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HSA

RESIDENCY

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"pioneers." 3/ In 1923 the ceiling on allowances was raised again, to \$25 a month for men and \$45 for women, and the requirement that allowances be paid out of "revenues of the Home" was replaced by a provision that allowances were to be paid out of money appropriated by the legislature for them. 4/

The 1929 legislature repealed the earlier acts on both Pioneers' Homes and allowances and enacted one omnibus piece of legislation, chapter 65, SLA 1929, "to revise and codify the laws relative to the care and support of the destitute and the needy." With respect to the Homes, chapter 65 essentially reenacted the 1913 legislation, with one significant change. Under section three, a five-year resident "in need of the aid or benefit of said Home in consequence of physical disability or other cause"

3. In 1925, however, the legislature amended the act to exclude only "any Indian or Eskimo resident of the Territory who is provided for by the Department of the Interior out of the funds of the Treasury of the United States or . . . any ward of the Government of the United States." Ch. 65, SLA 1925. This change, though, was apparently not a substantial one; evidently it still excluded most Natives. The 1925 legislature saw a heated debate over the exclusion of Natives, with one representative threatening to tie up the whole program if the exclusion were not lifted.

4. It is unclear whether the allowance program before 1923 was actually dependent on whether the Home generated revenue, i.e., spent less than the sum appropriated for it. For, from 1915 on, an appropriation was made specifically for allowances. The initial appropriation, § 7, ch. 64, SLA 1915, referred to "revenue of said Home." But some subsequent appropriations lacked this reference. For instance, the 1919-20 budget, ch. 36, SLA 1919, contained separate appropriations for the Home and for the allowance program.

was not entitled to admission unless destitute. As a corollary, section five authorized, but did not require, the board to admit non-destitute ten-year residents over age sixty-five 5/ "upon his agreement to pay to the Territory such sum per day as the Board may deem sufficient to compensate the Territory for the cost of care and support of such person at the Home." 6/ With respect to the pioneers' allowances, section nine lengthened the residency requirement so as to cover only those who had resided in Alaska continuously since January 1, 1906, and section eleven raised the maximum allowance for men from \$25 to \$35. (Women remained at \$45.)

In 1935 the January 1, 1906 requirement of the allowance program was changed to a simple 25-year residency requirement. Ch. 4/, SLA 1935. However, the entire program was abolished in 1947 (ch. 73, SLA 1947) probably because a general old age assistance program, with far less strenuous residency requirements, had been enacted in 1937. Chapter 2, L. Ex. Sess. 1937.

5. Although the Pioneers' Homes are generally thought of as senior citizens' homes, there is no age limitation for destitute residents admitted under AS 47.25.020, only for non-destitute residents admitted under § 30.

6. The 1929 legislation also provided that the members of the board of trustees other than the governor receive salaries.

Several changes have also been made to the statutory structure of the Pioneers' Homes program. In 1946 the provisions relating to the board of trustees were overhauled, and a new section defining the rights and duties of the superintendent of the home was added. Chapter 29, SLA 1946. In 1955 the legislature added the provision, now found at AS 47.25.020(b), that persons entitled to admission (i.e., destitute persons) could be required to pay to the home all income in excess of a certain sum (then \$15, now \$35). Chapter 158, SLA 1955. The same chapter also authorized the board to pay an allowance (then \$5 per month, now \$35 under AS 47.25.020(c)) to totally indigent residents. In 1961 the Alaska residency requirement for admission was raised to the present 15 years, chapter 89, SLA 1961, up from 5 years for persons entitled to admission (AS 47.25.020) and 10 for persons eligible for admission on payment (AS 47.25.030). In addition to these statutory changes, a significant physical change took place: the construction of a new Pioneers' Home in Sitka in 1934, built by the WPA on the site of the old Home. 7/

7. During construction of the new home the residents were housed, for a year or two, at facilities at Goddard Hot Springs in southeast Alaska.

