

HB

79

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 16, 2007

FURTHER REFERRALS: Finance

Date of Committee Action: 2-8-07

The STATE AFFAIRS Committee considered:

HB 79

HOUSE BILL NO. 79

LONGEVITY BONUS REAPPLICATIONS

"An Act relating to reapplications for the Alaska longevity bonus program; and providing for an effective date."

Recommends it be replaced with HCS or CS for HB 79 (STA)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of
Abbrev
for
Depts.:

- ADM
- CED
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- HSS
- LEG
- LAW
- LWF
- MVA
- DNR
- DPS
- REV
- DOT
- UA

NEW FISCAL NOTES				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
HES		X		
HES				X
HES		X		

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<i>Craig Aho</i>	Johnson				✓
<i>Kurt B. Johnson</i>	JOHANSEN			X	
<i>Bob Rose</i>	Roses	X			
<i>W. J. Stenborg</i>	Leahill	(X)		=	
<i>Jim Leahill</i>	Leahill				
<i>J. A. Jones</i>	Noil				✓
Chair: <i>[Signature]</i>	LYNN	X			
Chair: <i>[Signature]</i>					

Witness List for HB 79. Longevity bonus reapplications

Stacie Kraly, assistant attorney general for human resources section of Health and Social Services, 4164

Ellie Fitjarrald, acting director of public assistance, 5847

Tam Cook, attorney and bill drafter for HB 79, 6653

STA meeting 2-8-07
HB 79

→ CS
Version m was adopted

Testify

Pat Luby aarp

Elle Fitzgerald ~~at~~ DHSS

Tam Cook Bic drafter

→ Rosenberg asked if we under fiscal control
later - just before all L... - ...
forward ...

... ..

... ..

... ..

... .. would not qualify?

Nancy Manly

From: Christopher Clark [Christopher_Clark@gov.state.ak.us]
Sent: Thursday, February 08, 2007 5:47 PM
To: Nancy Manly; 'Shannon Devon'; Londi Ensor
Cc: Michael Sica; 'Jack Kreinheder'; 'Karen Rehfeld'; 'Jean Brown'; john_bitney@gov.state.ak.us; 'Lindstrom, Elmer A.'; 'Hill, Sherry'; stacie_kraly@law.state.ak.us; ellie_fitjarrald@health.state.ak.us; 'Deborah Behr'
Subject: Two fiscal notes for HB 79; one more to come
Importance: High
Attachments: HB079-DHSS-DPA1-02-08-07.pdf; HB079-DHSS-DPA3-02-08-07.pdf

Greetings, Nancy, Shannon, and Londi.

The attached two fiscal notes for HB 79 (Rep. Bob Lynn's measure relating to longevity bonus reapplications) are ready for transmittal to the House Chief Clerk's office, according to Jack Kreinheder of the Office of Management and Budget.

They are to accompany the bill that moved out of the House State Affairs Committee this [Thursday] morning.

In a nutshell, establishing a way to reapply for a longevity bonus check is linked to the longevity bonus program itself. They go hand in hand, and as such, we need to show the costs of re-establishing the program as set forth by this bill.

Which is what the two attached fiscal notes do.

The first fiscal note estimates the adjustments that would need to be made to the Governor's budget request for funding the longevity bonus program (\$33.7 million) to reflect certain assumptions outlined in the fiscal note by the Department of Health and Social Services.

The second fiscal note reflects the cost of holding harmless those seniors who, without state help, would get a longevity bonus but would lose benefits under the federal Supplemental Security Income program.

Per the suggestion of Jack Kreinheder, the Department of Health and Social Services will prepare a third fiscal note to reflect the administrative costs of operating the longevity bonus program.

As soon as that one's done, I'll forward it to y'all.

Have any questions?

Call me at the number below.

Thank you.

Thank you for your prompt attention to this,
Christopher Clark
Deputy Legislative Director
Gov. Sarah Palin
(907) 465-3994

Nancy Manly

From: Christopher Clark [Christopher_Clark@gov.state.ak.us]
Sent: Thursday, February 08, 2007 2:16 PM
To: 'Deborah Behr'; 'Jack Kreinheder'
Cc: 'Karen Rehfeld'; 'Joan Brown'; john_bitney@gov.state.ak.us; 'Hill, Sherry'; 'Shannon Devon'; 'Lindstrom, Elmer A.'; stacie_kraly@law.state.ak.us; ellie_fitzjarrald@health.state.ak.us; Nancy Manly; Londi Ensor; Michael Sica
Subject: HB 79 fiscal notes
Importance: High
Attachments: HB079-DHSS-DPA1-02-08-07.pdf; HB079-DHSS-DPA2-02-08-07.pdf; HB079-DHSS-DPA3-02-03-07.pdf

Salut, Deborah and Jack.

Attached are three fiscal notes prepared by the Department of Health and Social Services for HB 79, Rep. Bob Lynn's measure relating to longevity bonus reapplications.

During this morning's hearing in House State Affairs, committee members asked whether the first and third fiscal notes (HB079-DHSS-DPA1-02-08-07 and HB079-DHSS-DPA3-02-08-07) – which show the actual costs of reinstating the longevity bonus program – are even necessary.

They argue, somewhat persuasively in my mind, that these two notes are not needed because HB 79 does not appropriate any money for the program. Rather, funding for it may be found in the Governor's proposed fiscal year 2008 operating budget bills, HB 95 and SB 50.

The measure simply provides a means for people to reapply for a longevity bonus.

Ergo, the only fiscal that needs to go with the bill is the second one HB079-DHSS-DPA2-02-08-07, or one like it.

Does that sound right to you?

If it is, I will tell the House State Affairs Committee aide or the House Chief Clerk's office only to provide one fiscal note when the measure is read across the floor and its fiscal note is posted on BASIS.

Thank you for your prompt attention to this.

Christopher Clark
Deputy Legislative Director
Gov. Sarah Palin
(907) 465-3994

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB079-DHSS-DPA1-02-07-07
 Bill Version: HB 79
 () Publish Date: _____
 Dept. Affected: Health & Social Services
 RDU Alaska Longevity Bonus Programs
 Component Longevity Bonus Grants

Revision Date/Time (Note if correction): _____
 Title LONGEVITY BONUS REAPPLICATIONS

Sponsor LYNN
 Requester HOUSE (STA)

Component No. 26

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	(2,769.7)	(4,633.2)	(7,543.6)	(10,138.4)	(12,636.6)	(15,043.3)
Miscellaneous						
TOTAL OPERATING	(2,769.7)	(4,633.2)	(7,543.6)	(10,138.4)	(12,636.6)	(15,043.3)

CAPITAL EXPENDITURES						
CHANGE IN REVENUES (0)						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	(2,769.7)	(4,633.2)	(7,543.6)	(10,138.4)	(12,636.6)	(15,043.3)
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	(2,769.7)	(4,633.2)	(7,543.6)	(10,138.4)	(12,636.6)	(15,043.3)

Estimate of any current year (FY2007) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This proposed legislation reinstates Alaska Longevity Bonus (ALB) payments for individuals who were qualified to receive them before January 1, 1997, and who received a payment in June 2003 when funding for the program ended. This legislation also provides for reapplication to be filed before January 1, 2008. Calculated savings on this fiscal note is because the comparison is to the FY08 Governors budget where ALB payments are fully funded for all recipients 12 full months.

Analysis continued on Page 2.

Prepared by: Ellie Fitzjarrald, Acting Director
 Division Public Assistance
 Approved by: Karleen Jackson, Commissioner
 Agency Department of Health and Social Services

Phone 465-5847
 Date/Time 02/07/2007
 Date 02/07/2007

FISCAL NOTE
FN # HB079-D

STATE OF ALASKA
2007 LEGISLATIVE SESSION

BILL NO. HB 79

ANALYSIS CONTINUATION

Analysis Continued:

Analysis Assumptions

- Legislation will be effective and ALB payments will begin with the benefit month July 2007.
- ALB applications will only be accepted if received before January 1, 2008.
- 12,631 former ALB recipients may be eligible to qualify for the ALB in FY08.
- 95% or approximately 11,999 will be eligible and 5% or 632 potential ALB recipients will not qualify for the ALB because they do not meet the program's residency requirements or will not apply.
- Average ALB payment is \$212/month.
- The amount of the benefit ranged from \$100 to \$250 depending on time of entry in to the program.
- An ALB recipient may not accrue an ALB payment for more than two months before the date of application in accordance with AS47.45.080.
- The number of months a person may receive ALB payments in FY08 will vary depending on date of application, as shown in the chart below.
- Program expenditures for FY09 through FY13 will decline each year as eligible seniors move away, enter nursing homes, or expire.

