

HB

34

TABLE OF CONTENTS

HB 34: Durational Residency Requirements

- Item 1:** HB 34 by Donley, Boucher, Boyer, Brown, Hudson, Ulmer, and Goll
CSHB 34 (SA)
- Item 2:** Fiscal Notes and Analysis:
Department of Administration
Department of Law
Department of Revenue
- Item 3:** Memorandum from Rep. Donley to
House State Affairs Committee
January 24, 1989
- Item 4:** Committee Substitute for HB 34
Work Draft 6-0107E by Cook, January 24, 1989
- Item 5:** Memorandum from Keith Levy to
Senator Mitch Abood
February 7, 1989

HOUSE COMMITTEE ON STATE AFFAIRS

**RECAP OF
HB 34**

Durational Residency Requirements

Received January 9, 1989

by Reps. Donley, Boucher, Boyer, Brown, Hudson,
Ulmer and Goll

Heard January 25, 1989

Committee Substitute adopted January 25, 1989

Passed Out of Committee January 25, 1989

6 Do Pass

HOUSE COMMITTEE REPORT

(5)

Date Referred: January 9, 1989

FURTHER REFERRALS: JUDICIARY
FINANCE

Date of Committee Action: _____

The STATE AFFAIRS Committee recommends that:

HOUSE BILL NO. 34 [DURATIONAL RESIDENCY REQUIREMENTS]
"An Act relating to durational residency requirements for certain state benefit programs; and providing for an effective date."

be replaced with CSHB34 (SA) the same title
 a new title

have attached amendment(s)

- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact
- zero fiscal note
- zero with analysis

APPROVES PREVIOUS:

- fiscal note(s) published: _____
- zero fiscal notes(s) published: _____

SIGNING DO PASS:

D.A. Broun

Dave Douley

Steve Hendrix

Bill Spahr

Jim Boudreau

Eileen P. McKeon

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

D.A. Broun
Chairman's signature

FISCAL NOTE

REQUEST

Revision Date: _____
Title: Durational residency require-
ments for state benefit programs
Sponsor: State Affairs
Requestor: _____

Agency Affected: Revenue
BRU: Permanent Fund Dividend Division
Components: Permanent Fund Dividend
Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: See Attached.

Prepared By: Ervin Jones
Division: Permanent Fund Dividend Division

Phone: 465-2323
Date: February 8, 1989

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 2/8/89

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Alaska Department of Revenue
Permanent Fund Dividend Division
CS HB 34 (SA) Fiscal Note Analysis
February 8, 1989

Section 1 modifies one of the four general eligibility requirements to receive a permanent fund dividend. Under the law enacted in 1992, an individual must have been "a state resident for a period of at least six consecutive months immediately preceding April 1 of the current dividend year." For example, in addition to the other requirements, to be eligible for the 1991 dividend under current law, an individual must have been a state resident during the ELIGIBILITY PERIOD of October 1, 1990 through March 31, 1991. Section 1 extends the six month requirement to 24 months. In other words, the individual in the above example, in order to qualify for the 1991 dividend (see Section 3) must have been a state resident for the entire ELIGIBILITY PERIOD of April 1, 1989 through March 31, 1991 (see Attachment A).

Conservatively speaking, there are approximately 60,000 new dividend applicants each year. The first effect of Section 1 would be felt in 1991 when 60,000 new Alaskans who thought they would be eligible, find that they are not. The second and most difficult effect would be when approximately 60,000 individuals who did qualify for the 1990 dividend find that they are now not eligible for the 1991 dividend (see Attachment A).

It will take considerable effort on the Department's part, in conjunction with the state demographer, to predict the final effect of this bill. Some of the factors to be considered include:

- 1) the length of the period (current proposal - 24 months);
- 2) the number of eligible individuals who leave Alaska each year;
- 3) the number of new person's arriving each year;
- 4) the percentage of individuals moving to Alaska who leave after six months, one year, eighteen months, etc.;
- 5) the seasonal distribution of new arrivals;
- 6) the relative birth rate of new arrivals versus individuals who have been in Alaska over two years; and
- 7) the reaction of military personnel to the new proposal, i.e. how do they respond to the new choice presented relative to overseas pay, overseas duty credit, etc.

The final effect on administrative costs of the Permanent Fund Dividend program would depend upon such factors as mentioned above. For the first two years, the additional costs would include informing, advising, and counseling the public; answering repeated questions as to "why was I a resident in 1990 and not in 1991," plus the costs of denying the applicants who would file anyway and hearing their appeals; and the costs of assisting the Department

Alaska Department of Revenue
Permanent Fund Dividend Division
CS HB 34 (SA) Fiscal Note Analysis
February 8, 1989

of Law in defending the new requirement. These cost increases might be offset partially by the document processing cost savings of initially reducing the number of applicants by approximately 60,000.

At this point, the net effect in administrative costs appears to be zero. If this does not prove to be the case upon implementation, a supplemental appropriation would be sought.

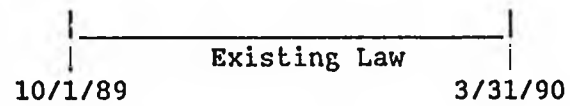
The Department's primary concern with the bill is a clear policy call -- the likelihood of a successful legal challenge to the extended ELIGIBILITY PERIOD on constitutional grounds, i.e. durational residency tests. This issue should be carefully weighed before jeopardizing the existing dividend program.

