS 37.13.145, an amount equal to the permanent fund dividends taken as annuity credits under AS 43.23 shall be annually transferred from the dividend fund to the annuity investment fund.

(b) The legislature may appropriate either general funds, or earnings upon the undistributed income account in the Alaska permanent fund, to the annuity investment fund. Any funds appropriated under this subsection shall be allocated to the individual annuity accounts of those who are eligible to receive a dividend for that year and do not elect cash under AS 43.23.005(d). The allocation shall be made in the following manner:

(1) A credit will be made to the account of each individual who is at least 18 years old:

(2) The credit for each person from the age of 18 through age 35 is the base amount. The size of the base amount is determined according to the amount of the appropriation;

(3) The credit for persons over the age of 35 is the base amount, increased for each year of age over 35 up to and including the age of 65. The incremental increase for each year of age is a percentage over the credit for the prior year of age. That percentage shall be established with due regard for historical and projected permanent fund returns on investment;

(4) If a person elects to receive a portion of his dividend in cash under AS 43.23.005(d), the allocation to which he is otherwise entitled will be proportionately reduced.

(c) Money in the annuity investment fund shall be invested by the commissioner of revenue in investments authorized under AS 39.35.110. The commissioner of administration shall credit individual annuity accounts with earnings at a rate equal to the rate of interest earned by the annuity investment fund.

(d) The legislature may annually appropriate to the Department of Administration an amount sufficient to pay monthly annuity payments for the subsequent fiscal year under AS 37.16.030 from the annuity investment fund. Funds appropriated under this subsection shall be transferred from the annuity investment fund to the Department of Administration in order to meet the current demands of the annuity program.

(e) The legislature may annually appropriate from the annuity investment fund an amount sufficient to administer the annuity program. Any costs of administration funded under this subsection shall be equitably allocated among all individual annuity accounts.

(f) Notwithstanding AS 39.35.110 or (c) of this section, the commissioner of revenue may invest all or part of the annuity investment fund in commercial insurance contracts.

Sec. 37.16.020. ANNUITY PROGRAM. (a) The annuity program is administered by the commissioner of administration. The commissioner of administration shall adopt regulations necessary to implement the annuity program.

(b) The commissioner of administration shall maintain records of individual annuity accounts and make annuity payments under AS 37.16.030.

Sec. 37.16.030. PAYMENT OF ANNUITIES. (a) An individual with one or more annuity credits may receive an annuity upon reaching the age of 65.

(b) An annuity under this section is a monthly payment during the life of the annuitant. The amount of the monthly payment shall be based upon the principal and accrued interest in the person's annuity account and shall be paid in the form of a straight life annuity. The size of the annuity may not vary on account of sex.

(c) An individual need not be a resident of the state to be eligible to receive an annuity payment from his or her account.

(d) An annuity share may not be assigned, sold, or otherwise transferred from one individual to another. The right to receive an annuity under this section terminates upon the death of the person who is eligible for the annuity and does not pass to that person's estate.

(e) If a person dies prior to age 65, his account shall be equitably distributed among the annuity accounts of all individuals of the same age.

(f) An individual does not receive a vested property right in an annuity payment until that payment is made. Notwithstanding the provisions of this section, the state is not obligated to provide annuity payments for annuity credits granted under AS 43.23.005.

* Sec. 10. AS 43.23.095(6) is repealed and re-enacted to read:

(6) "permanent fund dividend" means a credit to an annuity account under AS 37.16, unless the individual is either exempt under AS 47.45.015(b) or elects cash under AS 47.23.005(d);

* Sec. 11. AS 47.45.010(a) is amended to read:

(a) A person who is 65 years of age or over, who resides in the state for at least one year immediately preceding application for a

longevity bonus under this chapter may apply to the commissioner of administration for qualification to receive a monthly bonus [OF \$250].

* Sec. 12. AS 47.45 is amended by adding a new section to read:

Sec. 47.45.015. AMOUNT OF BONUS. (a) Subject to (b) of this section, the monthly longevity bonus is equal to \$250, increased by three percent each year beginning in fiscal year 1987, minus the maximum possible annuity for a person 65 years of age under the annuity program (AS 43.23.110 -- 43.23.120), as determined by the commissioner of administration.

(b) A person who is 65 years of age or over prior to January 1, 1986 is exempt from the annuity program reduction established in (a) of this section.

* Sec. 13. AS 47.45.070 is amended to read:

Sec. 47.45.070. UNQUALIFIED PERSONS. An unqualified person is one who

(1) does not meet the age or residence requirements as provided for under this chapter;

(2) meets the age and residence requirements of this chapter but either is confined in a state or federal mental health institution or facility and is certified by the state as unable to manage personal affairs, or resides in a nursing home as that term is defined in AS 08.70.180(5); however, if that person, at the time of commitment or commencement of residence, provided the principal support of a spouse, the commissioner of administration may determine to pay the confined person's bonus to the person's spouse until the spouse is qualified for a bonus;

(3) is otherwise qualified but confined in a penal or correctional institution or facility; upon completion of sentence or upon the conferral of a pardon, parole or probation, the person may

make application; confinement outside the state shall be considered as residence in the state if a person was convicted and sentenced from a court in Alaska; revocation of parole or probation shall be cause for immediate disqualification until release from confinement is again effected;

(4) voluntarily leaves the state and remains absent from the state for a continuous period of more than 180 days.

- * Sec. 14. Section 11, ch. 38, SLA 1984 is amended to read:

Sec. 11. Sections 7 and 9 of this [THIS] Act [AND AS 47.45] are repealed June 30, 1985.

- * Sec. 15. AS 43.23.045(c) is repealed.

- * Sec. 16. This Act applies only to permanent fund dividends for years beginning after December 31, 1985.

- * Sec. 17. This Act takes effect January 1, 1986.

REPORT OF THE MINORITY MEMBERS OF THE GOVERNOR'S LONGEVITY
BONUS TASK FORCE TO THE FOURTEENTH ALASKA STATE
LEGISLATURE AND GOVERNOR BILL SHEFFIELD

February 1, 1985

TABLE OF CONTENTS

- I. INTRODUCTION
- II. DIFFERING PHILOSOPHIES
- III. ANNUITY PROPOSAL
 - A. Summary
 - B. Front-loading
 - C. 3% Escalator
 - D. Participation
 - E. Legality of the Proposal
 - F. Conclusion
- IV. STAIRSTEPPING PROPOSAL
 - A. Summary
 - B. Impact on Younger Alaskans
 - C. Why Protection for 60 Year Olds Instead of 65 Year Olds
 - D. Legality of the Proposal
 - E. Conclusion
- V. MEANS TEST PROPOSAL
 - A. Summary
 - B. Reasons for a Means Test Program
 - C. Legality of the Proposal
 - D. Conclusion
- VI. STATUS QUO PROPOSAL
 - A. Summary
 - B. The Bonus as a Priority for State Funding
 - C. Continuing the Status Quo in FY 86
- VII. THE IMMEDIATE IMPACT ON PUBLIC ASSISTANCE ELIGIBILITY
 - A. How to Protect the Bonus Income of Public Assistance Recipients
 - B. Exclusion of Individuals in Nursing Homes from Eligibility for the Bonus
- VIII. COST INFORMATION
 - A. Long Term Costs
 - B. Population Forecast
 - C. Cost of the Annuity Proposal
 - D. Cost of the Stairstepping Proposal
 - E. Cost of the Means Test Proposal
 - F. Cost of the Status Quo Proposal

I. INTRODUCTION

The purpose of this report is to provide a broad view of the issues involved in resolving the future of the longevity bonus program. Each of the options discussed before the committee has both its merits and drawbacks. The minority members of the task force believe a more complete discussion of the various proposals is necessary so that policy makers can decide which of the options is the best one for the State.

The options covered in this report are the annuity proposal, the means test proposal, the stairstepping proposal, and maintaining the current program.

II. PHILOSOPHICAL DIFFERENCES

Each of the options considered represents a significantly different philosophy about the future of the program.

The philosophy underlying the annuity proposal is that the current bonus program should be replaced with a retirement program for all of the state's citizens. The majority report states, "[t]he Committee believes that there is a need for future State participation in the building of retirement security ...". The annuity proposal presumes that individuals need encouragement from the State to prepare for their final years, even though a majority of Alaskans save for their retirement through private sector investments and employer retirement programs.

The annuity proposal also assumes that there is still a need to provide cash assistance to elders regardless of their length of residency. And finally, this proposal would require Alaskans to choose between the alleged short term benefits of the permanent fund dividend program and the supposed long term benefits of the annuity program.

In contrast, stairstepping emphasizes three facts: (1) the original program was always intended to end if the courts ever declared it to be unconstitutional; (2) there are a large number of older Alaskans who have counted the bonus into their retirement plans, despite its constitutional status; and (3) the State faces a declining revenue picture.

Stairstepping takes care of the needs of Alaska's elders at the expense of the needs of younger Alaskans. The proposal also assumes that younger individuals will provide for their own retirement security through the private sector or will be eligible for public assistance. Further, fiscal reality is faced by phasing out the program (and the general fund cost) entirely, not shifting the general fund cost to another funding source. And finally, stairstepping does not

take need into account because many Alaskan elders reject need as a criteria for receipt of a bonus.

The philosophy behind the means test proposal can be contrasted with both the annuity and stairstepping proposals. It assumes the longevity bonus program should continue, but provides a larger benefit to those who need it the most. In other words, even though we cannot afford to continue the current program at its present cost forever, poorer individuals need a larger bonus payment. Also, the means test proposal is crafted to mesh with federal entitlement programs so the State can provide more benefits for the poor overall with less State cash.

The last option, maintaining the current program, assumes that the bonus should continue in its present form because all Alaskans rely on it, regardless of whom it was originally intended to benefit. Also, it emphasizes the importance of the bonus and its priority for State funding in spite of declining revenues and competition with other statewide needs.

III. ANNUITY PROPOSAL

Although the committee majority favors the annuity, there are certain aspects of the proposal that the majority report does not discuss.

A. Summary

The annuity proposal has three basic features: (1) Continuing the bonus program for all persons age 65 by 1986, and paying these persons a benefit level of \$250 per month, plus 3 percent cost of living increase, for life. (2) Phasing out the bonus program for every one under 65 in 1986, and paying these persons an ever reducing benefit level until sometime in the early part of the next Century. (3) Creating a State supplemental retirement program for those under 65 by 1986 who choose to invest their permanent fund dividends in it.

B. Front-loading

The annuity bill allows the Legislature to increase the monthly annuity amount by subsidizing or "front-loading" the account with annual appropriations.

The purpose of front-loading is to increase the amount of the monthly annuity check and to provide a tax shelter for those who invest their dividends in the program. Both of these aspects are considered necessary inducements to increase participation in the program.

Though the cost of front-loading depends on the number of people who participate in the program, the task force majority estimates that at least \$79 million will be required in the first three years, in addition to the funding necessary to continue the phase out bonus program. Since the revenue picture is a clear obstacle to getting this funding from the general fund, the majority proposes that front-loading dollars come from the permanent fund reserve account. We do not support use of the reserve account to pay for the annuity program, since the appropriate uses of the account are already spelled out in statute.

It is also likely that front-loading will be necessary far beyond 1989. Tax counsel has advised the committee that tax shelters will only be available in the years in which the program is front-loaded.

It also seems likely that once the subsidizing begins, it will be difficult to end. This appears especially true if short term front-loading increases the annuity checks of elder Alaskans more than those of younger Alaskans, as the majority report indicates.

It is also possible that the Legislature could decide not to front-load the program at all.

The amount of the bonus each year is tied to the maximum annuity of a 65 year old. Since the maximum annuity will be smaller if it is not subsidized, the general fund cost of the phase out bonus program would be more than the majority report indicates.

C. 3% Escalator

The bonus and the cost of the program itself are increased dramatically by a 3% annual escalator. If this is really intended to be an automatic cost of living increase, it should be tied to some acknowledged COLA indicator. In the past, the bonus amount has been increased for valid economic reasons, not automatically.

D. Participation

The more Alaskans that participate in the annuity program, the more likely it is to succeed. We are skeptical, however, about the ability of the program to achieve a high and continuous rate of participation.

According to the Governor's Office of Management and Budget, 40% of current bonus recipients have annual incomes of less than \$10,000. According to the IRS, only 2% of taxpayers within this income category buy

IRAs even though it is to their advantage to do so. The statistics on deferred compensation plans are similar. Generally, people without spare cash do not put off receiving income because they cannot afford to. Under this proposal, bonus checks will be reduced each year, yet individuals will have to give up their permanent fund dividends in order to make up the difference.

By grandfathering in current ALB recipients, the bill does protect the current income of today's elders who are at least 65. But what about everyone else? According to the Permanent Fund Corporation's recent report on the dividend program, about 18% of adult recipients making less than \$26,000 annually used their 1982 dividend to reduce debt and another 22% used it to help with regular expenses. Clearly, these individuals are using their dividends to meet basic needs.

The annuity proposal asks the Alaskans who can least afford it to make a very difficult choice -- either they take the cash now to meet basic needs or they skimp on basic needs and defer their dividend for a promise of a future payment. And they have to trust that the program will still be in existence, and that they will live to 65.

Even those Alaskans who can afford the program may be reluctant to participate. Consider the following fact:

1. The tax deferrable status is uncertain even with front-loading because the IRS has not yet ruled on it. If this program is not considered a shelter by the IRS, there are many other tax shelters available in the private sector.
2. There are no survivor benefits. No matter how long you defer your dividend, if you die, your account is split up amongst all the other accounts in your age category. None of your heirs, nor your estate, have a right to any part of the balance in the account.
3. An individual can never liquidate or transfer his annuity account if he decides to change investment strategy. In other words, the money goes in, you cannot take it out.
4. Even if you live to 65, there is still no assurance that you will get any or all of your annuity. Because there is no vested property right, the State could either end the program

at any time without owing you any money or could pay you less than you originally invested.

E. Legality of the Proposal

In general, this proposal appears to be constitutionally sound. It should be noted, however, that the grandfathering of current bonus recipients would create a protected class of persons. Any law that establishes such a classification is subject to an equal protection challenge. However, it seems unlikely that such a challenge would succeed, since the classification is a rational one that furthers a legitimate public purpose. Please refer to the discussion in section IV - E for further information.

