LEG. FINANCE - BILLS 1983 - 1984 2057

SB 215 cont. - SB 219

2057

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

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

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

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

II. CONSTRAINTS ON THE CHOICE OF OPTIONS

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

A. Constitutional Constraints.

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

Under both the federal and Alaska constitutions, a durational residency requirement which conditions or denies either a "fundamental right" or a "basic necessity of life" is valid only if the discrimination is necessary to further a compelling state interest. Zobel II, 619 P.2d at 448; Memorial Hospital v. Maricopa County, 415 U.S. 250, 259 (1974). "Fundamental rights" involve such things as voting,[26] while "basic necessities of life" include basic medical care[27] and welfare.[28]

The so called "right to travel" -- which any durational residency requirement arguable affects -- is not a fundamental right automatically triggering the compelling state interest test. Zobel II, 619 P.2d at 425-426, Zobel III, 72 L.Ed. 2nd at 677-678.[29]

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

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

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

[28]Shapiro v. Thompson, 394 U.S. 618 (1969).

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

needy in this state.[30] The longevity bonus program seems more akin to the permanent fund dividend, which the Alaska Supreme Court held in Zobel II was not a "basic necessity of life." 619 P.2d at 445. As the Court of Appeals for the Ninth Circuit has observed:

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

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

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

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

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

1. Unquestionably, the "length of residence may be used to test the bona fides of citizenship." Zobel III, 72 L.Ed. 2d at 684 (Brennan conc.). In other words, the state may, by a durational residency requirement, "make virtually certain (that the recipients of the program are) bona fide residents of the state ..." Vlandis v. Kline, 412 U.S. 441, 453-454 (1973).

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

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

precedential support. Second, it would be contrary to the August 9, 1982 settlement in the Vest case. Finally, and as noted previously, a durational residency requirement would not begin to exclude significant numbers of elderly Alaskans unless it was in excess of 10 years.

2. Durational residency requirements may be permissible for reasons other than presuming domiciliary, although at least four justices of the United States Supreme Court believe that those situations are "rare." Zobel III, 72 L.Ed. 2nd at 684.[31]

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

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

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

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

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

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

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

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

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

Finally, as to the ALB program's goal of providing an incentive for a specific subclass of Alaska's elderly to remain in the state, the courts in all likelihood would view that purpose as merely discrimination for its own sake. See Zobel III, 72 L.Ed. 2nd at 678-679. Presuming that only long-time residents have the requisite "wisdom and experience" to warrant subsidization is hardly likely to impress the U.S. Supreme Court.

B. Varying Goals of Several Longevity Bonus Options.

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

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[32] 1982 Op. Atty. Gen. ____ (November 26, 1982) at 25.

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

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

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

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

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

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

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

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

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[33]See n. 8, ante.

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

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

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

> 1. The existing longevity bonus program is taxed under the Internal Revenue Code;
>
> 2. Any ALB program which is based on need, or could be characterized as a "social benefit program for the promotion of the general welfare," would in all likelihood not be taxed by the IRS; and[36]

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[34]AS 43.23.075.

[35]See 42 U.S.C. §1382(a)(b)(6).

[36]See IRS Revenue Rulings, 63-136, 1963-2 C.B. 19; 68-38, 1968-1 C.B. 446; 72-340, 1972-2 C.B. 31; 78-170, 1978-1 C.B. 24.

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

III. DISCUSSION OF ALTERNATIVES

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

There are currently some 9,425 Alaskans who receive bonuses totally $28.28 million. This proposal would require additional appropriations for (1) bonuses for an additional 3,803 people; and (2) additional clerical support in the Department of Administration. The additional costs would total $12 million in FY 1984, increasing to $13.7 million in FY 1988.[38]

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

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

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

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

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

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

B. Phase Out The Existing Longevity Bonus Program.

One of the options analyzed by the Sheffield administration would phase out the ALB Program by reducing benefits by $50.00 each year beginning with FY 1984. By paying $200.00 a month to 13,228 recipients rather than $250.00 to 9,425, the net increase to the program in FY 1984 would be $2.1 million. In fiscal year 1985, however, when the bonus is reduced to $150.00, there will be a net decrease of $8.7 million in program costs.

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

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

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

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

CHART 1.

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

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

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

CHART 2.

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

FY 1984	2.1
FY 1985	(8.7)
FY 1986	(19.2)
FY 1987	(30.9)
FY 1988	(44.1)

The fiscal impact upon the Department of Health and Social Services' OAA program is far more difficult to determine. The Department of Administration has used two alternative assumptions -- (1) that of the 13,228 elderly in Alaska, 5% will become eligible and apply for public assistance as the income level is increased to $796 in FY 1988; or (2) that 25% of the elderly will become eligible and apply for assistance during that period.

We believe that the 25% possibility may be closer to the truth. Approximately 30% of Alaska's elderly have monthly incomes marginally above existing assistance levels -- from $500-$800 per month.[39] If those figures are accurate, as many as 3,968 will become eligible for public assistance -- in addition to the 2,300 currently on the OAA program.

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

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[39]Assessment, op. cit. n. 11 at 31.

existing receipients -- $295 in FY 1984.

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

(1) Of the 5,968 elderly whom current data suggest could be eligible for the increased OAA program, 2500 will in fact apply. This figure arbitrarily discounts both those who will decline to apply for psychological reasons, and those who will not apply because the minimal benefits to them are simply not worth the bother;

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

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

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

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

CHART 3

Year	# Add. on OAA	Mean Benefit	--------IN MILLIONS-------- Added Medicaid Costs	Added ALB Costs (Savings)	Net
FY 1984	500	$295.02	1.4	2.1	5.27
FY 1985	1000	345.02	2.8	(8.7)	(1.76)
FY 1986	1500	395.02	4.2	(19.2)	(5.90)
FY 1987	2000	445.02	5.6	(30.9)	(14.60)
FY 1988	2500	495.02	7.0	(44.1)	(29.30)

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

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

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

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

Finally, because welfare payments are generally viewed by the courts as involving "basic necessities of life" (see §II(A), ante), the durational residency requirement for increased old age assistance must be dropped from one year to 30 days.[40] The minimum national old age assistance level under the federal Supplemental Security Income system -- which OAA supplements -- is $284.30/mo.. A person with $600 a month income in a "minimum benefit" state is presumably ineligible for old age assistance (including Medicaid) in that state, but could become eligible under the Alaska system upon 30 days residency. While the mere prospect of an additional $196 per month (in FY 1988) is unlikely to induce people to retire in Alaska, the concommitant provision of Medicaid services -- including full nursing home coverage -- may have that effect. If a person can obtain free nursing home coverage -- valued at between $40 - $60,000 per year -- simply by spending the month of August in Anchorage, the State may face a rather remarkable in-migration problem indeed.

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

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

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[40] Shapiro v. Thompson, 394 U.S. 618 (1969).