A handwritten signature in cursive script, appearing to read "H. Malone". The signature is written in dark ink and is positioned in the lower-left quadrant of the page.

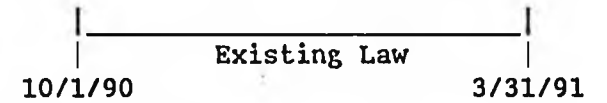
DIVIDEND
YEAR

COMPARISON OF ELIGIBILITY PERIODS

1990



1991



Original sponsors: Donley, Boucher,
Boyer, et al.

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 34 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to durational residency requirements
7 for certain state benefit programs; and providing for
8 an effective date."

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

10 * Section 1. AS 43.23.005(a) is amended to read:

11 (a) An individual is eligible to receive one permanent fund
12 dividend each year in an amount to be determined under AS 43.23.025 if
13 the individual applies to the department, and if

14 (1) on the date of application the individual is a state
15 resident;

16 (2) the individual was a state resident for a period of at
17 least 24 [SIX] consecutive months immediately preceding April 1 of the
18 current dividend year; and

19 (3) the individual has been physically present in the state
20 at some time during the period beginning July 1 two years before the
21 date of application and ending on the date of application.

22 * Sec. 2. AS 43.23.015(b) is amended to read:

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

27 I certify that

28 () I am a state resident on the date of this application, I have
29 been a state resident for at least 24 [SIX] months immediately

1 preceding April 1 of the current dividend year, and I have been phys-
2 ically present in the State of Alaska at some time during the period
3 beginning July 1 two years before the date of application and ending
4 on the date of this application; or

5 () (name), the individual on whose behalf I am applying, is a
6 state resident on the date of this application, has been a state
7 resident for at least 24 [SIX] months immediately preceding April 1 of
8 the current dividend year, and has been physically present in the
9 State of Alaska at some time during the period beginning July 1 two
10 years before the date of application and ending on the date of this
11 application.

12 I understand that a false claim of eligibility to obtain a perma-
13 nent fund dividend for myself or for another is a criminal offense,
14 that if convicted I will forfeit future dividends, and that I must
15 repay all dividends that have been paid to me. I understand that if I
16 wilfully misrepresent, exercise gross negligence, or recklessly disre-
17 gard a material fact regarding my eligibility for a permanent fund
18 dividend I will forfeit the dividend, be subject to a civil fine of up
19 to \$5,000, and lose my eligibility for the next five dividends. I
20 understand that these penalties are in addition to any criminal pen-
21 alties imposed.

22 _____
23 (signature of individual,
24 parent, guardian, or other
25 authorized representative)

26 * Sec. 3. AS 47.45.010(a) is amended to read:

27 (a) A person who is 65 years of age or over, who resides in the
28 state for at least two years [ONE YEAR] immediately preceding applica-
29 tion for a longevity bonus under this chapter may apply to the

1 commissioner of administration for qualification to receive a monthly
2 bonus of \$250.

3 * Sec. 4. This Act takes effect January 1, 1991.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FISCAL NOTE

REQUEST:

Revision Date: January 23, 1989
Title: * See below

Agency Affected: Administration
BRU: Longevity Bonus

Sponsor: Donley
Requestor: State Affairs Committee

Components: Administration, Grants

* An Act relating to durational residency requirements for certain state benefit programs; and providing for an effective date

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	(60.0)	(120.0)	(120.0)	(120.0)	(120.0)
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	(60.0)	(120.0)	(120.0)	(120.0)	(120.0)
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	(60.0)	(120.0)	(120.0)	(120.0)	(120.0)
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	(60.0)	(120.0)	(120.0)	(120.0)	(120.0)

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

See attached

Prepared By: James H. Chase
Division: Pioneers' Benefits

Phone: 465-4400
Date: _____

Approved by Commissioner: James H. Chase for John M. Andrews
Agency: Department of Administration

Date: 1/25/89

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. House Bill (HB) 34

In order to project the fiscal impact of the passage of HB 34 some assumptions had to be made. These assumptions were:

- 1) That the number of applicants for the Longevity Bonus who have a minimum of one year of residence in the state will remain at the same ratio to the total number of applicants.

Rationale: This ratio has remained constant for the past two years.

- 2) That the ratio of applicants for the Longevity Bonus who have a minimum of one year of residence in the state to the total number of applicants will remain at one in five.

Rationale: This is the ratio demonstrated in the last two years.

- 3) That the passage of HB 34 will impact only those applicants with less than two years of residence the year following its passage.

Rationale: Those applicant who would otherwise be qualified would have to wait another year for their applications to be accepted. Those who learn of the passage of HB 34 who do not have the one year of residence would apply two years after its passage and continue to do so in the following years.

- 4) That the average number of applicants for the Longevity Bonus who have a minimum of one year of residence in the state is 40 per month.

Rationale: Historical trend analysis result.