F. Conclusion

The question for policy makers is whether this particular annuity proposal makes good economic sense on both a State and a personal level.

IV. STAIRSTEPPING PROPOSAL

A. Summary

The stairstepping proposal continues the current program for five years and then begins to phase out the program by increasing the age of eligibility by one year, each year beginning in July, 1991. In effect, any one who is 60 or older by July of 1985 would qualify for a \$250 monthly bonus from age 65 until death.

B. Impact on Younger Alaskans

The proponents of stairstepping do not dispute the fact that the proposal protects today's elders, but does not protect those who will turn 60 after July of 1985. In fact, its purpose is to ensure that those who have counted on the bonus for their retirement years receive it throughout the rest of their lives. Since we do face a gloomy revenue picture, backers of this proposal believe the only affordable method of protecting the bonus for current elders is to discontinue the program for everyone else.

This should not be interpreted as a lack of concern for the retirement years of individuals under age 60. Instead, it reflects a philosophy of truly "substituting private thrift for public largesse", the alleged theme of the annuity proposal. It reflects a belief that there are plenty of savings options

available in the private sector for those individuals who are in a position to defer cash until some future time. Further, it reflects the belief that the annual permanent fund dividend can be used for this purpose now and that establishing a State annuity program to encourage saving the dividend for retirement is unnecessary.

Finally, it is important to reiterate that the original bonus program was intended to self-destruct if it was ever declared unconstitutional. The stairstepping proposal accomplishes this task while minimizing the harm which would otherwise occur.

C. Why Protection for 60 Year Olds Instead of 65 Year Olds

The group of Alaskans who do count on the bonus extends beyond those who are currently eligible to those who are about to become eligible. In general, it is accurate to state that the older and poorer an individual is, the more that individual needs both the bonus and the dividend.

It is true that any age cut off is arbitrary. The reason that age 60 has been chosen, however, is that those who are within five years of retirement are most in need of the bonus. Also, five years appears to be adequate to allow Alaskans in their 50s to prepare for a retirement without the bonus. At the very least, it gives these Alaskans plenty of notice that they can no longer expect to receive a bonus.

It should be noted that if the method of stairstepping is changed, the bonus of more Alaskans will be protected. For example, instead of waiting five years and then stairstepping one year each year, stairstepping could begin immediately but occur every other year. This would allow a much larger group of Alaskans to receive a bonus, but receipt would begin at a more advanced age.

D. Legality of the Proposal

Stairstepping creates two classes of people: those who receive bonuses and those who do not. Any law that establishes classifications is subject to an equal protection challenge under both the Federal and State constitutions. A challenge will not succeed, however, if the classifications embodied in the law are rational, and further legitimate governmental purposes. They do not need to meet the test of furthering a compelling State interest, as other laws do.

The stairstepping approach would not affect any constitutional right beyond general equal protection. It would provide benefits to newcomers who met the one year age requirement, and thus would not thwart the right to travel.

Stairstepping embodies a balance between recognition that our elders need the bonus on the one hand, and a perception that the State cannot continue to fund an ever expanding program indefinitely. In a recent case, the Alaska Supreme Court reaffirmed that the recognition of "grandfather right" and "hardship" are legitimate goals of the limited entry law under equal protection analysis. Kalmakoff v. State, Op. No. 2900 (January 11, 1985). It appears that court would find it legitimate for the Legislature to "grandfather" those who are presently receiving the bonus or expecting to receive it in the near future, since those individuals would suffer the most hardship if the program were suddenly ended. Individuals younger than 60 at the date of enactment would have considerable notice that the program would not be available to them at retirement, and would have some wage-earning years to adjust their expectations. Also, the State's revenue expectations are certainly a legitimate element in deciding what program should be enacted.

In sum, it appears that stairstepping is constitutional and would withstand any legal challenge.

E. Conclusion

Stairstepping continues to be a valid method of dealing with the current longevity bonus crisis. Though not all Alaskans would benefit from it, it is a fair, rational approach to a problem that does not have any easy solutions.

V. MEANS TEST PROPOSAL

A. Summary

Under the means test proposal, an individual age 65 or over may apply for a bonus of \$250 a month if his or her adjusted gross income was less than \$25,000 for the year prior to application. An individual who does not meet the income requirement, or who chooses not to apply for \$250, is eligible for a bonus of \$100 per month.

The \$25,000 income cap will allow 80% of Alaskan elders to continue to receive the \$250 monthly bonus. At the same time, the proposal would reduce payments to those elderly Alaskans for whom a monthly bonus is not a

financial incentive to remain in the State. These wealthier individuals will continue to be honored with a smaller monthly bonus that can be viewed as a psychological incentive to remain in Alaska.

B. Reasons for a Means Test Program

Many elder Alaskans have vehemently opposed creation of a "welfare" bonus program. These individuals feel that the bonus was originally intended to reward them for their contributions to Alaska and that it never was intended to be a form of public assistance. Indeed, some of these elders appear to prefer no future for the bonus program at all if that future is based on need.

Why then should the Legislature seriously consider a means test proposal? One important reason is the federal government's position on the impact of future bonus income on public assistance. Since federal officials insist that the \$250 bonus be counted when determining public assistance eligibility for some Alaskan elders, this proposal represents a direct method of cancelling the affect of the federal action. It would eliminate the loss of Federal Supplemental Security Income and Old Age Assistance for 750 Alaskans and non-nursing home medicaid benefits for 314 Alaskans.

Also, federal officials have indicated that they will be flexible in determining whether a program meets their definition of need. Though this proposal still allows 80% of current recipients to continue to get \$250 a month, federal officials believe it will fall within their definition.

The proponents of this proposal are not insensitive to the wishes of those elders who are opposed to any needs based program. Rather, they have attempted to craft a proposal that does alleviate the federal concern as well as the concern of these elders. Actually, this proposal would not implement a "welfare" program. It is only a needs based one in the sense that it does draw distinctions among elders based on income. But it is not a "welfare" program because it is not only for the very poor. All elders get a bonus and most elders get the same bonus; only the wealthiest 20% get less than the others.

Moreover, there are many elders who do not share the strong feelings about a potential "welfare" stigma. These individuals are not always the most vocal, but they are still important. This proposal emphasizes their importance and points out another method of dealing with the state's fiscal reality by giving a

larger bonus to those who need it the most.

C. Legality of the Proposal

The largest legal question posed by this proposal is whether the one year residency requirement would be valid for the \$250 bonus since its receipt would be based on a person's income. The United States Supreme Court has held that a one year residency requirement infringes on the federally protected right to travel when used in a program which provides the "basic necessities of life." Thus, in Shapiro v. Thompson, 394 U.S. 618 (1969), the court struck down a one year residency requirement for welfare assistance.

But every government program does not provide for "basic necessities of life." For example, in Hawaii Boating Association v. Water Transportation Facilities, 651 F.2d 661 (9th Cir. 1981), the court found that a one year residency requirement for reduced rates for boat moorage did not impair the right to travel, since the benefit involved was not significant.

While the courts have ruled that some programs clearly fall within the "basic necessities" definition (such as welfare, hospitalization, and federal low rent housing) and some programs are clearly outside of that definition (such as moorage fees, practicing law without taking a bar exam, running for city council and COLAs in workers compensation benefits), there is no precise dividing line. A strong argument could be made that this proposal does not provide a "basic necessity" and that the one year requirement is valid.

First, the State has other programs such as old age assistance and medicaid which are available to new Alaskans to provide basic necessities.

Second, the income cap requirement is not typical of a test for welfare eligibility. A welfare program test looks at a person's total assets (i.e., value of their home, boats, cars, etc.), but this proposal only looks at a person's adjusted gross income. The income cap provisions are more properly viewed as a retirement supplement to all but the most wealthy, rather than as a program to fulfill basic needs.

Finally, the purpose of the one year requirement would be to determine, without too much administrative burden, which elders are bona-fide Alaskans as opposed to mere visitors. Like students, older Alaskans tend to travel for extended periods. So long as seniors are not denied basic necessities such as medical care and funds for food and shelter if they are destitute, we

believe the one year requirement would withstand a challenge. The two year residency requirement for student loans was recently upheld for similar reasons.

D. Conclusion

This proposal is valid because it addresses the federal support of the public assistance question and because it favors those Alaskans who need the bonus the most. As such, it should be the subject of serious legislative consideration, even though some seniors have reservations about it.

VI. STATUS QUO PROPOSAL

A. Summary

This proposal would continue the present program -- \$250 monthly bonus to all one year residents at least 65 years old -- indefinitely.

B. The Bonus as a Priority for State Funding

This proposal asserts that the bonus in its present form is a major priority and should be continued for all Alaskans despite the high cost. If our revenues were not dwindling at an everincreasing pace, we would look more favorably on this proposal. We fear, however, that other statewide needs such as roads, water and sewer, education, and health care will suffer if the bonus program continues in its present form. There are simply not enough oil dollars to meet all our needs. Many other State programs reward and assist elder Alaskans. We hope to continue funding these programs as well as a less expensive bonus program.

C. Continuing the Status Quo in FY 86

Although we are uncomfortable with the notion of continuing the program in its present form forever, we feel strongly that if the Legislature and the Governor cannot reach agreement on any other proposals during this session, the current bonus program should be extended for another year. We do not prefer this approach, but we do not want to end the program altogether if 120 days is not enough time to reach consensus on this important issue.

VII. The Immediate Impact on Public Assistance Eligibility

A. How to Protect the Bonus Income of Public Assistance Recipients

Federal and State law treat the longevity bonus payment

in a manner that results in a devastating form of "legal" discrimination for many senior citizens on public assistance. These laws require the senior citizen to apply for the longevity bonus. Then, these same laws reduce or eliminate the amount of public assistance payments, dollar for dollar. The senior citizens on public assistance, unlike the middle and high income seniors who receive the longevity bonus on top of all other income, realize no material gain in their income from receipt of the longevity bonus. Additionally, many of the seniors also lose their entitlement to public assistance medical benefits that the longevity bonus payment does not replace. The poorest of our seniors -- those who need the bonus the most -- are actually harmed by the Alaska longevity bonus.

This "catch 22" affects all seniors who fall into either of two categories:

1. Seniors who reached the age of 65 during 1984 through September 30, 1985, and who did not meet the unconstitutional residency requirements.
2. Seniors who reach the age of 65 after September 30, 1985, irrespective of their residency. This category would include all seniors who would have met the unconstitutional residency requirements.

The effect of this "catch 22" is that the federal government saves federal funds and Alaska's longevity bonus program becomes a cash benefit program for the middle and upper classes of seniors who need the money far less than the poor.

There are only two ways to extend the benefits of the longevity bonus program to our low income senior citizens:

1. create a means test longevity bonus program, or
2. create a "hold-harmless" provision in State public assistance statutes to ensure that the State makes up the difference in federal benefits lost and continues to pay State public assistance to individuals effected by the "catch 22."

The cost to the State would be:

HOLD-HARMLESS COSTS - FY86

	<u>Already Budgeted</u>	<u>Required Fiscal Note</u>
Federal (SSI) Payment	0	1,400,000
State (OAA) Payment	760,000	0
Non-nursing Home Medical	0	413,847
	<u>760,000</u>	<u>1,813,847</u>

If the Nursing Home Exclusion Amendment (see "B", page 13) is not adopted, then the hold-harmless fiscal note should be increased by \$514,982 for FY86.

STATUTE CHANGES

One Statute change would be needed to hold recipients harmless under all currently proposed longevity bonus programs:

Amend Article 4, AS 47.25.430f, to provide that

- (1) The Department must increase the amount of an individual's Adult Public Assistance payment by the amount of any reduction in assistance provided under Title XVI of the Social Security Act which occurs solely because of considering payments made under AS 47.45 as available income; and
- (2) Notwithstanding AS 47.25.435, in determining eligibility for Adult Public Assistance and the amount of Adult Public Assistance payment, the Department will not consider any payment made under AS 47.45 as income available to the applicant or recipient.

Note: Regardless of which longevity bonus proposal is enacted, the hold-harmless provisions above must have an effective date of July 1, 1985. If the means test proposal is enacted, these hold-harmless provisions should sunset on the effective date of the new act to protect funding level of adult public assistance programs.

B. Exclusion of Individuals in Nursing Homes from Eligibility for the Bonus

The bonus can preclude a poor elder from receiving Medicaid assistance while in a nursing home even though it does not offset the cost of care in the nursing home (approximately \$4000/month). Also, the federal government requires that the individual apply for the bonus to get Medicaid. While the State could hold

these individuals harmless at a cost of \$514,982 (General Fund), the Legislature could make nursing home residents ineligible for a bonus.

It should be emphasized that this suggestion is not intended to harm nursing home residents or to judge their worthiness for receipt of a bonus. Rather, it is intended to protect such elders from the exorbitant cost of nursing home care. Irrespective of personal income before entering a nursing home, 97% of Alaskans in nursing homes in the state eventually turn to Medicaid to pay their bills.

VIII. COST INFORMATION

A. Long Term Costs

The following chart compares the cost of the four proposals in nominal dollars through fiscal year 2034. The chart shows that the general fund costs of both the annuity and stairstepping proposals eventually disappear whereas the means test and status quo proposals continue to need general funds. For the next 50 years, the total costs are as follows:

Annuity proposal	\$1.29 billion
Stairstepping proposal	\$1.13 billion
Means test proposal	\$3.20 billion
Status Quo	\$5.42 billion

The present value (the amount of funding necessary to endow the program today) of the cost of these proposals is:

Annuity proposal	\$620.02 million
Stairstepping proposal	\$496.88 million
Means test proposal	\$634.9 million
Status Quo proposal	\$879.78 million

B. Population Forecast

The cost chart is based on a forecast of Alaska's elderly population. This forecast may overstate the number of people who will actually participate in any of the proposed programs, at least in the near term. For example, the population forecast predicts 16,744 eligibles for FY 86, yet only 14,547 elders are currently receiving a bonus. Also, after 2010, the forecast assumes that the elder population remains constant, which does not account for death, migration, etc.

If the population projections do turn out to be too high, then the cost estimates are also too high.