Benefit Amount Calculations:

FY08

Percent of Applicants	Approx # of Applicants	Must apply by	May be paid retro-active to	Number months benefits FY08	Average Monthly Benefit Amount	Total FY08 Benefit Payments	
70%	8,842	9/1/2007	7/1/2007	12	\$ 212	\$ 22,494.0	
15%	1,895	10/1/2007	8/1/2007	11	\$ 212	\$ 4,410.0	
5%	632	11/1/2007	9/1/2007	10	\$ 212	\$ 1,339.8	
4%	505	12/1/2007	10/1/2007	9	\$ 212	\$ 963.5	
1%	126	1/1/2008	11/1/2007	8	\$ 212	\$ 213.7	
5%	-632	(will not meet residency criteria or will not apply)					\$ 0
Total		Average Benefit Amount= \$212.44 Rounded to \$212				\$ 29,430.3	

FY09 through FY13

	Approx Number of Recipients	Total Benefit Payments
FY09	10,836	\$27,566.8
FY10	9,692	\$24,656.5
FY11	8,672	\$22,061.6
FY12	7,690	\$19,563.4
FY13	6,744	\$17,156.7

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB079-DHSS-DPA2-02-07-07
 Bill Version: HB 79
 () Publish Date: _____
 Dept. Affected: Health & Social Services
 RDU: Alaska Longevity Bonus Programs
 Component: Longevity Bonus Hold Harmless

Revision Date/Time (Note if correction)
 Title: LONGEVITY BONUS REAPPLICATIONS

Sponsor: LYNN
 Requester: HOUSE (STA)

Component No. 2858

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	350.4	480.2	316.2	161.3	151.0	(6.2)
Miscellaneous						
TOTAL OPERATING	350.4	480.2	316.2	161.3	151.0	(6.2)
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (0)						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	350.4	480.2	316.2	161.3	151.0	(6.2)
1037 GF/Mental Health						
Longevity Bonus Hold Harmless						
Other (Specify Type-do not abbreviate)						
TOTAL	350.4	480.2	316.2	161.3	151.0	(6.2)

Estimate of any current year (FY2007) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This proposed legislation reinstates Alaska Longevity Bonus (ALB) payments for individuals who were qualified to receive them before January 1, 1997, and who received a payment in June 2003 when funding for the program ended. This legislation also provides for reapplication to be filed before January 1, 2008.

Federal law governing the administration of the Supplemental Security Income (SSI) program requires the Alaska Longevity Bonus be counted as income when determining federal SSI benefits. Under AS 47.45.122, the ALB Hold Harmless replaces the SSI benefits that are denied.

As the number of recipients decreases, the benefits paid will decrease, as does the Hold Harmless.

Prepared by: Ellie Fitzgerald, Acting Director
 Division: Public Assistance
 Approved by: Karleen Jackson, Commissioner
 Agency: Department of Health and Social Services

Phone: 465-5847
 Date/Time: 02/07/2007
 Date: 02/07/2007

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB079-DHSS-DPA2-02-07-07
 Bill Version: HB 79
 () Publish Date: _____
 Dept. Affected: Health & Social Services
 RDU: Alaska Longevity Bonus Programs
 Component: Alaska Longevity Programs Management

Revision Date/Time (Note if correction): _____
 Title: LONGEVITY BONUS REAPPLICATIONS

Sponsor: LYNN
 Requester: HOUSE (STA)

Component No. 2672

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (0)						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This proposed legislation reinstates Alaska Longevity Bonus (ALB) payments for individuals who were qualified to receive them before January 1, 1997, and who received a payment in June 2003 when funding for the program ended. This legislation also provides for reapplication to be filed before January 1, 2008.

The Administrative costs for operating the Alaska Longevity Bonus program are included in the Governor's FY08 Budget.

Prepared by: Ellie Fitzjarrald, Acting Director
 Division: Public Assistance
 Approved by: Karleen Jackson, Commissioner
 Agency: Department of Health and Social Services

Phone 465-1754
 Date/Time 02/06/2007
 Date 02/07/2007

Nancy Manly

From: Lori Roland
Sent: Thursday, February 15, 2007 3:08 PM
To: Nancy Manly
Subject: clarification

Hi Nancy,

7:11:11 - 2/8?

During the discussion of HB 79 on Tuesday, 2/13, Rep. Johnson said the following (see below). I don't see a 60-day requirement in the bill language. I do see mention of 60 days in the handout from Rep. Gruenberg, which gives the language from AS 47.45.030(a), which is referenced in the bill. However, the way Rep. Johnson says it, it sounds like 60 days the person must be in Alaska, but the way I read the statute, it looks like an absence must not exceed 60 days. Can you clarify?

Lori

REPRESENTATIVE JOHNSON asked, "This requires a 60-day continuous period in the state. Is that consistent with the permanent fund dividend?"

LORI x6609

2/16/07 8:50 am Lori. She will call Tom and try to explain.

HB 79
Amendment #
Eisenberg

Sec. 47.45.030. Absence from the state.

(a) After qualification, a recipient shall notify the commissioner of health and social services when the recipient expects to be absent from the state if the absence is for a continuous period that exceeds 60 days. After that notification, the recipient may no longer receive bonuses from the Department of Health and Social Services after the last regularly approved monthly application. Upon returning to the state, the recipient may again make application for a bonus. Failure to notify the commissioner of an expected absence may be grounds for disqualification.

25-LS0359M
Cook
2/7/07

CS FOR HOUSE BILL NO. 79()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES LYNN, THOMAS, GUTTENBERG AND KERTTULA, Nelson, Crawford, Kawasaki

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to reapplications for the Alaska longevity bonus program; and**
2 **providing for an effective date."**

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

4 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 REAPPLICATION FOR LONGEVITY BONUS. (a) Notwithstanding AS 47.45.020
7 and the requirement under AS 47.45.010(a) that applications for longevity bonus payments
8 must be filed not later than December 31, 1996, a person may file a longevity bonus
9 reapplication if the person

10 (1) qualified to receive a monthly longevity bonus payment under
11 AS 47.45.010(a) before January 1, 1997;

12 (2) was eligible for a longevity bonus for June of 2003 or did not receive that
13 bonus solely as a result of complying with AS 47.45.030(a); and

14 (3) is a resident and has maintained continuous state residency during the

1 period between June 30, 2003, and the date the reapplication is filed.

2 (b) A reapplication under this section must be filed with the commissioner of health
3 and social services before January 1, 2008. The Department of Health and Social Services
4 shall prepare a reapplication form for use under this section and may require evidence of
5 eligibility for a longevity bonus as part of the reapplication process.

6 (c) If the Department of Health and Social Services determines that a person who
7 reapplies meets the requirements of (a) of this section and is otherwise eligible under
8 AS 47.45.030(c) and 47.45.070, the amount of the person's monthly bonus shall be the
9 amount the person was eligible to receive under AS 47.45.010(a)(1) - (4).

10 * Sec. 2. This Act takes effect July 1, 2007.

Alaska State Legislature

Chairman
State Affairs Committee

Vice-Chairman
Economic Development, Trade & Tourism
Committee

Member
Judiciary Committee
Joint Armed Services Committee

Finance Subcommittees



A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" RepBobLynnBlog.com

Session:
Alaska State Capitol
Juneau, AK 99801-1182

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Anchorage, AK 99501-2133

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Changes from HB 79, Version A, to CS for HB 79(), Version M
"An Act relating to reapplications for the Alaska longevity
bonus program; and providing for an effective date."

Section 1(a) Restructures the subsection to make it more readable.

Includes another compliance requirement to consider, AS 47.45.030(a), regarding notification to the commissioner of health and social services for an absence from the state for a continuous period that exceeds 60 days. This ensures that eligible recipients won't be disqualified because of absences due to legitimate vacations and out-of-state travel.

Section 1(b) Replaces the Department of Administration with Department of Health and Social Services.

Section 1(c) Replaces the Department of Administration with Department of Health and Social Services.

Section 2 Changes the effective date from immediately to July 1, 2007.

25-LS0359C

Cook

2/5/07

CS FOR HOUSE BILL NO. 79()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES LYNN, THOMAS, GUTTENBERG AND KERTTULA, Nelson, Crawford,
Kawasaki

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to reapplications for the Alaska longevity bonus program; and
2 providing for an effective date."

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

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 REAPPLICATION FOR LONGEVITY BONUS. (a) Notwithstanding AS 47.45.020,
7 AS 47.45.030(a), and the requirement under AS 47.45.010(a) that applications for longevity
8 bonus payments must be filed not later than December 31, 1996, a person who qualified to
9 receive a monthly longevity bonus payme under AS 47.45.010(a) before January 1, 1997,
10 and was eligible for a longevity bonus for April, May, or June of 2003 may reapply to the
11 commissioner of health and social services for monthly longevity bonus payments if the
12 person is a resident and has maintained continuous state residency during the period between
13 June 30, 2003, and the date the reapplication is filed.

14 (b) A reapplication under this section must be filed before January 1, 2008. The

1 Department of Health and Social Services shall prepare a reapplication form for use under this
2 section and may require evidence of eligibility for a longevity bonus as part of the
3 reapplication process.

4 (c) If the Department of Health and Social Services determines that a person who
5 reapplies meets the requirements of (a) of this section and is otherwise eligible under
6 AS 47.45.030(c) and 47.45.070, the amount of the person's monthly bonus shall be the
7 amount the person was eligible to receive under AS 47.45.010(a)(1) - (4).

8 * **Sec. 2.** This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature

Chairman
State Affairs Committee

Vice-Chairman
Economic Development, Trade & Tourism
Committee

Member
Judiciary Committee
Joint Armed Services Committee

Finance Subcommittees



A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" RepBobLynnBlog.com

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Phone: (907) 269-0205
Fax: (907) 269-0207

Changes from HB 79 to CS for HB 79()

'An Act relating to reapplications for the Alaska longevity bonus program; and providing for an effective date.'