With these assumptions the following calculations were made. The number of applicants, 40, is multiplied by \$250 and that product multiplied by six for the second half of FY 90 or 12 for the FY 91 or six for the first half of FY 92. These products were the savings in the grant component. The savings in postage cost is reflected in the contractual component.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to durational
 residency requirements..."
 Sponsor: Repr. Donley
 Requestor: House State Affairs

Agency Affected: Department of Law
 BRU: Legal Services
 Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL			30.0	30.0		
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	30.0	30.0	-0-	-0-

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	30.0	30.0	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services

Phone: 465-3672
 Date: January 23, 1989

Approved by Commissioner: Richard I. Pegues /FOR/
Grace Berg Schaible, Atty. Gen.
 Agency: Department of Law

Date: January 23, 1989

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 34

Section 1 of this bill amends AS 43.23.005 (a)(2) to increase the residency requirement, for an individual to receive the state's annual permanent fund dividend, from six consecutive months' residence to 24 consecutive months' residence immediately preceding April 1 of the current dividend year.

Section 2 of the bill amends AS 47.45.010 (a) to increase the residency requirement, for an individual to receive the state's longevity bonus, from one year's residency to two year's residency immediately preceding an individual's application for the longevity bonus.

Historically, state laws containing lengthy durational requirements have come under legal attack in Alaska. The department anticipates that if the bill is enacted it will be challenged in the courts, on federal constitutional grounds. Fiscal note funds, in the amount of 30.0, are therefore being requested to pay for outside counsel to assist in the preparation of arguments, that will be needed by the department to defend the state. Although an opinion cannot be offered, it should be noted that if the bill becomes law and then is subsequently overturned by the courts, the state might be exposed to the payment of damages for any injuries or loss suffered by any classes of persons, as a result of the bill's enactment.

FISCAL NOTE

REQUEST

Revision Date: _____
Title: Durational residency require-
ments for state benefit programs
Sponsor: Donley, Boucher, Boyer, et al.
Requestor: _____

Agency Affected: Revenue
BRU: Permanent Fund Dividend Division
Components: Permanent Fund Dividend
Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: See Attached

Prepared By: Ervin Jones
Division: Permanent Fund Dividend Division

Phone: 465-2323
Date: January 24, 1989

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 1/24/89

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Alaska Department of Revenue
Permanent Fund Dividend Division
HB 34 Fiscal Note Analysis
January 24, 1989

Section 1 modifies one of the four general eligibility requirements to receive a permanent fund dividend. Under the law enacted in 1982, an individual must have been "a state resident for a period of at least six consecutive months immediately preceding April 1 of the current dividend year." For example, in addition to the other requirements, to be eligible for the 1989 dividend, an individual must have been a state resident during the ELIGIBILITY PERIOD of October 1, 1988 through March 31, 1989. Section 1 extends the six month requirement to 24 months. In other words, the individual in the above example, in order to qualify for the 1990 dividend (see Section 3) must have been a state resident for the entire ELIGIBILITY PERIOD of April 1, 1988 through March 31, 1990.

Conservatively speaking, there are approximately 60,000 new dividend applicants each year. The first effect of Section 1 would be felt in 1990 when 60,000 new Alaskans who thought they would be eligible, find that they are not. The second and most difficult effect would be when approximately 60,000 individuals who did qualify for the 1989 dividend find that they are now not eligible for the 1990 dividend. (See attachment A)

It will take considerable effort on the Department's part, in conjunction with the state demographer, to predict the final effect of this bill. Some of the factors to be considered include:

- 1) the length of the period (current proposal - 24 months);
- 2) the number of eligible individuals who leave each year;
- 3) the number of new person's arriving each year;
- 4) the percentage of individuals moving to Alaska who leave after one year, eighteen months, etc.;
- 5) the seasonal distribution of new arrivals;
- 6) the relative birth rate of new arrivals versus individuals who have been in Alaska over two years; and
- 7) the reaction of military personnel to the new proposal, i.e. how do they respond to the new choice presented relative to overseas pay, overseas duty credit, etc.

The final effect on administrative costs of the Permanent Fund Dividend program would depend upon such factors as mentioned above. For the first two years, the additional costs would include informing, advising, and counseling the public answering their repeated questions as to "why was I a resident in 1989 and not in 1990," plus the costs of denying the applicants who would file anyway, and hearing their appeals, and the costs of assisting the

Alaska Department of Revenue
Permanent Fund Dividend Division
HB 34 Fiscal Note Analysis
January 24, 1989

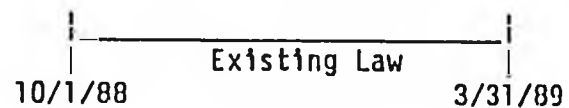
Department of Law in defending the new requirement. These cost increases might partially be offset by the document processing cost savings of reducing the number of applicants by approximately 60,000.

The Department's primary concern with the bill is a clear policy call -- the likelihood of a successful legal challenge to the extended ELIGIBILITY PERIOD on constitutional grounds, i.e. durational residency tests. This issue should be carefully weighed before jeopardizing the existing dividend program.