-----MONTHLY PAYMENTS-----

-----POPULATIONS-----

-----ANNUAL COSTS-----
(millions)

FISCAL YEAR	--MEANS TEST BILL--		-----ANNUITY BILL-----			65 & OVER	65 POPULATIONS		65 BEFORE 1992	ANNUAL COSTS			MEANS TEST BILL
	MEANS TEST ALB	UNIVERSAL ALB	ALB TO PERSONS 65 BEFORE 1986	MAXIMUM POSSIBLE ANNUITY	RESIDUAL ALB		BEFORE 1986	AFTER 1985		ANNUITY BILL ^a	STAIRSTEP BILL ^{a*}	CURRENT LAW	
1986	\$250.00	\$100.00	\$250.00	\$11.92	\$238.08	16,744	15,039	1,705	16,744	\$75.2	\$50.2	\$50.2	\$50.2
1987	\$250.00	\$100.00	\$257.50	\$24.86	\$232.64	17,768	14,349	3,419	17,768	\$80.4	\$53.3	\$53.3	\$46.7
1988	\$250.00	\$100.00	\$265.23	\$39.05	\$226.18	18,769	13,660	5,109	18,769	\$85.0	\$56.3	\$56.3	\$48.6
1989	\$250.00	\$100.00	\$273.18	\$46.90	\$226.24	19,828	12,974	6,854	19,828	\$61.1	\$59.5	\$59.5	\$50.6
1990	\$250.00	\$100.00	\$281.38	\$56.27	\$225.11	20,913	12,293	8,620	20,913	\$64.8	\$62.7	\$62.7	\$52.4
1991	\$250.00	\$100.00	\$289.82	\$67.21	\$222.61	21,908	11,616	10,292	21,908	\$67.9	\$65.7	\$65.7	\$54.0
1992	\$250.00	\$100.00	\$298.51	\$79.93	\$218.58	22,849	10,943	11,906	20,839	\$70.4	\$62.5	\$68.5	\$55.3
1993	\$250.00	\$100.00	\$307.47	\$94.67	\$212.80	23,861	10,273	13,588	19,890	\$72.6	\$59.7	\$71.6	\$56.6
1994	\$250.00	\$100.00	\$316.69	\$111.73	\$204.96	24,799	9,606	15,193	18,823	\$73.9	\$56.5	\$74.4	\$57.7
1995	\$250.00	\$100.00	\$326.19	\$131.53	\$194.66	25,891	8,945	16,946	17,940	\$74.6	\$53.8	\$77.7	\$59.0
1996	\$250.00	\$100.00	\$335.98	\$154.20	\$181.70	26,863	8,291	18,572	16,873	\$73.9	\$50.6	\$80.6	\$59.9
1997	\$250.00	\$100.00	\$346.06	\$180.13	\$165.93	27,692	7,644	20,048	15,819	\$71.7	\$47.5	\$83.1	\$60.5
1998	\$250.00	\$100.00	\$356.44	\$209.76	\$146.68	28,657	7,012	21,645	14,934	\$68.1	\$44.8	\$86.0	\$61.3
1999	\$250.00	\$100.00	\$367.13	\$243.52	\$123.61	29,556	6,396	23,160	13,969	\$62.5	\$41.9	\$88.7	\$61.8
2000	\$250.00	\$100.00	\$378.15	\$281.92	\$96.23	30,511	5,799	24,712	13,031	\$54.9	\$39.1	\$91.5	\$62.5
2001	\$250.00	\$100.00	\$389.49	\$325.34	\$64.15	31,459	5,225	26,234	12,098	\$44.6	\$36.3	\$94.4	\$63.2
2002	\$250.00	\$100.00	\$401.18	\$374.26	\$26.92	32,440	4,676	27,764	11,193	\$31.5	\$33.6	\$97.3	\$64.0
2003	\$250.00	\$100.00	\$413.21	\$429.25	-	33,448	4,156	10,306	10,306	\$20.6	\$30.9	\$100.3	\$64.7
2004	\$250.00	\$100.00	\$425.61	\$498.97	-	34,483	3,666	9,438	9,438	\$18.7	\$28.3	\$103.4	\$65.4
2005	\$250.00	\$100.00	\$438.38	\$560.18	-	35,721	3,210	8,639	8,639	\$16.9	\$25.9	\$107.2	\$66.7
2006	\$250.00	\$100.00	\$451.53	\$637.63	-	37,130	2,788	7,850	7,850	\$15.1	\$23.5	\$111.4	\$68.3
2007	\$250.00	\$100.00	\$465.07	\$721.15	-	38,489	2,402	7,043	7,043	\$13.4	\$21.1	\$115.5	\$69.7
2008	\$250.00	\$100.00	\$479.03	\$820.68	-	40,309	2,050	6,359	6,359	\$11.0	\$19.1	\$120.9	\$71.9
2009	\$250.00	\$100.00	\$493.40	\$928.22	-	42,194	1,778	5,640	5,640	\$10.5	\$16.9	\$126.6	\$74.0
2010	\$250.00	\$100.00	\$508.20	\$1,047.88	-	44,012	1,449	4,950	4,950	\$8.8	\$14.9	\$132.0	\$76.1
2011	\$250.00	\$100.00	\$523.44	-	-	45,000	1,213	4,243	4,243	\$7.6	\$12.7	\$135.0	\$76.7
2012	\$250.00	\$100.00	\$539.15	-	-	45,000	1,003	3,669	3,669	\$6.5	\$11.0	\$135.0	\$75.6
2013	\$250.00	\$100.00	\$555.32	-	-	45,000	819	3,161	3,161	\$5.5	\$9.5	\$135.0	\$74.5
2014	\$250.00	\$100.00	\$571.98	-	-	45,000	658	2,698	2,698	\$4.5	\$8.1	\$135.0	\$73.5
2015	\$250.00	\$100.00	\$589.14	-	-	45,000	521	2,340	2,340	\$3.7	\$7.0	\$135.0	\$72.4
2016	\$250.00	\$100.00	\$606.82	-	-	45,000	405	1,997	1,997	\$2.9	\$5.7	\$135.0	\$71.3
2017	\$250.00	\$100.00	\$625.02	-	-	45,000	309	1,596	1,596	\$2.3	\$4.8	\$135.0	\$71.0
2018	\$250.00	\$100.00	\$643.77	-	-	45,000	231	1,320	1,320	\$1.8	\$4.2	\$135.0	\$70.7
2019	\$250.00	\$100.00	\$663.08	continues	-	45,000	169	1,078	1,078	\$1.3	\$3.2	\$135.0	\$70.4
2020	\$250.00	\$100.00	\$682.98	to	-	45,000	114	866	866	\$0.9	\$2.6	\$135.0	\$70.1
2021	\$250.00	\$100.00	\$703.47	increase	-	45,000	76	686	686	\$0.6	\$2.1	\$135.0	\$69.9
2022	\$250.00	\$100.00	\$724.57	-	-	45,000	48	533	533	\$0.4	\$1.6	\$135.0	\$69.6
2023	\$250.00	\$100.00	\$746.31	-	-	45,000	31	407	407	\$0.3	\$1.2	\$135.0	\$69.3
2024	\$250.00	\$100.00	\$768.70	-	-	45,000	18	304	304	\$0.2	\$0.9	\$135.0	\$69.0
2025	\$250.00	\$100.00	\$791.76	-	-	45,000	10	222	222	\$0.1	\$0.7	\$135.0	\$68.7
2026	\$250.00	\$100.00	\$815.51	-	-	45,000	5	150	150	\$0.0	\$0.4	\$135.0	\$68.4
2027	\$250.00	\$100.00	\$839.97	-	-	45,000	3	100	100	\$0.0	\$0.3	\$135.0	\$68.1
2028	\$250.00	\$100.00	\$865.17	-	-	45,000	1	63	63	\$0.0	\$0.2	\$135.0	\$67.8
2029	\$250.00	\$100.00	-	-	-	45,000	-	41	41	\$0.0	\$0.1	\$135.0	\$67.5
2030	\$250.00	\$100.00	-	-	-	45,000	-	24	24	\$0.0	\$0.1	\$135.0	\$67.2
2031	\$250.00	\$100.00	-	-	-	45,000	-	13	13	\$0.0	\$0.0	\$135.0	\$67.0
2032	\$250.00	\$100.00	-	-	-	45,000	-	7	7	\$0.0	\$0.0	\$135.0	\$66.7
2033	\$250.00	\$100.00	-	-	-	45,000	-	4	4	\$0.0	\$0.0	\$135.0	\$66.4
2034	\$250.00	\$100.00	-	-	-	45,000	-	1	1	\$0.0	\$0.0	\$135.0	\$66.1

NOTES:

TOTAL COSTS, 1986-2034:	\$1,287.0	\$1,131.0	\$5,418.9	\$3,199.2
CONSTANT 1985 DOLLARS, 1986-2034:	\$764.38	\$625.01	\$1,391.12	\$945.9
PRESENT VALUE, 1986-2034:	\$620.02	\$496.88	\$879.78	\$634.9

* Persons 65 before 1986 grandfathered (i.e., stairstepping starts in 1986). Annual costs include three years of "front loading" (\$25.2 in '86, \$26.5 in '87, and \$27.7 in '88).

** Persons 65 before 1992 grandfathered (i.e., stairstepping starts in FY 1992).

Although we think it is important to point out this data limitation to policy makers, we do not suggest that another set of data be used. Rather, we wish to only point out the conservative nature of the projections.

C. Cost of the Annuity Proposal

This particular chart shows the cost of the annuity program if an average participation rate of 30% is achieved, if 100% of each PFD check is deferred if the Legislature chooses to subsidize the program for the first three years, and if the annuity investment achieves a 3% real rate of return. The actual cost of the annuity program depends on several variables not easily predicted, in addition to population. The value of the dividend each year, the amount of subsidy provided each year, the cost of administering the program, and the real rate of return on the money invested all affect the overall cost of the program.

For example, if front-loading is provided every year and all other assumptions remain the same, the additional 50 year cost would be \$1.95 billion. Every time a variable is changed, the cost estimate also changes.

D. Cost of the Stairstepping Proposal

The stairstepping cost is based on the Adams proposal. If stairstepping began immediately, but the age of eligibility was only increased every other year, the cost of the program would be \$1,641.6 billion.

E. Cost of the Means Test Proposal

It is important to point out that under this proposal, more elders get the higher bonus until FY 2000. At that time, the percentage switches, since the value of money erodes over time.

F. Cost of the Status Quo Proposal

The cost of extending the current program for one year only would be \$0.2 million.

1986 Ballot Measure No.3

Questions and Answers About Proposed Longevity Bonus Alternatives

September 1986

Division of Strategic Planning

OMB

STATE OF ALASKA
BILL SHEFFIELD, GOVERNOR

STAFF PAPERS AND REPORTS

OFFICE OF MANAGEMENT AND BUDGET

QUESTIONS AND ANSWERS
ABOUT PROPOSED
LONGEVITY BONUS ALTERNATIVES

By Gregg Erickson

September 1986

Division of Strategic Planning
Office of Management and Budget
State of Alaska

CONTENTS

Introduction. -----	page 1
Questions and Answers About Proposed Longevity Bonus Alternatives. -----	page 2
<i>Appendix A: General Fund Costs of Proposed Bonus Program Alternatives, Fiscal 1988-2005.</i> -----	page 14
<i>Appendix B: Ballct Measure No. 3, Advisory Vote On Longevity Bonus Annuity Program.</i> -----	page 15
<i>Appendix C: Chapter 99, Session Laws of Alaska, 1985, An Act Relating To A Longevity Bonus</i> -----	page 16

Introduction

In November 1986 Alaska's voters will be asked to advise lawmakers on the future of the Alaska longevity bonus program. The voter's pamphlet prepared by the Division of Elections contains a description of the ballot measure, including *pro* and *con* statements. This report provides a more detailed analysis of the alternative proposals, and why the legislature decided to put the matter before the electorate.

Gordon S. Harrison
Associate Director
September 1986

QUESTIONS AND ANSWERS ABOUT PROPOSED LONGEVITY BONUS ALTERNATIVES

What is the Alaska Longevity Bonus?

The bonus program pays \$250 per month to almost every Alaskan resident who is 65 or older and who has lived in the state for the one year immediately preceding the date of application.

How long has the state been making these payments?

The program was established in 1972, and the first checks were sent out in January of 1973. Initially, the monthly check was \$100, but increases were granted in 1976, 1978, 1980, and finally in 1981, when the present level of \$250 per month was established. Until 1984, eligibility was restricted to persons who were present in Alaska during territorial days, and who had 25 years continuous residency in Alaska. In 1984, however, the residency requirement was reduced to one year, opening the program to most elderly Alaskans.

Isn't it pretty unusual for a state to pay its residents money just because they happen to be above a certain age?

Alaska is the only state where age alone entitles a person to a cash benefit, but it is quite common for non-cash benefits or various subsidies to be awarded solely on the basis of age. For example, persons 65-and-over are entitled to an additional federal income tax deduction, and many states allow property tax credits to the elderly.

What purpose was the bonus supposed to serve?

It was to provide elderly, longtime Alaskans with "an incentive to continue uninterrupted residency in the state." In 1972, only 2.3 percent of all Alaskans were 65 years of age or older, compared with 10 percent for the nation as a whole. The 1972 legislature concluded that the high costs and rigors of Alaska life were forcing "pioneers...to live out their retirement years in areas far away from the land they loved and nurtured,...[thus] depriving future generations of Alaskans of the benefits of their wisdom and experience." The lawmakers went out of their way to emphasize that the payments were not to be considered as any "form, type or manner of public relief," but rather a reward for hardships suffered during territorial days and an incentive to remain in the state.

If the purpose of the bonus program was to keep oldtimers from leaving, why did the state open the program to newcomers in 1984?

In April 1984, in the case of *Vest v. Alaska*, the Alaska Supreme Court ruled that the residency requirements of the bonus program violated the equal protection provisions of the Alaska and U.S. constitutions. Rodney Vest, the plaintiff, had

established residence in Alaska in April 1959. Under the original law, Vest would never have been eligible to receive the bonus because he arrived in the state three months after it ceased to be a territory. In 1982, at the age of 67, Vest argued that it was unfair and unconstitutional to deny him the payments just because he was a relative newcomer.