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

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

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

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

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

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

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

E. Gradual Increase In The Age Of Eligibility.

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

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

This option has been quite unfavorably received. It has been facetiously but not unfairly referred to as the "newcomer's bonus program." A recent migrant born prior to June 30, 1918 would receive a longevity bonus for life, while a long-time Alaskan born subsequent to that date would receive nothing.

F. Self-Sustaining Annuities.

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

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

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

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

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

Current age	Annuity as a % of target annuity
25	358%
35	161%
40	100%
45	66
55	21

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

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

the 40-60 year age group, the general fund would simply fund the difference between their annuity and the "target" figure.

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

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

The remaining question, obviously, is what to do about the person who is currently 65. If that individual's supplement is the same in 1994 as a new annuitant -- 79% -- he will in fact receive less than the new annuitant since he will have only his permanent dividend, rather than a 21% annuity, to make up the difference. Conversely, if the grandfathered PFD recipient received a full target annuity in 1994, he would be at a substantial advantage over the new annuitant. The reason is this: while the new annuitant has earned a substantial portion of his target annuity by foregoing his cash dividend each year, the "grandfathered" recipient has both enjoyed the dividend, and its earning power, over that same period of time.

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

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

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

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

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

[42] Assuming that the ALB of the "grandfathered class" is reduced by the $365 permanent fund dividend, each of 13,228 persons will receive a payment of $2,635 this year -- totaling $34 million dollars.

For all of the short term problems of an annuity program, the long term advantages should receive equal time. First, in a period of 20-25 years, the general fund will no longer be encumbered with the longevity bonus program. Second, the eventual size of one's annuity payments would be a function of the number of permanent fund dividend contributions that have been credited to the annuitant's account. We seriously doubt that a successful durational residency claim could be made to this aspect of the program. An annuitant with three years contributions could no more claim that he is due an annuity based on 20 years contribution than could a 1996 resident claim not merely the $787 cash dividend available that year, but rather some $6,000 which his predecessors had amassed by being residents of Alaska since 1984.[43]

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

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

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

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

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

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[44] Reeves, Inc. v. State, 65 L.Ed. 2nd 244, (1980); see also White v. Massachusetts Council of Construction Employees, ___ U.S.___, No. 81-1003 (U.S.S.Ct., Feb. 28, 1983)(distinguishing Hicklin v. Orbeck, 437 U.S. 518 (1978).

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

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

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

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

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[45]cf. 26 U.S.C. §401-404

[46]<u>See</u> 26 U.S.C. §408.

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

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

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

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

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[47]U.S. v. Goldsmith, 586 F.2d 810 (Ct.Cl. 1978).

[48]Id.

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

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

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

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

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[49] Id.

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

A far closer question arises with respect to the effect of this option on other public assistance programs. Generally, annuity income is included in the calculation of income for various assistance programs.[50] If, however, this option can be characterized as a continuation of the longevity bonus program, then the existing longevity bonus income exclusion[51] may persist. If -- consistent with tax considerations -- the only "annuity" is the one purchased by the State as a funding source, then the existing longevity bonus program can be retained in both name and substance, with the amount of the bonus still dependent upon residency history. After all, under the option, (1) a person must be a six month resident in order to obtain a single PFD, and must be eligible for the annuity at the time of distribution;[52] (2) the amount of annuity is dependent upon the number of PFD's credited to the individual's account; and (3) the "grandfathered" class of existing elderly would presumably be required to meet a one-year durational residency requirement.

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[50] See, 42 U.S.C. §1382(a)(a)(2)(B).

[51] See 42 U.S.C. §1382(a)(b)(2)(B).

[52] See n. 8, ante.

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

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

G. State Social Security System.

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

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

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

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

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

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

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

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[53]Alaska Population Overview, Alaska Department of Labor, 1981

[54]Id.

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

YEAR	% OF ELDERLY POPULATION
1950	8.1
2000	13.1
2025	19.5
2050	21.8

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

For fiscal year 1983, the calculations are relatively straight-forward. Given an aggregate distribution of some $169 million in permanent fund dividends this year, approximately 25% would be needed to fund a "pay as you go system."

However, even assuming a 3% cost of living adjustment in the payment each year, the percentage needed to fund the program decreases. This is because permanent fund earnings will increase at a rate substantially higher than inflation. From the year 1983 to 2000, the average funding required would be 15 to 19 percent of the distributions, while, in the years 2000 to 2025 (and assuming continued growth in permanent fund earnings) the funding amount would be 10-12 percent.

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

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

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

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

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

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[55] 42 U.S.C. §414(a)(1)

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

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

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

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

H. Health Insurance For The Elderly.

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

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

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[57]Alaska Comprehensive Health Care Financing Study, Batelle Human Affair Research Center (1981)

[58]HB 641, 12th Leg. 1st Sess. (1981)

[59]ALB Survey, op. cit. n. 9 at 22

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

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

The major source of health insurance coverage for the elderly in Alaska is obviously Medicare -- a federal insurance plan which provides hospitalization for those eligible for social security[60] and medical insurance for an additional fee of $12.20 per month.

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

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

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

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[60] 42 U.S.C.§§ 426,1395(c). A person ineligible for Social Security may obtain Medicare hospitalization insurance for $113 per month

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

The largest group of elderly Alaskans ineligible for Medicare are rural residents, primarily Natives, who do not have a sufficient wage earning history to qualify for social security. All Alaska Indians, Aleuts and Eskimos are eligible for IHS -- which provides a broad range of services depending upon available facilities. IHS is, however, primarily a direct provider of facilities -- it does not make cash payments for services such a custodial care in a nursing home. Moreover, it is currently facing severe cutbacks in areas such as reimbursement for health-related travel expenses[62].

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

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

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

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

rates in Alaska run from $90 to $172 per day[63]. The costs are simply prohibitive for anyone not on Medicaid -- indeed, of the 467 elderly Alaskans currently residing in State nursing homes (other than the Pioneers Homes), all but 31 are there under Medicaid, or Alaska's General Relief Medical Assistance.

Conversely, nursing home rates in Washington, for example, have been estimated by the Department of Health & Social Services to vary from $50-$60 per day. It is not known how many elderly Alaskans are institutionalized in lower forty-eight custodial care facilities; however, it is apparent that unless one is eligible for Pioneer Home placement, a nursing home can be afforded if, at all, only by relocating to the lower forty-eight.

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

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

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63Alaska Nursing Home Census, Alaska Department of Health & Social Service, 12/31/82

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

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

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

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

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[64]42 U.S.C. §1382(a)(1)(B)

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

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

Secondly, there is the potentially severe problem of in-migration. If a year's residency in Alaska[66] were all that were required for free and unlimited nursing home coverage, the potential of in-migration may be severe. There are two potentially justifable components of the program which could mitigate this potential:

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

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

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

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

I. LONGEVITY BONUS PREMISED ON INDIVIDUALIZED RELOCATION HARDSHIP.

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

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

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

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

2. translation of those subjective criteria to a point system similar to that used by the Alaska Commercial Fisheries Entry Commission; and[68]

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

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

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

1. income;

2. location of family;

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[68]See AS 16.43

3. location of property; and

4. ethnic, religious, and cultural ties.