The CS for HB 79 adds another subsection, AS 47.45.030(a), to be waived so as not to disqualify qualified applicants from reapplying for longevity bonus payments because of absences due to legitimate vacations and out-of-state travel. It also adds the months of April and May to June of 2003, when payments stopped, to conform to this change.

The blank CS also inserts the "commissioner of health and social services" in place of the "commissioner of administration" in Section 1(a) and the Department of Health and Social Services in place of the "Department of Administration" in Sections 1(b) and 1(c).

Alaska State Legislature

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Economic Development, Trade & Tourism
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Sectional Analysis of Changes from HB 79 to CS for HB 79() (Changes from Version 25-LS0359\A to Version 25-LS0359\C)

- Section 1(a)** Version 25-LS0359\C adds on page 1, line 7, **AS 47.45.030 (a)**, to include legitimate absences from the state. Version C also adds on page 1, line 10, the months of **April** and **May** to June of 2003 conform to this change. Version C also correctly refers on page 1, line 11, to the **commissioner of health and social services** instead of the commissioner of administration, which was listed in Version A.
- Section 1(b)** Version C correctly refers on page 2, line 1, to the **Department of Health and Social Services** in place of the Version A reference to Department of Administration.
- Section 1(c)** Version C correctly refers on page 2, line 4, to the **Department of Health and Social Services** in place of the Version A reference to Department of Administration.

Alaska State Legislature

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Anchorage, AK 99501-2133

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Fax: (907) 269-0207

Sectional Analysis for HB 79: Longevity Bonus Reapplications

"An Act relating to reapplications for the Alaska longevity bonus program; and providing for an effective date."

- Section 1(a)** Allows qualified applicants who received a monthly longevity bonus payment in June of 2003 to reapply to the state for monthly payments, and not be disqualified for failing to follow the requirements of the "continuous eligibility procedures" under AS 47.45.020 and AS 47.45.010(a).
- Section 1(b)** Requires a qualified applicant to file a reapplication before January 1, 2008. Directs the Department of Health and Social Services to prepare a reapplication form and to check for evidence of eligibility for a longevity bonus.
- Section 1(c)** Allows the person who reapplies and meets the requirements of (a) of this section to reapply for the same monthly bonus payment they were getting under the program before the payments were stopped after June of 2003.
- Section 2** Sets an immediate effective date under AS 01.10.070(c)

Alaska State Legislature

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716 W. 4th Ave., #650
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Sponsor Statement for HB 79

"An Act relating to reapplications for the Alaska longevity bonus program; and providing for an effective date."

Governor Sarah Palin has included funding for the Longevity bonus program in her FY 2008 budget request. Alaska senior citizens who qualified for the program before funding was eliminated four years ago could be receiving their monthly bonus payments again.

However, without passage of House Bill 79, there will be a problem for them under the current law. When the checks stopped arriving after June of 2003, recipients stopped filing the required monthly applications for payments, thereby unintentionally violating the "continuous eligibility procedures" of the program.

HB 79 changes the statute to create a new application to allow formerly eligible recipients to reapply for their monthly bonus payments if the program is funded again.

This bill also requires qualified applicants to reapply before Jan. 1, 2008. And it directs the Department of Health and Social Services to prepare reapplication forms and to check for evidence of eligibility for a longevity bonus.

Under HB 79, those who qualify will be able to reapply for the same monthly bonus payments that they were getting before the program stopped being funded four years ago.

**Legal Opinions
For House Bill 79**

Longevity Bonus Reapplications

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

September 22, 2006

SUBJECT: Longevity Bonus Program (Work Order 25-LS0071\A)

TO: Representative Bob Lynn
Attn: Nancy Manly

FROM: Tamara Brandt Cook
Director

Earlier this month, I sent you a draft appropriation to fund the Longevity Bonus Program. Although the program has never been repealed, on reflection I expect that simply appropriating money to fund the program will not be sufficient.

The Longevity Bonus Program was not funded during fiscal year 2004, fiscal year 2005, fiscal year 2006, nor was it included in the budget for fiscal year 2007. Under AS 47.45.010(a) no person qualifies for a bonus unless the person applied before January 1, 1997. AS 47.45.020 sets up a system for continuous eligibility once the person applies and becomes eligible for the program. Continuous eligibility is based on monthly applications, or, in certain isolated rural areas, applications mailed every six months. Obviously, it is unlikely that eligible recipients have continued to mail the applications during the period that the Longevity Bonus Program was not funded for purposes of ensuring continuous eligibility or that those applications have been consistently processed. Consequently, it appears that it will be necessary to require a new application in order to insure that formerly eligible recipients have maintained residency status and continue to be eligible for the program. (AS 47.45.010(c); AS 47.45.070) This will require a statute change.

Also, be aware that reinstatement of the Longevity Bonus Program in a way that includes only the original recipients potentially muddies the legal status of the program. In 1993, the legislature decided to terminate the program by gradually phasing it out and "grandfathering in" current recipients, and, at a reduced level, future recipients who would first become eligible and apply for the bonus by the end of 1996. This legislation was challenged, but upheld by the Superior Court. (*Maggard v. Sipe*, Superior Court, Third Judicial District, Case No. 3AN-94-08935 CI, order dated June 6, 1996) Basically, the Superior Court held that because the Longevity Bonus Program provides merely an economic interest, it is entitled only to minimum scrutiny under an equal protection challenge, so that all the state needed to show was that its objectives in enacting the 1993 legislation were legitimate. The court found that the main objective was to terminate the program and save money, a legitimate state purpose. The court further found that the

Representative Bob Lynn
September 22, 2006
Page 2

purpose of gradually phasing out the program while grandfathering in recipients and those who soon would be recipients was to protect the interests of people who might have reasonably been relying on receiving the bonus. This also, the court found to be a legitimate state purpose. What saved the "grandfather" provision in the 1993 legislation from being held to unconstitutionally discriminate between newcomer seniors to the state and long time resident seniors was the fact that the state was protecting the reliance interest of people who, to some degree, were depending upon the bonus. The case was never appealed to the Supreme Court. Obviously, if the reinstated Longevity Bonus Program is challenged again on equal protection grounds, it will be harder to successfully argue that the state is validly protecting a reliance interest when the people who are eligible for the payments have, in fact, not received them for more than three years and, arguably, can no longer be reasonably relying on future receipt of those payments. This potential constitutional issue can be avoided if the Longevity Bonus Program is reopened for all seniors, but this would make the program much more expensive.

Please let me know if you would like a bill draft addressing any of these or other issues involved in reconstituting the Longevity Bonus Program.

TBC:med
06-482.med

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 5, 2007

SUBJECT: Senior Care Program (HB 79, Work Order No. 25-LS0359\A)

TO: Representative Bob Lynn
Chair of the House State Affairs Committee
Attn: Mike Sica

FROM: Tamara Brandt Cook
Director

How does receipt of longevity bonus payments affect eligibility for benefits under the senior care program?

The senior care program provides cash assistance benefits under AS 47.46.310 and prescription drug benefits under AS 47.46.320. Eligibility for these benefits depends upon household income. No statutory exemption is provided under the program that would remove income from certain sources from consideration for purposes of determining eligibility. The statutes that deal with the longevity bonus program do contain a "hold harmless" provision exempting bonus payments from income calculations for purposes of determining eligibility for some other benefit programs, but that statute does not apply to the senior care program. AS 47.45.122 provides:

Sec. 47.45.122. Eligibility for public assistance.

(a) An individual whose public assistance is denied or reduced solely because of the receipt of a bonus under AS 47.45.010 - 47.45.160 by the individual or by a member of the individual's household is eligible for assistance under the general relief assistance program in AS 47.25.120 - 47.25.300. Notwithstanding the limit in AS 47.25.130, the individual is entitled to receive the same amount as the individual would have received under other public assistance programs had the individual not received a longevity bonus.

(b) In this section "other public assistance" means

- (1) Supplemental Security Income under 42 U.S.C. 1381 - 1385;
- (2) Medicaid under 42 U.S.C. 1396 - 1396p; and
- (3) Adult Public Assistance under AS 47.25.430 - 47.25.615.

Consequently, longevity bonus payments will be included in the calculation of household income for purposes of determining eligibility for benefits under the senior care program. The household incomes of some people could be increased as a result of receiving

Representative Bob Lynn
February 5, 2007
Page 2

longevity bonus payments beyond the maximums permitted for benefits under the senior care program. Those people will have to choose which program to apply for. On the other hand, permanent fund dividends are not counted for purposes of determining eligibility for the senior care program. (AS 43.23.075(a))

TBC:lmb
07-008.lmb

**Research, Background
For House Bill 79**

Longevity Bonus Reapplications

Longevity bonus history at a glance

- **1972:** Legislature passes original bonus plan to benefit Alaskans 65 and over, and who were in Alaska before statehood in 1959. Cost: \$2.5 million per year. Participants: 4,300.
- **1982:** U.S. Supreme Court rules in *Zobel V. Williams* that a state can't distribute benefits based on the length of each citizen's residency.
- **1984:** Program changes to benefit all seniors age 65 and older who had been in the state for a year. Cost jumps from \$24 million to \$49 million.
- **1993:** Program cost peaks at \$67 million. Legislature sunsets program.
- **1997:** Last seniors to participate in program become eligible by turning 65.
- **2002:** Program costs \$47.5 million, with about 18,000 beneficiaries.