The court agreed, explaining that "[i]t is [the] supposition that living in territorial Alaska makes an individual entitled to special *legal* stature that is impermissible. The federal Constitution prohibits states from making such determinations. The basic predisposition to take care of one's own -- and no one else's -- is no longer a permissible goal for a state that has joined the federal union." The court did not order the state to pay Mr Vest the bonus. Instead, it struck down the entire program. With the final Supreme Court decision in the Vest case coming in early April of 1984, the legislature had to produce some sort of constitutional replacement for the bonus in the final two months of the session, or see the program expire altogether.

Even though it never directly benefited more than about two percent of the state's population, the residency-based bonus program had enjoyed broad political support. Sudden financial dislocations to the 10,000 elderly receiving the bonus in early 1984 would not have been desirable under any circumstances; legislators had no trouble agreeing that it was particularly undesirable in a year when 51 of the 60 legislative seats were up for election. Although a number of other approaches were proposed, legislators soon decided that it was better to extend the bonus to the 5,000 elderly not then receiving the entitlement, than to cut off, "cold turkey," the 10,000 who were. A bill was passed which re-established the bonus as a program for almost everyone over 65 with one year of Alaska residency. (To avoid loss of federally funded welfare benefits, the legislature later removed the eligibility of persons in nursing homes.)

The new law was to be temporary, and by its own terms was to be repealed in June of 1985, though the next legislature put that date off into the indefinite future. A special committee was established, chaired by former Governor Jay Hammond, to report in early 1985 on the feasibility of replacing the bonus "with an annuity program, a needs based program, or a longevity program." Establishment of the Hammond committee and the limited life assigned to the newly universalized bonus reflected the view that the fundamental changes in the bonus program forced by the courts and growing costs required a major rethinking of this part of the state's policy toward the elderly.

How much additional cost resulted from opening the program to everyone 65-and-over?

The program cost \$27.5 million in fiscal 1983, the last full fiscal year of the residency-based program; in the first full fiscal year of the universalized program (FY 85) the cost was \$43.1 million, a 57 percent increase. Costs of the universal program (which we still have) are currently growing at a rate of about 6 percent per year. Some evidence suggests that the availability of the bonus has caused a

slight increase in elderly migration to Alaska, mostly by individuals with adult children in the state. But even without this effect other demographic factors suggest that the number of 65-and-over Alaskans will get larger, even if the state as a whole loses population. Unless there are program changes, OMB estimates that the bonus's share of the state's general revenues will grow, due to the combination of declining spending elsewhere and an expanding elderly population, from about 1.8 percent in fiscal 1986 to the neighborhood of 4 percent in fiscal 1990. The prospect of this fiscal growth has forced politicians to search for alternatives to the current bonus program.

What alternatives have been considered?

More than a dozen proposals have been advanced, but in general there have been four different approaches.

1. Phase-out the bonus over a relatively extended period, either by gradually reducing the monthly benefit (say, by \$25 per year), or by progressively raising the eligibility age. The latter approach was sometimes described as "stairstepping," and in 1985 was generally the approach taken by the House of Representatives
2. Transform the bonus into a welfare program. Only those elderly able to demonstrate "need" in relation to some measure of wealth or income would receive payments.
3. Two plans were advanced that would require recipients to provide some sort of public service work to maintain eligibility for the bonus, but would otherwise leave the universal elderly benefit unchanged.
4. Gradually replace the publicly funded bonus payment (which would be phased-out over a period of years) with the proceeds of an individually purchased annuity. (An annuity is a contract which guarantees the holder regular payments under specified circumstances, for example monthly payments after the holder reaches a certain age.) Funds for purchase of the annuity contract would come from the individual's own permanent fund dividend. Those who chose to keep their dividend would receive no annuity payments and after the phase-out, no bonus payments either.

The Hammond committee recommended a type of annuity plan tied to the Permanent Fund dividend, although a minority on the committee favored either a more straightforward phase-out of the bonus or its transformation into a public assistance program with a "needs" test for eligibility. In 1985, legislators were able to agree on phasing-out the bonus as a universal entitlement for elderly Alaskans, but could not agree on how to accomplish that objective.

The House supported a relatively uncomplicated phase-out, accomplished by restricting eligibility to individuals who reach 65 before January 1, 1988. Costs would begin to decline in 1988 as mortality gradually reduces the size of the eligible population. The Senate favored a version of the Hammond committee's annuity plan. The Senate would also phase-out payments from general revenue, though not as quickly as the House proposal. Costs under the Senate plan would continue to increase until about 1994. Individuals who had opted to enroll in the annuity part of

the Senate plan (and had given up their dividends) could eventually receive annuity payments comparable to the old bonus payments.

After the two sides had been deadlocked for several weeks, they adopted both ideas into law, but made neither effective until the other is repealed. The idea was that one or the other plan would be repealed in 1987. To help the 1987 legislature decide, the advice of the voters will be solicited at the November 1986 election. Until the legislature acts again the current bonus program -- with its growing population of beneficiaries -- remains on the books.

So in November voters will be choosing between the Senate's plan and the House's plan?

Not exactly. The ballot measure will briefly describe both proposals, and note that both were adopted into law but that neither will take effect unless the legislature chooses one of them. Then it will ask "Should the legislature adopt the annuity option?" -- yes or no.

But if a majority votes "no" on the Senate's annuity plan, won't the House plan be put into effect?

Not necessarily. Although the legislature's actions imply that a "no" vote is a vote for the House plan, the members of the 1987 legislature may see it only as a vote against the Senate approach. Even an unambiguous "yes" vote does not insure that the legislature will act to put the annuity phase-out plan supported by the Senate into effect. This is only an advisory ballot; regardless of what voters may intend by voting "yes" or "no," legislators are legally free to disregard the results of the advisory ballot.

Why didn't the legislature put both options directly before the voters, and have whichever plan the voters approved become law?

It is not clear why the legislature decided to put the question to the voters as a "yes" or "no" on the Senate proposal rather than a choice between the alternatives on which the legislature deadlocked. We do know why the vote is advisory only: According to attorneys, allowing the voters to actually choose which proposal becomes law would be an unconstitutional and illegal delegation of legislative power.

Who actually wrote the language of the ballot measure?

The legislature included language for the ballot measure in the 1985 act. The language that will appear on the ballot is slightly different, having been revised for clarity by the lieutenant governor, the state's chief elections officer. The wording that will appear on the ballot is found in Appendix B. The original ballot language can be found on page 12 of the current longevity bonus law, reprinted here in Appendix D.

How would the bonus be changed if the 1987 legislature adopts either of the two proposals?

Let's start with the House proposal since it is simpler. If you were born before January 1, 1923, the bonus program will continue for you as if nothing had changed. If you were born on or after that date you will get nothing. Looking at it another way, if you turn 65 before 1988, you are grandfathered "in;" if your 65th birthday comes in 1988 or anytime after, you are "out."

Among the effects of the House plan is that everyone getting the bonus now will remain eligible in the future. Another effect of this arrangement is that the minimum age to qualify for the bonus will increase by one year each year. At the beginning of 1989, eligibility will be restricted to those 66 and older; at the beginning of 1990, the only persons eligible will be age 67 and older. By the year 2034 the eligibility age will have risen to 111. Somewhere around that time the last eligible individual in Alaska will have died, and the program will end.

What about a person born before 1923 who just arrived in Alaska? Do newcomers get the bonus too?

Yes, after they have lived in Alaska for the required one year. A person arriving in Alaska in 1990 at age 70, for example, would be eligible sometime in 1991, after he or she had established residency by living here for one year.

How about an eligible person who leaves Alaska and then returns?

Before receiving each month's check, recipients certify with a postcard that they are physically present in Alaska. Bonus recipients who plan to be absent from the state for more than 30 days are required to notify the state so that payments can be stopped. Payments immediately resume when the person returns if the total time voluntarily spent out of state during the preceding 12 months was less than 90 days. If the total voluntary absence is greater than 90 days the individual is treated like any other newcomer, and must wait a full year to again qualify.

Until 1985, the limit on voluntary absences was 180 days. Analysts have long noted a seasonal cycle in bonus payments with peaks occurring in late summer and troughs in late winter which were believed to reflect increased travel outside the state during the colder months. After shortening the length of a permitted absence, several hundred otherwise eligible recipients dropped out of the program, suggesting that some elderly Alaskans may be willing to forgo the financial benefits of the bonus in favor of maintaining the practice of prolonged winter trips out-of-state.

Would this 90 day limit also apply under the Senate plan?

Yes. With respect to people born before 1923 (e.g., people who reach 65 before 1988) the two proposals and the current law are identical -- those people are grandfathered and for them it will be as if the law were never changed. People born after 1937 (e.g. people now younger than 49) would also be treated identically under either the House or Senate proposal -- they will never get a bonus.

The differences between the Senate and House plans must be particularly important for people born between 1923 and 1937, since the choice doesn't seem to matter for anybody else.

The only individuals with a direct personal stake in the choice between the two alternatives for phasing-out the bonus are people born between 1923 and 1937, i.e., people who are now between age 49 and age 63. Under the House plan they will never receive a bonus. Under the Senate plan they would receive a bonus after they turn 65, but the amount of the bonus check would be reduced each year in step with the increasing maximum possible annuity payment obtainable under the Senate annuity proposal.

In a general sense, of course, everyone has a stake in the choice of plan, as citizens in a more or less just society and as taxpayers whose money is redistributed to the elderly by means of the bonus program.

What is "the maximum possible annuity payment" under the Senate plan, and how does it relate to the bonus that the Senate plan would give to persons who become 65 in 1988 or later?

The Senate plan would create an optional annuity purchase program funded with permanent fund dividends. If you chose the maximum level of participation in the program (which would be available only to those born in 1923 or later) you would receive no dividend. Instead, the state would use your money to establish an annuity account on your behalf. Interest earned on your investment would accrue to the account, and on reaching age 65 the money in the account would be used to purchase an annuity, probably from a large insurance company, with you as the beneficiary. For the rest of your life you would get a fixed monthly annuity check. The amount of the declining bonus received by persons with birth dates in 1923 or later is determined by amount of the maximum possible monthly straight life annuity payment for a person giving up all possible permanent fund dividends, subtracted from \$250. The idea was that the combined bonus and annuity of those who made the maximum contributions would never fall below \$250 per month.

For example, a person turning 65 in 1988 (i.e., born in 1923) would have had the opportunity to give up only one dividend, of about \$600. The maximum straight life annuity that could be purchased with \$600 for a person age 65 would be about \$5 per month, so the bonus in 1988 for persons turning 65 in that year would be about \$245 per month.

A person turning 65 in the year 2000 (i.e., someone now age 51) could have contributed a maximum of 13 full permanent fund dividends. OMB estimates that the maximum annuity obtainable from this investment in 2000 will be about \$164 per month. Thus the bonus received in 2000 by everyone between the ages of 65 and 77 would be \$86 (\$250 minus \$164). This bonus would be received regardless of whether or not the individual had participated in the proposed annuity program. As shown in the table below, sometime around 2003, the maximum annuity will exceed \$250 per month. Thereafter no bonuses will be paid to persons born in 1923 or

later. The table is necessarily based on guesswork concerning future permanent fund dividends, annuity investment earnings, and the implementation of the annuity mechanism in the Senate bill. The exact amounts will not be known until a few months before they are paid.

Table 1.
SENATE ANNUITY PLAN
Estimated Monthly Bonus Payments For Persons
Reaching Age 65 in 1988 or Later (Born in 1923 or Later)

<u>Fiscal Year</u>	<u>Maximum Monthly Annuity</u>	<u>Monthly Bonus</u>
1988	\$5	\$245
1989	\$12	\$238
1990	\$29	\$231
1991	\$27	\$223
1992	\$36	\$214
1993	\$46	\$204
1994	\$57	\$193
1995	\$70	\$180
1996	\$85	\$165
1997	\$101	\$149
1998	\$120	\$130
1999	\$141	\$109
2000	\$164	\$86
2001	\$190	\$60
2002	\$219	\$31
2003 and after	further growth	\$-0-

Remember, persons who reach 65 before 1988 are not affected by the declining bonus. They continue to get the full \$250 per month under either the House or Senate proposals.

Who will be responsible for managing my annuity account investment?

The state Commissioner of Revenue.

Suppose I put my dividend into the annuity. Can I get my money out if I have a sudden financial emergency?

No. Once invested in the state sponsored annuity your money will not be available to you until you become 65, and then only as monthly annuity payments.

Do I lose my annuity if I leave the state?

No. If you invested in the annuity program and are 65 or over, you are entitled to your monthly annuity check, regardless of where you reside. The checks won't necessarily start coming by themselves, however; you will probably have to apply for them.

What if I should die? Will my survivors get anything?

Persons contributing to the annuity will be able to choose a survivor benefits option, but doing so will reduce the monthly annuity amount that you will receive. The declining bonus amounts shown in Table 1 are calculated using the "maximum possible straight life annuity," which is obtained by foregoing all dividends and not choosing the survivors option. The annuity investments of those who die before age 65, without having chosen the survivor option will be divided equitably among the accounts of those who survive.

Assuming the Senate plan is adopted, can I avoid paying income taxes on my permanent fund dividend by giving it to the state to put in my annuity account?

No. Regardless of whether you take the dividend in cash or have it put in your annuity account, you still will be required to report it as taxable income on your federal income tax return.

What about the interest earned by my annuity account or the monthly annuity payments? Would taxes be due on either of these?

Under the current federal income tax law, the interest earned on your annuity account is not taxable as it accrues. Any tax liability on the interest accruals is avoided through wording in the statute that denies any legal obligation to pay anything to you. When you do receive your annuity payments, however, you will have to pay taxes on the part of each annuity payment that is paid from the interest earnings on your contributions.

Are you saying that the state is not legally bound to pay me back any of the permanent fund dividend money I might deposit in my annuity account?

That is correct. The law says that notwithstanding anything else, the state "is not obligated to provide annuity payments for annuity credits...." (AS 43.23.130 .) Without this language you would be required to pay taxes each year on the interest accruing to your account. According to the attorney general's office, the state's deferred compensation plan for its own employees operates under similar language.

How would the proposed revisions to the federal tax code affect the Senate's annuity plan?