Since 1961 there have only been minor changes in the statutes governing the Pioneers' Homes program. 8/ The program itself, however, has grown tremendously; its budget for the 1983 fiscal year is nearly \$19 million. In addition to the Sitka Home, there are now Homes in Fairbanks (dedicated in 1967), Palmer (1971), Anchorage (1977), and Ketchikan (1981), and planning is underway for a Home in Juneau. The five existing Homes, plus a small senior center in Kotzebue run under contract with the program, are capable of housing 635 people.

Although the Pioneers' Homes are capable of housing 635 people, only 519 people are currently in residence making the actual cost per year per resident approximately \$36,600. 9/

8. Chapter 71, SLA 1963, authorized the establishment of branch Homes besides the one in Sitka. Chapter 63, SLA 1965, changed the dollar figures in AS 47.25.020(b) and (c), discussed above. Executive Order 30, issued in 1968, transferred responsibility for the Homes to the Department of Administration. Chapter 118, SLA 1968, repealed the prohibition on Indians and Eskimos, which had already been rendered ineffective by other provisions of law. Chapter 7, SLA 1971, raised the dollar figures in AS 47.25.020(b) and (c) to their current levels. And Chapter 89, SLA 1978, enacted AS 47.25.035, providing an exception to the continuous 15-year residency requirement for persons with 30 years total residency.

9. Many of the rooms in the Pioneers' Home in Sitka were designed for double occupancy but for privacy reasons are used by only one person. Due to the growing waiting list, these rooms will return to double occupancy as needed. Other current vacancies in the Homes are due to the remodeling of the Anchorage Pioneers' Home as well as to the fact that a limited number of beds in the nursing portions of the Homes must be kept vacant to allow for emergency use by current residents.

This figure and the total Pioneers' Homes program budget of nearly \$19 million for fiscal year 1983 may be compared with the state's public assistance programs which include Aid to Families with Dependent Children, Adult Public Assistance (former separate programs for the blind, disabled, and aged), and General Relief. These programs require a total of approximately \$34 million in state general funds matched with \$21 million from the federal government. Under the AFDC program, over 13,500 people may receive assistance in any one month. A family of four with no income may be eligible for a maximum of \$15,857 per year in assistance which would be allotted as follows:

\$ 7,608	AFDC payments
3,264	Food stamps
425	Energy benefit
4,560	Medicaid benefit if needed
<u>\$15,857</u>	

The recipients of AFDC assistance or other categorical aid must meet a variety of eligibility requirements depending upon the type of aid sought. All must, however, fall below specific income levels to qualify for help.

Of the 519 persons presently participating in the Pioneers' Homes program, 515 were admitted under the non-destitute, over 65 and paying clause (AS 47.25.030), while only four were admitted under AS 47.25.020 because they were destitute and disabled. Thus, the program now is for practical purposes no longer a home for the needy -- at least as the

statutes make that distinction. Instead, the program is more of a retirement home for non-destitute "pioneers."

Furthermore, even for the destitute and disabled, the Pioneers' Homes program is essentially duplicative of existing programs. Alaska has chosen to participate in the medical assistance program of subchapter XIX of the federal social security program, 42 U.S.C. § 1396, et seq. See AS 47.07.010. That program provides federal money to the state to assist with medical costs of the needy, contingent upon the state's meeting a lengthy list of conditions set out in 42 U.S.C. § 1396a. Disabled persons entitled to admission to the Pioneers' Homes are also covered by subchapter XIX. See 42 U.S.C. § 1396a(a)(10) (state plan shall provide certain medical services to all individuals receiving aid or assistance under a state plan approved under subchapter XVI of Social Security Act; subchapter XVI relates to supplemental security income for the aged, blind, and disabled). Even if § 1396a(a)(10) does not require states to pay for nursing home costs of the disabled -- see subparagraph (A) and 42 U.S.C. § 1396d(a) -- Alaska has chosen to provide this care. AS 47.07.030; 7 AAC 43.005(b)(2) and (3).