Who gets it, and how much?

- About 12,000 seniors who were already on the program in 1994 receive \$250 per month.
- About 1,700 seniors who joined the program in 1995 receive \$200 per month.
- About 1,900 seniors who joined the program in 1996 receive \$150 per month.
- About 2,200 seniors who joined the program in 1997 receive \$100 per month.

Web posted Sunday, March 16, 2003

By MASHA HERBST
JUNEAU EMPIRE © 2003

Alaska Longevity Bonus Statistical Summary

Final Payment Issued August 2003

Active Participants Receiving Warrant:	17,412
Total Warrants Issued:	17,560
Total Cost of Warrants Issued:	\$3,843,651

Includes past warrants due to some participants

Budget

	FY 2002	14 Pmts FY 2003
Authorized	\$51,158,600	\$55,852,800
Cost	50,958,000	55,275,500
Difference	\$200,600	\$577,300

History

Fiscal Year	Total Cost	Bonus Amount	# Recipients (FY end)
1973	\$2,532,300	\$100	4,753
1974	6,009,700	100	5,250
1975	6,255,300	100	5,463
1976	6,533,400	100	5,553
1977	8,666,900	125	6,228
1978	9,444,200	125	6,671
1979	12,195,500	150	7,207
1980	13,226,500	150	7,897
1981	19,420,600	200	8,527
1982	26,198,750	250	9,101
1983	27,504,500	250	9,731
1984	29,155,750	250	10,769
1985	43,096,750	250	15,135
1986	44,024,250	250	15,763
1987	46,943,250	250	16,834
1988	49,994,000	250	17,675
1989	53,348,500	250	18,439
1990	57,172,700	250	19,490
1991	60,069,500	250	20,298
1992	63,073,750	250	21,645
1993	66,607,500	250	22,741
1994	70,414,100	See (5)	23,850
1995	72,709,500	See (5)	24,959
1996	73,270,100	See (5)	26,083
1997	71,950,800	See (5)	26,427
1998	68,031,900	See (5)	24,610
1999	63,528,300	See (5)	23,039
2000	59,125,450	See (5)	21,467
2001	54,829,900	See (5)	20,238
2002	50,967,990	See (5)	18,741
2003	55,275,500	See (5)	18,741

See (1)

See (2)

See (3)

See (4)

Projected Cost if Program Continued

Fiscal Year	Total Cost	Average # Monthly Recipients
2004	44,777,917	17,252
2005	41,543,333	16,081
2006	38,344,167	14,917
2007	35,203,333	13,766
2008	32,130,417	12,631
2009	29,080,833	11,468
2010	26,115,000	10,324
2011	23,361,667	9,304
2012	20,743,333	8,322
2013	18,250,000	7,376
2014	15,914,583	6,484
2015	13,740,417	5,654
2016	11,734,167	4,883
2017	9,901,250	4,165
2018	8,251,250	3,510
2019	6,768,750	2,917
2020	5,457,083	2,390
2021	4,326,667	1,931
2022	3,342,917	1,524
2023	2,510,833	1,168
2024	1,832,917	876
2025	1,282,083	638
2026	848,750	447
2027	525,833	298
2028	288,333	176
2029	116,250	81
2030	36,250	28
2031	5,833	5

Note (1) 25 year residency requirement

Note (2) 1 year residency requirement, 5/1

Note (3) 2 year residency requirement, 1/1

Note (4) 1 year residency requirement, 6/11

Note (5) The Longevity Bonus Program is being phased out. New applicants in: 1994 received \$200 per month, 1995 received \$150 per month and 1996 received \$100 per month. No recipients were added to the program after December 31, 1996. All people on the program prior to 1997 continue to receive their monthly bonus as long as they maintain their eligibility.

Note (6) 14 Payments were issued in FY 2003. The May and June 2003 payments, issued in July and August 2003, were paid from an FY 2003 supplemental appropriation rather than an FY 2004 appropriation.

Note (7) The Longevity Bonus Program was terminated and the final payment was issued August 1, 2003. Based on average the low payment estimate per the October 2002 forecast run of the McDowell Group model.

born and is thus influenced only by assumptions of migration or death.

Population Projections by Age

Middle series, 2005-2029



School age populations

Four age groups approximate the school age population. Ages 5-11 kindergarten and elementary school, ages 12-13 junior high, ages 14-17 high school, and ages 18-22 college and post-secondary education.

The historical uncertainty of fertility trends, compounded by migration, makes the future number of school-age children the most uncertain to project. (See Exhibit 14.) In 2000, there were about 76,000 children ages 5-11. Since 2000, this number has declined and in the mid level projection should bottom out in 2004 at 72,500. This age group should rise to 2000 levels again by 2009. The number should stabilize at 86,000 for the following decade.

Children ages 12-13 numbered about 22,100 in 2000 and peaked at 23,600 in 2003. (See Exhibit 15.) This age group is expected to decline until 2009 when it should bottom out at about 21,000, according to the mid level projection. It should return to 2003 levels by about 2019.

(continued on page 13)

Age	2005	2009	2014	2019	2024	2029
0-4	53,101	54,661	57,660	59,296	59,597	59,343
5-9	51,456	55,642	57,583	60,335	61,700	61,770
10	10,394	10,663	11,700	11,957	12,418	12,508
11	10,794	10,592	11,540	11,904	12,408	12,552
12	11,076	10,328	11,513	11,888	12,412	12,630
13	11,426	10,748	11,601	11,826	12,339	12,617
14	11,760	10,659	11,228	11,722	12,214	12,590
15	11,940	10,968	10,877	11,873	12,081	12,490
16	11,320	11,119	10,719	11,626	11,941	12,393
17	11,036	11,231	10,183	11,324	11,649	12,121
18	10,461	11,170	10,152	10,958	11,133	11,588
19	10,041	10,849	9,530	10,046	10,482	10,910
20-24	43,685	47,463	48,559	44,362	48,321	49,366
25-29	42,478	45,375	50,325	51,103	46,569	50,154
30-34	45,610	46,715	49,579	54,248	54,728	49,919
35-39	47,846	47,398	47,959	50,576	54,950	55,144
40-44	54,712	47,386	46,435	46,782	49,137	53,216
45-49	55,913	54,209	45,414	44,320	44,482	46,609
50-54	50,799	53,529	51,712	42,954	41,760	41,805
55-59	38,865	46,956	50,104	48,289	39,675	38,453
60-64	24,680	32,893	42,219	46,023	44,309	36,005
65-69	15,379	20,586	29,458	38,104	41,621	40,107
70-74	10,814	12,489	17,917	26,032	33,815	36,998
75-79	8,026	6,472	10,123	14,918	22,077	28,753
80-84	5,105	5,747	6,322	7,762	11,749	17,750
85-89	2,519	3,286	3,936	4,366	5,525	8,544
90-94	1,016	1,253	1,933	2,333	2,597	3,449
95+	352	514	724	1,243	1,768	2,170
16+	490,657	517,740	543,301	567,369	588,283	605,454
18+	468,301	495,390	522,399	544,419	564,693	580,940
65+	43,211	52,347	70,413	94,758	119,152	137,771
Total	662,604	692,001	727,003	758,170	783,452	801,904
Median Age	33.4	33.7	34.0	34.5	35.2	35.8
Males per 100 Females	105.5	104.5	103.3	102.0	100.8	99.5
Youth Dependency (<18/18-64)	45.7	44.4	45.3	47.5	49.1	49.9
Aged Dependency (65+/18-64)	10.2	11.8	15.6	21.1	26.7	31.1

Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section

**News Articles
For House Bill 79**

Longevity Bonus Reapplications

Gov. Palin puts longevity bonus back in budget

by Natasha Rasheed
Saturday, Jan. 27, 2007

Anchorage, Alaska - Gov. Sarah Palin says money for the longevity bonus is back in the budget. The governor says she put \$33 million in the budget to reinstate the program. Palin says she will work with lawmakers to make sure the funding stays.

The program provided some senior citizens up to \$250 a month until it was vetoed by Gov. Frank Murkowski in 2003.

Approximately 13,000 Alaskans qualify for longevity bonus.



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House Majority Leader John Coghill, R-North Pole, who is backing Binkley, criticized Murkowski for dropping the program all at once but said he would not support an effort to reinstate it.

"It was the right thing to do," he said of Murkowski's ending the program, "He just did it the wrong way."

The hurdle of an unwilling Legislature hasn't stopped both Republican and Democratic candidates from criticizing the governor for his veto and vowing to bring the program back.

"It was a poor, misguided decision to lop our seniors off a program that was scheduled to phase out," Palin told the News-Miner last month, "I think it was a huge mistake."

Palin said she would reinstate the program and that the state could afford it.

According to the Department of Health, about 13,800 seniors would qualify for the bonus in 2007. Murkowski vetoed the funding when more than 17,000 qualified.

Knowles said he would reinstate the program as it was when he left the office of governor in 2002. He said the "vast majority" of the bonus funds went to people who are now over 75 and have no other way of supplementing an often "very meager" cash supply.