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

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

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

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

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

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

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

J. GRANDFATHERING

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

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

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

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

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

4. CONCLUSION

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

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT

CONFIDENTIAL

RODNEY G. VEST,

Plaintiff,

v.

MARIAN SCHAFER and STATE OF ALASKA,

Defendants.

Case No. 1JU-82-1103 Civ.

AGREEMENT AND ORDER OF SETTLEMENT

WHEREAS, in 1972 the Alaska Legislature enacted the Alaska Longevity Bonus Program (AS 47.45.010 et. seq.) which currently provides, inter alia, for the payment of $250 for each month of continued residency by bona fide Alaska residents over the age of 65 who were domiciled in Alaska on or before January 3, 1959 and who have maintained a continuous domicile in Alaska for 25 years;

WHEREAS, the purpose of the Alaska Longevity Bonus Program is among other things, to reward elderly Alaskans for their past contributions to the state and territory, and for past hardships suffered during territorial and early statehood days. AS 47.45.170;

WHEREAS, since 1972, the State of Alaska in good faith has administered the Longevity Bonus Program in the belief that

the rewarding of prior residency was a constitutionally permissible purpose;

WHEREAS, in upholding the State's prior Permanent Fund Dividend distribution program, the Alaska Supreme Court ruled that "reward[ing] those Alaska residents who have chosen to stay" is a constitutionally permissible purpose. Williams v. Zobel, 619 P.2d 448, 460 (Alaska 1980);

WHEREAS, Justices Dimond and Matthews, in dissenting in Williams v. Zobel, believed that the Longevity Bonus Program would withstand constitutional scrutiny (619 P.2d at 469, n.13);

WHEREAS, on June 14, 1982, the United States Supreme Court, in invalidating Alaska's prior Permanent Fund Distribution Program, ruled that a statutory purpose of rewarding prior residency was constitutionally impermissible. Zobel v. Williams, ____ U.S. _____, 80-1146;

WHEREAS, because of the U.S. Supreme Court's decision in Zobel v. Williams, it appears the Longevity Program may not be deemed constitutional;

WHEREAS, a serious and good faith disagreement has developed and the Alaska Legislative Council questions whether the appropriate remedy is to expand the class of recipiants of monthly longevity bonuses, or alternatively, to invalidate the entire program and cease payment of monthly bonuses to any person;

WHEREAS, this uncertainty regarding the appropriate remedy derives from § 2, Ch. 205, SLA 1972, which provides, with respect to the Longevity Bonus Program:

> If any provision of this Act, or the application of a provision of this Act to any person or circumstances is held invalid, this entire act shall be considered invalid.

WHEREAS, unless and until the question of appropriate remedy is resolved by this court, or a settlement of this controversy is achieved, it is reasonable and prudent that the State of Alaska continue to administer the Longevity Bonus Program in the manner provided by statute;

WHEREAS, on July 6, 1982, Plaintiff Rodney Vest filed the above-captioned action, seeking as relief his inclusion in the Longevity Bonus Program of "any . . . bona fide Alaska resident who is 65 years or older....". Complaint, Prayer for Relief, para. 2;

WHEREAS, ON July 23, 1982, Plaintiff Vest filed an amended complaint seeking to have this case certified as a class action under Alaska Rule of Civil Procedure 23 on behalf of all bona fide Alaskans of the age of 65 or older, and further seeking as alternative relief the invalidation of the Longevity Bonus Program, or the payment of retroactive bonuses "in amount equal to what they would have been entitled to obtain under the program had the unconstitutional criteria never been in place or

enforced." First Amended Complaint, Prayer for Relief, paras. 4-6.

WHEREAS, there are currently 9,124 recipients of monthly longevity bonuses, and many of these recipients are of modest means, and depend upon the monthly bonus for sustenance, and the termination of the longevity bonus payments to these individuals could cause great and irreparable harm;

WHEREAS, because of the uncertainty with respect to the appropriate remedy, the parties are desirous of settling this litigation in a manner which affords meaningful relief to Plaintiff Vest and others similarly situated, but which also ensures the continuation of monthly bonus payments to existing recipients;

WHEREAS, the parties are further desirous of achieving a settlement which will finalize and constitute a full and final accord of the rights and liabilities of the parties hereto;

WHEREAS, there may be as many as 4,000 persons who are similarly situated with Plaintiff Vest -- to wit, bona fide Alaskans of the age of 65 or over -- who are not currently receiving longevity bonus payments because of the residency requirements of the statute;

WHEREAS, the parties agree that, because of the nature of the rights of recipients involved in this litigation, a one-year residency requirement is reasonable, necessary and appropriate in order to demonstrate bona fide Alaskan residency;

WHEREAS, a full and final settlement of the parties' rights and liabilities hereto cannot be achieved until all persons similarly situated with Plaintiff Vest are certified as a class under Alaska Rule of Civil Procedure 23(c);

WHEREAS, the settlement envisioned by the parties includes the retroactive payment of longevity bonuses to plaintiff class commencing and including July 1, 1982;

WHEREAS, the payment of such retroactive bonuses to an expanded class of recipients would require the appropriation of sums above the amount currently appropriated for the longevity bonus program for fiscal year 1982-83. Moreover, and because of the Alaska Legislative Council's view of the non-severability clause, quoted above (effecting the expansion of the class of longevity bonus recipients), such payments may require the enactment of curative legislation;

WHEREAS, it is therefore necessary, in order to effectuate this settlement, for appropriate legislation to be enacted;

WHEREAS, the Alaska Legislature is a coordinate branch of government of the State of Alaska, and is represented in this action by the Attorney General;

WHEREAS, notwithstanding the above, the Attorney General cannot in any manner bind or compel the Alaska Legislature in the exercise of its legislative powers;

WHEREAS, on July 16, 1982, the Alaska Legislative Council moved to participate in the above-captioned action as amicus curiae, it is agreed that the Alaska Legislative Council may participate in all negotiations of any settlement, the filing of briefs and may participate in oral arguments; however, the Alaska Legislative Council agrees that it will not be involved in discovery proceedings in the event the case is ultimately litigated and will not become otherwise involved in accordance with the terms of this settlement agreement;

WHEREAS, and while the Alaska Legislative Council cannot bind the Alaska Legislature in the exercise of its legislative powers, the Alaska Legislative Council can and is willing to commit its best efforts to the enactment of appropriate legislation during the first regular session of the 13th Alaska Legislature;

WHEREAS, and subject to (1) the certification of plaintiff class, (2) the Superior Court's approval of a settlement proposal herein, and (3) the commitment of the Alaska Legislative Council to use its best efforts in the enactment of appropriate legislation, plaintiff class is agreed that such action will provide full and adequate consideration for the promise and agreement of plaintiff class not to seek relief in any form with respect to the Longevity Bonus Program through and including the adjournment of the first regular session of the