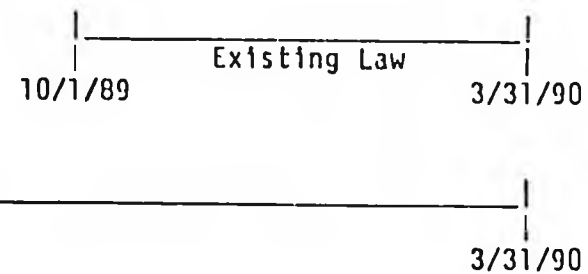
DIVIDEND
YEAR

COMPARISON OF ELIGIBILITY PERIODS

1989



1990



REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN • SPENARD
SEAT A
HEATHER MEADOWS • NORTHWOOD • SPENARD • THOMPSON • FURNAGAIS • UPPER MIDDTOWN • WINDMERE

3111 "C" STREET, SUITE 450
ANCHORAGE, ALASKA 99503
(907) 561-7629




CHAIRMAN
LABOR AND COMMERCE COMMITTEE

MEMBER
STATE AFFAIRS COMMITTEE
HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE
HOUSING AND BANKING SUBCOMMITTEE
FINANCE BUDGET SUBCOMMITTEE
DEPT. OF COMMERCE AND
ECONOMIC DEVELOPMENT

January 24, 1989

M E M O R A N D U M

To: Members, House State Affairs Committee
From: Representative Dave Donley 
Re: HB 34 - Durational residency requirements for Longevity Bonus and Permanent Fund Dividends

HB 34, a measure establishing a two year residency requirement to be eligible for a Permanent Fund dividend and for the Alaska Longevity Bonus, is before the House State Affairs Committee.

The current durational residency requirement for the Longevity Bonus is one year and for the Permanent Fund Dividend, six months of continuous residency prior to April 1 of the current dividend year. HB 34 retains that April 1 determination date and increases the residency period to 24 months. A January 1, 1990 effective date is included so that the new residency requirement would coincide with the calendar year to facilitate the administration of the permanent fund dividend program.

There is a proposed amendment to HB 34 in your files. The amendment inserts additional language under the Longevity Bonus program to make it consistent with the new residency requirement. This language was inadvertently left out of the original bill. Should the Committee decide to incorporate this amendment into a CS, I ask that you also consider changing the effective date to January 1, 1991. Such a change would "grandfather" in anyone about to become eligible for the bonus.

The residency requirement under the original Longevity Bonus program required continuous residency since statehood. The Alaska Supreme Court struck down the program in the Vest decision, in part because of the lengthy residency requirement, although they did not elaborate on what length of residency they would find acceptable. The state subsequently adopted the one year requirement.

Originally, the Permanent Fund dividends were disbursed according to the number of years a particular Alaskan had maintained residency in the state. The U.S. Supreme Court struck down the program in the Zobel decision, because the residency requirement was arbitrary and unfair and violated both the privileges and immunities and equal protection clause of the Constitution. Again, they

Douley MEMO

did not elaborate on what residency requirement would meet a constitutional challenge.

Traditionally the courts have applied two "tests" when considering residency requirements. The first, "strict scrutiny", is applied when a particular program provides the basic necessities of life (medical care, welfare benefits etc.) or when an important constitutional right is at stake, such as the right to vote. In these cases, even a one year residency requirement would not be upheld.

The second standard, applied when dealing with laws that do not affect a basic necessity or a fundamental right, is called "rational basis". Under the "rational basis" standard, the courts weigh the nature and extent of the residency required against the state's purpose in enacting the statute and the fairness and substantially of the relationship between the purpose and the requirement. In other words, what are the reasons for requiring two years of residency and does the requirement satisfy the purposes for which it was adopted?

In addition, the courts recognize that for the purpose of determining residency the state can require both actual residency and intent to become or remain a resident. However, the state must be careful to not impose standards that result in bone fide residents being treated differently under the law, such as under the original permanent fund dividend program.

It is clear that neither of the programs affected by HB 34 involve a fundamental right or a basic necessity of life. Therefore, the "rational basis" standard would apply. Both the Longevity Bonus and the Permanent Fund Dividend are unique programs uniquely created to benefit Alaska's residents. 1. | The Longevity Bonus is designed to enable life-long Alaskans to spend their retirement years in the state they helped build. The Permanent Fund Dividend is designed to create a direct link between the residents of Alaska and the Fund they created through a constitutional amendment.

Therefore, the state has clear and compelling reasons to assure that benefits from these programs accrue to bone fide residents of the state. The pertinent question is whether the state has compelling reasons to require two years of residency in these cases and whether the requirement is reasonable to establish that a person is a bone fide resident of the state. I believe we do and I believe it can be successfully defended in court.

In a federal District Court decision that upheld the two year residency requirement for the Alaska Student Loan Program, the judge took into consideration certain unique circumstances about the program that justified a longer durational residency requirement. Among them were: the student loan program was the most generous in the nation, students as a class are a mobile population, and there was evidence of "loan-shopping" by students which may encourage applicants to fraudulently claim residency status. Therefore, the court reasoned, the state had cause to apply a strict standard to assure that applicants were, in fact, bone fide residents.