The effects of the new tax bill on the annuity program are not yet clear.

Could I take my permanent fund dividend to an insurance company right now, and use it to buy an annuity much like the one that the state would be offering under the Senate plan?

Yes, many such plans are available from insurance companies, banks, and other institutions.

Will the state annuity proposed under the Senate plan be more attractive than plans now available from insurance companies and others?

Alaskans will choose or not choose to give up their dividend based on the details of the annuity program available from the state, the earnings rate that they expect to receive from the state, and how well the program is marketed. None of these details are known, but there are reasons to anticipate that few people will opt for the annuity.

Why might the annuity plan not be popular?

A dividend recipient must first decide that he or she wishes to devote the proceeds of the dividend to obtaining additional retirement security. National economic data indicates that Americans devote less than 10 percent of incremental income to savings as a whole. Retirement saving, such as the proposed annuity plan, is a smaller subcategory. Demographic and economic factors suggest that the marginal savings rate in Alaska is lower, although surveyed recipients of the 1982 and 1983 dividends reported that they devoted from 18 to 20 percent of those dividends to savings generally. In any event, the percentage of their dividend that most Alaskans would wish to save is likely to be less than the minimum 25 percent annuity contribution allowed under the Senate proposal.

But if a dividend recipient should wish to devote as much as 25 percent of the dividend to retirement savings, will he or she prefer the state's annuity plan over the alternatives? Insurance industry sources, though naturally disposed to favor their own annuity products, are confident that few will choose the state plan over their own offerings, in part due to the inaccessibility of the individual's investment under the Senate plan. "When I sell annuities to people, the one thing everyone asks about is the ability to get their money out in an emergency," noted one agent. "I just don't think anyone will be very interested in a plan that doesn't have that escape hatch, even if it did offer a better earnings rate."

These factors might be overcome by aggressive marketing or relative ease in obtaining the state sponsored annuity. If the Senate annuity plan is adopted, however, a section along the following lines will have to be added to the permanent fund dividend application.

SECTION 11.

(CHECK ONLY ONE BOX.)

- A. I wish to receive 100 percent of my dividend as cash in a check from the state
 If you checked box A you have completed your dividend application. Be sure it is properly signed and witnessed and received by the Department of Revenue or postmarked before June 30, 1987.
- B. I wish to have all or part of my dividend used to create an annuity account which will be maintained for me by the state.
 If you checked box B, you must use the boxes in Section 12 on the next page to choose the options you prefer.

SECTION 12.

A. How much of your dividend should go to you as cash and how much to your annuity account (CHECK ONLY ONE BOX).

- 100 percent to my annuity account.
- 75 percent to my annuity account, 25 percent to me as cash in a check from the state.
- 50 percent to my annuity account, 50 percent to me as cash in a check from the state.
- 25 percent to my annuity account, 75 percent to me as cash in a check from the state.

B. Indicate below whether or not you wish to choose the survivor's option. Remember, you may not change your choice once an annuity credit is issued to your account.

(CHECK ONLY ONE BOX).

- I do not want the survivor's option. I understand that my survivors will receive nothing from my annuity should I die before reaching age 65.
- I want the survivor's option. I understand that my annuity payments on reaching age 65 will be reduced as a result of this choice.

Experts will no doubt word the application differently. Even so, the natural inclination of most applicants will be to choose the cash and skip the rest.

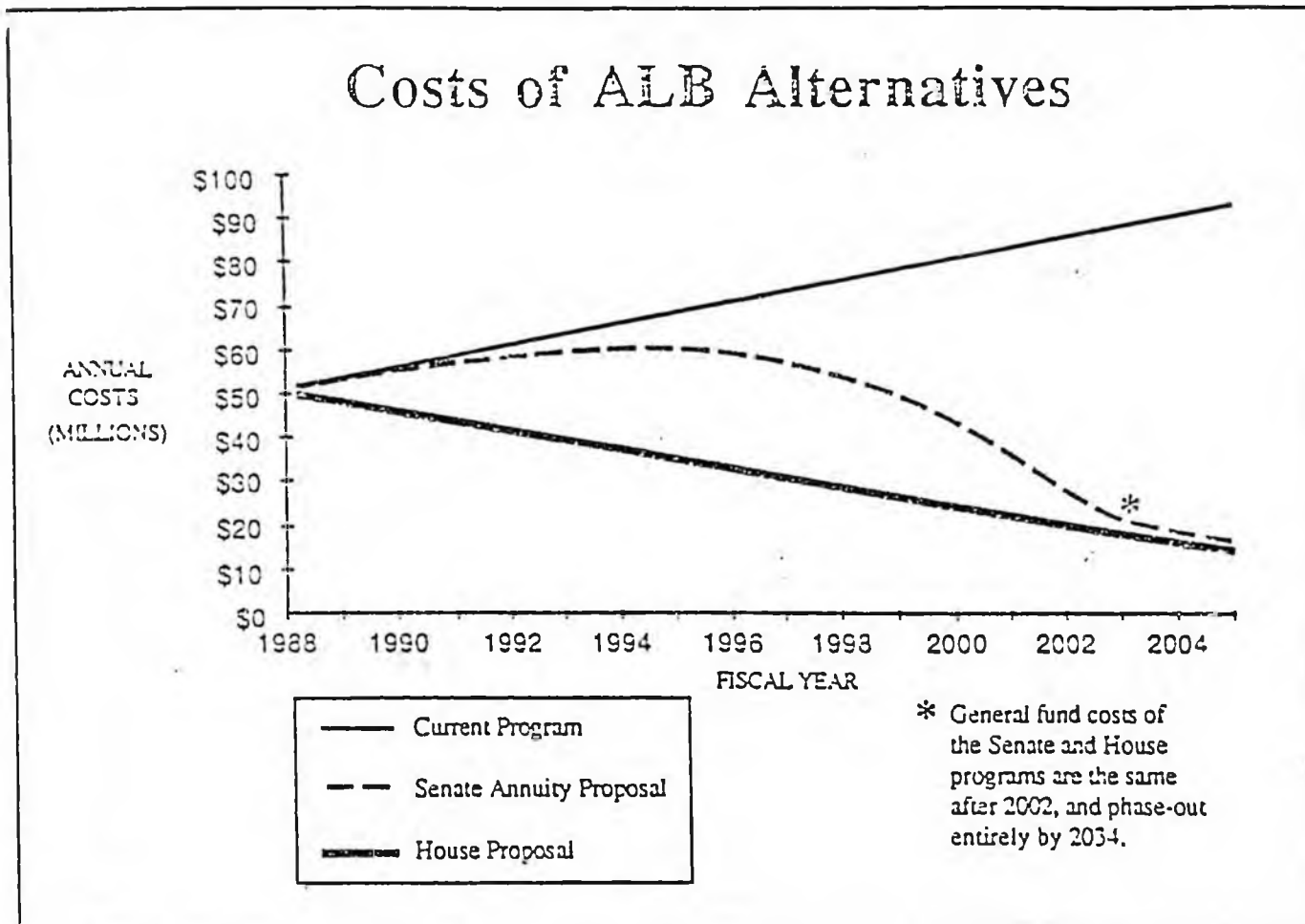
Will a shortage of annuity participants create any problems?

The administrative costs of the annuity program are to be deducted from the annuity investment fund. These deductions will likely be a proportionately greater burden if relatively few Alaskans choose to participate in the annuity program.

What about the cost to the taxpayers? The Senate plan is better for folks who are now 49 to 63, but doesn't that also mean it is going to cost more?

Yes, because it pays bonuses to those younger individuals the Senate annuity plan will cost more than the House approach, especially during the 1990s. For example, ON² estimates that in 1995 the cost of the House program will be \$34.6 million, compared with \$59.2 million for the Senate bill in that year. After about 2002, the declining bonuses which the Senate program will pay to these younger individuals will have been eliminated by the increasing maximum annuity, so the costs of both programs will be the same after that year. The total costs through the year 2002 are \$521 million for the House plan, \$774 million for the Senate plan, and \$1,026 million for the current law. Under either the House or Senate program all costs will end by 2034. Here is a chart showing the annual estimated costs of the House and Senate alternatives and the costs of the current law if it is left unchanged. The annual costs are also shown in the Table in Appendix A.

Chart 1



What happens if the permanent fund dividends are eliminated sometime in the future?

Under the Senate proposal, permanent fund dividends play a critical role in the phase-out of bonus payments. Indeed, if the dividends were eliminated in 1987, the result -- under the Senate proposal -- would be an indefinite continuation of the bonus. In the Senate plan the declining dividend going to those born in 1923 or later is determined by subtracting the maximum possible monthly annuity from \$250. But what if the maximum possible annuity is zero, as it would be if the dividend program were eliminated in 1987? In that case the bonus of those born in 1923 and later would never decline below \$250 per month, and no phase-out would occur. Costs of the Senate program would then be the same as costs of continuing the current program.

Elimination of the dividends in later years would mean that the maximum possible monthly annuity would grow much more slowly than anticipated, and the bonuses received by those born in 1923 or later would decline more slowly than shown in Table 1. As a result, the costs of the Senate plan would be greater than the amounts shown in Chart 1 and Appendix A, though still less than the costs of continuing the current program.

Assuming the Senate plan were adopted, doesn't the tie between the dividend and the annuity lock the state into the dividend program in the future?

That argument has been made. As a legal matter, the legislature would remain perfectly free to eliminate either the dividend, the bonus program, or both at any time it chose. As a practical matter, the connection between the two programs under the Senate proposal may make the dividend politically more difficult to eliminate. Some see that as a good result, others the opposite.

APPENDIX A

General Fund Costs of Proposed Bonus Program Alternatives

-----millions of dollars-----

<u>Fiscal Year</u>	<u>Costs of House Proposal</u>	<u>Costs of Senate Annuity Proposal</u>	<u>Costs of Current Law</u>
1988	49.3	49.9	49.9
1989	47.7	52.4	52.7
1990	45.5	54.8	55.6
1991	43.3	56.6	58.2
1992	41.1	57.9	60.7
1993	38.9	58.9	63.4
1994	36.7	59.2	65.9
1995	34.6	59.2	68.8
1996	32.5	58.2	71.4
1997	30.3	56.1	73.6
1998	28.2	53.2	76.1
1999	26.1	49.1	78.5
2000	24.1	43.7	81.1
2001	22.1	36.8	83.6
2002	20.2	28.2	86.2
2003	18.3	18.3	88.9
2004	16.5	16.5	91.6
2005	14.8*	14.8*	94.9†

*Annual general fund costs continue declining, and reach zero by about 2034.

†Annual general fund costs likely to continue increasing.

APPENDIX B

Ballot Language For Advisory Vote on Longevity Bonus Annuity Program

The Fourteenth Alaska State Legislature considered two alternatives to the present longevity bonus program. Both were adopted into law, but neither will take effect unless the legislature chooses one of them. The legislature has asked for an advisory vote of the public on the annuity option which is described below.

The annuity option provides that every individual who reaches age 65 by January 1, 1988, including those already receiving the bonus, would receive a longevity bonus payment of \$250 per month. In addition, a person under age 65 on January 1, 1988, could participate in an optional annuity program by depositing all or part of his or her permanent fund dividends in an account held by the state. Upon reaching age 65, a person would receive a monthly payment in an amount determined by how much was contributed to the account. The annuity payments would be supplemented with declining longevity bonus payments paid for with general funds until the annuity accounts were large enough to provide monthly payments of \$250 a month.

The second option provides that every individual who is 65 years old by January 1, 1988, including those already receiving the bonus, will receive a longevity bonus payment of \$250 per month, but that anybody younger than age 65 by January 1, 1988, would not be eligible for benefits.

Should the legislature adopt the annuity option?

YES () NO ()



Official Business

Alaska State Legislature

House

P.O. BOX V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: All Members,
House of Representatives

FROM: Representative Fran Ulmer

DATE: May 13, 1987

RE: Longevity Bonus Proposals

Attached are selected figures comparing the annual and cumulative costs of each Longevity Bonus Proposal offered this session. This memorandum should replace a similar one handed out on May 12, 1987.

Please note I have posed a number of questions that should be considered in evaluating these proposals. In addition, a House Research report is attached which shows the effects of changing the distribution of earnings (40/30/30 and 50/50 Real Income Split) on the Senate's annuity/bonus reduction proposal (CSSB 56).

ANNUAL AND CUMULATIVE COSTS

LONGEVITY BONUS PROPOSALS

<u>PROPOSAL</u>	<u>1988</u> (annual)	<u>2005</u> (annual)	<u>2005</u> (cum)
Current Program.....	49.9	94.9	1,301.1
Sund Proposal: Income Based With No Cutoff Date.....	43.8	59.6	889.5
Annuity Proposal CSSB 56.....	51.2	14.8	817.0
Reiger Proposal 1/1/88 cutoff CSHB 151 (Fin).....	49.3	14.8	570.2
Ulmer Proposal Bonus Reduction With Needs-based Program.....	44.9	0	408.7
\$25,000 Income Limit.....	43.1	9.2	402.9
\$20,000 Income Limit.....	41.8	8.0	370.3
Governor's Proposal HB 151.....	34.5	7.4	324.3
Bonus Reduction For All Seniors.....	44.9	0	257.3

Current Program: All persons 65 years of age or older receive \$250 per month for the remainder of their lives.

Sund Proposal: Income Based With No Cutoff Date: All persons 65 years and over would be eligible to receive a monthly Bonus of \$250 if their income is \$20,000 or less. Persons with incomes greater than \$20,000 and less than \$25,500 would be eligible for a reduced monthly Bonus, and persons with incomes greater than \$25,500 would be ineligible.

Annuity Proposal: CSSB 56:

- Grandfather Group: individuals who turn 65 by January 1, 1988 will receive \$250 until their death.
- The Reduced Bonus Group: if you turn 65 after January 1, 1988 and before 2003 you qualify for this group. The senior that turns 65 receives a reduced Bonus based on earnings from an annuity account. The Bonus is reduced each year by the maximum straight-life annuity payment that would be due a 65 year-old who had invested all PFDs after Dec. 1987 in an annuity account. For example, the keystone senior is the person that turns 65 after January 1, 1988 - that person would have set aside one PFD. That person would be entitled to \$8 dollars from the annuity account each month plus a Bonus of \$242 each month which amounts to a combined total of \$250 per month. Next year, that person sets aside another PFD and now earnings from the annuity account equals \$9 per month. \$17 (\$8 + \$9) is now subtracted from \$250 - the Bonus is \$233, and so on until the Bonus reaches zero in 2003.