13th Alaska Legislature or June 30, 1983, whichever ever event comes first in time;

WHEREAS, nothing herein is to be construed as an admission by the State of Alaska as to the unconstitutionality of the Longevity Bonus Program;

WHEREAS, except with respect to the good faith of the State and its agents, nothing herein is to be construed as an admission by either party in the event the settlement agreed to here is not consummated;

NOW THEREFORE THE PARTIES STIPULATE AND AGREE AS FOLLOWS:

1. All actions and proceedings in the above-captioned case, other than:

(a) the certification of plaintiffs class

(b) the approval by the Superior Court for the State of Alaska, First Judicial District of this proposed settlement agreement, and

(c) any further approval by the court necessary to consummate the settlement agreement after the certification of plaintiffs class,

are stayed through and including the date of adjournment of the first regular session of the 13th Alaska Legislature or June 30th, 1983, whichever event occurs first in time. Procedures for class certification shall be submitted to the Court for review no later than September 10, 1982, and the parties will request the

Court to render its order with respect to the notice procedures forthe said class no later than September 24th, 1982. Notice to the class shall be transmitted, along with the proposed settlement and the conditions necessary to affectuate the settlement, on or before October 11th, 1982. The State of Alaska will undertake reasonable efforts to assist Plaintiff to locate those persons 65 years or older as of July 1, 1982, who have been bona fide Alaska residents in the state of Alaska for one year immediately prior to that date. In the event this settlement agreement is not consummated for whatever reason, but the class certification has been certified by the court as set forth above, the Plaintiff shall not be precluded from seeking an enlargement of the class and a certification thereof so as to include other persons having a shorter residential duration within the State and may also seek a greater retroactive recovery.

2. The Alaska Legislative Council shall utilize its best efforts to secure the enactment, during the first regular session of the 13th Alaska Legislature, of the following legislation;

(a) Legislation which treats equally all bona fide Alaska residents of the age of 65 or older with respect to their residential qualifications to receive any "longevity bonus payments" or any substitute benefits from July 1, 1982 and thereafter for as long as the legislature may determine to continue such a program. Bona fide Alaska residents are those

who continuously resided in the state for one year immediately prior to the date of eligibility; and

(b) Any appropriation which might be required to fund the legislation described in paragraph (a), including the retroactive payment of bonuses.

3. If the Alaska Legislature passes legislation described in 2(a)-(b) above at any time during the first regular session of the 13th Alaska Legislature and the Governor signs the said legislation or otherwise allows 2(a)-(b) to become law so that 2(a)-(b) will be effective no later than Ninety days after enacted, the above action shall be dismissed with prejudice, subject only to the determination of attorney fees by the Court.

4. If the above-captioned action is dismissed under paragraph 3 above, all claims or rights of any class member (except those class members who exercise their right to opt out under Rule 23 of the Alaska Rules of Civil Procedure), with respect to the Longevity Bonus Program, shall be merged into the judgment of dismissal and extinguished;

5. If the Legislation described in 2(a)-(b) above is not enacted during the first regular session of the 13th Alaska Legislature or in any event no later than June 30, 1983, then this agreement shall be null and void, except that the Plaintiff and the class certified, together with any additional members, if there is an enlargement of the class, may prosecute this case as

if this agreement had not been entered into, it being the intent of the parties that certification of the plaintiff class, or the enlargement thereof, shall not be affected if this agreement becomes null and void;

6. The obligation of the Alaska Legislative Council under 2 herein is contingent upon certification of plaintiff class under Alaska Rule of Civil Procedure 23(c), which class shall include each and every individual of the age of 65 or older who, as of July 1, 1982, had continuously resided one year immediately preceding that date within the State of Alaska, and in the event that a class is certified which is less inclusive than as above described, the State of Alaska has reserved the right to waive the protections of this paragraph in whole or in part. Nothing in this paragraph is intended to modify or affect the certification of the class or the right of the Plaintiff to enlarge the class if this agreement becomes null and void.

DATED this __ day of _____, 1982.

DATED: August 9, 1982

Wilson L. Condon by Ofts
Attorney for Defendants
Marian Schaefer and
State of Alaska

WILSON L. CONDON
ATTORNEY GENERAL

DATED: August 6, 1982

Henry J. Camarot
Attorney for Plaintiff

Henry J. Camarot
Camarot, Sandberg & Hunter

DATED: 8/16/82

Attorney for Alaska
Legislative Council
Amicus Curiae

FOR William Ruddy
Robertson, Monagle,
Eastaugh & Bradley

O R D E R

IT IS SO ORDERED.

DATED: _____

Hon. Walter Carpeneti
Superior Court Judge

PROGRAM NAME	PROGRAM DESCRIPTION	TYPE OF BENEFITS	INCOME LIMIT (Number of Persons) 1	2	3	4	ALB EXCLUDED	NUMBER OF ELDERLY ALASKANS	MEAN BENEFIT	NUMBER OF ELDERLY AT RISK
Medicaid - Nursing Home	Provides payments on behalf of needy persons in nursing homes for cost of care 48% federal 52% state funds	Vendor Payments	852.90	n/a	n/a	n/a	Yes	up to $450/mo.	$3600/mo.	app. 275* *includes app. 120 who are included in the 500 at risk for SSI
Medicaid - Regular	Provides payment for necessary medical care on behalf of recipients of Old Age Assistance federal, 52% state funds, 48%	Vendor Payment	546	802 (net)	n/a	n/a	Yes	app. 2300 eligible, of whom app. 943 use benefits each month	$1027/ useage	app. 1200* *includes 500 at risk in SSI program

AM NAME	PROGRAM DESCRIPTION	TYPE OF BENEFITS	INCOME LIMIT (Number of Persons) 1	2	3	4	ALB EXCLUDED	NUMBER OF ELDERLY ALASKANS	MEAN BENEFIT	NUMBER OF ELDERLY AT RISK
ld Age ssistance	Payments to needy	Monthly Cash	546	802	n/a	n/a	Yes	app 2300	246.70/mo.	app 1200* *includes 500 at risk in SSI
Food Stamp Program	A federally funded program designed to promote the health of the nation's population by raising the levels of nutrition among low-income households	Food coupons that are used in place of money	490	650	810	970 This is net monthly income	No	1700	$32 per person (random sampling of 10-elderly cases.)	-0-
Supplemental Security Income(SSI)	Federally funded & administered program providing assistance to needy persons who are aged or disabled 100% federal funds	Monthly Cash	284.30	426.40	n/a	n/a (net)	Yes	app 900	app $228 mo.	500
Energy Assistance	Grants to low-income households to offset energy costs	Vendor home energy credit	$851	$1113	$1375	$1637 (net)	Yes	app. 1400	$475	300-400
General Relief (Medical)	100% state-funded, provides medical assistance on behalf of needy persons. For elderly, primarily provides drugs for Medicaid eligible persons on OAA and SSI	Vendor Payment	$300 or same as SSI and/or OAA (net)	$400			Yes, for elderly	2750 eligibles app. 30% of whom use benefits	$50/mo. useage benefits	app. 1475