2. | Both the Longevity Bonus and the Permanent Fund dividend program are generous benefits that are unique to Alaska. There is certainly evidence that "benefit shopping" occurs in that citizens move to Alaska to take advantage of the

Longevity Bonus as well as the dividend, as opposed to other states without these benefits or with similar programs that are not so generous. Finally, the population group affected by HB 34 is, by definition, transient. Therefore, I believe the state has sufficient grounds to adopt a two year residency requirement and at least an even chance of arguing our case successfully in court under the "rational basis" standard.

A M E N D M E N T

OFFERED IN THE HOUSE

BY DONLEY

TO: HB 34

Page 1, after line 21:

Insert a new bill section to read:

"* Sec. 2. AS 43.23.015(b) is amended to read:

(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, I have been a state resident for at least 24 [SIX] months immediately preceding April 1 of the current dividend year, and I have been physically present in the State of Alaska at some time during the period beginning July 1 two years before the date of application and ending on the date of this application; or

() (name), the individual on whose behalf I am applying, is a state resident on the date of this application, has been a state resident for at least 24 [SIX] months immediately preceding April 1 of the current dividend year, and has been physically present in the State of Alaska at some time during the period beginning July 1 two years before the date of application and ending on the date of this application.

I understand that a false claim of eligibility to obtain a

permanent fund dividend for myself or for another is a criminal offense, that if convicted I will forfeit future dividends, and that I must repay all dividends that have been paid to me. I understand that if I wilfully misrepresent, exercise gross negligence, or recklessly disregard a material fact regarding my eligibility for a permanent fund dividend I will forfeit the dividend, be subject to a civil fine of up to \$5,000, and lose my eligibility for the next five dividends. I understand that these penalties are in addition to any criminal penalties imposed.

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

Renumber the following bill sections accordingly.

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN • SPENARD
SEAT A
HEATHER MEADOWS • NORTHWOOD • SPENARD • THOMPSON • FURNAGAIN • UPPER MIDTOWN • WINDEMERE

3111 "C" STREET, SUITE 450
ANCHORAGE, ALASKA 99503
(907) 561-7629




CHAIRMAN
LABOR AND COMMERCE COMMITTEE

MEMBER
STATE AFFAIRS COMMITTEE
HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE
HOUSING AND BANKING SUBCOMMITTEE
FINANCE BUDGET SUBCOMMITTEE
DEPT. OF COMMERCE AND
ECONOMIC DEVELOPMENT

January 17, 1989

MEMORANDUM

To: Representative H.A. "Red" Boucher, Chair
House State Affairs Committee

From: Representative Dave Donley 

Re: HB 34 - Durational residency requirements for certain
state benefit programs

I am writing to request that you schedule HB 34 for a hearing before the House State Affairs Committee at your earliest convenience.

A file of backup information on the bill will be delivered to your office within the week. Please contact me or Ginger Baim at 4954 if you have any questions or need additional information.

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN • SPENARD
NORTHWOOD • SPENARD • THOMPSON • TURNAGAIN • UPPER MIDDTOWN • WINDEMERE

PO. BOX V, JUNEAU 99811
(907) 465-3892



CHAIRMAN
LABOR AND COMMERCE
COMMITTEE

MEMBER
STATE AFFAIRS COMMITTEE
HEALTH, EDUCATIONAL
AND SOCIAL SERVICES COMMITTEE

December 14, 1988

M E M O R A N D U M

TO: Representative Red Boucher, Chair
House State Affairs Committee

FROM: Representative Dave Donley *LD*

RE: Scheduling a measure regarding residency requirement
for the Longevity Bonus and PFD

I am prefiling legislation that would mandate a two year
residency requirement for recipients to be eligible for the
longevity bonus and the permanent fund dividend.

I expect that this measure will be referred to the State
Affairs committee and would appreciate it if you would
schedule it for a hearing as soon as possible.

If you have any questions, please don't hesitate to contact
me, or my aide, Michael Ward. Thank you for your
consideration.

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN • SPENARD
SEAT A
HEATHER MEADOWS • NORTHWOOD • SPENARD • THOMPSON • TURNAGAIN • UPPER MIDDLETOWN • WINDEMERE

3111 "C" STREET, SUITE 450
ANCHORAGE, ALASKA 99503
(907) 561-7629



CHAIRMAN

LABOR AND COMMERCE COMMITTEE

MEMBER

STATE AFFAIRS COMMITTEE

HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

HOUSING AND BANKING SUBCOMMITTEE

FINANCE BUDGET SUBCOMMITTEE
DEPT. OF COMMERCE AND
ECONOMIC DEVELOPMENT

PRESS RELEASE * PRESS RELEASE * PRESS RELEASE

Date: December 29, 1988

Contact: Representative Dave Donley or
Ginger Baim at 561-7629
(After 1/2/89 at 465-4954)

PROPOSED INCREASE IN RESIDENCY REQUIREMENTS FOR STATE BENEFITS

A measure establishing a two year residency requirement for the Alaska Longevity Bonus and Permanent Fund Dividend has been introduced by Representative Dave Donley, D-Anchorage.

"Alaskans overwhelmingly agree that the residency requirement should be increased", Donley said. "The courts overturned the original residency requirements on both the programs because they were too long. But the courts didn't say what length of residency would meet Constitutional muster."

