

HB

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SENATE COMMITTEE REPORT

FURTHER

5/5/89

DATE TURNED INTO OFFICE

5/7/89

Mr. President:

Finance

Committee considered

CSHB 34 (FIN)

establishing durational residency requirements, not to exceed two years, for receipt of the permanent fund dividend and receipt of benefits under the longevity bonus program; efd and recommended

- replace with _____ CS _____) same title
- or adopt _____ CS _____) new title
- attached amendment(s) and technical title change (HB only)
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) zero fiscal impact appropriation no FN
 new updated previous 206 & 207 (210.0)
 same as previous fiscal note(s) published

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]
 Chair: signature and recommendation
[Signature] Co-Chair

Committee Backup attached

FISCAL NOTE

REQUEST:

Revision Date: March 21, 1989 Agency Affected: Administration
Title: * See below BRU: Longevity Bonus

Sponsor: Donley Components: Administration, Grants
Requestor: State Affairs Committee

* An Act relating establishing durational residency requirements, not to exceed two years, for receipt of the permanent fund dividend and receipt of benefits under the longevity bonus program; 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	(210.0)	(1080.0)	(120.0)	(120.0)	(120.0)
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	(210.0)	(1080.0)	(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	(210.0)	(1080.0)	(120.0)	(120.0)	(120.0)
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	(210.0)	(1080.0)	(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 M. Chase *James M. Chase* Phone: 465-4400
Division: Pioneers' Benefits *James M. Chase* Date: 3/21/89
Approved by Commissioner: John M. Andrews *John M. Andrews* Date: 3/21/89
Agency: Department of Administration

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
cc: "House Bills" Binder

Adopted

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 34 (FIN)

In order to project the fiscal impact of the passage of CSHB 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 CSHB 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 CSHB 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. Each month the number of applicants who only have the minimum of one year in the state is multiplied by \$250 to compute the projected savings. The first month would be 40 times \$250, the second month it would be 80 times \$250 and so forth until the original "40" became eligible by having the minimum of two years in the state a year after the effective date of the bill. From that point, the amount of savings would decrease until all of those originally affected would have become eligible. The savings then would level out at the initial monthly rate of 40 one year minimum applicants times the \$250.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSHB 34 (FIN)
PUBLISH DATE: HOUSE 3/24/89

FISCAL NOTE

REQUEST:

Revision Date: March 21, 1989
Title: "... for establishing durational
residency requirements..."
Sponsor: House Judiciary
Requestor: House Finance

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-	-0-	30.0	30.0	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	30.0	30.0	-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 L. Pegues

Prepared by: Richard L. Pegues, Director

Phone: 465-3672

Division: Administrative Services Division

Date: March 21, 1989

Richard L. Pegues / FOR

Approved by Commissioner: Douglas B. Bailly, Attorney Gen.

Date: March 21, 1989

Agency: Department of Law

Distribution (by preparer):

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

Adopted

CONTINUATION of FISCAL NOTE ANALYSIS

No. 5
CSHB 34 (FIN)
HOUSE 3/24/89For Bill/Resolution No. CSHB 34 (Fin)

The committee substitute for HB 34 adds legislative findings, and it also provides for reduced durational residency requirements if a court finds that the bill's 24 month durational requirements are invalid. Specifically, Sections 3 and 6 appear to delegate the legislature's law making authority to the court, if a court finds either a two year or a one year residency requirement invalid. In the case of the Longevity Bonus Program, this delegation could conceivably result in a shorter durational residency requirement than currently exists. However, these changes do not alter the fact that state laws containing lengthy durational residency requirements come under legal attack in Alaska. Consequently, the fiscal impact noted in the Department of Law's fiscal note of February 8, 1989, are still appropriate. The department's previous comments regarding that impact are repeated below.

Section 2 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 5 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 legal scholar costs, to assist in the preparation and review of arguments that will be needed by the department to defend the state.