Croft and Binkley also said they would bring back the Longevity Bonus.

"It was a promise," said Croft.

Murkowski defended his veto in a July interview with the News-Miner. He said the program was unfair because it was not based on financial need and that a budget deficit forced him to cut state spending.

"I'm willing to take the heat," he said, "I can justify my actions because we had to make some cuts."

Ultimately, bringing back the Longevity Bonus could take more than a new governor.

Democratic lawmakers tried in 2004 and again in 2005 to restore funding to the program, but none of their proposals made it out of committee.

Rep. Les Gara of Anchorage, who led a push for funding in 2005, said the issue had become political, with Republican lawmakers backing the Republican governor.

Coghill mentioned a desire by lawmakers to cut the program over five years but acknowledged that lawmakers turned down multiple chances to reinstate it.

"The Legislature is probably culpable in some degree," he said.

Whether a new governor could bring lawmakers around is another question.

Coghill claimed the political will to bring the program back does not exist.

Binkley disputed the claim.

"I believe with the governor leading the way that it will happen," he said.

Staff writer Stefan Milkowski can be reached at smilkowski@newsminer.com or 459-7577.

<<Back



Apprehension, excitement and relief about longevity bonus



Anchorage senior citizens discuss the newly-reinstated longevity bonus. (Kris Riley/KTUU-TV)

by Natasha Rasheed
Friday, Dec. 15, 2006

Anchorage, Alaska - This morning, Gov. Sarah Palin announced that she plans to reinstate the longevity bonus for seniors. But with that announcement comes some apprehension and many seniors hope it isn't an empty promise.

Norma Erickson, who is 76 years old, knows a thing or two about the value of a dollar. For Erickson, \$150 is enough to pay for utilities, as well as a chance to buy presents for her grandchildren.



Norma Erickson (above) said the bonus would help her and others living on a fixed income make ends meet. (Kris Riley/KTUU-TV)

"It really helped me a lot and it took a long time before I got used to cutting here and cutting there and, you know, getting used to it," Erickson said.

In 2003, then-Gov. Frank Murkowski decided to end the longevity bonus program, which paid eligible seniors as much as \$250 a month.

"I just thought the suddenness of it -- I figured they could have done it by a year, kind of phased it out, so people could get used to it and plan otherwise," said Erickson.



Gov. Palin announced Friday that she intends to reinstate the longevity bonus for Alaska seniors. (Kris Riley/KTUU-TV)

But with a new administration comes a new plan. Palin says she plans to reinstate the longevity bonus, and at the Anchorage Senior Center, the news produced excitement for some.

"Wonderful! I was getting it for about five years and when it stopped it really hurt my budget," said Phillip McGuire, a senior citizen in Anchorage.

Others were apprehensive of Palin's offer.



Former Gov. Frank Murkowski (above) vetoed the seniors program in 2003. His popularity never recovered. (Kris Riley/KTUU-TV)

"I'm concerned about how the state is going to operate financially. I am not sure if she has taken that all into consideration or not. I'm sure it's popular with us senior citizens, but we have to think about how the state's going to make it down the road and our children," said Vincent Casey a senior citizen in Anchorage.

While some think it's a refreshing change for Alaska, officials estimate it would cost the state \$33.7 million to start making the payments again to the seniors who received it before. Finding the money will be up to the Legislature.

For Erickson, it would be a better quality of life and a change she hopes to see happen with the new administration. It is important to note that this is not yet a done deal.



Vincent Casey (above) was apprehensive about the program's reinstatement and worried about state's fiscal solvency. (Kris Riley/KTUU-TV)

The money must still be appropriated by the Legislature in order for seniors to get the checks.

At the time of the veto by Murkowski, the program was already being phased out with no new recipients and a bitter joke among seniors was that they were not dying fast enough.

In 2003, approximately 18,000 senior Alaskans got the monthly longevity bonus checks, or roughly half the senior population.

Today, Palin said that roughly 13,000 seniors would be eligible for the reinstated program, indicating that about 5,000 of the former recipients either moved or passed away.



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Longevity Bonus becoming election focal point

By Stefan Milkowski

Staff Writer

Published August 17, 2006

A controversial veto made by Gov. Frank Murkowski three years ago is coming back as a hot-button campaign issue.

Four of the five leading candidates for governor—Republicans Sarah Palin and John Binkley and Democrats Tony Knowles and Eric Croft—have said they would reinstate the state's Longevity Bonus Program, which gave financial assistance to certain Alaskan seniors.

Only Murkowski is standing behind his decision to cut the program's funding.

According to the departments of Law and Health and Social Services, bringing the program back would be fairly straightforward.

The program, which offered seniors monthly payments of up to \$250, ended when Murkowski chose not to fund it, but the law behind it still exists. According to Mark Morones, spokesman for the Department of Law, the bonus could probably be reinstated without a hitch if the governor and Legislature made an appropriation for it.

Janet Clarke of the Department of Health and Social Services, which administered the program, said the same.

Because the program was already being phased out, it would cost significantly less than it did when Murkowski vetoed funding for it in 2003.

The program offered monthly payments of \$250 to residents who had lived in Alaska at least a year, were at least 65 years old, and applied before 1994. Lesser payments were available to those who turned 65 in 1994, 1995, and 1996. No one was allowed to enter the program after 1996.

According to estimates from the Department of Health, the bonus would cost the state a little more than \$35 million in fiscal year 2007 and less each year until there were no more recipients. The program would have cost roughly \$45 million in fiscal year 2004.

The biggest challenge for a new governor could be convincing a Republican-controlled Legislature to reinstate the program.

**Relevant Alaska Statutes
For House Bill 79**

Longevity Bonus Reapplications

Sec. 47.45.010. Persons who may qualify for longevity bonus.

(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 AS 47.45.010 - 47.45.160 may apply to the commissioner of administration no later than December 31, 1996, for qualification to receive a monthly bonus of

(1) \$250, if the person's application was submitted before January 1, 1994;

(2) \$200, if the person's application was submitted on or after January 1, 1994, but before January 1, 1995;

(3) \$150, if the person's application was submitted on or after January 1, 1995, but before January 1, 1996; or

(4) \$100, if the person's application was submitted on or after January 1, 1996, but before January 1, 1997.

(b) When the commissioner of health and social services determines that an applicant qualifies under AS 47.45.010 - 47.45.160 the commissioner shall immediately begin payment of the bonus.

(c) A person who otherwise qualifies to receive a bonus provided for in AS 47.45.010 - 47.45.160 may continue to do so only as long as that person continues to be a resident of the state.

(d) *[Repealed, Sec. 62 ch 21 SLA 1991].*

Sec. 47.45.020. Continuous eligibility procedures.

After qualification, monthly applications for bonuses may be made in person to any office of the Department of Health and Social Services. Mailed monthly applications shall also be considered by the department. In-person or mailed applications shall be made on forms provided by the department and shall conform to the conditions as provided by regulation. The commissioner of health and social services may make exceptions for those residents who are isolated in rural areas and cannot mail a monthly application; however, they shall mail an application at least once every six months.

Sec. 47.45.030. Absence from the state.

(a) After qualification, a recipient shall notify the commissioner of health and social services when the recipient expects to be absent from

the state if the absence is for a continuous period that exceeds 60 days. After that notification, the recipient may no longer receive bonuses from the Department of Health and Social Services after the last regularly approved monthly application. Upon returning to the state, the recipient may again make application for a bonus. Failure to notify the commissioner of an expected absence may be grounds for disqualification.

(b) *[Repealed, Sec. 4 ch 78 SLA 2002].*

(c) A recipient who has been absent from the state for a continuous period that exceeds three years is permanently disqualified from receiving bonuses.

Sec. 47.45.035. Unpaid sabbaticals. [Repealed, Sec. 4 ch 78 SLA 2002].

Repealed or Renumbered

Sec. 47.45.040. Disqualification.

Disqualification under AS 47.45.010 - 47.45.160 shall rest solely with the commissioner of health and social services and shall be outlined in the regulations adopted under AS 47.45.100 (1).

Sec. 47.45.045. Reapplication after disqualification. [Repealed, Sec. 4 ch 78 SLA 2002].

Repealed or Renumbered

Sec. 47.45.050. Department hearing.

The Department of Health and Social Services may arrange with the office of administrative hearings (AS 44.64.010) to hold a hearing upon the request of an applicant or recipient who has been disqualified. Before this hearing, the department shall, by certified mail, notify an applicant or recipient in plain and comprehensive language the exact reason for the disqualification. Form letters using only referral to state statutes or department regulations, or otherwise vague in detail, are not considered compliance by the department with this section.

Sec. 47.45.060. Legal remedy.

Legal remedy from disqualification may be sought by an applicant or recipient in any court of competent jurisdiction in the state. The burden of proof shall rest solely upon the applicant or recipient and any costs related to a disqualification verdict determined against the applicant or

recipient may be recoverable by the attorney general from that person, or from any agency representing that person supported in whole, or in part, with state appropriations.

Sec. 47.45.070. Unqualified persons.