"The courts have upheld two year residency requirements in other cases", Donley said, "most notably the Alaska Student Loan Program. I believe they will uphold the same requirements for these two programs".

Continuous residency since Statehood was required under the original Longevity Bonus Program. The Alaska Supreme Court overturned that law on Constitutional grounds and the state subsequently adopted a one year residency requirement. The original Dividends were prorated among Alaskans depending on the number of years of residency. Again the courts overturned the law and the current program requires at least six months of residency for eligibility.

"There are no easy answers", Donley said. "There are substantial questions of law at stake and it's not a sure thing that the courts will uphold the new law. But I think we would remiss in our duties if we failed to place the question before the court".

"The Longevity Bonus was created to enable Alaska seniors to live out their lives in the state they helped build. The Dividend gives Alaskans a direct stake in the health and future of their Permanent Fund", Donley said. "It is appropriate that the people who benefit from these programs have at least the same stake in Alaska."

6-0107E
Cook
1/24/89

Original sponsors: Donley, Boucher,
Boyer, et al.

Rec'd Alaska Renewal 2/26/89

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 34 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to durational residency requirements
7 for certain state benefit programs; and providing for
8 an effective date."

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

10 * Section 1. AS 43.23.005(a) is amended to read:

11 (a) An individual is eligible to receive one permanent fund
12 dividend each year in an amount to be determined under AS 43.23.025 if
13 the individual applies to the department, and if

14 (1) on the date of application the individual is a state
15 resident;

16 (2) the individual was a state resident for a period of at
17 least 24 [SIX] consecutive months immediately preceding April 1 of the
18 current dividend year; and

19 (3) the individual has been physically present in the state
20 at some time during the period beginning July 1 two years before the
21 date of application and ending on the date of application.

22 * Sec. 2. AS 43.23.015(b) is amended to read:

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

27 I certify that

28 () I am a state resident on the date of this application, I have
29 been a state resident for at least 24 [SIX] months immediately

Handwritten: Making a Fair Statement

SB 444

1 preceding April 1 of the current dividend year, and I have been phys-
2 ically present in the State of Alaska at some time during the period
3 beginning July 1 two years before the date of application and ending
4 on the date of this application; or

5 () (name), the individual on whose behalf I am applying, is a
6 state resident on the date of this application, has been a state
7 resident for at least 24 [SIX] months immediately preceding April 1 of
8 the current dividend year, and has been physically present in the
9 State of Alaska at some time during the period beginning July 1 two
10 years before the date of application and ending on the date of this
11 application.

12 I understand that a false claim of eligibility to obtain a perma-
13 nent fund dividend for myself or for another is a criminal offense,
14 that if convicted I will forfeit future dividends, and that I must
15 repay all dividends that have been paid to me. I understand that if I
16 wilfully misrepresent, exercise gross negligence, or recklessly disre-
17 gard a material fact regarding my eligibility for a permanent fund
18 dividend I will forfeit the dividend, be subject to a civil fine of up
19 to \$5,000, and lose my eligibility for the next five dividends. I
20 understand that these penalties are in addition to any criminal pen-
21 alties imposed.

22
23 _____
24 (signature of individual,
25 parent, guardian, or other
authorized representative)

26 * Sec. 3. AS 47.45.010(a) is amended to read:

27 (a) A person who is 65 years of age or over, who resides in the
28 state for at least two years [ONE YEAR] immediately preceding applica-
29 tion for a longevity bonus under this chapter may apply to the

1 commissioner of administration for qualification to receive a monthly
2 bonus of \$250.

3 * Sec. 4. This Act takes effect [January 1, 1990.]
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

6-0107E
Cook
1/24/89

Original sponsors: Donley, Boucher,
Boyer, et al.

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 34 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to durational residency requirements
7 for certain state benefit programs; and providing for
8 an effective date."

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

10 * Section 1. AS 43.23.005(a) is amended to read:

11 (a) An individual is eligible to receive one permanent fund
12 dividend each year in an amount to be determined under AS 43.23.025 if
13 the individual applies to the department, and if

14 (1) on the date of application the individual is a state
15 resident;

16 (2) the individual was a state resident for a period of at
17 least 24 [SIX] consecutive months immediately preceding April 1 of the
18 current dividend year; and

19 (3) the individual has been physically present in the state
20 at some time during the period beginning July 1 two years before the
21 date of application and ending on the date of application.

22 * Sec. 2. AS 43.23.015(b) is amended to read:

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

27 I certify that

28 () I am a state resident on the date of this application, I have
29 been a state resident for at least 24 [SIX] months immediately

1 preceding April 1 of the current dividend year, and I have been phys-
2 ically present in the State of Alaska at some time during the period
3 beginning July 1 two years before the date of application and ending
4 on the date of this application; or

5 () (name), the individual whose behalf I am applying, is a
6 state resident on the date of this application, has been a state
7 resident for at least 24 [SIX] months immediately preceding April 1 of
8 the current dividend year, and has been physically present in the
9 State of Alaska at some time during the period beginning July 1 two
10 years before the date of application and ending on the date of this
11 application.