The eligibility standards under the Alaska program are found in Title 7, Part 3 of the Alaska Administrative Code (Health and Social Services -- Family and Children Services). 7 AAC 40.170(a) adopts the federal definition of disability in

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42 U.S.C. § 1382c(a)(3). That definition basically provides that a person is disabled only if his physical or mental impairment precludes him from engaging in any kind of "substantial gainful work." Disabled persons eligible for medical assistance are those eligible for (but not necessarily receiving) Adult Public Assistance (APA) payments, plus a few others. 7 AAC 43.020(a). APA eligibility is defined in 7 AAC 40: a person may not have resources in excess of \$1,500 for an individual or \$2,250 for a married couple (7 AAC 40.270), subject to numerous resource exclusions (7 AAC 40.280--290), and may not have income in excess of certain amounts, depending on the person's status and living arrangements. These amounts, based on state rather than federal law, will be listed in the soon-to-be-promulgated 7 AAC 40.310.

These standards for medical assistance differ slightly from both those currently utilized by the Pioneers' Homes in making decisions under AS 47.25.020 and those in the Homes' proposed regulations, 2 AAC 30. Under present policies, as set forth in the current Policy and Procedures Manual of the Pioneers' Homes (the section on admissions policies became effective in February 1981), income limits for destitutes are the same as for the Adult Public Assistance (aged, blind, and disabled) program, and resource limits may be tougher. (The policy manual sets a ceiling of \$35,000 on the value of an applicant's property, while

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under 7 AAC 40.280(a)(1) the applicant's home seems to be excluded from counted resources regardless of the home's value.) The policy manual's definition of disability, though, seems laxer than the definition in 42 U.S.C. § 1382c(a)(3) cited above: according to the manual a person is eligible under AS 47.25.020 if he or she "has a physical infirmity, disability or impairment that prohibits activity, or other disability which makes it necessary for them [sic] to receive assistance from others in coping with the problems of daily living." The proposed regulation on income and resources, 2 AAC 30.030(a), seems to use the current resources guidelines, but the Aged, Blind and Disabled income limits (to be issued in 7 AAC 40.310) uses federal Office of Management and Budget poverty guidelines. The proposed regulation on need under AS 47.25.020 and 2 AAC 30.040 approximates current policy on what constitutes a disability.

Constitutionality of Residency Requirements

Addressing the most fundamental matter first, the question is whether the 15-year, continuous residence (or 30 years of total residence) requirement is constitutional. As the former and present statutes and the program's history show, there are two separate purposes of the program.

First, the Homes are to provide care to the destitute disabled of any age. Second, the Homes also are to be retirement

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Homes for non-destitute persons over 65 years old who could pay for their support.

A state may not deny access to welfare benefits or "basic necessities of life" like housing and care for the needy on the basis of length of residence unless the state can show that such a classification is absolutely necessary to promote a compelling state interest. Williams v. Zobel, 619 P.2d 448, 453 (Alaska 1980); Shapiro v. Thompson, 394 U.S. 618 (1969). This "strict scrutiny" test is rarely met. The Ninth Circuit Court of Appeals recently explained the standard and its application in the following manner.

The right to travel is a fundamental right, and it has been recognized that durational residency requirements - because they disadvantage a class of persons who may have recently exercised the right to travel - may, in certain circumstances, unduly infringe upon this right. In Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969), the Court held unconstitutional a one-year durational residency requirement for welfare assistance. The Court stated, however:

"We imply no view of the validity of waiting-period or residence requirements determining eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interests on the one hand, or, on the other, may not be penalties upon the exercise of the constitutional right of interstate travel." [Id. at 638, n.21]

The Court held, in Dunn v. Blumstein, 405 U.S. 330 (1972), and Memorial Hospital v. Maricopa County, [415 U.S. 250 (1974)], that durational residency requirements which involved deprivations of the right to vote and free nonemergency medical care triggered strict scrutiny. In Maricopa County, however, the Court noted that "The amount of impact required to give rise to the compelling-state-interest test [has] not been made clear." [Id. at 256-7] (Footnote omitted). In Fisher v. Reiser, 610 F.2d 629 (CA9 1979) cert. denied, [447 U.S. 930 (1980)], we noted the importance of the "nature of the benefit denied." Id. at 635. In fact, Judge Hufstedler, dissenting in Fisher, after reviewing the right to travel cases, commented that "The Court [has] indicated that the 'penalty' required to invoke strict scrutiny involves a genuinely significant deprivation, such as a denial of the basic 'necessities' (as in Shapiro), or the denial of a 'fundamental political right' (as in Dunn)." Id. at 639 (footnote omitted) (emphasis added). Judge Hufstedler also noted that "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." Id. at 639, n.5.