Individuals who do not deposit PFDs or other money in the annuity account would receive a reduced Bonus each month based on the above reductions.

- No Bonus Group: after 2003, if you did not deposit money in an annuity account (or even if you did) you would not receive a Bonus.

Reiger Proposal: 1/1/88 Cutoff: CSHB 151 (Fin): All persons 65 years of age or older by January 1, 1988 receives \$250 per month for the remainder of their lives.

Ulmer Proposal: Bonus Reduction With Needs-Based Program: All persons 65 years or older with incomes of \$20,000 or less would receive a Bonus of \$225. Persons with incomes greater than \$20,000 would receive a monthly Bonus of \$225 in FY 88; in subsequent years, the Bonus amount would be reduced by \$25 each year until it reaches zero by FY 97. Once the Bonus amount reaches zero, both programs end.

\$25,000 Income Limit: \$25,000 income limit;\$250 Bonus. Persons must turn 65 years prior to January 1,1988 to be eligible for the Bonus. Persons with incomes of \$20,000 or less would receive a monthly Bonus of \$250; persons with incomes greater than \$20,000 but less than \$25,000 would receive a reduced monthly Bonus varying between \$25 and \$225; persons with incomes greater than \$25,000 would be ineligible.

\$20,000 Income Limit: \$20,000 income limit;\$250 Bonus. Persons must turn 65 years prior to January 1,1988 to be eligible. Persons with incomes of \$20,000 or less would receive a monthly Bonus of \$250; persons with incomes greater than \$20,000 would be ineligible.

Governor's Proposal:HB 151: House Bill 151 would provide a Bonus only to individual who turn 65 prior to January 1, 1988 and who have an adjusted gross income of less than \$25,500. The Bonus amount would vary from \$200 to \$17 per month depending upon the recipient's income.

Bonus Reduction: All persons 65 years or over would be eligible to receive the Bonus. The Bonus amount would start at \$225 per month in FY 88 and be reduced \$25 each year until reaching zero in FY 97. (This proposal has also been referred to as Phase-out).

ISSUES

1. What should be (if any) the cutoff date for receipt of the Bonus?
2. Should receipt of the Bonus be based on age or date one turns 65?
3. The Annuity option (CSSB 56) is based on current projections of PFDs in terms of reducing the Bonus and ending the program. What if the legislature opts for a different distribution split of the earnings (e.g. 40/30/30 or 50/50 Real Income)? If the legislature agrees on a different split of earnings, then the annuity may have to be amended to include an actual schedule of Bonus payments.
4. The annuity option (CSSB 56) is based on a 30 percent forecast. What happens under a mean forecast?
5. Will a voluntary annuity program be used; will it benefit lower income seniors? The major problems with the Senate proposal are:
 - The poor and needy cannot be expected to defer.
 - Those uncertain that they will stay in the State will take PFD and chance losing the ALB.
6. Individuals opting for the annuity program (CSSB 56) can only withdraw funds from their annuity account if the commissioner gives permission. Should the annuity account be more flexible?



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

May 12, 1987

MEMORANDUM

TO: Representative Fran Ulmer

ATTN: Dennis Burns

FROM: Karen Oakley--
Legislative Analyst

RE: Projected Costs of the Longevity Bonus Program Under Senate Bill 56
Research Request 87-303

You asked us to project the costs of the Alaska Longevity Bonus (ALB) Program if modified by the Committee Substitute for Senate Bill 56 offered by the Senate Judiciary Committee [CSSB 56 (Jud)] and dated April 1, 1987 (Attachment A). Committee Substitute for Senate Bill 56 would set a schedule for reducing the amount of the monthly bonus paid to all persons turning 65 years of age after January 1, 1988; the bill would also establish an optional program wherein all persons eligible for a Permanent Fund Dividend (PFD) could elect to set aside each PFD in an annuity account. The relationship between the ALB program and the annuity program is this: the schedule for reducing the bonus amount will be determined by the maximum possible straight life annuity payment under the annuity program. Committee Substitute for Senate Bill 56 (Jud) defines how this maximum possible straight life annuity payment is to be calculated.

Under earlier versions of SB 56, the bonus amount was defined as:

. . . \$250, minus the maximum possible straight life annuity for a person 65 years of age under the annuity program . . .

Committee Substitute for Senate Bill 56 (Jud) now explains that:

. . . The maximum possible straight life annuity equals the amount a person would receive if that person became 65 on January 2, 1988, and contributed 100 percent of all permanent fund dividends or the cash equivalency to the annuity program for every year after December 31, 1987. However, for the purposes of this section the maximum possible straight life annuity may not exceed the amount that a person turning 65 in the current year would receive if that person had contributed 100 percent of all permanent fund dividends or the cash equivalency to the annuity program for every year after December 31, 1987.

Thus, to determine what the bonus amount will be in any year, CSSB 56 (Jud) requires that two maximum possible annuity payments be calculated and compared:

Case A: the payment due a person turning 65 years of age in the current year that has contributed all PFDs received after January 1, 1987 to an annuity account; and

Case B: the payment due a person who turned 65 years of age on January 2, 1988 and who contributed each PFD received after January 1, 1987 to an annuity account.

Committee Substitute for Senate Bill 56 (Jud) specifies that in determining the bonus amount, the maximum possible annuity payment will be the lesser of the amounts paid under the two cases.

In Case B, the individual has an annuity account for each PFD, and the annuity payment received by this individual is the sum of the annuity payments derived from each such account. In calculating the total annuity payment made to this individual, we have assumed that the PFD is deposited into an annuity account in October of each year, accrues interest at a rate of 9 percent through the end of the fiscal year, and that monthly annuity payments begin on July 1. The life expectancy value used to calculate the annuity payment due the individual who turned 65 on January 2, 1988 changes each year.

In Table 1, the maximum possible annuity payments under Case A and Case B are compared based on March 19, 1987 projections of future PFDs by the Permanent Fund Divided Corporation. Only in the first year that annuity payments are made--FY 90--does the amount due the person who turned 65 on January 2, 1988 exceed the amount due the person turning 65 in the current year, and the difference is only a few cents. Because the annuity payments possible under Case B are lower than under Case A, the bonus amount in any year will be greater under Case B, and it will take longer for the bonus program to end. If the bonus amount is calculated using the annuity payable to the person turning 65 in the current year, the bonus program would end in about 2002 because in that year, the annuity amount is projected to exceed \$250. Using the bonus reduction schedule dictated by Case B, the bonus program would not end until about 2004.

In Table 2, the annual and cumulative costs of the ALB program under CSSB 56 (Jud) are compared to the costs of the current program and various other proposals to modify the program. Figure 1 depicts the annual costs of CSSB 56 (Jud), the current program, and CSHB 151 (Fin), which modifies the current program by requiring all recipients to turn 65 years prior to January 1, 1988; Figure 2 depicts the cumulative costs.

Representative Ulmer
May 12, 1987
Page 3

Because the bonus amount is predicated on annuity accounts built from PFDs, projections of the costs of the ALB program under CSSB 56 (Jud) are necessarily sensitive to the projections of future PFDs amounts. Various proposals to change the proportion of Permanent Fund earnings available for dividends have been considered by the legislature this year. To provide an indication of how changes in the PFD amounts will affect the ALB program under CSSB 56 (Jud), we have projected the costs of the ALB program using PFD projections under two scenarios:

40%-30%-30%: 40 percent of the earnings go to dividends, 30 percent to inflation proofing, and 30 percent to reserves; and,

50%-50%: 50 percent of the earnings go to dividends and 50 percent to the General Fund after full inflation proofing.

(See House Research Memorandum 87-174 for further information on these scenarios.)

Figure 3 compares the annual costs of CSSB 56 (Jud) using these differing PFD projections to the costs of the current program and the program under CSHB 151 (Fin). Figure 4 compares the cumulative costs. The effect of both the 40-30-30 and 50-50 proposals is to reduce the PFD amount in comparison to the current program. Because the PFD amounts determine the maximum possible annuity payments which in turn dictate the bonus amount, the longevity bonus program would cost more and take longer to end if dividends are reduced.

The link between the PFD program and the ALB program established by CSSB 56 is forged solely to provide a formula for reducing the bonus amount--ALB recipients are not required to set aside their PFDs in an annuity. The fact that the two programs are linked adds considerable uncertainty to the bonus program as modified by CSSB 56. One option for accomplishing what CSSB 56 does--but without the uncertainties caused by the link with the PFD program--would be to simply replace the relevant phase-out language in the bill with a schedule for reducing the bonus amount.

I hope you find this information useful. If you need any additional information, please let me know.

Attachments

TABLE 1

Amount of the Monthly Annuity Payments Possible from
Investment of Permanent Fund Dividends in Annuity Accounts

No Change in the Permanent Fund Dividend Program

		CASE A			CASE B			
		Person turning 65 in current year			Person Turning 65 on 1-2-88			
Fiscal Year	Dividend Received	Annuity Balance at	Monthly Annuity Payment	Monthly Longevity Bonus Amount	Balance of prior year's annuity account on July 1	Payment from prior year's account	Combined Monthly Annuity Payment	Monthly Longevity Bonus Amount
		Interest Rate of 9.0%						
1989	\$794.00	\$847.60			\$847.60			
1990	855.00	1,836.59	\$8.37	241.63	912.71	8.53	8.53	241.47
1991	914.00	2,977.58	18.13	231.87	975.70	9.37	17.91	232.09
1992	913.00	4,220.19	29.40	220.60	974.63	10.24	28.14	221.86
1993	923.00	5,585.31	41.67	208.33	985.30	10.46	38.60	211.40
1994	991.00	7,145.88	55.14	194.86	1057.89	10.83	49.44	200.56
1995	1,071.00	8,932.30	70.55	179.45	1143.29	11.93	61.37	188.63
1996	1,154.00	10,968.10	88.19	161.81	1231.90	13.26	74.64	175.36
1997	1,244.00	13,283.20	108.29	141.71	1327.97	14.71	89.35	160.65
1998	1,340.00	15,909.14	131.14	118.86	1430.45	16.35	105.69	144.31
1999	1,442.00	18,880.30	157.07	92.93	1539.34	18.20	123.89	126.11
2000	1,550.00	22,234.15	186.40	63.60	1654.63	20.27	144.17	105.83
2001	1,653.00	25,999.80	219.52	30.48	1764.58	22.61	166.77	83.23
2002	1,759.00	30,217.51	256.70	0.00	1877.73	25.07	191.84	58.16
2003	1,870.00	34,933.32	298.34	0.00	1996.23	27.77	219.61	30.39
2004	1,986.00	40,197.37	344.90	0.00	2120.06	30.75	250.37	0.00
2005	2,107.00	46,064.35	396.87	0.00	2249.22	33.97	284.34	0.00

Estimates of monthly annuity payments based on Alaska Permanent Fund Dividend Corporation projections of dividend payment (February 28, 1987 Financial Statement) and an interest rate of 9 percent.

Life expectancy values were provided by the Alaska Department of Labor, Demographic Report No. 1, December 1986.

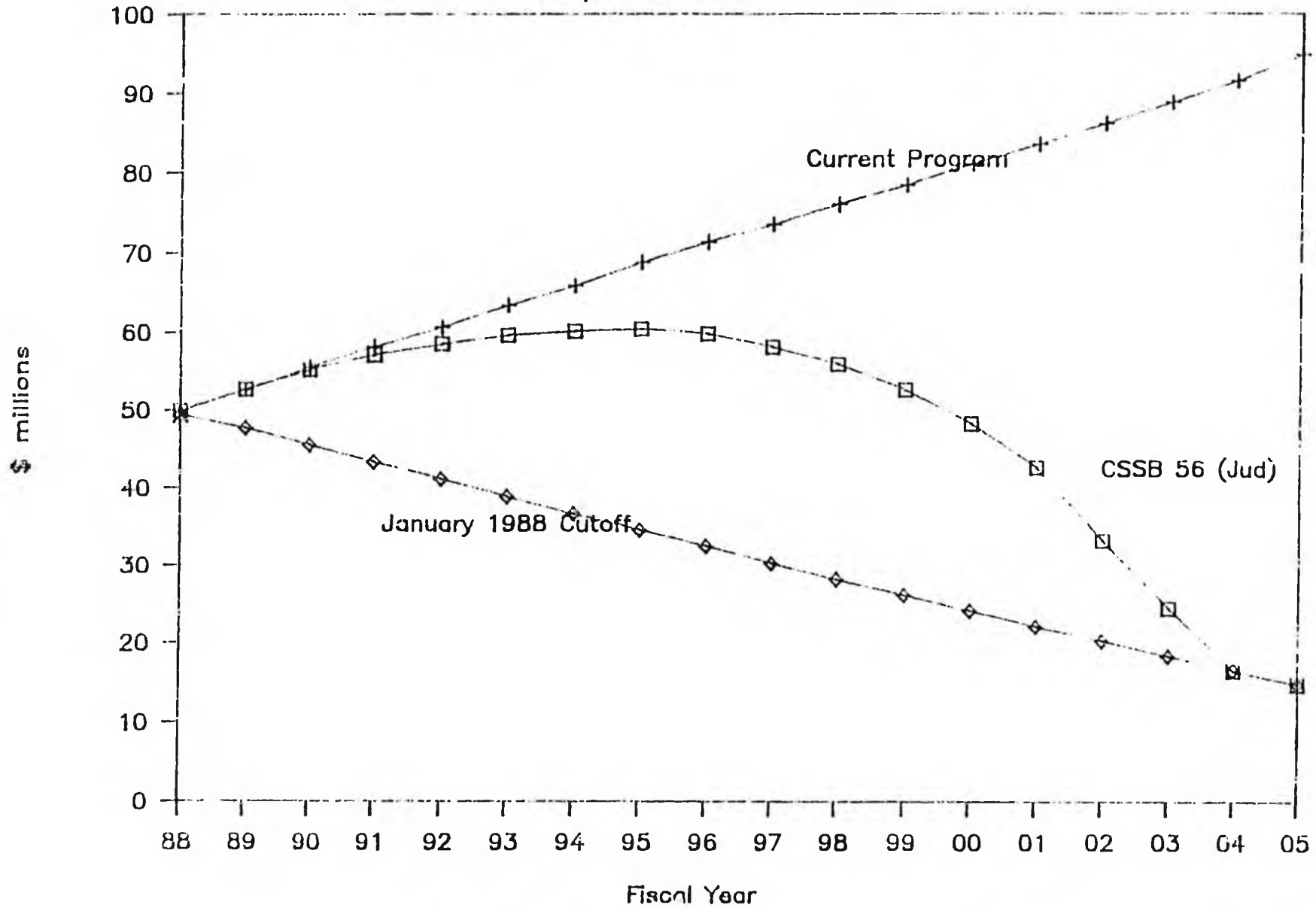
Prepared by the House Research Agency, May 1987 (87-303A; 370330-10).

