SCOMM

#34:8

TELEGRAM

ALASCOM, INC.
PHONE: 586-6442
JUNEAU, AK 99802

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PMS REPRESENTATIVE JOHN LISKA

POUCH V

1279

JUNEAU AK 99811

ALASKA ASSOCIATION OF REALTORS PRESIDENT MARK KORTING AND LEGISLATIVE CHAIRMAN JESS COOK HAVE REVIEWED HB180 AND THEY SUPPORT THE RESIDENCY REQUIREMENT CHANGE FROM 5 YEARS TO 1 YEAR AND THE INCLUSION OF WIDOWS AND WIDOWERS UNDER STATE VETERAN ELIGIBILITY PROVISIONS. THANK FOR YOU THIS OPPORTUNITY TO COMMENT.

FILE COPY

TRISH HURLEY SMITH EXECUTIVE OFFICER

ANCHORAGE BOARD OF REALTORS

Rec'd
FEB 22 1983

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 180 Date on Bill: 2/9/83
Title: "An act relating to elegibility for Veteran's Interest Rates
Sponsor: Liska et al
Requestor: House Special Committee on Loans

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital			-0-					
Operating			-0-					
Total			-0-					

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

FILE COPY

3. Assumptions:

On July 27, 1982, the Board of Directors of Alaska Housing Finance Corporation adopted a resolution doing away with the one year and five year residency requirement for veterans that is currently in the statutes. The resolution was based on an Attorney General's opinion dated July 14, 1982, which stated that the U.S. Supreme Court's decision in the Zobel case made the residency requirements in 18.56.101 constitutionally defective.

AHFC would suggest the AG's office be contacted regarding the definition and parameters of "resident" as used in 18.56.

It is difficult to measure the financial impact caused by the expansion of the group

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Mary Pelfrey, Spec. Asst. Phone: 465-2300
Division: Comm. Offices Date: 2/22/83

Approved by Commissioner: Patrick C Heath Date: 2/22/83
Department: Revenue

5. Distribution:
Original to Legislative Finance
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2/15/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 180 (cont.) Date on Bill: 2/9/83
Title: "An act relating to elegibility for Veteran's Interest Rates.
Sponsor: Liska et al
Requestor: House Special Committee on Loans

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total								

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

cont.

of widows and widowers of veterans as the Corporation has no way of determining potential applicants who have not been eligible in the past. A review of previous lending activity to widows and widowers, as currently allowed, suggests the proposed change in eligibility will have an insignificant fiscal impact on the Corporation.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: _____ Phone: _____
Division: _____ Date: _____

Approved by Commissioner: _____ Date: _____
Department: _____

5. Distribution:
Original to Legislative Finance
Copy to OMB
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Copy to Requestor

2/15/83

Alaska State Legislature

House of Representatives

John J. Liska

Official Business

While in Session
Pouch V
Juneau, Alaska 99811
(907) 465-3733

Home - District 15
P.O. Box 421
Eagle River, Alaska 99577
(907) 688-2526

February 21, 1983

TO: House Special Committee on State Loans, Rick Uehling, Chairman

FROM: John J. Liska, Representative - District 15

SUBJECT: House Bill 180, "An Act relating to eligibility for Veterans' interest rates on loans made under the special mortgage loan purchase program (AS 18.56.098) by the Alaska Housing Authority."

Briefly, House Bill 180 has been introduced in order to provide widows and widowers of Veterans a more equitable statute protecting their rights and eligibility for veteran's rates on mortgage loans.

According to the current statute referenced above, Section 18.56.101, widowers and widows of eligible veterans are required to fulfill one more eligility requirement than their spouses, ie., they are required to have been married to veterans who resided in the State of Alaska at least one year prior to their induction into the services. This was not necessarily a requirement for the veteran himself (herself).

The intent of this Bill as introduced, is to allow the widow or widower of an eligible veteran to more equitably inherit the mortgage loan benefits earned by his or her spouse.

ALASKA
STATE LEGISLATURE
MEMORANDUM

February 18, 1983

TO: House Special Committee on State Loans, Rick Uehling, Chairman

FROM: John J. Liska, Representative - District 15

SUBJECT: House Bill 180, "An Act relating to eligibility for Veterans' interest rates on loans made under the special mortgage loan pruchase program (AS 18.56.098) by the Alaska Housing Authority."

The following authorities have reviewed this proposed bill and have indicated their support. Their summary letters have been mailed, and have not yet arrived in Juneau.

* Denna Cline, AHFC, Anchorage:

Only 4 women were turned down for Veteran's Rates Home Loans in 1982 and January of 1983. These widows were not eligible under the existing statute. Ms. Cline's experience leads her to believe that the fiscal impact of this proposed legislation would be negligible.

* Trish Hurley Smith, Executive Director, Anchorage Board of Realtors

* Mark Korting, President, Realtors Political Action Committee

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

February 22, 1983

Honorable Rick Uehling
Representative
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: HB 180 (veterans' loans)

Dear Representative Uehling:

This is a response to your February 16 request for our review of HB 180 "to determine the legality of the residency requirement in the bill." In fact, the bill does not impose any residence requirements at all. Rather, it would amend AS 18.-56.101 to delete a five-year residence requirement for eligibility for special veterans' interest rates on Alaska Housing Finance Corporation (AHFC) loans. The bill leaves unchanged several other one-year residence requirements for eligibility for the same program.

In our view, the deletion of the five-year residence requirement does not raise any legal or constitutional problems. On the other hand, while reasonable arguments can be raised in defense of the remaining one-year residence requirements, we believe a much safer approach would be to substitute a subjective bona fide residence test with a durational presence requirement of 30 days. However, in light of the fact that no residence requirement whatsoever is imposed on nonveteran applicants for AHFC loans, even a 30-day requirement for veterans may be difficult to successfully defend.

We have enclosed a copy of our July 14, 1982 opinion which concludes that the current one-year residence requirements could not withstand constitutional scrutiny. See specifically pages 22 -- 26 of that opinion.

We are currently working with the governor's office on legislation to eliminate the vulnerable residence requirements

now on our statute books.

Please contact this office again if we can provide you further assistance.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Peter B. Froehlich
Assistant Attorney General

PBF:eja

Enclosure:

MEMORANDUM State of Alaska

TO: Joe L. Hayes
Speaker of the House of Representatives
Alaska State Legislature

DATE: September 7, 1982
FILE NO: 366-109-83
TELEPHONE NO: 465-3600

FROM: WILSON L. CONDON
ATTORNEY GENERAL

By: Jeffrey W. Bush
Assistant Attorney General

SUBJECT: Eligibility of currently active members of the armed services for veterans loans

You request advice whether the Memorandum of Advice, No. J66-445-80, prepared by Leslie Ludtke of this office on February 4, 1980 is still valid. Specifically, that memorandum concluded that a presently active member of the armed forces is not a veteran for purposes of veteran's loan eligibility, notwithstanding the fact that this individual had been previously discharged. It is our opinion that the conclusions of this earlier memorandum remain valid.1/

Although we recognize that changes have occurred in the veteran's loan program since the date of our prior opinion, no significant changes have occurred in the eligibility provisions, AS 26.15.130 and AS 26.15.160. 2/ Therefore, we continue to be of the opinion that in order for an applicant to be eligible for this particular loan program, he or she may not currently be an active member of the armed services.