(a) An unqualified person is one who

(1) does not meet the age or residence requirements as provided for under AS 47.45.010 - 47.45.160;

(2) meets the age and residence requirements of AS 47.45.010 - 47.45.160 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; however, if that person, at the time of commitment or commencement of residence, provided the principal support of a spouse, the commissioner of health and social services 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) is permanently disqualified under AS 47.45.030 (c);

(5) did not apply, under AS 47.45.010 (a), before January 1, 1997, for qualification to receive a longevity bonus;

(6) was found qualified to receive a longevity bonus and was subsequently permanently disqualified under former AS 47.45.030 (b) or former AS 47.45.045.

(b) Notwithstanding (a)(2) of this section, a person who meets the age and residence requirements of AS 47.45.010 - 47.45.160 qualifies for the bonus during any period of residence in a nursing home that does not exceed 90 consecutive days if the bonus is exempt from the determination of income eligibility under Supplemental Security Income in 42 U.S.C. 1382a (Sec. 1612(b)(2)(B), Social Security Act), as amended.

(c) Notwithstanding (a)(2) of this section, a person who resides in a nursing home who meets the age and residence requirements of AS 47.45.010 - 47.45.160 qualifies for the bonus if the costs of care of the person at the nursing home are paid for entirely from private sources, veterans' benefits, or a combination of private sources and veterans' benefits.

Sec. 47.45.300. Senior care program.

(a) The senior care program is established in the Department of Health and Social Services to provide cash assistance benefits and prescription drug benefits as far as practicable under appropriations provided by law.

(b) The department shall

(1) administer the program; and

(2) adopt regulations under AS 44.62 to carry out the purposes of the program.

(c) If the department estimates that appropriations for the program are insufficient to meet the demands of the program in a fiscal year, the department may reduce or eliminate the benefits available to recipients. Benefits shall be reduced or eliminated in the following order:

(1) deductible coverage under AS 47.45.320 (c);

(2) premium coverage under AS 47.45.320 (c);

(3) cash assistance under AS 47.45.310 (b).

Sec. 47.45.310. Cash assistance benefit.

(a) To be eligible for a cash assistance benefit under the program, an individual shall

(1) be 65 years of age or older;

(2) be a resident of the state;

(3) have household income that does not exceed

(A) \$16,133 a year if the household consists of one person; or

(B) \$21,641 a year if the household consists of two people;

(4) meet other eligibility requirements specified in this subsection and in regulations adopted under this subsection; and

(5) apply on a form provided by the department; the department may use an abbreviated form for an individual who received a payment under an assistance program for seniors that paid \$120 a month and was

administered by the department on or before the effective date of this section.

(b) An eligible individual who meets the income standard of (a)(3) of this section shall receive cash assistance of \$120 a month as far as practicable under appropriations available to the program.

(c) Cash assistance provided under this section is inalienable by assignment or transfer and is exempt from garnishment, levy, or execution as provided in AS 09.38.015.

Sec. 47.45.320. Prescription drug benefit.

(a) To be eligible for a prescription drug benefit under the program, an individual

(1) shall be 65 years of age or older;

(2) shall be a resident of the state;

(3) shall have household income that does not exceed

(A) \$20,913 a year if the household consists of one person; or

(B) \$28,053 a year if the household consists of two people;

(4) may not be receiving a cash assistance payment under AS 47.45.310;

(5) shall be enrolled in at least one of the prescription drug programs described in (c) of this section;

(6) shall meet other eligibility requirements specified in this subsection and in regulations adopted under this subsection; and

(7) shall apply on a form provided by the department; the department may use an abbreviated form for individuals who received a payment under an assistance program for seniors that paid \$120 a month and was administered by the department on or before the effective date of this section.

(b) To receive a prescription drug benefit under this section, an individual

(1) may not also receive a similar prescription drug benefit, except for a prescription drug program offered by a facility that operates under the authority of 25 U.S.C. 450 - 458bbb-2; and

(2) if eligible for a similar prescription drug benefit, shall assign to the department the individual's right to payment of the other prescription drug benefit.

(c) The department may pay an eligible individual's premium and deductible for a prescription drug benefit authorized under

(1) 42 U.S.C. 1395w-101 - 1395w-152 (Medicare Prescription Drug, Improvement and Modernization Act of 2003), as amended, including

(A) a prescription drug plan funded under 42 U.S.C. 1395w-101 - 1395w-152 (Medicare Prescription Drug, Improvement and Modernization Act of 2003), as amended; and

(B) a Medicare Advantage plan that provides prescription drug coverage qualified under 42 U.S.C. 1395w-101 - 1395w-152 (Medicare Prescription Drug, Improvement and Modernization Act of 2003), as amended;

(2) a group health plan, including the federal employees health benefits program and qualified retiree prescription drug plan as defined in 42 U.S.C. 1395w-132 (sec. 1860D-22(a)(2) of the Social Security Act), as amended;

(3) coverage of prescription drugs for veterans, survivors, and dependents under 38 U.S.C. 1701 - 1784, as amended;

(4) coverage under a Medicare supplemental policy, such as medigap under 42 U.S.C. 1395ss (sec. 1882 of the Social Security Act), as amended, and as specified in 42 C.F.R. 403.205, that provides a prescription drug benefit regardless of whether the coverage was issued in accordance with the standardization requirement under 42 U.S.C. 1395ss(p)(1) (sec. 1882(p)(1) of the Social Security Act), as amended;

(5) military coverage under 10 U.S.C. 1071 - 1110, as amended; or

(6) any other private plan that is identified by the department as providing coverage actuarially equivalent to 42 U.S.C. 1395w-101 - 1395w-152 (Medicare Prescription Drug, Improvement and Modernization Act of 2003), as amended.

(d) If an eligible individual has a prescription drug benefit that is specified in (c) of this section, but that benefit does not require the individual to pay either a premium or a deductible, the department may not pay a prescription drug benefit to the individual under this section.

(e) The total prescription drug benefit that an eligible individual may receive under this section in a fiscal year may not exceed the annual premium cost of a plan identified in (c) of this section and any deductible required under 42 U.S.C. 1395w-101 - 1395w-152 (Medicare Prescription Drug, Improvement and Modernization Act of 2003), as amended.

(f) The department may not pay a prescription drug benefit under this section to an individual who has a prescription drug benefit authorized under

(1) Medicaid under 42 U.S.C. 1396 - 1396v (Title XIX of the Social Security Act), as amended; or

(2) a waiver under 42 U.S.C. 1315 (sec. 1115 of the Social Security Act), as amended.

(g) An individual residing in a public institution, a nursing facility, the Alaska Pioneers' Home, or the Alaska Veterans' Home is not eligible for a prescription drug benefit under this section. For purposes of this subsection, an individual is not considered to be residing in a public institution or nursing facility if the individual is institutionalized for medical services for a period of less than three months and continues to maintain and provide for the expenses of the individual's home or living arrangement to which that individual may return upon discharge from the institution or facility.

Sec. 47.45.330. Continuation of benefits.

An eligible individual who leaves the state may not receive a cash assistance benefit under AS 47.45.310 or prescription drug benefit under AS 47.45.320 during the absence unless the individual's absence is temporary and is for one of the following reasons:

(1) to receive medical treatment for the individual;

(2) to accompany the individual's family member who is receiving medical treatment outside the state; or

(3) for a vacation, business trip, or other absence of less than 30 consecutive days, unless the individual has applied for and received a time extension from the department for special circumstances.

Sec. 47.45.340. Appeal rights.

An individual who receives a determination from the department that denies, limits, or modifies a cash assistance benefit or prescription drug benefit under AS 47.45.300 - 47.45.390, other than a determination under AS 47.45.300 (c) to reduce or eliminate benefits, may request a hearing before the department under regulations adopted by the department.

Sec. 47.45.350. Ability to recover or recoup improper assistance benefits.

An individual is liable to the department for the value of assistance or benefits improperly paid to the person under AS 47.45.310 or 47.45.320 if the improper payment was based on inaccurate or incomplete information provided by the individual. In a civil action brought by the state to recover from the individual the value of assistance or benefits improperly paid under AS 47.45.310 or 47.45.320, the state may recover from the individual the costs of investigation and prosecution of the civil action, including attorney fees as determined under court rules.

Sec. 47.45.360. Alaska senior care fund.

The Alaska senior care fund is established as an account in the general fund. The fund shall be used by the commissioner of health and social services to pay for costs incurred in the provision of senior services under AS 47.45.300 - 47.45.390. The fund consists of

- (1) money in the former senior care fund established in sec. 2, ch. 3, SLA 2004;
- (2) appropriations to the Alaska senior care fund; and
- (3) any appropriation of interest earned on money in the Alaska senior care fund.

Sec. 47.45.390. Definitions.

In AS 47.45.300 - 47.45.390,

- (1) "department" means the Department of Health and Social Services;
- (2) "eligible individual" means an individual who meets the requirements of AS 47.45.310 or 47.45.320 and regulations adopted under those statutes for eligibility for the program;

(3) "family member" means a person who is

(A) legally related to an eligible individual through marriage or guardianship; or

(B) an eligible individual's sibling, parent, grandparent, son, daughter, grandson, granddaughter, uncle, aunt, niece, nephew, or first cousin;

(4) "program" means the senior care program established in AS 47.45.300 - 47.45.390;

(5) "public institution" means a governmentally owned establishment that furnishes food, shelter, and some additional treatment or services to 16 or more persons; "public institution" does not include the Alaska Pioneers' Home or Alaska Veterans' Home;

(6) "resident" has the meaning given in AS 47.25.430 (a).