Hawaii Boating Association v. Water Transportation Facilities,
651 F.2d 661 (9th Cir. 1981).

Denial of access by the destitute to public housing and life-care aid have usually been found to be "significant deprivations" or denials of "basic necessities of life."

Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974); Cole v. Housing Authority of City of Newport, 435 F.2d 807 (1st Cir. 1970); Strong v. Collatus, 593 F.2d 420 (1st Cir. 1979); King v. New Rochelle Municipal Housing Authority, 442 F.2d 646 (2d Cir.

1971) cert. denied 404 U.S. 863 (1971). An argument can be made, however, that these rulings were conditioned on the non-existence of essentially similar public services.. For example, in Cole the right denied was access to public housing. The court expressly premised its ruling that a compelling state interest had to be shown on the non-existence of an adequate alternative:

Normally, persons eligible for public housing have only to sign up and wait six months for a vacancy. Plaintiffs were required to wait two years before they could be placed on the six-month waiting list. During that time, they were forced to live in substandard housing. Using "penalty" in what appears to be the right context, i.e., not in the sense of a criminal or civil sanction, plaintiffs and other in their class can truly be said to suffer "disadvantage, loss, or hardship due to some action."

As a result of penalizing the right to travel, the Authority can successfully defend its residency requirement only by demonstrating that the requirement furthers a compelling state interest.

435 F.2d at 811 (citations omitted; emphasis added). See also King v. New Rochelle Municipal Housing Authority, supra, 442 F.2d at 647; Strong v. Collatus, 593 F.2d at 422; Memorial Hospital v. Maricopa County, 415 U.S. at 261 ("The denial of medical care is all the more cruel in this context, falling as it does on indigents who are often without the means to obtain alternative treatment.").

Here, however, there are adequate and substantially similar alternatives. As described earlier, disabled persons

denied access to the Pioneers' Home are entitled to subchapter XIX medical assistance, which, with a few differences, offers substantially similar aid.

The differences that do exist between the Pioneers' Homes program and the state's subchapter XIX medical assistance program are arguably not constitutionally significant. In other words, in no case will a person who would be eligible for the Pioneers' Homes under AS 47.25.020 but for lack of 15 years residence be deprived of necessary medical care. It might be that a 15-year resident would be considered disabled and admitted to a Home under the proposed definition of disability, while a similarly situated shorter-term resident would not be admitted to a nursing home under AS 47.07. But that would be because the state believed that that person was not really so disabled as to require the services of a nursing home; that person would still receive necessary medical care, either under subchapter XIX or, if the person did not qualify under that program, under the state's General Relief Medical program (7 AAC 47.180-- 260). Consequently, an argument can be made that these statutes do not deny access to a "basic necessity of life," and should not be reviewed under the compelling-state-interest test.

Furthermore, to the extent that the program offers care and housing to the non-needy, an even stronger argument can be made for a less intensive standard of review. Here the purpose

is to provide retirement housing and care to the non-needy, with some reimbursement of the costs of providing that service. Denial of this service to persons who are not destitute would presumably not rise to the level of a denial of access to a basic necessity of life. The United States Supreme Court has linked the economic standard of the class allegedly discriminated against to the determination of "access to a basic necessity of life":

Whatever the ultimate parameter of the Shapiro penalty analysis, it is at least clear that medical care is as much "a basic necessity of life" to an indigent as welfare assistance. And, governmental privileges or benefits necessary to basic sustenance have often been viewed as being of greater constitutional significance than less essential forms of governmental entitlements.