1/ We call your attention to the Formal Opinion of the Attorney General of July 14, 1982, prepared by Kenneth E. Vassar, which addressed the constitutionality of AHFS veterans' loans residency requirement under AS 18.56.101, in the aftermath of Zobel v. Williams, 50 U.S.L.W. 4613 (USSC 6/14/82). Nothing in our opinion here is in conflict with the conclusions reached in that Formal Opinion.

2/ The only substantive changes in these provisions occurred in 1980, when the cut-off date for required service was changed from "six months after termination of hostilities involving United States forces in Indo-China" to "November 7, 1975". (A minor technical change was made in SLA 1982, chap. 59, § 62.)

JWB/11b

MEMORANDUM State of Alaska

TO: Don Hostak, Director
Division of Veteran's Affairs
Dept. of Commerce & Economic Development

DATE: February 4, 1980

FILE NO: J-66-445-80

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT: Eligibility of Currently Active Members of the Armed Services for Veteran's Loans.

By: Leslie J. Ludtke
Leslie J. Ludtke
Assistant Attorney General

You have requested advice concerning whether a currently active member of the armed services is eligible for a veteran's loan under AS 26.15.130 and AS 26.15.160. It is our opinion that no individual who is currently active on a full-time basis in the armed services is eligible for a veteran's loan, regardless of whether that individual has been previously discharged.

The veteran's loan program was established by the legislature to assist ex-servicemen in readapting themselves to civilian life. It was not intended to provide benefits to those individuals who have chosen to enter the military as an occupation, until those individuals have been discharged. The language of the statute clearly conveys this intent.

Both AS 26.15.130 and AS 26.15.160 condition eligibility for the loan program upon discharge from the service. AS 26.15.130(1)(A) provides that a loan may be made to certain residents if those residents return to the state after discharge (emphasis added) from the service. Similarly AS 26.15.160(1)(A) requires that eligible persons are those "who were discharged other than dishonorably from the armed forces of the United States or who are released to a reserve component ...."

This reading of the statute comports with the commonly accepted meaning of the word "veteran." Webster's Seventh New Collegiate Dictionary defines veteran as "a former member of the armed forces." The American Heritage Dictionary defines veteran as "one who has been a member of

the armed services," and Webster's Third New International Dictionary defines veteran as "a former member of the armed forces who by length and type of service, honorable discharge or release, or degree of disablement qualifies under a statute (as of the U.S. or one of its states) for benefits or privileges provided by law for ex-servicemen."

These definitions of the word "veteran," coupled with the legislative intent in creating the veteran's loan program, clearly establish that currently active servicemen are not eligible for loans under Alaska veteran's loan programs.

LJL/ab

276-4555

MSG 83-00003342 PRTY 1 01/24/83 14:32:56 ORIG: LW00 IN= 0006 OUT= 0074
FROM: KIM / D.C. TO: PATRICIA / JUNEAU
TARGET: LJHL SUBJ: MESSAGE FOR REP. LISKA

FILE COPY

THE LEGISLATION WHICH REP. ULLMAN HELPED SPONSOR WAS THE MORTGAGE SUBSIDY BOND ACT OF 1980.

THE DEFINITION OF VETERAN USED IN THE ACT IS THE SAME AS IN 38 UNITED STATES CODE, 101 (2) 'THE TERM "VETERAN" MEANS A PERSON WHO SERVED IN THE ACTIVE MILITARY, NAVAL, OR AIR SERVICE, AND WHO WAS DISCHARGED OR RELEASED THEREFROM UNDER CONDITIONS OTHER THAN DISHONORABLE.'

THERE IS ALSO THIS CITATION FROM THE CODE OF FEDERAL REGULATIONS, TITLE 26, 6A.103A-3, QUALIFIED VETERANS' MORTGAGE BONDS. (C) & (D)

' (C) VETERAN. THE TERM "VETERAN" SHALL HAVE THE SAME MEANING AS IN 38 U.S.C. 101(2), THAT IS, A PERSON WHO SERVED IN THE ACTIVE MILITARY, NAVAL, OR AIR SERVICE, AND WHO WAS DISCHARGED OR RELEASED THEREFROM UNDER CONDITIONS OTHER THAN DISHONORABLE.
(D) HUSBAND AND WIFE. FOR PURPOSES OF THIS SECTION, IF A RESIDENCE IS TO BE OWNED BY A HUSBAND AND WIFE AS JOINT TENANTS, AS TENANTS BY THE ENTIRETY, OR AS COMMUNITY PROPERTY, AND IF ONE SPOUSE IS A VETERAN, THEN BOTH SPOUSES SHALL BE TREATED AS SATISFYING THE REQUIREMENTS OF PARAGRAPH (C) OF THIS SECTION.'

PAT, LET ME KNOW IF YOU NEED ANYTHING ELSE!

7235 BLACKBERRY STREET
ANCHORAGE, AK 99502 276-4555 243-1772

Rec'd
FEB 22 1983

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 180 Date on Bill: 2/9/83
Title: "An act relating to elegibility for Veteran's Interest Rates
Sponsor: Liska et al
Requestor: House Special Committee on Loans

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital			-0-					
Operating			-0-					
Total			-0-					

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

FILE COPY

3. Assumptions:

On July 27, 1982, the Board of Directors of Alaska Housing Finance Corporation adopted a resolution doing away with the one year and five year residency requirement for veterans that is currently in the statutes. The resolution was based on an Attorney General's opinion dated July 14, 1982, which stated that the U.S. Supreme Court's decision in the Zobel case made the residency requirements in 18.56.101 constitutionally defective.

AHFC would suggest the AG's office be contacted regarding the definition and parameters of "resident" as used in 18.56.

It is difficult to measure the financial impact caused by the expansion of the group

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This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Mary Redford, Spec. Asst. Phone: 465-2300
Division: Comm. Offices Date: 2/22/83

Approved by Commissioner: Robert D Heath Date: 2/22/83
Department: Revenue

5. Distribution:
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2/15/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 180 (cont.) Date on Bill: 2/9/83
Title: "An act relating to elegibility for Veteran's Interest Rates.
Sponsor: Liska et al
Requestor: House Special Committee on Loans

1. Estimated fiscal impacts on:

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(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
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Total								

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

cont.

of widows and widowers of veterans as the Corporation has no way of determining potential applicants who have not been eligible in the past. A review of previous lending activity to widows and widowers, as currently allowed, suggests the proposed change in eligibility will have an insignificant fiscal impact on the Corporation.