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

PROGRAM NAME	PROGRAM DESCRIPTION	TYPE OF BENEFITS	INCOME LIMIT (Number of Persons) 1	2	3	4	ALB EXCLUDED	NUMBER OF ELDERLY ALASKANS	MEAN BENEFIT	NUMBER OF ELDERLY AT RISK
Old Age Assistance	Payments to needy	Monthly Cash	546	802	n/a	n/a	Yes	app 2300	246.70/mo.	app 1200* *Includes 500 at risk in SSI
Food Stamp Program	A federally funded program designed to promote the health of the nation's population by raising the levels of nutrition among low-income households	Food coupons that are used in place of money	490	650	810	970 This is net monthly income	No	1700	$32 per person (random sampling of 10-elderly cases.)	-0-
Supplemental Security Income(SSI)	Federally funded & administered program providing assistance to needy persons who are aged or disabled 100% federal funds	Monthly Cash	284.30	426.40 (net)	n/a	n/a	Yes	app 900	app $228 mo.	500
Energy Assistance	Grants to low-income households to offset energy costs	Vendor home energy credit	$851	$1113 (net)	$1375	$1637	Yes	app. 1400	$475	300-400
General Relief (Medical)	100% state-funded, provides medical assistance on behalf of needy persons. For elderly, primarily provides drugs for Medicaid eligible persons on OAA and SSI	Vendor Payment	$300 or same as SSI and/or OAA (net)	$400			Yes, for elderly	2750 eligibles app. 30% of whom use benefits	$50/mo. useage benefits	app. 1475

SENATE AMENDMENT

BY HALFORD / Ferguson

To: CS For SENATE BILL No. 219 (Resources)

To: HOUSE BILL No.

PAGE: 3 LINE: 19

Delete "expertise"
Insert "responsibility"

PAGE: 4 LINE: 16

Delete "solely"

Page 4 Line 21-22

Delete all of (b) and renumber.

PAGE: 5 LINE: 7-12

Delete all of "(f)."

PAGE: 6 LINE: 9-10

Insert period (.) after word Game and
delete remainder of sentence.

Offered: 6/15/83
Referred: Finance

Original sponsors: Bennett and Fahrenkamp

SB 84

IN THE SENATE BY THE RESOURCES COMMITTEE

CS FOR SENATE BILL NO. 219 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to processing of permits by state agencies, and to administration of the Alaska coastal management program."

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

* Section 1. FINDINGS. The legislature finds that

(1) the orderly development of state resources is being unnecessarily delayed by the length of time required to obtain a permit from a state agency, by the complexity of the permit process, and by the number of agencies involved in the permit process;

(2) the uncertainties created by the lack of specific time limits, the proliferation of state agency review, the number of state agencies involved in the permit process, and duplicative state agency requirements for the processing of permit applications have resulted in excessive costs to the public in lost employment and higher prices;

(3) unnecessary delay in the processing of permit applications is not in the public interest; and

(4) a reduction in the number of state agency reviews and review time required in the permit process would promote the social, economic and environmental health and well being of state residents.

* Sec. 2. AS 44.62 is amended by adding new sections to read:

ARTICLE 8A. PERMIT PROCESSING.

Sec. 44.62.632. PERMIT CLASSIFICATION. (a) A state resource agency shall by regulation classify each permit issued by that agency in one of the following categories:

(1) class I, for which the state agency must issue a final decision within 30 days after the date of receipt of a completed application; and

(2) class II, for which, because of a necessary public notice or interagency review period, a final decision cannot be issued within 30 days; a final decision on a class II permit must be issued within 65 days after the date of receipt of a completed permit application, unless a public hearing is held on the permit, in which case a final decision must be issued within 85 days of the date of receipt.

(b) Each state resource agency shall adopt final regulations classifying its permits by October 1, 1983, following appropriate notice and hearing. Permits applied for after October 1, 1983, must be issued in accordance with the time periods specified in (a) of this section, and the provisions of the implementing regulations.

Sec. 44.62.633. OTHER REGULATORY REQUIREMENTS FOR PERMIT PROCESSING. (a) An applicant and a resource agency may agree to waive the time limit under AS 44.62.632(a).

(b) Upon a finding by the head of a resource agency that a permit being considered by the agency involves unusually complex issues so that the agency cannot render a final decision within the time period specified in AS 44.62.632, the head of the agency may prescribe a time period within which the final decision will be made. The finding of the head of the agency may be appealed by the applicant to the superior court under the Appellate Rules of Procedure.

(c) Subject to the provisions of (a) and (b) of this section and AS 44.62.632, if the resource agency fails to make a final decision within 30 days after the receipt of an application for a class I permit or within the time specified in AS 44.62.632(a)(2) for a class II permit, the permit application is approved.

(d) Unless otherwise required by law, a state agency may not condition the issuance of a permit upon the issuance of a permit from another governmental agency.

(e) The time period specified in AS 44.62.532(a) may be extended if necessary to facilitate joint processing of a permit application by state and federal agencies, but only if adherence to the time periods established in AS 44.62.632(a) would cause a conflict with federal statute or regulation.

(f) In performing its functions under this section, the lead agency shall consult with other resource agencies and with coastal resource districts under AS 46.40. The lead agency shall consider documented facts, data, opinion, conclusions, or recommendations submitted by the commenting agency and the coastal resource districts with an approved district coastal management program, within their areas of expertise, but may, in its discretion, reach contrary opinions, conclusions or recommendations according to the weight of the evidence received. The lead agency shall balance competing factors in reaching its final decision. No resource agency other than the lead agency has primary expertise in the balancing of competing factors.

Sec. 44.62.634. ADDITIONAL INFORMATION. (a) If a resource agency receives a permit application that does not contain sufficient information concerning compliance with the agency's statutes and regulations, the agency shall notify the applicant within 15 days after receipt of a permit application for a class I permit, and within 30 days after receipt for a class II permit.

(b) The notification must specify those particular facts or issues concerning the proposal upon which the agency requires additional information in order to determine whether the project will conform to the agency's statutes and regulations.

(c) If a timely request under (a) and (b) of this section is made, the time period specified in AS 44.62.632 is suspended from the date of request to the date of full compliance with the request. Subsequent requests for additional information may be made, but must relate only to new issues raised by the response to the initial notification.

Sec. 44.62.635. LEAD AGENCY. (a) There is established a lead agency that is solely responsible for issuing coastal management consistency determinations under AS 46.40. For resource development activities on state and federal land, water, and submerged land, the lead agency is the Department of Natural Resources. In all other cases, the lead agency is that resource agency that has principal administrative responsibility for the type of development for which the consistency determination is required, even though the development may require permits from more than one resource agency. The lead agency is solely responsible for preparing and submitting state comments on federal permit applications. For classes of activities for which no agency with principal responsibility exists the governor shall designate a resource agency to be a lead agency for each class by administrative order no later than October 1, 1983.