Memorial Hospital, 415 U.S. at 259 (citation omitted; emphasis added). Denial of access to the Pioneers' Homes to persons who do not otherwise need the service is, using the Ninth Circuit's terminology in the Hawaii Boating case, even more arguably an "uncomfortable deprivation" rather than a "genuinely significant deprivation."

If the purpose and effect of the Homes do not trigger strict scrutiny of the program, then the program's distinction between categories of people must survive the Alaska Constitution's "intensified scrutiny" test, and the Federal Constitution's "rational basis" test. The inquiry proceeds in

three parts: (1) identifying the purpose for the distinction; (2) determining whether that purpose is a legitimate state purpose; and (3) testing the "fit" between the purpose and the distinction itself to see if the distinction accomplishes the claimed purpose.

The Alaska and federal tests differ primarily in the required closeness of the fit between the distinction made and the purpose behind the distinction. Under the Alaska approach the court

will balance the nature and extent of the infringement (on the right to interstate travel) caused by the classification against the state's purpose in enacting the statute and the fairness and substantiality of the relationship between that purpose and the classification.

Williams v. Zobel, 619 P.2d at 453.

On the other hand, the federal standard is extremely forgiving, and in fact has been characterized by the Alaska Supreme Court as "virtual abdication" of the court's responsibility. Isakson v. Rickey, 550 P.2d 359, 363 (Alaska 1976). The test is termed the "rational basis" test, and was explained by the United States Supreme Court in Dandridge v. Williams, 397 U.S. 471, 485 (1970):

In the area of economics and social welfare, a state does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with

mathematical nicety or because in practice it results in some inequality.' Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78. 'The problems of government are practical ones and may justify, if they do not require, rough accommodations -- illogical, it may be, and unscientific.' Metropolis Theatre Co. v. City of Chicago, 228 U.S. 61, 69-70. 'A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.' McGowan v. Maryland, 366 U.S. 420, 426. 10/

10. The choice of the level of scrutiny usually determines the outcome of the analysis. Zobel II, 619 P.2d at 452. This is particularly evident in durational residency cases. For a period of time there was substantial confusion concerning whether strict scrutiny was always required in durational residency cases or was limited to only those instances where significant deprivations resulted from failure to meet the residency requirement. E.g., Memorial Hospital v. Maricopa County, 415 U.S. at 257; Cole v. Housing Authority of City of Newport, 435 F.2d 807 (1st Cir. 1970). As a result, various courts have ruled differently on almost identical issues. E.g., compare Larsen v. Gallogly, 361 F.Supp. 305 (D. R.I. 1973) (two-year residency requirement for divorce subject to strict scrutiny; held unconstitutional) with Mendez v. Heller, 380 F.Supp. 985 (E.D. N.Y. 1974) aff'd on other grounds, 530 F.2d 457 (2d Cir. 1976) (two-year requirement for divorce subject to rational basis test; held constitutional); Bolanewski v. Raich, 330 F.Supp 724 (D.C. Mich. 1971) (three-year residency requirement for mayor subject to strict scrutiny; held unconstitutional) with Walker v. Yucht, 352 F.Supp. 85 (D.C. Del. 1972) (three-year residency requirement for candidates for General Assembly subject to rational basis test; held constitutional); State v. Wylie, 516 P.2d 142 (Alaska 1973) (one-year residency requirement for state employment subject to strict scrutiny; held unconstitutional) with Ostendorf v. Turner, 411 So.2d 330 (Fla. App. 1982) (five-year residency requirement for homestead exemption subject to rational basis; held constitutional). It is extremely rare for a durational residency requirement to be overturned under the rational basis test, and usually will only occur in exceptional cases. E.g., Antonio v. Kirkpatrick, 579 F.2d 1147 (8th Cir. 1978) (ten-year residency requirement in order to run for state auditor); Massey v. Apollonio, 387 F.Supp. 373, 376-377 (D. Me. 1974) (three-year residency requirement in order to be licensed as a lobsterman).