Sec. 47.45.122. Eligibility for public assistance.

(a) An individual whose public assistance is denied or reduced solely because of the receipt of a bonus under AS 47.45.010 - 47.45.160 by the individual or by a member of the individual's household is eligible for assistance under the general relief assistance program in AS 47.25.120 - 47.25.300. Notwithstanding the limit in AS 47.25.130, the individual is entitled to receive the same amount as the individual would have received under other public assistance programs had the individual not received a longevity bonus.

(b) In this section "other public assistance" means

(1) Supplemental Security Income under 42 U.S.C. 1381 - 1385;

(2) Medicaid under 42 U.S.C. 1396 - 1396p; and

(3) Adult Public Assistance under AS 47.25.430 - 47.25.615.

Sec. 47.45.130. Death or cessation of residency.

The commissioner of health and social services shall establish procedures to stop a bonus when a recipient under AS 47.45.010 - 47.45.160 no longer qualifies. When a recipient dies or discontinues residency in the state the recipient's qualification for a bonus shall stop at the time of the recipient's last approved monthly application.

Sec. 47.45.140. Penalty for false statements.

A person who wilfully or knowingly makes a false statement, or falsifies or permits to be falsified any record required by AS 47.45.010 - 47.45.160, is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than \$500, or by imprisonment for not more than six months, or by both, forfeits all rights under AS 47.45.010 - 47.45.160, and shall make adequate restitution for any bonuses illegally received.

Sec. 47.45.150. Definitions.

In AS 47.45.010 - 47.45.160

(1) "bonus" means a monthly Alaska longevity bonus payment made to a person or the person's beneficiary who qualifies under AS 47.45.010 - 47.45.160;

(2) "resident" or "resident of the state" means an individual who is physically present in the state with the intent to remain in the state indefinitely and to make a home in the state; a person demonstrates the requisite intent by maintaining a principal place of abode in the state for one year and by providing other proof of intent the commissioner may require by regulation, including proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 8, 2007

SUBJECT: Reinstatement of the longevity bonus program (HB 79)

TO: All members of the House State Affairs Committee, and
All members of the House Judiciary Committee

FROM: Tamara Brandt Cook
Director

TBC

Enclosed is a copy of the Orders in the case Maggard v. Sipe, Superior Court, Third Judicial District, Case No. 3AN-94-03935 CI, June 6, 1996, and July 9, 1996, upholding the statute that established the "stair step" phase out of the longevity bonus program. This is being sent to you at the request of Representative Max Gruenberg.

TBC:ljw
07-063.ljw

Enclosure

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

RECEIVED

JUN 10 1996

Attorney General's Office
Juneau

MURREL MAGGARD, an individual
on his own behalf; and
MURREL MAGGARD, for and on behalf
of all others similarly situated,

Plaintiffs,

vs.

CONNIE SIPE, Director, Division
of Senior Services, Alaska
Department of Administration,
State of Alaska; and Does 1
through 25,

Defendants.

FILED IN THE TRIAL COURTS
State of Alaska, Third District

JUN 06 1996

Clerk of the Trial Courts

By [Signature] Deputy

Case No. 3AN-94-03935 CI

ORDER

Murrel Maggard, for himself and as named plaintiff of the plaintiff class, challenges the constitutionality of the 1993 Amendment to the statutes governing Alaska's Longevity Bonus Program, A.S. 47.45, on the grounds that the amendment violates the Equal Protection clause of the Fourteenth Amendment to the U.S. Constitution and the Equal Rights clause of the Alaska Constitution, Art. I, Sec. 1.

The parties have filed cross motions for summary judgment. Having reviewed all of the motions, corresponding oppositions and replies, and supporting evidence, IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment is GRANTED, and Plaintiffs' Motion for Summary Judgment is DENIED.

A memorandum supporting this order will be issued at a later time.

Done at Anchorage, this 6th day of June, 1996.

I certify that on 6/6/96
a copy of the above was mailed to each
of the following at their addresses of
record: Saguna / Buchholdt

[Signature]
Secretary/Deputy Clerk

[Signature]
Brian Shortell
Superior Court Judge

for at least one year could receive a monthly bonus from the state.

In 1993 the legislature decided to terminate the LBP. Rather than terminate the entire program immediately, however, the legislature chose to phase it out gradually, and "grandfathered in" current bonus recipients, and, at a reduced level, those future bonus recipients who would first become eligible and apply for the bonus by the end of 1996.

The 1993 Amendment completely grandfathered in anyone receiving a bonus at the end of 1993. This group of people would continue to receive \$250 every month for life (assuming eligibility). Persons first becoming eligible and applying for the bonus in 1994 would receive \$200 per month for life, instead of \$250. Those first eligible and applying in 1995 would receive \$150 per month for life, and those first eligible and applying in 1996 would receive \$100 per month for life. Those persons not eligible by the end of 1996, or those who may be eligible but who fail to apply by the end of 1996, are not eligible to receive benefits under the program. Thus, as of January 1, 1997, the LBP will continue to pay bonuses to those already in the program, but will not be open to any new participants.

The challenged amendment creates the following five classes of persons:

- (1) persons who receive \$250 per month;
- (2) persons who receive \$200 per month;
- (3) persons who receive \$150 per month;
- (4) persons who receive \$100 per month; and
- (5) persons who receive nothing.

DISCUSSION

A. Alaska Equal Protection Analysis.

Alaska has developed a "sliding scale" approach to equal protection questions. Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264, 269 (Alaska 1984). As a preliminary determination, if federal constitutional questions are involved, such as fundamental rights or suspect categories, the federal "strict scrutiny" test is applied. State v. Erickson, 574 P.2d 1, 11 (Alaska 1978). This test requires a compelling state interest. Id. If no fundamental rights or suspect classes are at issue, a flexible, sliding-scale analysis is used. Alaska Pacific

Insurance Co., 687 P.2d at 269. This approach places "a greater or lesser burden on the state to justify a classification depending on the importance of the individual right involved." Id.

A three-step analysis is employed:

First, it must be determined . . . what weight should be afforded the constitutional interest impaired by the challenged enactment. The nature of this interest is the most important variable in fixing the appropriate level of review.

Second, an examination must be undertaken of the purposes served by a challenged statute. Depending on the level of review determined, the state may be required to show only that its objectives were legitimate, at the low end of the continuum, or at the high end of the scale, that the legislation was motivated by a compelling state interest.

Third, an evaluation of the state's interest in the particular means employed to further its goals must be undertaken. . . . At the low end of the sliding scale, we have held that a substantial relationship between means and ends is constitutionally adequate. At the higher end of the scale, the fit between the means and ends must be much closer. If the purposes can be accomplished by a less restrictive alternative, the classification will be invalidated.

Alaska Pacific Assurance Co. . 687 P.2d at 269-70.

L. Nature of the Interest.

The first and most important step in the equal protection analysis is to determine the nature of the interest impaired by the challenged enactment. In the instant case, the interest at issue is the right to receive a longevity bonus of \$250. It would be difficult to say that the bonus is anything more than a government monetary benefit. The right to receive a bonus from the state is not an entitlement, it is not based on need and therefore could not be considered a basic necessity, and the right to receive it is not a fundamental right. It is best categorized as merely an economic interest. As such, it is entitled only to minimum protection under Alaska's equal protection analysis. State v. Anthony, 810 P.2d 155, 158 (Alaska 1991).

Maggard concedes that relatively little weight is afforded mere economic interests. He argues, however, that the amendment impacts a much greater interest, the constitutional right to travel, or migrate, and that the "impact of the statute on such a weighty interest should cause the court to insist that the fit between the classifications and the hardship suffered by the elderly be close." (Maggard's Memorandum of Points and Authorities in Support of Plaintiff's Motion

for Summary Judgment ["Maggard's Memo"] at 9-10.) Maggard suggests that the LBP amendment imposes durational residency requirements, which often trigger a higher level of scrutiny and, as a result, have often been found to be unconstitutional.

I find Maggard's argument unpersuasive for several reasons. First, the LBP amendment does not impose true durational residency requirements. A true durational residency requirement requires a person to be a resident for a specified number of years before he or she is eligible for whatever benefit or obligation is considered by the statute.

A good example of a true durational residency requirement is found in Williams v. Zobel, 619 P.2d 422 (Alaska 1980) ["Zobel I"], upon which Maggard heavily relies. In its simplest form, the challenged statute in Zobel I exempted from paying income tax anyone who had been an Alaskan resident for more than three years, while requiring newcomers to the state to pay income taxes for their first three years of residency. In Zobel I, the discrimination between taxpayers was based solely on years of residency; the statute had a true durational residency requirement.

In the instant case, the LBP amendment does not classify persons according to years of residency. Instead, it classifies them according to the year in which they (1) met all of the eligibility requirements (which includes both age and residency), and (2) applied for the bonus. This is not a durational residency requirement, and the effect is quite different. The distinction is illustrated by the state's following hypothetical: the LBP amendment will permanently disqualify from receiving the bonus a life-long Alaskan who is not 65 by the end of 1996 but will grant the bonus to someone who turned 65 and moved to the state in 1992.