(b) Except as required by federal law no state agency other than the lead agency may comment to a federal permitting agency.

(c) For activities involving approval of a plan of operation and a certificate under 33 U.S.C. 1341 (sec. 401 of the Clean Water Act), the lead agency shall be the Department of Natural Resources.

(d) For activities occurring on privately owned land, and for which one or more state permits or a disposal of interest in state land is required to provide access to the privately owned land, or for purposes otherwise ancillary to the activity, the lead agency shall be

the Department of Natural Resources.

(e) Nothing in this section or AS 46.40 authorizes a lead agency or any resource agency to deny or condition a consistency determination because of effects that may be caused by activities not themselves requiring a state or federal permit or disposal of interest in state land.

(f) In making a consistency determination under this section for an activity occurring outside the boundaries of a coastal resource district with an approved district plan, the lead agency or any resource agency may consider only those statewide standards and guidelines adopted by the Alaska Coastal Policy Council under AS 46.40.-040(1).

* Sec. 3. AS 44.62.636 is amended by adding a new subsection to read:

(c) As used in AS 44.62.632 - 44.62.635,

(1) "date of receipt" means the date on which a state agency physically receives an application filed in accordance with agency regulations and at a place identified as appropriate for filing in the agency's regulations;

(2) "permit" means a permit, license, certification, consistency determination, comments on pending permit applications before other governmental entities, or other authorization or approval issued by a resource agency as a written document that is required to be obtained or is solicited from a state agency before the construction or operation of a project; "permit"

(A) does not include the approval of a unit agreement, a unit development plan, or a unit exploration plan, or conveyances of interest in state land or water;

(B) does include all authorizations and approvals, whether proprietary or regulatory, necessary to undertake a

project under a previously conveyed property interest;

(3) "project" means a new activity or expansion or addition to an existing activity for which permits are required before construction or operation; "project" does not include pursuing a trade or profession, providing public health service, or operating a financial institution;

(4) "resource agency" includes the Department of Natural Resources, the Department of Environmental Conservation, and the Department of Fish and Game with respect to permits issued for the protection of fish habitat or the regulation of state sanctuaries, refuges, and critical habitat areas.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM June 23, 1983

SUBJECT: Sectional analysis of CSSB 219 (Resources)

TO: Senator Bettye Fahrenkamp
Chairman, Senate Resources Committee

FROM: Billy G. Berrier BGB
Director
Division of Legal Services

You have requested a sectional analysis of CSSB 219 (Resources).

Section 1 contains legislative findings. Essentially the findings are that the present system of processing permits results in unnecessary delay and excessive costs in development of state resources and that reduction in the number of state agencies involved and the time required to process permits would be in the public interest.

Section 2 adds a new article to AS 44.62 concerning permit processing consisting of Secs. 44.62.632 - 636.

Section 44.62.632 requires state resource agencies to classify permits by regulation adopted by October 1, 1983. Permits after that date must be issued in accordance with the time periods specified. Two classes of permits are established. These are:

(1) Class I on which the final decision must be made in 30 days, and

(2) Class II on which, because of necessary public notice or agency review, the final decision must be made in 65 days unless a public hearing is required in which case the period is 85 days.

Section 44.62.633 establishes other regulatory requirements:

(a) Allows waiver by the applicant and agency of the

time requirements in Sec. 44.62.632.

(b) Allows the head of a resource agency to prescribe a longer time period than that established in Sec. 44.62.632 if unusually complex issues are involved. This decision may be appealed to the Superior Court.

(c) Provides, subject to (a) or (b) above if the final decision is not made in the prescribed time period the permit application is approved.

(d) Provides issuance of a permit may not be conditioned on obtaining another permit unless the condition is required by law.

(e) The time periods may be extended to allow joint federal - state permit processing if the time periods presented would cause a conflict with federal law or regulations.

(f) A lead agency shall consult with other resource agencies and coastal resource districts in performing its functions. It may consider documentation submitted by a commenting agency or resource district but may reach its own conclusions based on the weight of evidence. The lead agency shall balance competing factors in reaching its final decisions. No other agency has primary expertise in balancing competing factors.

Section 44.62.634 regulates requirements of additional information.

(a) If a permit application does not contain sufficient information concerning compliance with law and regulations the agency must notify the applicant within 15 days for a Class I permit and within 30 days for a Class II permit after date of receipt of the application.

(b) Provides the notification shall specify the additional information required.

(c) Provides that if a request is made under (a) or (b) the time period for final decision is suspended from the date of the request until the

request is complied with. Additional requests may be made only if they relate to new issues raised by the response.

Section 44.62.635 relates to lead agencies which solely are responsible for issuing coastal management consistency determinations under AS 44.40.

(a) Establish lead agencies.

(1) For resource development on state and federal land or water the lead agency is the Department of Natural Resources.

(2) In other cases the lead agency is the agency with principal administration responsibility for the type of development for which the determination is required even though permits may be required from more than one agency. If no agency has principal responsibility the governor shall designate a resource agency as a lead agency for each class by October 1, 1983.

(b) Unless required by federal law no state agency other than the lead agency may comment to a federal permitting agency.

(c) The lead agency for activities involving a plan of operation and certificate under Sec. 401 of the federal Clean Water Act the lead agency is the Department of Natural Resources.

(d) If activities for which a consistency determination is required occurs on private land but a permit to use or a disposal of state land is involved the lead agency is the Department of Natural Resources.

(e) This section and AS 46.40 do not authorize a resource agency to deny or condition a consistency determination because of effects caused by activities not themselves requiring a permit or a disposal of state land.

(f) If the activity for which the consistency

determination is required occurs outside a coastal resource district with an approved district plan the agency may only consider statewide standards and guidelines adopted by the Alaska Coastal Policy Council.

Section 44.62.636 defines terms used in the Article.

(1) "date of receipt" means the date an agency physically receives an application filed in accordance with regulations at the place identified as appropriate for receiving filing.

(2) "permit" is broadly defined as an authorization or approval issued on a written document that is required before construction or operation of a project. It includes authorization or approvals necessary to undertake a project on previously conveyed state property. It does not include the approval of a unit agreement, a unit development plan, or a unit exploration plan, or conveyances of interest in state land or water.

(3) "project" means a new activity or expansion or addition to an existing activity for which a permit is required. It does not include an occupational license, providing public health services or operating a financial institution.

(4) "resource agency" includes (1) the Department of Natural Resources, (2) the Department of Environmental Conservation, (3) the Department of Fish and Game with respect to permits issued for the protection of fish habitat or the regulation of state sanctuaries, refuges, and critical habitat areas.