The first issue, then, is to determine the purposes of the 15- and 30-year residency requirements of AS 47.25.020, .030 and .035. Like the purposes ascribed by the legislature to the longevity bonus program in AS 47.45.170, the following purposes here appear to be paramount:

(1) to reward long-term residents for their past contributions to the state and their persevering through past economic hardship;

(2) to prevent present suffering and hardship to such persons that would be caused by their having to retire outside the state, including loss of contact with family; and

(3) to retain in Alaska those persons' personal knowledge of Alaska's past history, so that it is accessible to present and future generations.

The next and most difficult issue is to determine the legitimacy of these three purposes. All three appear to be legitimate under the Alaska Constitution. Under the Federal Constitution, the "reward for past contributions" purpose is clearly illegitimate; the other two purposes, however, are arguably legitimate. A description of the permanent fund dividend cases is essential to an explanation of the present state of the law.

In a series of cases -- Williams v. Zobel, 619 P.2d 422 (Alaska 1980) (Zobel I); Williams v. Zobel, 619 P.2d 448 (Alaska 1980) (Zobel II); and Zobel v. Williams, ___ U.S. ___, 72 L.Ed.

2d 672 (1982) (Zobel III, reversing Zobel II) -- the Alaska Supreme Court and the United States Supreme Court ruled upon various residency distinctions relating to tax relief (Zobel I) and distribution of permanent fund dividends (Zobel II and Zobel III). In Zobel III, the United States Supreme Court overturned the then existing permanent fund dividend distribution plan.

In Zobel II, the Alaska Supreme Court found that rewarding past contributions is "a permissible purpose, albeit not a particularly compelling one." 619 P.2d at 460. Further, the court held that using length of residence as a measure of past contributions did satisfy the Alaska Constitution:

Although we recognize that the length of residency may be an imperfect measure of past contributions, we have concluded that the state may recognize these contributions. The fit between means and ends need not be perfect. We think the relationship is fair and substantial. There clearly is a correlation between one's length of residency and the extent to which that individual has been able to make contributions to the community. We are not convinced that any workable alternative method of measuring past contributions is clearly preferable. Although the existence of a preferable alternative would not automatically render the relationship unfair or insubstantial, the absence of any preferable workable alternative is a strong indication that the classification chosen by the legislature is acceptable. We think the relationship is as fair and substantial as the Alaska Constitution requires in this context.

Id. at 461.

The second purpose of the Pioneers' Home program -- using length of residence as a measure of the present suffering that would be caused if the retiree would otherwise move out of the state, was not mentioned by the majority, but was expressly endorsed by Justices Dimond and Matthews in their dissent in Zobel II:

[A]dmission to pioneer homes, AS 47.25.020-.030 . . . require[s] lengthy residency periods. [The program is] apparently designed to help those individuals who would like to retire in the state but cannot do so because of the high cost of living. The state might well want to limit these 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.

619 P.2d at 469 n.2. Therefore, at least two Justices would apparently uphold this program on the above rationale alone.

Finally, there is the third purpose of present access to the historical knowledge contained by these persons. Although probably not a compelling reason, it is a legitimate purpose and one that is directly tied to length of residence.

Therefore, a valid defense can be advanced that the Pioneers' Homes program meets the Alaska Constitution's equal protection test. The Alaska Supreme Court has expressly upheld the "past contribution" rationale and its "fit" with the residency requirement, while the "present hardship" reason was expressly

approved by the two Justices as sufficient to withstand constitutional scrutiny.

The question then becomes whether the revised program is defensible under the Federal analysis. In summary, although the "past contribution" purpose is an improper purpose under the Federal Constitution, the strength of the remaining two purposes does not have to be very great to withstand the minimal scrutiny of the federal "rational basis" test. Almost any legitimate purpose is defensible, so the real inquiry is whether the two remaining purposes are legitimate in light of the residency criteria. Although the United States Supreme Court has indicated serious concern with the use of residency as a measure of any trait beside bona fide residence and qualification for office, there remains room for argument that other purposes are legitimate and that residency is not an arbitrary means to be used to further those purposes.