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This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: _____ Phone: _____
Division: _____ Date: _____

Approved by Commissioner: _____ Date: _____
Department: _____

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

Introduced: 2/9/83
Referred: House Special Committee
on State Loans and Finance

BY LISKA, BUSSELL, FLOOD, FRITZ, LACHER, LINDAUER, PESTINGER, PHILLIPS, TISCHER, UEHLING, WARD, FURNACE AND BARNES

IN THE HOUSE

HOUSE BILL NO. 180

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to eligibility for veterans' interest rates on loans made under the special mortgage loan purchase program (AS 18.56.098) by the Alaska Housing Finance Corporation."

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

* Section 1. AS 18.56.101 is amended to read:

Sec. 18.56.101. ELIGIBILITY FOR VETERANS' INTEREST RATES. (a) The following persons are eligible veterans for the purposes of AS 18.56.098(g) and (h):

(1) a person who served in the armed forces of the United States for 90 days or more, or whose service was for less than 90 days because of injury or disability incurred in the line of duty, after April 6, 1917,

(A) who at the time of induction into the service was a resident of the territory or state, who had been a resident for not less than one year immediately before [HIS] induction, and who returned to the territory or state within one year after discharge as a resident with the intention of remaining in the territory or state; or

(B) who, not being a bona fide resident of the territory or state at the time of entry into the service, has been a resident of the territory or state for at least one year at the time of the loan application [AND HAS BEEN A RESIDENT OF THE TERRITORY OR STATE FOR AT LEAST FIVE YEARS]; and

(C) whose discharge was under honorable conditions;

(2) the widow or widower of a member of the armed forces or of a [AN ELIGIBLE] veteran if

(A) the member or veteran was a resident of the territory or state for at least one year before the death of the member or veteran [INDUCTION INTO THE SERVICE];

(B) the member or veteran served in the armed forces for at least 90 days after April 6, 1917; and

(C) in the case of a widow or widower of a veteran, the veteran's [HIS] discharge was under honorable conditions;

(3) a person who has served in the Alaska Army National Guard, the Alaska Air National Guard, or the Alaska Naval Militia or who has served in a reserve unit of the United States armed forces in Alaska if the reserve unit required, as a minimum, one weekend each month of duty and 15 consecutive days of active duty training each year for not less than five years and whose discharge was under honorable conditions.

* Sec. 2. AS 18.56.101 is amended by adding a new subsection to read:

(b) In this section

(1) "widow or widower of a member of the armed forces" means the widow or widower of a person who died while serving in the armed forces; and

(2) "widow or widower of a veteran" means the widow or widower of a person who was a veteran of the armed forces at the time of death.

TO: House Special Committee on State Loans

FROM: John J. Liska - Representative, District 15

SUBJECT: House Bill 180

Testimony:

THE INTENT OF THIS BILL AS I HAVE INTRODUCED IT, IS TO ALLOW THE WIDOW OR WIDOWER OF AN ELIGIBLE VETERAN, TO MORE EQUITABLY INHERIT THE MORTGAGE LOAN BENEFITS EARNED BY HIS OR HER SPOUSE.

ACCORDING TO THE CURRENT STATUTE, AS 18.56.098, WIDOWERS AND WIDOWS OF ELIGIBLE VETERANS ARE REQUIRED TO FULFILL ONE MORE ELIGIBILITY REQUIREMENT THAN THEIR SPOUSES. THAT IS TO SAY, THAT THEY ARE REQUIRED TO HAVE BEEN MARRIED TO A VETERAN WHO RESIDED IN THE STATE OF ALASKA AT LEAST ONE YEAR PRIOR TO THEIR INDUCTION INTO THE SERVICE. BUT, THIS IS NOT REQUIRED FOR THE VETERAN HIMSELF. THE VETERAN CAN QUALIFY SIMPLY BY FULFILLING HIS RESIDENCY PRIOR TO THE TIME OF LOAN APPLICATION.

WITH REGARD TO RESIDENCY, WE MUST ADDRESS THIS ISSUE, AS WELL. WITH THE PENDING ESTABLISHMENT OF A COMMISSION ON RESIDENCY, IT SEEMED APPROPRIATE TO ELIMINATE THE 5 YEAR RESIDENCY REQUIRED BY THE EXISTING STATUTE, AND REDUCE IT TO A ONE YEAR MINIMUM. WHILE IT IS NOT MY INTENT TO OPEN THESE ADDITIONAL FUNDS TO NON-ALASKANS, I RECOGNIZE THAT THERE MAY BE A QUESTION AS TO THE CONSTITUTIONALITY OF EVEN THIS ONE YEAR REQUIREMENT. HOWEVER, I RECOMMEND AWAITING THE FINAL DETERMINATION OF THE ATTORNEY GENERAL AND THE PROPOSED COMMISSION BEFORE ELIMINATING IT ALTOGETHER.

AS I HAVE STATED AT THE BEGINNING OF THIS TESTIMONY, THE INTENT OF HOUSE BILL 180 IS TO ALLOW A MORE EQUITABLE TRANSFER OF BENEFITS TO WIDOWS AND WIDOWERS OF ELIGIBLE VETERANS. AS YOU CAN SEE FROM THE MATERIALS IN YOUR COMMITTEE PACKETS REGARDING THIS BILL, THE ACTUAL NUMBER OF PEOPLE THIS NEW LEGISLATION WOULD AFFECT, IS RELATIVELY SMALL SO THAT THE FISCAL IMPACT WILL BE NEGLIGIBLE. IT WOULD SEEM THEREFORE, THAT TO WITHHOLD THESE IMPORTANT BENEFITS FROM THIS GROUP ON THE BASIS OF AN INEQUITABLE STATUTE REQUIRING CRITERIA NOT EVEN REQUIRED OF THEIR ELIGIBLE SPOUSES IS UNFAIR AND SHOULD BE CORRECTED. I ASK FOR YOUR FAVORABLE CONSIDERATION OF THIS BILL.

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

July 14, 1982

Harry Goldbar
Executive Director
Alaska Housing Finance Corporation
P.O. Box 1020
Anchorage, Alaska 99501

Re: Constitutionality of veterans' loans residency requirements (AS 18.56.101)
Our file: 366-037-83

Dear Mr. Goldbar:

The constitutionality of the residency requirements applicable to veterans' benefits under the special mortgage loan purchase program of the Alaska Housing Finance Corporation (AHFC) has been called into question by bond counsel. They have issued an opinion concluding that some of the requirements are unconstitutional. We agree with their conclusions, but not necessarily with all of the analysis that led them to those conclusions.

The program (as well as AHFC) is established in AS 18.56. Primarily as a result of appropriations from Alaska's general fund, AHFC is able to purchase residential mortgage loans under the program at rates of interest lower than would normally be charged. The interest on a loan purchased under the program is established in accordance with AS 18.56.098(g). Under AS 18.56.098(g)(3), the interest on the first $90,000 of a loan

made to an "eligible veteran" is reduced by one percentage point from the interest rate which would otherwise apply to the loan under the program.