Offered: 6/15/83
Referred: Finance

Original sponsors: Bennett and Fahrenkamp

IN THE SENATE BY THE RESOURCES COMMITTEE

CS FOR SENATE BILL NO. 219 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to processing of permits by state agencies, and to administration of the Alaska coastal management program."

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

* Section 1. FINDINGS. The legislature finds that

(1) the orderly development of state resources is being unnecessarily delayed by the length of time required to obtain a permit from a state agency, by the complexity of the permit process, and by the number of agencies involved in the permit process;

(2) the uncertainties created by the lack of specific time limits, the proliferation of state agency review, the number of state agencies involved in the permit process, and duplicative state agency requirements for the processing of permit applications have resulted in excessive costs to the public in lost employment and higher prices;

(3) unnecessary delay in the processing of permit applications is not in the public interest; and

(4) a reduction in the number of state agency reviews and review time required in the permit process would promote the social, economic and environmental health and well being of state residents.

* Sec. 2. AS 44.62 is amended by adding new sections to read:

ARTICLE 8A. PERMIT PROCESSING.

Sec. 44.62.632. PERMIT CLASSIFICATION. (a) A state resource agency shall by regulation classify each permit issued by that agency in one of the following categories:

(1) class I, for which the state agency must issue a final decision within 30 days after the date of receipt of a completed application; and

(2) class II, for which, because of a necessary public notice or interagency review period, a final decision cannot be issued within 30 days; a final decision on a class II permit must be issued within 65 days after the date of receipt of a completed permit application, unless a public hearing is held on the permit, in which case a final decision must be issued within 85 days of the date of receipt.

(b) Each state resource agency shall adopt final regulations classifying its permits by October 1, 1983, following appropriate notice and hearing. Permits applied for after October 1, 1983, must be issued in accordance with the time periods specified in (a) of this section, and the provisions of the implementing regulations.

Sec. 44.62.633. OTHER REGULATORY REQUIREMENTS FOR PERMIT PROCESSING. (a) An applicant and a resource agency may agree to waive the time limit under AS 44.62.632(a).

(b) Upon a finding by the head of a resource agency that a permit being considered by the agency involves unusually complex issues so that the agency cannot render a final decision within the time period specified in AS 44.62.632, the head of the agency may prescribe a time period within which the final decision will be made. The finding of the head of the agency may be appealed by the applicant to the superior court under the Appellate Rules of Procedure.

(c) Subject to the provisions of (a) and (b) of this section and AS 44.62.632, if the resource agency fails to make a final decision within 30 days after the receipt of an application for a class I permit or within the time specified in AS 44.62.632(a)(2) for a class II permit, the permit application is approved.

(d) Unless otherwise required by law, a state agency may not condition the issuance of a permit upon the issuance of a permit from another governmental agency.

(e) The time period specified in AS 44.62.632(a) may be extended if necessary to facilitate joint processing of a permit application by state and federal agencies, but only if adherence to the time periods established in AS 44.62.632(a) would cause a conflict with federal statute or regulation.

(f) In performing its functions under this section, the lead agency shall consult with other resource agencies and with coastal resource districts under AS 46.40. The lead agency shall consider documented facts, data, opinion, conclusions, or recommendations submitted by the commenting agency and the coastal resource districts with an approved district coastal management program, within their areas of expertise, but may, in its discretion, reach contrary opinions, conclusions or recommendations according to the weight of the evidence received. The lead agency shall balance competing factors in reaching its final decision. No resource agency other than the lead agency has primary expertise in the balancing of competing factors.

Sec. 44.62.634. ADDITIONAL INFORMATION. (a) If a resource agency receives a permit application that does not contain sufficient information concerning compliance with the agency's statutes and regulations, the agency shall notify the applicant within 15 days after receipt of a permit application for a class I permit, and within 30 days after receipt for a class II permit.

(b) The notification must specify those particular facts or issues concerning the proposal upon which the agency requires additional information in order to determine whether the project will conform to the agency's statutes and regulations.

(c) If a timely request under (a) and (b) of this section is made, the time period specified in AS 44.62.632 is suspended from the date of request to the date of full compliance with the request. Subsequent requests for additional information may be made, but must relate only to new issues raised by the response to the initial notification.

Sec. 44.62.635. LEAD AGENCY. (a) There is established a lead agency that is solely responsible for issuing coastal management consistency determinations under AS 46.40. For resource development activities on state and federal land, water, and submerged land, the lead agency is the Department of Natural Resources. In all other cases, the lead agency is that resource agency that has principal administrative responsibility for the type of development for which the consistency determination is required, even though the development may require permits from more than one resource agency. The lead agency is solely responsible for preparing and submitting state comments on federal permit applications. For classes of activities for which no agency with principal responsibility exists the governor shall designate a resource agency to be a lead agency for each class by administrative order no later than October 1, 1983.

(b) Except as required by federal law no state agency other than the lead agency may comment to a federal permitting agency.

(c) For activities involving approval of a plan of operation and a certificate under 33 U.S.C. 1341 (sec. 401 of the Clean Water Act), the lead agency shall be the Department of Natural Resources.

(d) For activities occurring on privately owned land, and for which one or more state permits or a disposal of interest in state land is required to provide access to the privately owned land, or for purposes otherwise ancillary to the activity, the lead agency shall be

the Department of Natural Resources.

(e) Nothing in this section or AS 46.40 authorizes a lead agency or any resource agency to deny or condition a consistency determination because of effects that may be caused by activities not themselves requiring a state or federal permit or disposal of interest in state land.

(f) In making a consistency determination under this section for an activity occurring outside the boundaries of a coastal resource district with an approved district plan, the lead agency or any resource agency may consider only those statewide standards and guidelines adopted by the Alaska Coastal Policy Council under AS 46.40.-040(1).

* Sec. 3. AS 44.62.636 is amended by adding a new subsection to read:

(c) As used in AS 44.62.632 - 44.62.635,

(1) "date or receipt" means the date on which a state agency physically receives an application filed in accordance with agency regulations and at a place identified as appropriate for filing in the agency's regulations;

(2) "permit" means a permit, license, certification, consistency determination, comments on pending permit applications before other governmental entities, or other authorization or approval issued by a resource agency as a written document that is required to be obtained or is solicited from a state agency before the construction or operation of a project; "permit"

(A) does not include the approval of a unit agreement, a unit development plan, or a unit exploration plan, or conveyances of interest in state land or water;

(B) does include all authorizations and approvals, whether proprietary or regulatory, necessary to undertake a

project under a previously conveyed property interest;

(3) "project" means a new activity or expansion or addition to an existing activity for which permits are required before construction or operation; "project" does not include pursuing a trade or profession, providing public health service, or operating a financial institution;

(4) "resource agency" includes the Department of Natural Resources, the Department of Environmental Conservation, and the Department of Fish and Game with respect to permits issued for the protection of fish habitat or the regulation of state sanctuaries, refuges, and critical habitat areas.