Despite its notoriety in Alaska, the United States Supreme Court opinion in Zobel III actually stands for only two propositions. First, making an award of benefits based on residency accumulated prior to the date of enactment of the benefits program is not rationally related to the purpose of granting

believes that such valid independent interests are few and far between:

To be sure, allegiance and attachment may be rationally measured by length of residence - length of residence may, for example, be used to test the bona fides of citizenship - and allegiance and attachment may bear some rational relationship to a very limited number of State purposes. But those instances in which length of residence could provide a legitimate basis for distinguishing one citizen from another are rare.

Id., Brennan concurrence at 684 (citations omitted).

Although the instances where length of residence has an independent utility as a device to further a legitimate state interest may be rare, they may not be as rare as Justice Brennan implies. Justice Brennan indicated his belief that there were only two categories that would admit of an independent interest: testing bona fide residence and qualifying for public office.

Id. But there may well be other legitimate instances that Justice Brennan did not think of, such as Justices Dimond and Matthews' view that length of residence might be a reasonable tool to measure the present hardship that would be caused by disrupting ties to the state. Zobel II, 619 P.2d at 469 n.13.

Thus, Zobel III does not preclude the state from arguing either (1) that the "present hardship" and "link with the past" purposes are legitimate, or (2) that length of residence is a legitimate tool to distinguish between those residents who meet

those purposes and those who do not. Consequently, given the "virtual abdication" of scrutiny under the federal test (Isakson v. Rickey, 550 P.2d at 363), a good faith defense can be mustered to uphold the constitutionality of the Pioneers' Homes program.

This is not to say, however, that there are not serious and possibly fatal arguments against the entire program. Besides the strong implication in the Zobel cases that residency can only be used as a discriminatory tool in extremely rare cases, there are other serious constitutional problems that the courts could find to be fatal.

One problem is that the courts could view the provision of housing and medical care as the provision of a "basic necessity of life" in all instances, and not just when there are no existing alternatives or where the purpose of the program is to aid indigents. Another problem is that the Alaska Supreme Court might view the Zobel III rejection of the "past contribution" purpose as a persuasive analysis to be applied under the Alaska constitution. That, in addition to an analysis that the "penalty" on interstate migration is much greater than that under the permanent fund dividend program, could shift the balance under the state's intensified scrutiny test against the lengthy residency requirement.

A third potential problem is that even if the courts recognize the legitimacy of the purposes and the potential

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appropriateness of a residency requirement, either they could view this specific instance as an inappropriate means for using a residency test, or they could find that 15 continuous years or 30 years overall is an unreasonably long period to use to achieve these goals.

We do believe, however, that there is enough of a defense for the program that it is appropriate for the courts, rather than this office, to make the ultimate determination. Given the present state of confusion in the case law, the state's strong interest in this program, and the long-standing and uninterrupted 70-year history of the Pioneers' Homes program, a judicial resolution is appropriate.

Response to Division of Legislative Audit

With regard to Division of Legislative Audit's preference question, we believe that the statutory language clearly commands that destitute and disabled applicants be given preference over those able to pay, in the event that space limitations preclude acceptance of all otherwise eligible applicants. This conclusion follows from the language of AS 47.25.020(a) -- that worthy persons "destitute and in need of the aid or benefit of the Home" are entitled to admission -- and of § 030 -- that persons not destitute may on application be admitted. Since admission is automatic for the first group and discretionary for

the second, the first group must be given preference.

With regard to the "pay-for-care" provision, there is in our opinion no clear answer. The 1929 legislature may have intended through its statute -- permitting the board of trustees to admit non-destitute residents on their agreement to pay "such sum per day as the Board may deem sufficient to compensate the Territory for the cost of care and support of such person at the Home" -- to extract from paying residents the full cost. The language suggests this, though it is not unequivocal; "compensate" could be read as meaning "partially compensate" rather than fully compensate.

Although there is no record of specific legislative or administrative intent in subsequent years, it has consistently been the administrative practice not to require full payment of costs. Legislative Audit has noted that by 1967 non-destitute residents were assessed only 66% of the full costs, which figure has decreased to 21% in 1976 and to 11% in 1982. In addition, the legislature has consistently appropriated the money to make up the difference. Therefore, there has been a consistent and long-standing administrative (and even legislative) interpretation that the statute does not require the payment of the full cost of support. See generally 2A Sands, Sutherland Statutory Construction, ¶49.03-49.05, at 233-238 (4th ed. 1973).