The provisions of AS 18.56.101 establish the eligibility requirements for veterans. Pertinent to our inquiry are the provisions of AS 18.56.101(1) and (3). Under AS 18.56.101(1), a person who has served in the armed forces of the United States is an "eligible veteran" if at the time of his induction, he was a resident of the state or territory for at least one year. If the veteran was not "a bona fide resident of the territory or state at the time of entry into the service," he may yet become an "eligible veteran" if he resides in the state for at least one year immediately before making application for a loan and for at least five years altogether. Under AS 18.56.101(3), a person is an "eligible veteran" if he has served for at least five years in a reserve unit of the United States armed forces in Alaska.

I. Constitutionality of AS 18.56.101(1)

The durational residency requirements of AS 18.56.101-(1) must be examined under the equal protection clauses of Article I, sec. 1 of the Alaska Constitution and the Fourteenth Amendment to the United States Constitution. Reviewed under these constitutional provisions, the durational residency

requirements are plainly unconstitutional and invalid.

The Alaska Supreme Court has, on several occasions, considered the validity of durational residency requirements under equal protection challenges. In some of those cases, the court has upheld durational residency requirements. Gilbert v. State, 526 P.2d 1131 (Alaska 1974), and Castner v. City of Homer, 598 P.2d 953 (Alaska 1979), involved one-year residency requirements for candidacy for political office. In Gilbert the court found that the durational residency requirement infringed upon fundamental rights of free association, franchise, and interstate travel. Infringement upon such rights requires strict judicial scrutiny and, therefore, the court applied the compelling state interest test. Under that test, the requirement is unconstitutional unless it is necessary to further a compelling state interest. Finding that the state had a compelling interest in legislators who "are acquainted with the conditions, problems, and needs of those who are governed," and in electors who are "familiar with the character, habits and reputation of candidates for political office" (Gilbert, 526 P.2d at 1153), the court upheld the durational residency requirement.

In Castner the issue presented was whether the compelling state interest test would still be applicable to such requirements in light of the single standard test for equal protection questions announced in State v. Erickson, 574 P.2d 1

(Alaska 1978). However, concluding that the requirement would meet the more stringent compelling state interest test, as held in Gilbert, the court did not perceive a need to address that issue.

In Williams v. Zobel, 619 P.2d 448 (Alaska 1980) (hereafter Zobel II), the court did decide the issue of whether the compelling state interest test is still applicable to every durational residency requirement challenged under the equal protection clause of the Alaska Constitution. Reviewing Alaska's original attempt at a permanent fund income distribution plan, the court concluded that durational residency requirements do not automatically trigger strict scrutiny and applied the Erickson, supra, single standard test. Zobel II, 619 P.2d at 453. See also, Williams v. Zobel, 619 P.2d 422 (Alaska 1980) (hereinafter Zobel I) (reaching the same conclusion in review of Alaska's personal income tax). The court recognized that where the compelling state interest test would be applied by the United States Supreme Court, it must also be applied by the Alaska court. However, reviewing the United States Supreme Court cases involving durational residency requirements (Shapiro v. Thompson, 394 U.S. 618 (1969); Dunn v. Blumstein, 405 U.S. 330 (1972); Memorial Hospital v. Maricopa County, 415 U.S. 450 (1974); Sosna v. Iowa, 419 U.S. 393 (1975); Vlandis v. Kline, 412 U.S. 441 (1973)), the court concluded that, for federal equal protection

purposes, the durational residency requirement in the permanent fund income distribution plan would not be subjected to the compelling state interest test.

The court recognized that strict scrutiny under the compelling state interest test was applied to durational residency requirements in Shapiro, Dunn, and Memorial Hospital (and that language in Dunn indicated that any durational residency requirement automatically triggers strict scrutiny). However, the court nevertheless found distinguishing factors based on Sosna, language in Memorial Hospital, and Vlandis, which suggested that strict scrutiny would not apply to Alaska's permanent fund dividend plan. First, the court found, using a distinction noted in Sosna, that the purposes of the durational residency requirement in the permanent fund dividend plan involved more than justifications based only on administrative, budgetary, or recordkeeping needs. Zobel II at 455. In fact, the court found legitimate purposes listed in the statute itself, which included

> (1) providing a mechanism for equitable distribution to the people of Alaska of at least a portion of the state's energy wealth derived from the development and production of the natural resources belonging to them as Alaskans;
>
> (2) encouraging persons to maintain their residence in Alaska and to reduce population turnover in the state;

(3) encouraging increased awareness in involvement by the residents of the state in the management and expenditure of the permanent fund.

These purposes, and their use as distinguishing factors to avoid the compelling state interest test, are of some importance considering the decision of the United States Supreme Court when Zobel II reached that tribunal. That decision will be discussed shortly.

Second, the court concluded that the Memorial Hospital case suggested that strict scrutiny would apply to a durational residency requirement if the benefit of which new residents are deprived is a "basic necessity" of life. Otherwise, strict scrutiny is not appropriate. The court found that permanent fund dividends were not a "basic necessity" of life. Id. at 455.

Third, the court found that the permanent fund dividend plan did not deny any benefit but merely delayed a benefit to new residents. However, the Court considered this a close question the result of which was not as clear as the other two distinctions previously considered.

Finally, the court concluded that no "fundamental rights" were involved in the permanent fund dividend plan.

Based on all of the preceding considerations, the court finally concluded that strict scrutiny under the compelling state

interest test did not properly apply to the durational residency requirement in the permanent fund dividend plan. Instead, the Court applied its single standard approach described in Erickson, supra. Under the Erickson test, the court

> must look to the purpose of the statute, viewing the legislation as a whole, and the circumstances surrounding it. It must be determined that this purpose is legitimate, that it falls within the police power of the state. Examining the means used to accomplish the legislative objectives and the reasons advanced therefore, the court must then determine whether the means chosen substantially further the goals of the enactment. Finally, the state interest in the chosen means must be balanced against the nature of the constitutional right involved.

Erickson, 574 P.2d at 12 (footnotes omitted). The court found that the purposes listed earlier in this opinion were legitimate, that the durational residency aspects of the legislation bore a fair and substantial relationship to those purposes, and that the permanent fund dividend plan did not "penalize" the right of interstate migration. Thus, the court upheld the durational residency requirement.1/

1/ The court's determination to apply the Erickson single standard test in lieu of the compelling state interest test in a case involving durational residency marked a substantial change in its treatment of durational residency requirements and the constitutional right of interstate migration. Previous Alaska Supreme Court cases had uniformly held that the right to interstate migration is a fundamental right, that durational
(footnote continued on next page)

A discussion of the United States Supreme Court cases dealing with durational residency is helpful at this point, since those cases have been important factors, if not the actual basis, for the Alaska cases. Probably the foundational case is Shapiro v. Thompson, 394 U.S. 618 (1969), in which the United States

---

(footnote continued)
residency requirements infringe upon that fundamental right, and that the compelling state interest test necessarily must be applied.