TABLE 2
 Comparison of Annual and Cumulative Costs between the Current Longevity Bonus Program and Various Proposals

Fiscal Year	Current Program Annual Cost	January 1, 1988 Cutoff Reiger Proposal Annual Cost	HB 151 Governor's Proposal Annual Cost	HB 151 Modifications		Bonus Reduction Annual Cost	Bonus Reduction With Needs Annual Cost	Needs Based No Age Cutoff Annual Cost	CSSB 56 (Jud) Bonus Reduction/Annuity Annual Cost
				\$25,000 Income Limit Annual Cost	\$20,000 Income Limit Annual Cost				
1988	\$49.9	49.3	\$34.5	\$43.1	\$41.8	\$44.9	\$44.9	\$43.8	\$49.9
1989	52.7	47.7	28.8	35.8	33.4	42.1	45.8	39.8	52.7
1990	55.6	45.5	27.1	33.7	31.9	38.9	46.7	41.3	55.2
1991	58.2	43.3	25.4	31.6	29.4	34.9	46.8	42.8	57.1
1992	60.7	41.1	24.0	29.8	27.5	30.4	46.9	44.3	58.5
1993	63.4	38.9	22.3	27.6	25.3	25.4	46.0	45.4	59.6
1994	65.9	36.7	20.9	25.9	23.9	19.8	45.5	46.8	60.1
1995	68.8	34.6	19.2	23.9	21.8	13.8	44.1	47.9	60.4
1996	71.4	32.5	17.7	21.9	19.8	7.1	42.0	48.6	59.8
1997	73.6	30.3	16.4	20.3	18.5	0	0.0	49.7	58.1
1998	76.1	28.2	15.1	18.8	16.9	0	0.0	51.1	55.9
1999	78.5	26.1	13.7	17.0	15.2	0	0.0	51.6	52.6
2000	81.1	24.1	12.6	15.7	14.0	0	0.0	53.2	48.2
2001	83.6	22.1	11.3	14.0	12.4	0	0.0	53.7	42.6
2002	86.2	20.2	10.3	12.8	11.3	0	0.0	55.3	33.2
2003	88.9	18.3	9.2	11.4	10.1	0	0.0	56.2	24.4
2004	91.6	16.5	8.4	10.4	9.1	0	0.0	58.4	16.5
2005	94.9	14.8	7.4	9.2	8.0	0	0.0	59.6	14.8
CUMULATIVE TOTAL	\$1,301.1	\$570.2	\$324.3	\$402.9	\$370.3	\$257.3	\$408.7	\$889.5	\$859.5

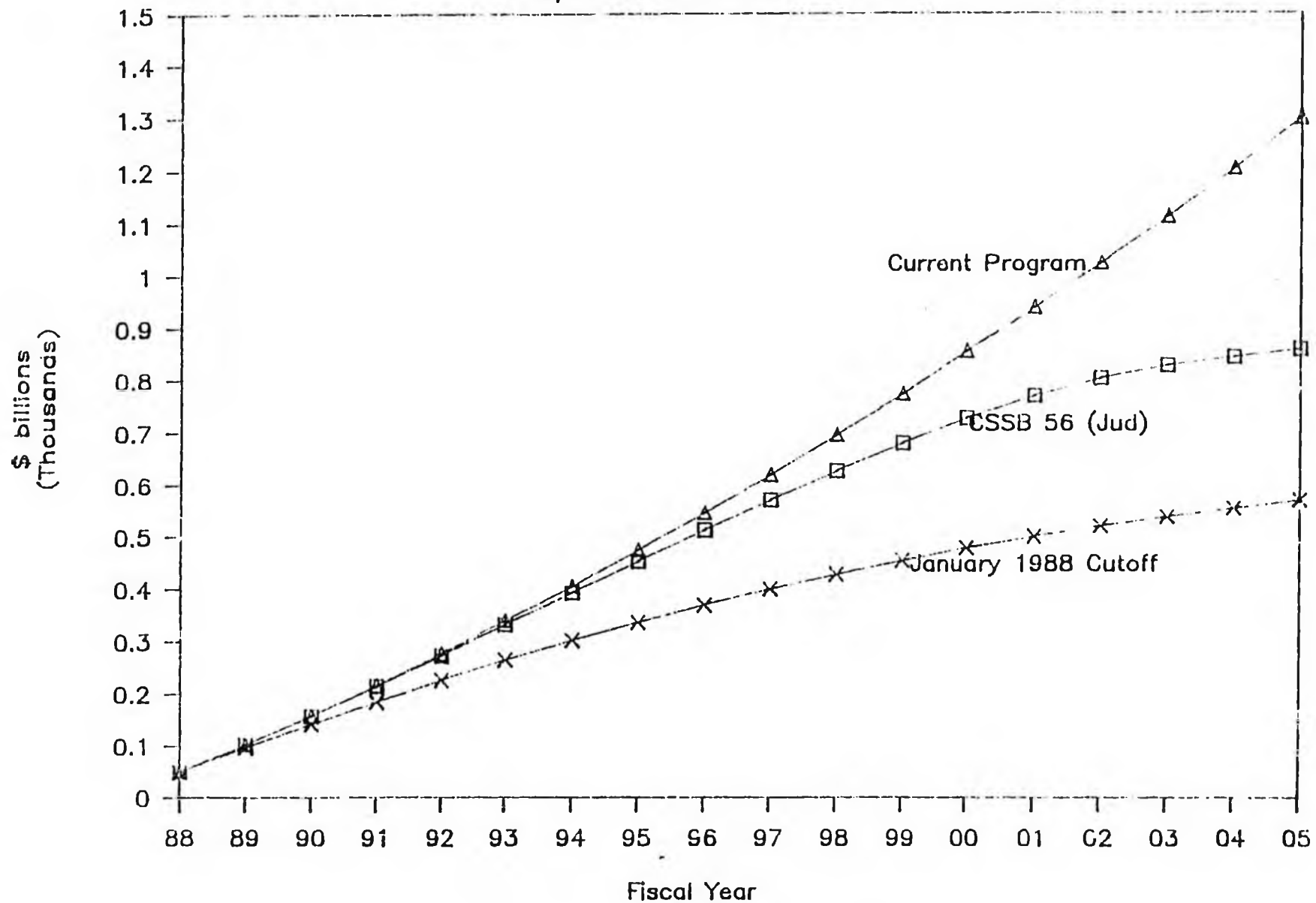
Prepared by the House Research Agency, May 1987 (87-303B; 860330-10).

Figure 1
ALASKA LONGEVITY BONUS
 Comparison of Annual Costs



Prepared by the House Research Agency, May 1987.

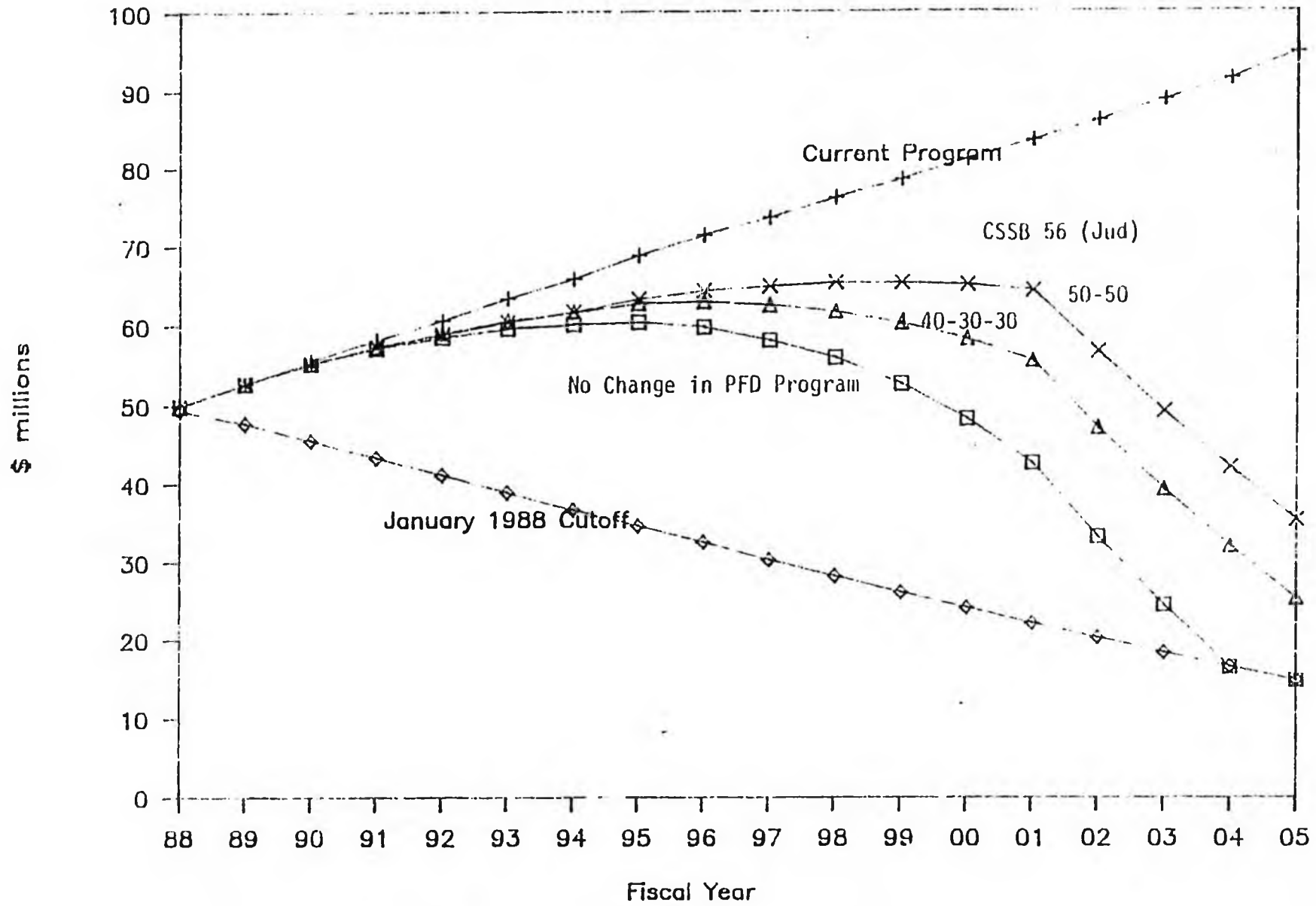
Figure 2
ALASKA LONGEVITY BONUS
 Comparison of Cumulative Costs



Prepared by the House Research Agency, May 1987.

Figure 3
ALASKA LONGEVITY BONUS

Comparison of Annual Costs

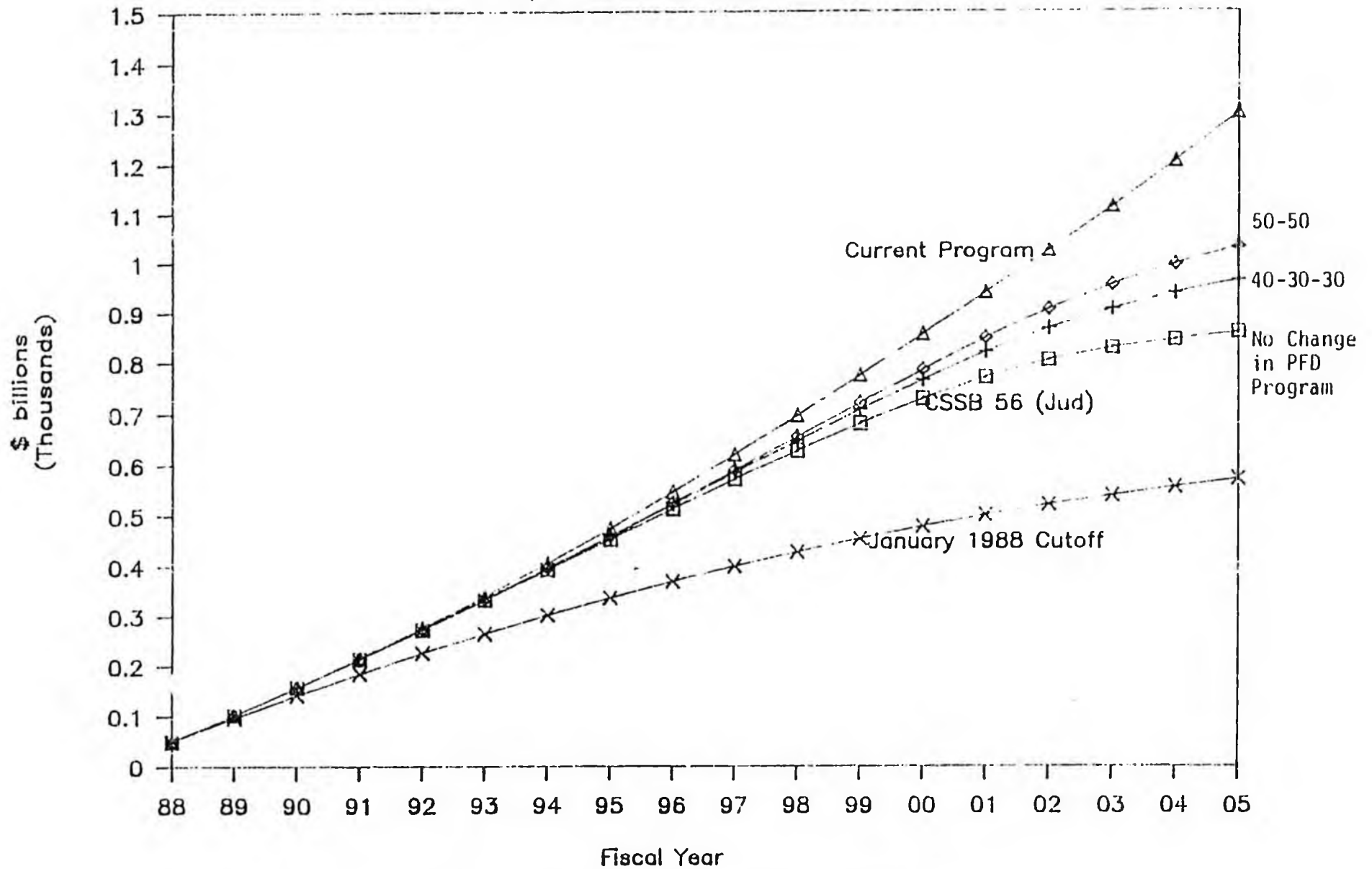


Prepared by the House Research Agency, May 1987.