In addition to these costs, the department also has a hidden cost whenever it has to divert existing staff resources from other work to defend against durational residency lawsuits. As an example, the longevity bonus lawsuit, Vest v. State, cost the department about \$70,000 in staff salaries and associated overhead expenses. Approximately ten weeks of attorney time was required to prepare for and defend the state at trial, on the constitutionality and retroactivity issues. Approximately eight weeks of attorney time was spent on the Alaska Supreme Court appeals, on the same issues. The average cost for the department's attorneys who handle this level of work, including normal office support costs, is \$96.00 per hour. The department also paid Professor Walter Dellinger \$8,200 to review and help prepare its briefs in the Vest trials. Professor Dellinger is a noted legal scholar and an expert on constitutional law. The department's outside legal expert costs in this matter would have been substantially greater had the case reached the U.S. Supreme Court. Because this particular

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 34 (Fin)

No. 5
CSHB 34 (FIN)
HOUSE 3/24/89

dispute was settled on a request for a motion for summary judgement and did not require a trial on the facts, and because the dispute ended at the state supreme court level, the department's total costs were probably somewhat less than they would have been if the case had gone to the U.S. Supreme Court. Lastly, the costs, attorney fees, and interest that were awarded to the plaintiff by the court in Vest, and which were subsequently paid by the state, totalled \$149,383.88.

Although an opinion cannot be offered, it should also 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.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSHB 34 (FIN)
PUBLISH DATE: HOUSE 3/24/89

FISCAL NOTE

REQUEST

Revision Date: March 21, 1989
Title: Durational residency require-
ments for state benefit programs
Sponsor: Donley, Boucher, Boyer et al.
Requestor: House Finance

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 Phone: 465-2323
Division: Permanent Fund Dividend Division Date: March 21, 1989

Approved by Commissioner: Hugh Malone Date: 3/21/89
Agency: Revenue

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

Adopted

Alaska Department of Revenue
Permanent Fund Dividend Division
CS HB 34 (Fin) Fiscal Note Analysis
March 21, 1989

No. 6
CSHB 34 (FIN)
HOUSE 3/24/89

Section 2 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 1990 dividend under current law, an individual must have been a state resident during the ELIGIBILITY PERIOD of October 1, 1989 through March 31, 1990. Section 2 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 9) 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 2 would be felt in 1990 when 60,000 new Alaskans who thought they would be eligible, find that they are not.

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 their eligibility, plus the costs of denying the applicants who would file anyway and hearing their appeals; and the costs of assisting the Department 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.

Alaska Department of Revenue
Permanent Fund Dividend Division
CS HB 34 (Fin) Fiscal Note Analysis
March 21, 1989

No. 6
CSHB 34 (FIN)
HOUSE 3/24/89

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, and the likelihood of a successful injunction request, prohibiting the Department of Revenue from distributing dividends in 1990 until the court has resolved any litigation. An effective date of 1990 does not allow much time for the courts to resolve any possible litigation, making an injunction more likely. A successful injunction request, preventing the timely distribution of the 1990 dividends, would have a definite negative effect on Alaska's economy. For those residents who depend upon the annual dividend for basic necessities, an injunction would have serious consequences. A successful injunction would also cause increased costs in the administration of the dividend program as we deal with the predictable outpouring of concern and complaints from 536,000 Alaskan residents. For the above reasons, the Department of Revenue strongly opposes changing the effective date to January 1, 1990. This issue should be carefully weighed before jeopardizing the existing dividend program.

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

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2

CS FOR HOUSE BILL NO. 34 (Finance)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act establishing durational residency require-
7 ments, not to exceed two years, for receipt of the
8 permanent fund dividend and receipt of benefits under
9 the longevity bonus program; and providing for an
10 effective date."

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

12 * Section 1. FINDINGS. (a) The legislature finds with respect to the
13 permanent fund dividend program that

14 (1) compared with other states, Alaska has one of the highest
15 ratios of transients to permanent state residents;

16 (2) a significant number of people from other states come to
17 Alaska to work in temporary or seasonal jobs or on short-term projects;

18 (3) because of the large number of transients it is very diffi-
19 cult for the state to determine whether a person is actually a resident
20 with the intent to remain in the state;

21 (4) the permanent fund dividend program is unique to the state
22 and provides generous benefits;

23 (5) the generous nature of this benefit program creates an
24 inducement for people to claim residency inaccurately;

25 (6) a two-year residency requirement is a reasonable way to
26 determine bona fide residency for the purposes of eligibility for this
27 benefit program;

28 (7) a two-year residency requirement will not discourage mi-
29 gration to the state or otherwise interfere with interstate travel;

1 (8) this program does not involve a basic right under the state
2 or federal constitutions or a basic necessity of life;

3 (9) a two-year residency requirement will more accurately indi-
4 cate actual domicile and the intent to remain a resident than the require-
5 ment under current law; and

6 (10) the interest of the state in determining bona fide residence
7 for purposes of this program is at least equal to the interest recognized
8 in *Andress v. Baxter*, U.S. District Court for the District of Alaska, No.
9 A82-307 Civ., September 8, 1983.