12 I understand that a false claim of eligibility to obtain a perma-
13 nent fund dividend for myself or for another is a criminal offense,
14 that if convicted I will forfeit future dividends, and that I must
15 repay all dividends that have been paid to me. I understand that if I
16 wilfully misrepresent, exercise gross negligence, or recklessly disre-
17 gard a material fact regarding my eligibility for a permanent fund
18 dividend I will forfeit the dividend, be subject to a civil fine of up
19 to \$5,000, and lose my eligibility for the next five dividends. I
20 understand that these penalties are in addition to any criminal pen-
21 alties imposed.

22 _____
23 (signature of individual,
24 parent, guardian, or other
25 authorized representative)

26 * Sec. 3. AS 47.45.010(a) is amended to read:

27 (a) A person who is 65 years of age or over, who resides in the
28 state for at least two years [ONE YEAR] immediately preceding applica-
29 tion for a longevity bonus under this chapter may apply to the

1 commissioner of administration for qualification to receive a monthly
2 bonus of \$250.

3 * Sec. 4. This Act takes effect January 1, 1990.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Item 5



Alaska State Legislature

House of Representatives
COMMITTEE ON STATE AFFAIRS

TO: House State Affairs Committee Members

FROM: Representative H.A. "Red" Egan, Chair
House State Affairs Committee

DATE: January 24, 1989

RE: HB 34 -- Durational Residency Requirements

I would like to bring to your attention a memorandum from Keith Levy to Senator Mitch Abood dated February 7, 1987 which discusses durational residency requirements and case law regarding residency requirements.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM

February 7, 1987

SUBJECT: Durational residency requirement for
 longevity bonus (SB 56 and SB 57)

TO: Senator Mitch Abood, Chair
 Senate State Affairs Committee

FROM: Keith B. Levy ^{KBL}
 Legislative Counsel

You have asked whether making the Alaska longevity bonus a "needs based" program with an income cap for eligibility of \$20,000 or \$25,000 would require reducing the residency requirement for the program from one year to 30 days. While it is difficult to predict with certainty the maximum durational residence requirement that is constitutionally permitted under any particular set of facts, it is true that making the longevity bonus "needs based" would open the current one year requirement up to serious attack.

A one year durational residency requirement presents potential constitutional problems in any state legislation. In the case of a program which provides the "basic necessities of life," however, the invalidity of such a durational residence requirement is almost certain. Thus, a one year residence requirement for the longevity bonus program, even in its current form, is open to constitutional challenge. Making the program "needs based" would make a successful challenge more likely if the court views the program as providing the basic necessities of life.

In Shapiro v. Thompson, 394 U.S. 618, 22 L.Ed.2d 600 (1969), the United States Supreme Court struck down various state provisions requiring indigents to be state residents for one year before being eligible for state welfare benefits. The court observed that in each case there was no question that the indigents were state residents, but they were being denied welfare benefits solely because they had not been residents for the one year period. The court concluded

that, while the state may require that welfare recipients be state residents, the one year requirement penalized the constitutional right to travel:

. . . any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional. - (Emphasis in original.) Shapiro, 22 L.Ed.2d, at 615.

The court rejected various arguments of the states involved, including the argument that the one year waiting period served to prevent fraudulent receipt of benefits. The court pointed out that fraud can be prevented and residency established without the extensive waiting period. Shapiro, 22 L.Ed.2d, at 616 - 617.

In a footnote, the Shapiro court did state that its ruling was limited to the facts of the case:

We imply no view of the validity of waiting-period or residence requirements determining eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interests on the one hand, or, on the other, may not be penalties upon the exercise of the right of interstate travel.

Shapiro, 22 L.Ed.2d, n. 21, at 617.

The holding in Shapiro was extended to apply to medical benefits in Memorial Hospital v. Maricopa County, 415 U.S. 250, 39 L.Ed.2d 306 (1974):

Whatever the ultimate parameters of the Shapiro penalty analysis, it is at least clear that medical care is as much "a basic necessity of life" to an indigent as welfare assistance. And governmental privileges or benefits necessary to basic sustenance have often been viewed as being of greater constitutional significance than less essential forms of governmental entitlements. (Footnotes omitted. Memorial Hospital, 39 L.Ed.2d, at 315.)

The court acknowledged that a one year residence requirement may sometimes be justified, as in the case of charging lower tuition to one year residents attending a state university:

While we fully recognize the value of higher education, we cannot equate its attainment with food, clothing and shelter. Shapiro involved the immediate and pressing need for preservation of life and health of persons unable to live without public assistance, and their dependent children. Thus, the residence requirement in Shapiro could cause great suffering and even loss of life. The durational residence requirements for attendance at publicly financed institutions of higher learning do not involve similar risks. (Memorial Hospital, 30 L.Ed.2d, n. 15, at 316.)

[Accordingly, the court left open the possibility that a one year residence requirement could be upheld in certain instances, but not where the benefit involved is one of the basic necessities of life.

It is difficult to say whether the Alaska Supreme Court would view an income cap of \$20,000 or \$25,000 as making the longevity bonus a benefit involving the "basic necessities of life" within the meaning of the Shapiro and Memorial Hospital cases. It can certainly be argued that any income cap would make the program a "welfare" benefit so that the court would view it as providing basic necessities. And the lower the income cap gets, the more likely the court will reach this conclusion. Thus, a \$20,000 income cap is more subject to challenge than a \$25,000 cap.