Figure 4

ALASKA LONGEVITY BONUS

Comparison of Cumulative Costs



Prepared by the House Research Agency, May 1987.

Original sponsors: Kerttula, Halford
and Fischer

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 56 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act amending and making effective an annuity
7 program and amendments to the longevity bonus program
8 and the permanent fund dividend program provided for
9 in secs. 2 - 18, ch. 99, SLA 1985; and providing for
10 an effective date."

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

12 * Section 1. AS 43.23.110(a) is amended to read:

13 (a) The annuity investment fund is established as a separate
14 fund in the state treasury. The annuity investment fund consists of
15 money transferred from the dividend fund, cash contributions under
16 AS 43.23.125, and income earned by the annuity investment fund.
17 Notwithstanding AS 37.13.145, an amount equal to the permanent fund
18 dividends taken as annuity credits under this chapter shall be annual-
19 ly transferred from the dividend fund to the annuity investment fund.

20 * Sec. 2. AS 43.23 is amended by adding a new section to read:

21 Sec. 43.23.125. CASH CONTRIBUTIONS. An individual who is eligi-
22 ble to receive the permanent fund dividend as an annuity credit under
23 AS 43.23.005(d) but does not elect to do so or who elects to receive
24 only a portion of the permanent fund dividend as an annuity credit may
25 make a cash contribution to that individual's annuity account. The
26 total amount credited and contributed to an annuity account in a year
27 may not exceed the amount of the permanent fund dividend for that
28 year.

29 * Sec. 3. AS 43.23.130(a) is amended to read:

1 (a) An individual with one or more annuity credits o cash
2 contributions under AS 43.23.125 may receive an annuity upon reaching
3 the age of 65.

4 * Sec. 4. AS 43.23.130(e) is amended to read:

5 (e) If a person elects to credit a permanent fund dividend or
6 make a cash contribution to an annuity account in a particular year,
7 that person may make an irrevocable choice regarding death benefits
8 with respect to that credit or contribution. If a person dies before
9 age 65 and that person has selected death benefits in at least one
10 year, a lump sum payment shall, subject to appropriation, be paid to
11 the surviving spouse by right of survivorship unless a different
12 beneficiary was designated. When no spouse survives and no benefi-
13 ciary is designated, the lump sum shall be paid to the decedent's
14 estate. The lump sum payment includes all dividends credited to the
15 person's annuity account in years in which death benefits were select-
16 ed and interest on those dividends. Dividends credited and cash
17 contributed to a person's annuity account in years for which death
18 benefits were not selected and interest on those dividends and contri-
19 butions shall, if the person dies before age 65, be distributed equi-
20 tably among the annuity accounts of all individuals for which death
21 benefits were not selected.

22 Sec. 5. AS 43.23 is amended by adding a new section to read:

23 Sec. 43.23.130 EMERGENCY WITHDRAWALS. An individual may make a
24 withdrawal from that individual's annuity account before reaching the
25 age of 65 if the individual establishes to the satisfaction of the
26 commissioner that the withdrawal is necessary to meet an unforeseeable
27 emergency. The amount withdrawn may not exceed the total amount in
28 the individual's annuity account or the amount actually necessary to
29 meet the emergency, whichever is less. The commissioner shall define

1 the term "unforeseeable emergency" by regulation. An individual may
2 only make one withdrawal under this section and may pay it back with
3 interest under terms established by the commissioner.

4 Sec. 6. AS 47.45.015(a) is amended to read:

5 (a) Except as provided in (b) of this section, the monthly
6 longevity bonus is equal to \$250, minus the maximum possible straight
7 life annuity [FOR A PERSON 65 YEARS OF AGE] under the annuity program
8 (AS 43.23.110 - 43.23.130), as determined by the commissioner of
9 administration. The maximum possible straight life annuity equals the
10 amount a person would receive if that person became 65 on January 2,
11 1988, and contributed 100 percent of all permanent fund dividends or
12 the cash equivalency to the annuity program for every year after
13 December 31, 1987. However, for purposes of this section the maximum
14 possible straight life annuity may not exceed the amount that a person
15 turning 65 in the current year would receive if that person had
16 contributed 100 percent of all permanent fund dividends or the cash
17 equivalency to the annuity program for every year after December 31,
18 1987.

19 Sec. 7. Section 1, ch. 99, SLA 1985, is repealed.

20 Sec. 8. Chapter 99, SLA 1985, and secs. 1 - 6 of this Act apply only
21 to permanent fund dividends for years beginning after December 31, 1987.
22 Notwithstanding the amendments to AS 43.23 made by ch. 99, SLA 1985, and
23 this Act, permanent fund dividends for 1987 and prior years shall be made
24 under the law as it existed before the effective date of this Act.

25 Sec. 9. This Act takes effect immediately under AS 11.10.071-112.

SECTIONAL ANALYSIS OF HJR 44

Proposing an amendment to the Constitution
of the State of Alaska relating to open meetings.

SECTION 1 amends Article 1, Declaration of Rights, of the Constitution of the State of Alaska, by adding a new Section 23:

The deliberations of each house of the Legislature, and its committees and subcommittees, shall be open to the public, unless the legislative body is meeting in executive session to consider matters authorized by law.

If a matter is appropriate to a particular legislative body, private and substantive deliberation on the matter by a quorum of that body is prohibited.

Caucuses of the legislature may meet in private to consider matters of procedure, organization or strategy.

SECTION 2 Expresses legislative intent and summarizes provisions in the existing open meetings law.

Subsection (f) provides that the Legislative Affairs Agency will consider the statement of legislative intent expressed in (a) through (e) when preparing its neutral summary for the election pamphlet.

SECTION 3 Provides that the amendment will be placed before the voters at the next general election.

Prepared by:
Rep. Kay Brown
January 29, 1988

By Brown, Ellis, Frank, Davis, Cotten,
Navarre, Pourchot, Boyer, Koponen,
Boucher, Davidson, and Menard

**HJR 44: Proposing an amendment
to the Constitution of the State of Alaska
relating to open meetings**

HJR 44 proposes to amend the State Constitution by:

- mandating legislative adherence to the Open Meetings Act
- providing for court enforcement in the instance of a violation
- requiring that legislative deliberations be open unless the body is meeting in executive session to consider matters authorized by law
- prohibiting a quorum of a legislative body (committee, subcommittee, etc.) from engaging in private and substantive deliberation on a matter appropriate to that body
- allowing legislative caucuses to meet in private to consider matters of procedure, organization or strategy

HJR 44 includes intent language making it clear that this amendment is not intended to prevent the free flow of ideas among legislators or their participation in public forums, community meetings, or social events.

The proposed language is the work of a number of individuals who began meeting together shortly after the Supreme Court issued its ruling last September.

Prepared by:
Rep. Kay Brown
January 29, 1988

Opinion

The question of the public conduct of the public's business is one of the questions before the Alaska Legislature in its new session. A resolution proposed by Sen. Arliss Sturgulewski and Rep. Kay Brown would put before the state's voters a constitutional amendment to require that all legislative meetings be public except certain exemptions.

The proposal grows out of last year's lawsuit against the Legislature by the League of Women Voters and The Daily News. It transpired that the Legislature never argued about breaking the rules. However, the court ruled that it had no jurisdiction or constitutional basis for requiring the Legislature to follow its own rules.

By
the
rules

That decision essentially told the Legislature it could do whatever it pleases, and the public be damned. The proposal by Sturgulewski and Brown, two among a minority of legislators who have actually resisted the Legislature's general secretive inclinations, is an attempt to make the Legislature live by its rules. That's all.

The proposed amendment would leave legislators the same exemptions as the Legislature provided when it adopted the state's Open Meetings Act. It would also allow party caucuses to meet privately "to consider matters of procedure, organization, or strategy."

That's plenty of leeway for any responsible legislator. The public should call on its legislators to support the Sturgulewski-Brown proposal.

Elements of the Alaska Legislature have gone out of their way in recent years to make important budget decisions in secret -- in ad hoc sessions, in caucuses, in, well, who knows?

If legislators balk at the Sturgulewski-Brown proposal, they invite a question: Have you stopped doing the public's business in secret? It's a fair question, and it requires the admission they cannot avoid.

MY TURN

Open Meetings: The need for a constitutional amendment.

By KAY BROWN and
ARLISS STURGULEWSKI

When the Alaska Supreme Court issued its opinion on the open meetings lawsuit brought against the Alaska Legislature by the League of Women Voters and two Alaska newspapers, the ruling brought to light a crucial flaw in our state Constitution. The court ruled that it had no jurisdiction in the open meetings dispute and accordingly could not force the legislature to comply with the state Open Meetings Act.

It is now clear that this flaw can only be corrected by an amendment to the state Constitution which expressly protects the public's right to openness in the legislative process.

No Dispute over Violations: In the League v. the Alaska Legislature case there was no argument over the charge that the legislature held secret budget meetings during the 1986 session in violation of the Open Meetings Act. Nor was there any argument that these meetings violated the legislature's own Uniform Rule 22, which also requires open meetings of legislative bodies.

Neither of these claims was contested by the lawyers defending the legislature. As noted by the court: "The facts of this case are not in dispute. ... The Legislators do not deny that these meetings occurred, or that they conducted the business and

made the decisions that the League alleges." So, if everyone agrees that the meetings were in violation of the Open Meetings Act and Rule 22, what happened?

Courts Powerless to Enforce Law: The Supreme Court based its ruling on interpretations of the state Constitution. Although no one disputed that open meeting violations had occurred, the court ruled that it lacked authority to force the legislature to obey the open meetings law it has enacted. Further, because the Alaska Constitution currently does not expressly provide for open meetings, and because the Constitution gives the legislature the authority to establish its own rules, the Supreme Court determined it could not enforce the Open Meetings Act.

The court did not find the legislature innocent of violating open meeting requirements. Rather, the court decision stated that "because the Constitution commits to the legislature the authority to provide for its own rules of procedure ... we regard the question of whether the legislators have violated the Open Meetings Act or Uniform Rule 22 to be nonjudicialable." The court concluded it is not the function of the judicial system to require the legislature to follow its own rules.

The court also addressed the assertion that the public has an "im-

plied" constitutional right of access to the conduct of legislative business. Although it is noteworthy that Supreme Court Justice Compton dissented, and argued forcefully that the court did have jurisdiction in the case, the majority of justices disagreed.

The Need for an Amendment: The crucial issue in the open meetings lawsuit concerned the right of the press and the public to know and understand the deliberations of their elected representatives. The need for access to legislative deliberations has never been more critical than at present. Decisions made in Juneau are of vital interest to all Alaskans as the state comes to terms with declining oil revenues.

In response to the Supreme Court's decision, one legislative leader characterized the ruling as giving legislators "a blank check." In essence, the Alaska Supreme Court found that the legislature's conduct is above the law that requires other state and local officials to conduct the public's business in the open. A constitutional amendment requiring open meetings of the legislature is the only way to remedy this deficiency.

Proposed Constitutional Amendment: Before the Supreme Court ruling, it had been our belief that the public was entitled to open legislative meetings; we now know that a constitutional amendment is needed. With that goal in mind, we have introduced an identical Joint Resolution in both the House and the Senate that would amend the Alaska Constitution and specifically provide for open meetings by the legislature.

The proposed amendment language is the work product of a number of individuals who began meeting shortly after the Supreme Court issued its ruling, including representatives of the League of Women Voters and several news organizations. In trying to draft suitable language with the help of this ad hoc group, we knew that it was essential to develop both realistic and workable standards. Such standards must fundamentally ensure openness by the legislature but also not prevent the free exchange of ideas among legislators which is essential to a legislator's ability to represent his or her constitu-

ents. At the same time, we felt that the legislature, as the state's only bicameral legislative body, elected along partisan lines, must have the flexibility to exercise that partisanship.

With these standards in mind, our proposed amendment requires that legislative deliberations be open unless, as presently provided by the Open Meetings Act, the body is meeting in a properly convened executive session to consider matters expressly authorized by law. The amendment also states that if a matter is appropriate to a particular body (which includes committees and subcommittees), then "private and substantive deliberation of the matter by a quorum of the legislative body" is prohibited. The proposed amendment also recognizes the unique role of legislative caucuses and specifically allows caucuses to meet in private, but only to consider "matters of procedure, organization, or strategy."

We recognize, of course, that our amendment draws a firm line of distinction between a discussion that would be prohibited as "private and substantive" and a discussion that would be permissible as a matter of caucus "strategy." In the final analysis, however, it is our feeling that it will be incumbent upon all legislators to police themselves as a group and for individual members to insist when appropriate, as we have, that the public's right to know must be protected and that the public's substantive business be conducted openly.

Finally, we believe that the proposed amendment provides both a realistic and workable set of standards by which the legislature can conduct legislative business in an open manner while still providing legislators an opportunity to participate in confidential partisan activities. Without a constitutional amendment to provide for the public's right of access, the legislature will continue to be free to meet at will behind closed doors in clear violation of the Open Meetings Act, but beyond the reach of the courts.

Rep. Kay Brown and Sen. Arliss Sturgulewski both represent Anchorage in the Alaska Legislature.