In State v. Van Dort, 502 P.2d 453 (Alaska 1972), the court struck down a 75-day durational residency requirement for voting. The court noted:

> It is our reading of Dunn that all durational residency requirements are prima facie invalid as in contravention of the equal protection clause because they penalize the right to travel and the right to vote in elections on an equal basis with other citizens in the jurisdiction. The only durational residency requirements that will be countenanced are those which are absolutely necessary for administrative purposes.

Id. at 454.

In State v. Wylie, 516 P.2d 142 (Alaska 1973), the court struck down personnel regulations of the State of Alaska giving an absolute hiring preference to persons who had resided in the state for at least one year. Against arguments that the durational residency requirement was necessary to reduce chronic unemployment in the state, to upgrade and utilize the state's human resources, and to improve the efficiency of state government through reduction of personnel turnover, the court found that the durational residency requirement penalized the fundamental right to travel, that no compelling state interest was served by the requirement, and that the characterization of public employment as a "privilege" and not a "right" was irrelevant to the question.
(footnote continued on next page)

Supreme Court struck down a statutory provision which denied welfare benefits to residents of a state who had not resided in the state for at least one year. The Court found that the United States Constitution guarantees the right of interstate movement and that the one-year durational residency requirement penalized

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(footnote continued)
The court quoted from Justices Brennan, White and Marshall in their separate opinion in Oregon v. Mitchell, 400 U.S. 112, 238 (1970):

> By definition, the imposition of a durational residence requirement operates to penalize those persons, and only those persons, who have exercised their constitutional right of interstate migration. Of course, governmental action that has the incidental effect of burdening the exercise of a constitutional right is not ipso facto unconstitutional. But in such a case, governmental action may withstand constitutional scrutiny only upon a clear showing that the burden imposed is necessary to protect a compelling and substantial governmental interest. (Citations omitted.)

In State v. Adams, 522 P.2d 1125 (Alaska 1974), the court struck down a one-year durational residency requirement for obtaining a divorce in the state. Citing Van Dort and Wylie, the court repeated its language from Van Dort, in which it concluded that

> all durational residency requirements are prima facie invalid as in contravention of the equal protection clause because they penalize the right to travel and the right to vote in elections on an equal basis with other citizens in the jurisdiction.

Adams, 522 P.2d at 1126, quoting from Van Dort, 502 P.2d at 454.

In Hicklin v. Orbeck, 565 P.2d 159 (Alaska 1977), the court struck down a state law which required certain contracts with the state to include a provision that one-year residents of Alaska be given a preference in hiring over nonresidents. Hicklin was the first Alaska case to be decided after the United States Supreme Court's decisions in Sosna and Memorial Hospital, supra.

the exercise of that right. Therefore, the Court concluded that it was unconstitutional unless it served a compelling governmental interest. Id. at 619-630 and 634. One of the arguments posited in support of the durational residency requirement was that it distinguished "between new and old residents on the basis of the contribution they have made to the community through the payment of taxes." Id. at 632. However, the Court noted that the facts of the case failed to support that hypothesis and, beyond that, concluded that the Equal Protection Clause prohibits such an apportionment of state services. The Court stated:

> Appellants' reasoning would logically permit the State to bar new residents from schools, parks, and libraries or deprive them of police and fire protection. Indeed it would permit the State to apportion all benefits and services according to the past tax contributions of its citizens. The Equal Protection Clause prohibits such an apportionment of state services.

Id. at 632-633 (footnote omitted).

Dunn v. Blumstein, 405 U.S. 330 (1972), involved a Tennessee law which limited voter registration to those persons who, at the time of the election, were residents of the state for one year. In striking that law down, the Court cited Shapiro

as well as the line of cases which have established the right to travel throughout the United States as a basic right under the Constitution. Dunn, 405 U.S. at 333-339. Once again the court noted that any classification which serves to penalize the exercise of the right to travel would trigger the compelling state interest test and, finding no compelling state interest, declared the law unconstitutional.

Memorial Hospital v. Maricopa County, 415 U.S. 150 (1974), continued the line of durational residency requirements declared unconstitutional by the Court. The law in that case required one year's residency before an indigent could receive nonemergency hospitalization or medical care at the expense of the county. Relying upon Shapiro and Dunn, the Court found the compelling state interest test to be applicable and, in the absence of a compelling state interest, found the law to be unconstitutional. However, Memorial Hospital brought to focus some limitations on Shapiro and Dunn. The Court emphasized that, under Shapiro and Dunn, it was the penalizing of the right to travel, and not the actual deterral of that right, which was a critical element to its analysis. The Court noted:

> Thus, Shapiro and Dunn stand for the proposition that a classification which "operates to penalize those persons . . . who have exercised their constitutional right of interstate migration," must be justified by a compelling state interest. Oregon v. Mitchell, 400 U.S. 112, 238 (1970) (separate opinion of Brennan, White, and Marshall, JJ.) (emphasis added). Although any durational residence requirement imposes a potential cost on migration, the Court in Shapiro cautioned that some "waiting period[s] . . . may not be penalties." 394 U.S., at 638 n. 21. In Dunn v. Blumstein, supra, the Court found that the denial of the franchise, "a fundamental political right," Reynolds v. Sims, 377 U.S. 533, 562 (1964), was a penalty requiring application of the compelling-state-interest test. In Shapiro, the Court found denial of the basic "necessities of life" to be a penalty. Nonetheless, the Court has declined to strike down state statutes requiring one year of residence as a condition to lower tuition at state institutions of higher education.

Memorial Hospital, 415 U.S. at 258-259 (footnote omitted).

The reference in the last line of the excerpt from Memorial Hospital, above, cited Vlandis v. Kline, 412 U.S. 441, 451-453, n.9 (1973), which, in turn, referred to the federal district court case of Starns v. Malkerson, 326 F.Supp. 234 (D. Minn. 1970), aff'd 401 U.S. 985 (1971). In Starns, the federal district court upheld a one-year durational residency requirement for reduced tuition benefits at a state university. The court distinguished Shapiro on two grounds. First, unlike the factual situation in Shapiro, the court found there was no specific objective of the statute to exclude from the jurisdiction the

poor who needed or may need relief. Second, Shapiro involved a "basic necessity of life", which the court found lacking with regard to reduced tuition benefits. As the court noted:

> There is no showing here that the one-year waiting period has any dire effects on the nonresident student equivalent to those noted in Shapiro.

Starns, 326 F.Supp. at 238.2/

2/ A conflict appears to have developed at this point in the development of the court's durational residency perspective between Starns, supra, and Shapiro, supra. As noted previously in this opinion, the court, in Shapiro, had refuted the validity of a durational residency justification based upon rewarding past contributions, noting that

> Appellant's reasoning would logically permit the State to bar new residents from schools, parks, and libraries or deprive them of police and fire protection. Indeed it would permit the State to apportion all benefits and services according to the past tax contributions of its citizens. The Equal Protection Clause prohibits such an apportionment of state services.