Section 1(b), ch. 38, SLA 1984, states:

The longevity bonus program is not a form of welfare and is not a substitute for or supplement to public assistance. Other programs are available to provide the basic necessities of life. The longevity bonus program is intended to encourage elderly Alaskans to spend their retirement years in the comfort of their homes.

This language is obviously intended to protect against a challenge under Shapiro and Memorial Hospital. However, setting an income cap on eligibility for the bonus would seem to repudiate that language by making the bonus available only to those Alaskans who need it.

In Dunn v. Blumstein, 405 U.S. 330, 31 L.Ed.2d 274 (1972), the United States Supreme Court struck down a one year residence requirement for the right to vote as penalizing that important constitutional right. In a similar case, the Alaska Supreme Court struck down a 75 day residence requirement for voting in state elections. State v. Van Dort, 502 P.2d 453, 454 (Alaska 1972). In each case, however, the court did find that a 30 day residence requirement would serve the compelling state interest in preventing voter fraud and voting by nonresidents.

In subsequent cases, the Alaska Supreme Court seems to have taken an even broader interpretation of the right to travel and a more critical view of durational residence requirements than the United States Supreme Court. For example, in State v. Adams, 522 P.2d 1125 (Alaska 1974), the court held that a one year residence requirement to obtain a divorce in a state court violates the state constitution. This is in contrast to the United States Supreme Court opinion in Sosna v. Iowa, 419 U.S. 393, 42 L.Ed. 2d 532 (1976), in which the court upheld Iowa's one year residence requirement for seeking a divorce in the state, under the federal constitution. The court in Adams went so far as to say:

All durational residency requirements inherently infringe upon the fundamental constitutional right of interstate travel. Hence, all such requirements are prima facie invalid and will be countenanced only when they serve a compelling state interest. (Footnotes omitted. Adams, at 1131.)

In State v. Wylie, 516 P.2d 142 (Alaska 1973), the court struck down a one year residence requirement for public employment, saying the state had failed to advance a compelling justification for the requirement.

The standard for reviewing durational residence requirements in Alaska was altered somewhat after the Alaska Supreme Court adopted a new test under which state equal protection challenges are considered:

The classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. (Isakson v. Rickey, 550 P.2d 359 (Alaska 1976).)

Even under the new standard, however, the court requires the state to provide a high level of justification before it will sustain a durational residence requirement. Applying this new standard, the court struck down a borough ordinance requiring one year of residence in the borough to participate in the borough's land lottery. Gilman v. Martin, 662 P.2d 120 (Alaska 1983).

The significance of the Adams, Wiley, and Gillman cases is that the court struck down the one year residence requirements even though they did not involve "basic necessities of life." Thus, it appears that the Alaska Supreme Court goes much further than the United States Supreme Court in durational residence challenges. Accordingly, even if the longevity bonus is not viewed as providing the basic necessities of life, the one year residence requirement could be overturned by the court. The Alaska Supreme Court has upheld durational residence requirements for eligibility to run for the state legislature (Gilbert v. State, 526 P.2d 1131 (Alaska 1974)); for eligibility to perform jury duty (Hampton v. State, 569 P.2d 138 (Alaska 1977)); and for eligibility to run for a municipal office (Castner v. City of Homer, 598 P.2d 953 (Alaska 1979)). However, the distinguishing factor in each of these cases is that the residence requirement was for a position involving important policy making responsibilities.

The longevity bonus in any form seems to be more akin to the cases in which the durational residence requirements were struck down than the cases in which they were upheld. It is simply a state benefit, not a policy making position. The kinds of justifications the state could put forth for the one year requirement -- protection of fiscal integrity of the program and preventing people from moving to the state solely to obtain the benefit -- have been rejected by both the Alaska Supreme Court and United States Supreme Court. However, setting an income cap for eligibility for the program will certainly add to the arguments against the one year requirement, since such a change is likely to make the program more of a "basic necessity of life" rather than a mere supplement to income.

In Jeffrey v. Colorado State Department of Social Services, 599 P.2d 874 (Colorado 1979), the Colorado Supreme Court struck down a state old-age pension plan which contained a durational residence requirement. The court rejected the argument that the pension was merely an income supplement

Senator Abood
February 7, 1987
Page 6

because, under state law, the pension benefit was reduced in proportion to the amount of an individual's other income. This provision made it clear to the court that the pension was intended to meet the basic necessities of life, not to supplement other income. Similarly, setting an income cap on eligibility for the longevity bonus would add to the arguments that the program provides basic needs and the one year durational residence requirement is unconstitutional.

In conclusion, it is possible that the Alaska Supreme Court would find the one year residence requirement for the longevity bonus unconstitutional even in the program's present form. However, setting an income cap for eligibility for the program will certainly add to the likelihood that the residence requirement would be struck down if challenged. The strength of such a challenge will depend, in part, on the details of how the "needs based" program would operate. The lower the level of income at which an individual becomes eligible, the greater the likelihood that the court will view the program as providing the basic necessities of life, thus increasing the chance that the one year requirement will be struck down.

If I may be of further assistance, please advise.

KBL:mkr
m8/105