10 (b) The legislature finds with respect to the longevity bonus program
11 that

12 (1) the longevity bonus is immediately payable to an applicant
13 upon acceptance into the program;

14 (2) acceptance into the program is primarily based on a state-
15 ment from the applicant that the applicant is a resident for the purposes
16 of eligibility for this benefit program and that the applicant intends to
17 remain a resident of the state;

18 (3) a two-year residency requirement will more accurately indi-
19 cate actual domicile and the intent to remain a resident than the require-
20 ment under current law;

21 (4) the longevity bonus program is unique to the state and
22 provides generous benefits;

23 (5) the generous nature of this benefit program creates an
24 inducement for people to claim residency inaccurately;

25 (6) a two-year residency requirement is a reasonable way to
26 determine bona fide residency for the purposes of eligibility for this
27 benefit program;

28 (7) the two-year residency requirement will not discourage
29 migration to the state or otherwise interfere with interstate travel;

1 (8) this program does not involve a basic right under the state
2 or federal constitutions or a basic necessity of life; and

3 (9) the interest of the state in determining bona fide residence
4 for purposes of this program is at least equal to the interest recognized
5 in Andress v. Baxter, U.S. District Court for the District of Alaska, No.
6 A82-307 Civ., September 8, 1983.

7 * Sec. 2. AS 43.23.005(a) is amended to read:

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

11 (1) on the date of application the individual is a state
12 resident;

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

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

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

20 (e) If a court finds the durational residency requirement under
21 (a)(2) of this section is invalid and no appeal is pending, the resi-
22 dency requirement is one year. If a court finds the one year resi-
23 dency requirement is invalid and no appeal is pending, the residency
24 requirement is the longest duration permitted by law. The department
25 shall change the statement of eligibility under AS 43.23.015(b) as
26 necessary to conform to this subsection.

27 * Sec. 4. AS 43.23.015(b) is amended to read:

28 (b) The department shall prescribe and furnish an application
29 form for claiming a permanent fund dividend. The application must

1 contain a statement of eligibility and a certification of residency in
2 substantially the following form:

3 I certify that

4 () I am a state resident on the date of this application, I have
5 been a state resident for at least 24 [SIX] months immediately preced-
6 ing April 1 of the current dividend year, and I have been physically
7 present in the State of Alaska at some time during the period begin-
8 ning July 1 two years before the date of application and ending on the
9 date of this application; or

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

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

27
28
29

(signature of individual,
parent, guardian, or other

1 authorized representative)

2 * Sec. 5. AS 47.45.010(a) is amended to read:

3 (a) A person who is 65 years of age or over, who resides in the
4 state for at least two years [ONE YEAR] immediately preceding applica-
5 tion for a longevity bonus under this chapter may apply to the commis-
6 sioner of administration for qualification to receive a monthly bonus
7 [of \$250.]

8 * Sec. 6. AS 47.45.010 is amended by adding a new subsection to read:

9 (d) If a court finds the durational residency requirement under
10 (a) of this section is invalid and no appeal is pending, the residency
11 requirement is one year. If a court finds the one year residency
12 requirement is invalid and no appeal is pending, the residency re-
13 quirement is the longest duration permitted by law.

14 * Sec. 7. Notwithstanding the amendments to AS 43.23 made by secs. 2 -
15 4 of this Act, if an individual received a permanent fund dividend for 1989
16 the individual's eligibility to receive a dividend for 1990 shall be de-
17 termined under the law as it existed before those amendments.

18 * Sec. 8. Notwithstanding the amendment to AS 47.45 made by secs. 5 and
19 6 of this Act, if an individual received a longevity bonus payment for any
20 month during 1989, the individual's eligibility to receive bonus payments
21 during 1990 shall be determined under the law as it existed before that
22 amendment.

23 * Sec. 9. This Act takes effect January 1, 1990.