Shapiro, 394 U.S. at 632-634 (footnote omitted). In contrast, Starns, which was summarily affirmed by the court and which was cited with approval in Vlandis, supra, explicitly relied upon the state's justification for the higher tuition rates charged to students who had not resided in the state for one year as

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Reading Shapiro, Dunn, Memorial Hospital, and Vlandis together, along with the summarily affirmed district court opinion in Starns, it appears that the court had arrived at a three-step analysis: (1) durational residency requirements necessarily involve classifications which call into issue the equal protection clause; (2) a durational residency requirement which penalizes the exercise of the right to travel requires strict scrutiny under the compelling state interest test; and (3) a penalty can be found either through infringement of a fundamental right (in addition to the right to travel), such as voting, or through denial of a basic necessity of life, such as welfare or medical services.

(footnote continued)
a rational attempt by the State to achieve partial cost equalization between those who have and those who have not recently contributed to the State's economy through employment, tax payments and expenditures therein.

Starns, 326 F.Supp. at 240.

The United States Supreme Court, in a footnote to its opinion in Zobel v. Williams, infra, ultimately resolved the conflict by noting that Starns was considered to involve a test of bona fide residence -- a permissible state purpose -- and not a return on prior contributions to the commonwealth -- an impermissible state purpose.

Sosna v. Iowa, 419 U.S. 393 (1975), upheld Iowa's one-year durational residency requirement for obtaining a divorce. While it might be inferred from the result that the Court viewed access to the courts for the purpose of obtaining a divorce as neither a fundamental right nor a basic necessity of life, no such ruling was expressly made in the Court's opinion. The Court indicated that the regulation of domestic relations "has long been regarded as a virtually exclusive province of the States." Id. at 404. Aside from this general hands off attitude toward the subject, the Court seemed to base its conclusion on two principles: (1) the durational residency requirement did not deny "what she [the appellant] sought" (whether what she sought were a right or a benefit), but only delayed it; and (2) the state had an interest in regulating domestic relations within its jurisdiction and in ensuring that other states gave full faith and credit to its determination (although we cannot tell whether the interest simply formed a rational basis for the discrimination or whether it was a compelling state interest for the satisfaction of which the discrimination was the least drastic means available), and this interest exceeded the mere recordkeeping or budgetary interests at stake in Shapiro, Dunn, and Memorial Hospital.

Sosna really does not provide very much assistance in clarifying the Court's thinking with regard to equal protection,

the right to travel, and durational residency except to the extent that it reflected the Court's willingness at the time to uphold durational residency requirements where, apparently, no fundamental right or basic necessity of life was involved. Noting Shapiro, Dunn, and Memorial Hospital, the Court stated:

> [N]one of those cases intimated that the States might never impose durational residency requirements, and such a proposition was in fact expressly disclaimed.

Sosna, 419 U.S. at 406.3/

3/ It is noteworthy that Sosna was decided one year after the Alaska Supreme Court's decision in State v. Adams, supra, in which a similar durational residency requirement for obtaining a divorce in Alaska was declared unconstitutional. Adams, citing Van Dort and reiterating its interpretation of Dunn, was based largely on the court's understanding that Dunn required application of the compelling state interest test for all durational residency requirements.

One year after Sosna, the Alaska Supreme Court decided Hicklin, supra at n.1, which involved a requirement that certain contractors with the state agree to provide an employment preference for people who had resided in the state for at least one year. Although it noted and discussed Memorial Hospital, Sosna, Starns, and Vlandis, the court nevertheless reiterated its position that durational residency requirements are subject to strict scrutiny because they penalize those who have exercised their right of interstate migration. The court expressly rejected the basic necessities reasoning of Memorial Hospital, and, plausibly, of Sosna, stating simply

> We have never used this "basic necessities" reasoning.

(footnote continued on next page)

In Zobel I and II, the court recognized that its previous interpretations of United States Supreme Court durational residency cases had been incorrect as a matter of federal equal protection law. Accordingly, it relented from its refusal to accept the "basic necessities" reasoning and from its determination that durational residency requirements necessarily invoke strict scrutiny. Since the receipt of permanent fund dividends could not be said to involve a fundamental right or basic necessity, the standard of review enunciated in Erickson, supra, was applicable. Under that standard of review,

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(footnote continued)
Hicklin, 565 P.2d, at 163. The court also distinguished the employment preference law under its review from the reduced tuition law under review in Starns and Vlandis by stating

> Alaska Hire would resemble an absolute preference in enrollment for one-year residents, not a reduced tuition rate. Those cases [Starns and Vlandis] do not support such an absolute preference, nor do any others.

Hicklin, 565 P.2d at 165. Hicklin was the last durational residency case decided by the Alaska Supreme Court before Zobel I and II.

the court identified the legislative objectives, determined whether the objectives were legitimate, determined whether the means chosen substantially furthered the objectives, and balanced the means chosen against constitutional rights involved. As noted earlier in this opinion, the application of that procedure led the court to conclude in Zobel II that the durational residency requirement of the permanent fund dividend plan was constitutional.

The United States Supreme Court disagreed. Zobel v. Williams, No. 80-1146, ____ U.S. ____ (June 14, 1982). The majority opinion, delivered by Chief Justice Burger, restated the three purposes advanced in justification of the distinctions among residents made by the dividend plan. Those purposes were stated as

> (1) the creation of a financial incentive for individuals to establish and maintain residence in Alaska; (2) the encouragement of prudent management of the Permanent Fund; and (3) the apportionment of benefits in recognition of "undefined 'contributions of various kinds, both tangible and intangible, which residents have made during their years of residency.'"

Slip Op. at 6.

The Court, in its majority opinion, never reached the ques-

tion of whether the rational basis test or the compelling state interest test was applicable to the dividend plan, since it concluded that the distinctions among residents made under the plan did not even satisfy the rational basis test. Under the plan, residents were to receive greater benefits for greater durations of residency. The plan was also to be applied retroactively so that residency before enactment of the plan would also be counted toward increased benefits. The majority opinion of the Court focused on the retrospective aspect of the plan. The Court failed to see any rational relationship between this retrospective aspect of the plan and the first two purposes noted above, and, in that regard, stated:

> Assuming arguendo that granting increased dividend benefits for each year of continued residence might give some residents an incentive to stay in the state in order to reap increased dividend benefits in the future, the State's interest is not in any way served by granting greater dividends to persons for their residency during the 21 years prior to the enactment.
>
> Nor does the State's purpose of furthering the prudent management of the Permanent Fund and the state's resources support retrospective application of its plan to the date of statehood.