Even focusing on just the residency factor, the LBP amendment still does not have a "durational" residency requirement, just a residency requirement. As the Court stated in Williams v. Zobel, 619 P.2d 448, 451 (Alaska 1980), *rev'd on other grounds*, 457 U.S. 55 (1982) ["Zobel II"].

A durational residency requirement, which draws a distinction between new and old residents based on the length of their residency, must be distinguished from

a residence requirement, which draws a distinction between residents and nonresidents.

The distinction is important because "a state has much more authority to draw distinctions between residents and nonresidents than between long- and short-term residents." Zobel II, 619 P.2d at 451 (citing Vlandis v. Kline, 412 U.S. 441, 452-53 (1973)).

Second, assuming arguendo that the challenged amendment imposes durational residency requirements, such requirements no longer automatically trigger "strict scrutiny" in Alaska, although they did at one time. In Zobel I, the Alaska Supreme Court expressly rejected a prior line of Alaska cases holding that durational residency provisions always trigger strict scrutiny, and instead utilized standard Alaska equal protection analysis. Zobel I, 619 P.2d at 426-27 ("We conclude now that durational residency requirements should be measured against the test discussed in Erickson.").

Within the framework of the equal protection analysis, the focus for analyzing durational residency requirements is clearly on whether, and to what extent, the operation of the requirement will have the effect of penalizing United States citizens for exercising their right to interstate migration. Zobel I, 619 P.2d at 431-32, and Zobel II, 619 P.2d at 457-58.

Using Zobel I and Zobel II as guides, it is clear that the amendment at issue does not penalize citizens for exercising their right to migrate. In Zobel I, the Court found that the tax statutes, which required new residents to pay income taxes for their first three years, penalized interstate migration. The Zobel II Court found that the PFD statutes did not penalize interstate migration. The Zobel II Court explained the different holdings as follows:

[The PFD statutes] cannot be said to "penalize" the right of interstate migration. In common sense terms, it is easy to see that the imposition of a tax primarily of new residents [referring to Zobel I], with older residents exempt, can be perceived as a penalty imposed on a person who chooses to exercise his or her right to move into Alaska. It is much more difficult to receive such a "penalty" here. The new resident does, in fact, receive financial gain for exercising his or her right to move into Alaska; and whatever "penalty" may accrue from the fact that this gain is not as large as that realized by a long-term resident we regard as de minimis.

Zobel II, 619 P.2d at 458.

The longevity bonus at issue in this case is more analogous to the PFD than to the tax statutes; the bonus is a grant of a benefit, such as the PFD, and not an imposition of tax. Accordingly, I find that the amendment does not impose a penalty on U.S. citizens for exercising their right to migrate. Because a penalty is not imposed, the amendment does not impinge on the right to travel.

In summary, therefore, I find that no federal constitutional issues are implicated by the amendment, that the amendment does not impinge on the right to travel, and that the nature of the right to receive a longevity bonus is merely an economic interest. As such, it is entitled only to minimum protection. Anthony, 810 P.2d at 158.

2. The State's Purpose.

Based on my finding that a person's interest in receiving a longevity bonus is reviewed at the low end of the scale, the state is required to show only that its objectives in enacting the LBP amendment were legitimate. Anthony, 810 P.2d at 158-59. It is not required to show that the purposes for which the amendment was enacted were carried out or effectively accomplished. Katmailand, Inc. v. Lake and Peninsula Borough, 904 P.2d 397, 401 (Alaska 1995).

Both parties agree that the state's overall purpose in changing the LBP program in 1993 was to save money; this is a legitimate state purpose. The parties offer different reasons, however, for the amendment's graduated grandfather provisions.

The state claims that its purpose in gradually phasing out the program while grandfathering in certain groups was to protect the interests of those who might have reasonably relied on receiving the bonus.

The purpose behind the grandfather provisions . . . is shown by Governor Hickel's letter to the legislature . . . [in which] [t]he governor explained that he was proposing a "phased elimination" of the LBP "because many Alaskans who will be reaching 65 in the next four years have counted on the bonus in planning for their retirement, and an abrupt termination of the program would not be fair."

State's Memorandum in Support of Defendant's Motion for Partial Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment ["State's Memo"] at 9-10.

This is also a legitimate state purpose. "The protection of reasonable reliance interests is not only a legitimate governmental objective: it provides an exceedingly persuasive justification. . . ." Nordlinger v. Hahn, 505 U.S. 1, 13 (1992) (internal quotations omitted).

In order to effectively challenge the state's stated purpose, Maggard must present sufficient credible evidence disproving the factual basis for the state's justification. Katnailand, Inc., 904 P.2d at 401-02. This Maggard has failed to do. Maggard argues that the state's real purpose behind the grandfather provisions was simply to curry political favor in order to ensure successful passage of the amendment, but he presents no credible evidence supporting his position or contradicting the state's justification.

Therefore, I find legitimate the state's purpose of protecting the reliance interests of those receiving and expecting to receive longevity bonus payments.

3. Fair and Substantial Relationship.

The third and final step in Alaska's equal protection analysis is an evaluation of the state's interest in the particular means employed to further its goals. At the low end of the sliding scale, a fair and substantial relationship between means and ends is constitutionally adequate. Alaska Pacific Assurance Co., 687 P.2d at 269-70 (Alaska 1984). The fair and substantial standard is not a rigorous one. "Despite the language in Isakson v. Rickey, 550 P.2d 359, 362 (Alaska 1976), indicating that this court's lower level of scrutiny will be more rigorous and less deferential than the federal rational basis test, we have invalidated only two legislative enactments under the fair and substantial relationship test since Isakson." Anthony, 810 P.2d at 159.

The issue is whether a fair and substantial relationship exists between the state's goals (protecting the reasonable reliance interests of present and future recipients) and its chosen means (the grandfather clause). I conclude that the state's means bear a fair and substantial relationship to its goal. The state's goal in enacting the grandfather clause was to protect reliance interests. Naturally, the people with the greatest reliance interests were those receiving

the bonus at the time the amendment was enacted. They were appropriately grandfathered in completely, and will receive the same amount, \$250, for life. The people with the next greatest reliance interest were those expecting to receive the bonus beginning the next year, in 1994. Because these people had less of a reliance interest than those already receiving the bonus, they were grandfathered in at a lesser amount, \$200. This pattern continues consistently for those expecting to receive the bonus in 1995 and 1996. People who in 1993 were expecting to receive the bonus in 1997, four years into the future, had even less of a reliance interest than the other groups already mentioned, and it is reasonable to conclude that their reliance interests were insufficient to warrant protection.

By grandfathering in the full \$250 bonus for those already receiving it, the legislature fully protected the interests of those person who it could reasonably conclude most relied on it. . . . By grandfathering in a lesser bonus for those who would first become eligible and apply in 1994, 1995, and 1996, the legislature partially protected the interests of those persons who, it again could reasonably conclude, had a substantial but lesser reliance on the LBP. . . . Again, the key difference is the amount of time available to make the necessary adjustments.

State's Memo at 16-17.

I recognize that the fit between protecting reliance interests and the actual phases created by the state is not perfect. Maggard correctly points out that the amendment is both over- and under-inclusive and that the bonus goes to persons who have varying incomes, assets, and family ties. However, "[t]he fair and substantial relationship test does not require a perfect fit between a legislative classification and the government objective it is intended to further," Anthony, 810 P.2d at 159, it only requires that the fit be reasonable and not arbitrary. Keyes v. Humana Hosp. Alaska, Inc., 750 P.2d 343, 357 (Alaska 1988). Such is the case here. As shown above, the classifications bear a reasonable and substantial relationship with the reliance interests the state sought to protect. The state adequately tailored the classifications to accomplish its purpose.

Therefore, I conclude that slowly phasing out the longevity bonus program by grandfathering in certain present and future recipients bears a fair and substantial relationship

to the goal of protecting the reliance interests of those who reasonably relied on receiving the bonus.


B. Federal Equal Protection Analysis.

I have already found that the amendment does not impinge on the right to travel, that no other fundamental rights are involved, and that no suspect classes are at issue. Furthermore, I have already found that an individual's interest in receiving a longevity bonus is entitled only to minimum protection. Therefore, given the fact that the federal equal protection clause is less protective of individual rights than Alaska's equal protection clause, and the federal equal protection analysis is less stringent, if the state's purpose and the relationship between means and ends satisfy the stricter Alaska standard, then they a fortiori meet the requirements of the less strict rational basis test. See Anthony, 810 P.2d at 162. Accordingly, the 1993 LBP amendment does not violate the equal protection clause of the United States Constitution.

CONCLUSION

In conclusion, I find that an individual's interest in a longevity bonus is entitled to minimum scrutiny, that the state's purpose in enacting the 1993 LBP Amendment, which was to protect the recipients' reasonable reliance interests, is legitimate, and that the amendment bears a fair and substantial relationship to this purpose. This memorandum accompanies my previous order of June 6, 1996, granting the state's motion for summary judgment.

Done at Anchorage, this 9 day of July, 1996.



Brian Shortell
Superior Court Judge

I certify that on 7/10/96
a copy of the above was mailed to each
of the following at their addresses of
record: Buchholdt / Gagnier

J. Herdman
Secretary/Deputy Clerk