Introduced: 3/30/83
Referred: Resources and
Finance

IN THE SENATE BY BENNETT AND FAHRENKAMP

SENATE BILL NO. 219

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the processing of permits by state agencies; and providing for an effective date."

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

* Section 1. FINDINGS. The legislature finds that

(1) the orderly development of state resources is being unnecessarily delayed by the length of time required to obtain permits from state agencies, by the complexity of the permitting process, and by the number of agencies involved in the permitting process;

(2) the uncertainties created by the lack of specific time limits, the proliferation of agency reviews, the number of agencies involved in the permit process, and unjustified agency requirements upon the processing of permit applications have cost Alaskans millions of dollars in lost employment and higher prices;

(3) the public interest has not been advanced by protracted delay in the processing of permit applications by state agencies;

(4) by requiring state agencies to process permit applications in an expeditious manner within a reasonable period of time, the state will promote the social, economic, and environmental health and well-being of its citizens.

* Sec. 2. AS 44.62 is amended by adding new sections to read:

ARTICLE 8A. ISSUANCE OF PERMITS.

Sec. 44.62.632. TIME LIMIT ON THE PROCESSING OF PERMITS. (a) Upon receipt of a permit application or receipt of a federal agency request for state review of an application for a federal permit, the

responsible state agency shall issue a final decision granting, denying, or reasonably conditioning the issuance of the permit, or issue a final response to the federal agency's request for state review, within the following time periods, unless the applicant and the agency mutually agree to a different period of time:

(1) any time period specifically required by state law;

(2) 60 days if a time period is not specifically required by state law and a public notice, public hearing, or comment period is specifically required by state law in connection with the permit application;

(3) 30 days if (1) or (2) of this subsection do not apply.

(b) The final decision on a permit application under (a) of this section shall include:

(1) conclusions of the state agency that support its decision concerning the permit application, including the factual basis and statutory authority for any conditions or stipulations to which the permit is subject; and

(2) the granting, conditional granting, or denial of the permit by the state agency.

(c) The final decision under (a) of this section must bear a fair and substantial relation to the object of the law under which the state agency is empowered to act.

(d) A permit may not be denied because of the lack of any other permit, and may not be conditioned upon the acquisition of any other permit.

(e) A permit application that has not been approved or rejected by the responsible state agency within the time period specified in (a) of this section is approved as submitted. The permit is approved on the last day on which the state agency could have announced a final

decision under (a) of this section.

Sec. 44.62.634. DEFECTIVE APPLICATIONS; NOTICE TO APPLICANT. (a) If a state agency receives a permit application requesting a permit that the agency believes it does not have authority to issue, or that it believes is unnecessary, it shall notify the applicant within 10 days after its receipt of the application. A notice given under this subsection is the final agency decision.

(b) If a state agency receives a permit application that it believes does not contain sufficient information concerning the location and nature of the project to allow the agency to determine whether the project complies with state law, the agency shall notify the applicant within 10 days after its receipt of the application. The notice must specify all information the agency requires to determine whether the project complies with state law.

Sec. 44.62.635. REVIEW BY THE COMMISSIONER OR BOARD. A state agency's final decision issued under AS 44.62.632 may be reviewed by the commissioner or board of the issuing agency at the request of the applicant. The applicant is entitled to a review de novo if requested in the original request for review; otherwise the review is a review on the record. The request must be filed with the commissioner or board within 30 days of the applicant's receipt of the decision. The commissioner or board shall issue a decision within 10 days of receipt of the request if the review is a review on the record. If the applicant has requested a hearing de novo, the hearing shall be held within 30 days of receipt of the request, and the decision of the commissioner or board shall be made within 30 days of the conclusion of the hearing. Unle the agency decision is confirmed in its entirety, the commissioner or board shall issue a written decision setting out the findings and conclusions in full.

Sec. 44.62.636. REVIEW BY THE SUPERIOR COURT. (a) Judicial review by the superior court of a final decision issued by a state agency under AS 44.62.632 or AS 44.62.634 or of a decision of the commissioner or board issued under AS 44.62.635, may be had by filing a notice of appeal in the superior court in accordance with the applicable rules of appellate procedure. The right to appeal is not affected by the failure to seek reconsideration or further review under AS 44.62.635. The review shall be governed by the provisions of AS 44.62.560(b) - (e) and AS 44.62.570.

(b) On an appeal by an applicant to the superior court, the agency that issued the final decision has the burden of proving that the decision is in accordance with AS 44.62.632 and AS 44.62.634.

(c) An appeal taken under this section has preference on the calendar of civil actions before the court and shall be decided without unnecessary delay.

* Sec. 3. AS 44.62.640 is amended by adding a new subsection to read:

(c) In AS 44.62.632 - 44.62.634,

(1) "permit" means a permit, license, certification, consistency determination, comments on pending permit applications before other governmental entities (including environmental impact statement comments), plan review, or other authorization or approval issued as a written document that is required to be obtained or is solicited from a state agency before the construction or operation of a project; "permit" does not include

(A) conveyances of interest in state land or water, but does include all authorizations and approvals, whether proprietary or regulatory, necessary to undertake a project under a previously conveyed property interest; and

(B) the provision of financial assistance;

(2) "permit application" includes the following documents:

(A) a document requesting the issuance of a permit that contains sufficient information concerning the location and nature of a project to allow the state agency to which it is directed to determine compliance of the project with state law;

(B) a document submitted to a state agency by a governmental entity that solicits comments in connection with a permit being processed by that governmental entity;

(3) "project" means a new activity or expansion or addition to an existing activity for which permits are required before construction or operation; "project" does not include pursuing a trade or profession, providing public health service, or operating a financial institution;

(4) "state agency" means a state department, commission, board, or other agency of the state; "state agency" includes a local or regional air pollution control authority established under AS 46.-03.210 and a coastal resource district and coastal resource service board established under AS 46.40.010 - 46.40.210.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.-10.070(c).

STATE OF ALASKA
FISCAL NOTE

Revision Date

I. REQUEST

Bill/Resolution No.: CSSB 219
Title: Permit Reform
Sponsor: Bennett
Requestor: Senate Resources

II. FISCAL DETAIL

Agency Affected: Natural Resources
Program Category Affected: NRMEC
BRU, Program or Subprogram(s) Affe
Mgmt. of Land/Mineral/Energy Resourc

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY
OPERATING						
100 PERSONAL SERVICES		346.6				
200 TRAVEL		18.0				
300 CONTRACTUAL		94.5				
400 COMMODITIES		33.8				
500 EQUIPMENT		264.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		756.9				
CAPITAL		-				
REVENUE		-				

FUNDING: (Thousands of Dollars)

GENERAL FUND		756.9				
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		10				
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis (Attached)

Prepared By: Jim Barnett James K. Barnett Phone: 265-4131
Division: Commissioner's Office - Anchorage Date: 5/20/83
Approved by Deputy Commissioner
For Commissioner: Mary Hallorar Date: 5/20/83
Department: Natural Resources

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