Slip Op. at 7. In a footnote at the end of the first paragraph quoted above, the Court noted:

> In fact, newcomers seem more likely to become dissatisfied and to leave the State than well-established residents; it would thus seem that the State would give a larger, rather than a smaller, dividend to new residents if it wanted to discourage emigration. The separation of residents into classes hardly seems a likely way to persuade new Alaskans that the State welcomes them and wants them to stay.
>
> Of course, the State's objective of reducing population turnover cannot be interpreted as an attempt to inhibit migration into the State without encountering insurmountable constitutional difficulties. See Shapiro v. Thompson, supra, 394 U.S. at 629.

Slip Op. at 7, n.9.

The Court relied upon Shapiro, supra, in concluding that the third objective -- to apportion benefits in recognition of past contributions to the state -- was not a legitimate state purpose. In a footnote, it addressed the apparent conflict, noted earlier in this opinion, between Shapiro and Starns. In that footnote, the Court stated:

> Starns v. Malkerson . . . cannot be read as a contrary decision of this Court. First, summary affirmance by this Court is not to be read as an adoption of the reasoning supporting the judgment under review . . . . Moreover, as we pointed out in Vlandis v. Kline . . . we considered the Minnesota one-year residency requirement examined in Starns a test of bona fide residence, not a return on prior contributions to the commonwealth.

Slip Op. at 9-10 n.13.

Thus, finding no legitimate state purpose which was rationally connected to the distinctions among residents made by the dividend plan, the Court concluded that the distinctions were invalid under the equal protection clause at least insofar as they were applied retroactively to provide greater benefits based on length of residency before enactment of the dividend plan.

In a concurring opinion written by Justice Brennan for himself and three other members of the Court, it was emphasized that

> The Court today reaffirms the important principle that, at least with respect to durational-residency discrimination, a State's desire "to reward citizens for past contributions" is "clearly not a legitimate state purpose."

Brennan concurring opinion at 4, quoting from the majority opinion at 7-8. Beyond that, Justice Brennan's opinion indicates that at least four of the Justices considered the constitutional concerns raised by the dividend plan to be such as "might well preclude even the prospective operation of Alaska's scheme." Brennan concurring opinion at 1.

The four Justices who joined in the Brennan concurrence also joined in the majority opinion, and the concurrence applied to the prospective aspects of the plan what the majority opinion applied only to the retrospective aspects of the plan. From this, it must be concluded that the concurrence was also based on the rational basis test. The necessary conclusion is that the purposes proffered do not have any rational connection with the means chosen for their accomplishment, although that is not expressed in the concurrence. Some of the language does, nevertheless, indicate an enhanced (perhaps pre-Memorial Hospital) concern on the part of the four Justices for the right to travel. Quoting from Shapiro, the Court noted that

> The constitutional right to travel from one State to another . . . occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.
>
> . . . In any event, freedom to travel throughout the United States has long been recognized as a basic right under the Constitution.

Brennan concurring opinion at 2-3.

Applying the rather long history of durational residency and equal protection cases discussed above to the one-year and five-year durational residency requirements of AS 18.56.101(1), we are convinced that neither requirement could

withstand constitutional scrutiny.

The durational residency requirements are not likely to be considered as infringements upon a fundamental right or as denials of a basic necessity of life. So, under federal equal protection analysis, they would be judged by the rational basis test (Memorial Hospital, Starns, Vlandis, Sosna), while under the state's equal protection analysis they would be judged under the Erickson sliding scale standard (Zobel II).

Under Erickson (ostensibly the more rigorous standard of review, although the results were otherwise in Zobel II), the court must identify the purpose of the legislation, determine whether that purpose is legitimate, determine whether there is a fair and substantial relationship between the purpose and the means chosen to accomplish it, and balance the means chosen against constitutional rights involved.

The apparent purpose of the one-year durational residency requirement in AS 18.56.101(1) is to establish the bona fides of an applicant's residency. The statute refers to a veteran who had been a resident for one year at the time of induction and compares that veteran with one who had not been a resident for one year at the time of induction by describing the latter as one who was not "a bona fide resident of the territory or state at the time of entry into the service." This is a legitimate state purpose under Starns, Vlandis, and the Brennan

concurrence in Zobel, although the Brennan concurrence did note that

> those instances in which length of residence could provide a legitimate basis for distinguishing one citizen from another are rare.

Williams v. Zobel, supra, Brennan concurring opinion at 6.

While the establishment of the bona fides of an applicant's status as a resident is a legitimate state purpose and the use of a one-year waiting period can often be used to further that purpose, the durational residency requirements in AS 18.56.101(1) do not bear a fair and substantial relationship to the purpose. Indeed, they most likely do not even bear a rational relationship to the purpose. The benefit to be obtained by an applicant under the program is attainment of a loan at below market rates of interest for the purchase of a primary place of residence. The difference between the market rate of interest for a housing loan and the normal program rate is subsidized by substantial appropriations from the general fund. A difference between a special veteran's benefit loan and the general loan category is the subsidy necessary to compensate bondholders for the one percent difference rate of interest. In fact, the program does not impose any residency requirement for the attainment of benefits other than the special veterans'

benefits. It is difficult to understand why veterans should be required to reside in the state for one year to qualify for an additional percentage point reduction in the interest on their loans when no explicit residency requirement is established at all under the program for other valuable benefits financed in part by the state general fund for non-veterans. Apparently, to the extent that the statutes indicate a concern over the bona fides of applicants' residency status, that concern is adequately addressed for all applicants other than veterans by the fact that the benefit itself directly relates to residency.

Even if the durational residency requirements do somehow promote the purpose of establishing the bona fides of an applicant's status as a resident, the final step of the Erickson analysis requires that the means chosen to promote the purpose be balanced against constitutional rights affected. While an infringement of the right to travel is not, of itself, sufficient to cause the compelling state interest test to be used, the right to travel is still a basic right under the United States Constitution. Shapiro, 394 U.S. at 630. Under Alaska's Erickson test, the infringement of this right must be balanced against the method chosen to accomplish the state's purpose. Given the scant interest in AS 18.56.101(1) in establishing bona fide residence

of veteran, we believe an infringement of the right to travel caused by those requirements would result in the invalidation of the durational residency requirement.

While the durational residency requirements of AS 18.56.101(1) do not rise to the level of a penalty against the exercise of the right to travel since there is no fundamental right or basic necessity of life involved, they do infringe upon the right to travel to the extent that they act to prevent only those who have recently arrived in the state from obtaining a benefit otherwise available to similarly situated, longer-term residents of the state. From the concurring opinions of Justice Brennan and Justice O'Connor in Williams v. Zobel, supra, it appears that at least five of the members of the United States Supreme Court would agree that this burdens the exercise of the right to travel even though it may not penalize it.

II. Constitutionality of AS 18.56.101(3)

The provisions of AS 18.56.101(3) present a slightly different situation in that they do not require residence, per se, in Alaska but, rather, service. Under AS 18.56.101(3), a person is eligible for the veterans' loan rate if he has served

in the Alaska Army National Guard, the Alaska Air National Gaurd, the Alaska Naval Militia, or a reserve unit of the armed forces in Alaska for at least five years.

The Brennan concurring opinion in Williams v. Zobel indicates that rewarding public service can serve as a legitimate state interest as long as the public service is not measured simply in terms of durational residency. Justice Brennan wrote:

> recognition and reward of past public service has independent utility for the State, for such recognition may encourage other people to engage in comparably meritorious service. But even the idea of rewarding past public service offers scarce support for the "past contribution" justification for durational residence classifications since length of residence has only the most tenuous relation to the actual service of individuals to the State.

Zobel, Brennan concurring opinion, at 6.

Thus, it appears that a legitimate state purpose exists in rewarding members of the Alaska Army National Guard, the Alaska Air National Guard, and the Alaska Naval Militia for their service to the state. These organizations are available in

emergency situations to provide assistance to the state at the call of the governor. The requirement that the service in these organizations be for at least five years could be seen as a durational residency requirement since meeting the requirement would involve residing in the state for the necessary period of time. However, because these organizations provide a direct service to the state, the five-year requirement can independently be justified as a reward for meritorious service to the state and as an encouragement to other people to engage in comparably meritorious service.

The same cannot be said of the five-year service in Alaska requirement for a member of a reserve unit of the armed forces of the United States. Reserve units are not available at the call of the governor to provide assistance to the state. If a reserve unit is called into action, the service it provides is not necessarily limited to the jurisdiction in which the unit is located. While reserve units provide a valuable service to the nation as a whole and it would be a legitimate state purpose to reward that service, there is no particular service unique to Alaska provided by reserve units located in Alaska. Thus, there is no justification for requiring that the service be in a reserve unit located in Alaska. We believe that the requirement that service in a reserve unit be "in Alaska" is invalid; in the

absence of that requirement, a valid state purpose exists for rewarding service in the reserves generally and for encouraging other people to engage in comparably meritorious service.

III. Remedies

The constitutional defects in AS 18.56.101(1) and (3) can and should be cured by deleting the durational residency requirements in AS 18.56.101(1) and by deleting the requirement in AS 18.56.101(3) that reserve unit service be "in Alaska." AHFC should process pending and future loan purchase agreements to reflect these considerations.

Retroactive application of the conclusions reached in this opinion with respect to AS 18.56.101(1) and (3) may also be appropriate. However, we believe it more likely than not that a court would apply these prospectively only. We believe it is clearly more appropriate for AHFC to apply them only prospectively as an administrative matter in the absence of judicial compliance.

If the provisions of AS 18.56.101(1) or (3) were challenged in court and found unconstitutional, the Alaska Supreme Court has made it clear that it is entirely within the discretion of the court to apply that finding retrospectively or prospectively. In Warwick v. State ex rel. Chance, 540 P.2d 384, 393 (Alaska 1976), the court held:

> A state supreme court has unfettered discretion to apply a particular ruling either purely

> prospectively, purely retroactively, or partially retroactively, limited only "by the jurisprudential philosophy of the judges. . ., their conceptions of law, its origin and nature." The decision is not a matter of law, but a determination based on weighing the merits and demerits of each case.

Citations omitted. The court has also provided guidelines for when it will apply a ruling prospectively in Plumley v. Hale, 594 P.2d 497, 503 (Alaska 1979). The court observed:

> In accord with the United States Supreme Court precedent [Chevron Oil Co. v. Huson, 404 U.S. 97, 106-107 (1971)], we have previously identified four conditions indicating the propriety of non-retroactive treatment in civil cases: 1) the holding is one of first impression, or overrules prior law, and was not foreshadowed in earlier decisions; 2) there has been justifiable reliance on an alternative interpretation of the law; 3) undue hardship would result from retroactive application; and 4) the purpose and intended effect of the holding is best accomplished by prospective application.

Applying these guidelines to the provisions of AS 18.56.101(1) and (3), we believe a court first would consider whether a holding that the provisions are unconstitutional was foreshadowed. While we believe that the long history of durational residency cases in the Alaska Supreme Court and the United States Supreme Court may have foreshadowed the conclusions we have reached in this opinion, it is difficult to say whether they would be considered to have "clearly" foreshadowed those results.

The next question would be whether there has been justifiable reliance on an alternative interpretation of the law. In this case, the "alternative interpretation" is a plain reading of the language of the law itself. There has been reliance by AHFC on the plain language of AS 18.56.101(1) and (3) to the extent that loans have been purchased and loan purchase agreements have been made based upon the plain language of the law. No interpretation of the law other than the plain meaning is indicated by the legislative history of the law. To the best of our knowledge, no administrative or court appeals have raised any issue relating to AHFC's reliance upon the plain meaning of the law. AHFC has no special expertise in constitutional law which would have alerted it to the potential problems raised by the durational residency requirements. In short, we believe AHFC's reliance has been justifiable. The loans it has purchased and the loan purchase agreements it has entered into resulted from that justifiable reliance. As the Alaska Supreme Court noted in Moore v. State, 553 P.2d 8, 28 (Alaska 1976), "We have no desire . . . to upset settled transactions which were entered into in good faith."

The third question would be whether undue hardship would result from a retroactive application of the ruling. Certainly, there would be some hardship. The "settled transactions . . . entered into in good faith" would be upset.

To the extent that financing of loans purchased by AHFC has been based upon receipt of interest on the loans at a particular rate which would be reduced as a result of the ruling, there could be financial hardship on AHFC and the program it administers. There would also be the administrative hardship on AHFC of locating applicants who applied for but did not receive veterans' benefits because of the invalid provisions of AS 28.56.101(1) or (3). Since AHFC does not directly review or process loan applications under the program, this could be a particularly difficult task. These administrative and financial hardships might well be considered "undue" depending largely upon the effect a retroactive application of the ruling would have on agreements entered into by AHFC with bond holders. Cipriano v. City of Houma, 395 U.S. 701 (1969).

The fourth question would be whether the purpose and intended effect of the court's holding would best be accomplished by prospective application. The purpose and intended effect of a ruling striking down AS 18.56.101(1) or (3) would most likely be to provide equal protection to all applicants for loans under the program and to eliminate infringements on the exercise of the constitutional right to travel. A purely prospective application of the holding would accomplish the holding's purpose and

intended effect by eliminating those infringements, even though it might be argued that some individuals who received loans which were purchased under the program but who were denied the special veterans' benefits would continue to be denied equal protection and would continue to have their freedom of travel infringed by virtue of the continued higher interest rate they are required to pay on their loans.

It must be recalled that the foregoing are only guidelines to a court's decision whether to provide prospective or retroactive application of a ruling. The ultimate decision is one which is wholly within the discretion of a court to make. Nevertheless, we believe the application of the Plumley guidelines to the circumstances of AS 18.56.101(1) and (3) would most likely result in a purely prospective application of the court's ruling. Under these circumstances, and in the absence of any judicial determination to the contrary, we believe AHFC as a wholly adminsitrative matter should employ the conclusions reached in this opinion only prospectively.

Sincerely,

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WLC/KEV/11b