And there is no discernable legislative intent, either originally or currently, which would inhibit the administrative ability to continue to interpret the statute to allow the payment of less than the full cost of support.

We would note, however, that there does not seem to be any formal or informal record to support either the present level of support (\$225 a month for residential care and \$275 a month for skilled nursing care), or any mechanism for reviewing the level of support at intervals to adjust for increased costs of service. Although an administrative agency does have reasonably broad discretion in making judgments such as these, if challenged there must be some evidence that the judgment was not arbitrary, capricious, or irrational. Kingery v. Chapple, 504 P.2d 831, 834-835 (Alaska 1972); Kelly v. Zamarello, 486 P.2d 906, 911 (Alaska 1970). Therefore we would recommend that the agency review the costs and leave some record of the reasons for settling on a particular number or proportion of total cost. This determination should be reviewed at reasonable times in the future so that original judgments will not become irrational because of markedly changed circumstances.

IV. CONCLUSION

Therefore, it is our opinion that

(1) the Pioneers' Homes program durational residency requirements are defensible;

Gerald L. Wilkerson and
Carole J. Burger
366-188-83 and J99-101-80

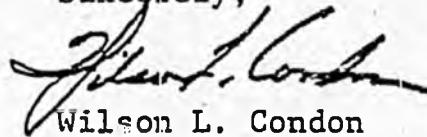
November 26, 1982
Page 33

(2) destitute and disabled applicants receive priority over paying applicants; and

(3) paying residents do not need to pay the full cost of support.

Finally, we believe that some administrative review of the level of payment should be undertaken. Since the present set of proposed regulations can now proceed, it might be appropriate to include procedures for that review in those regulations.

Sincerely,



Wilson L. Condon
Attorney General

WLC:mr

Enclosure

ALASKA PIONEERS' HOME.

To the Senate and the House of Representatives:

Chapter 80, Session Laws, 1913, providing for the acceptance and use of the United States Marine buildings at Sitka as a home for indigent prospectors and others who have spent their years in Alaska and become dependent, constitutes the Governor of Alaska a member of the Board of Trustees, provided for in the law, and directs him to appoint two citizens to act with him as members of the Board. In accordance therewith, on June 19, 1913, W. P. Mills and Sergius George Kostrometinoff, of Sitka, were appointed members of the Board, and a formal organization was effected on July 4, following. W. P. Mills was designated Treasurer and Sergius G. Kostrometinoff Secretary of the Board, and Arthur G. Shoup was appointed Superintendent, to serve without compensation.

A report giving in detail the history of the Home and its operation since its establishment, together with the cost of maintenance, receipts and disbursements, and the other information, prepared by the Superintendent, is submitted herewith and made a part of this report. The Board has endeavored to discharge its duties in a manner commensurate with the trust with which it is charged, and it is a pleasure to acknowledge the hearty sympathy which has been expressed in many ways by the people of Alaska generally for the success and welfare of this Territorial institution. At one time it was feared by the Board that the appropriation made for the maintenance of the Home would be exhausted before another appropriation could be made by the Legislature. Happily, such fear proved groundless, and the Home was enabled to continue through appropriations received from the Federal indigent funds from the judges of the four judicial divisions for the support of inmates from their respective divisions.

Much painstaking work has been required to place the Home in its present condition; many handicaps had to be overcome in overhauling the buildings, furnishing them and getting them ready for occupancy. The Home was ready for the admission of inmates on September 2, 1913, and was opened with five members. There are now fifty-one, the number having steadily increased since that time; ten have died, three have been adjudged insane and com-

mitted to Morningside Sanitarium, and six have been discharged at their own request. The physical condition of a number of the inmates has resulted in making the institution a hospital as well as a home, and a hospital equipment as well as the employment of a trained nurse will be necessary hereafter. It will be also necessary to provide for the employment of a superintendent under salary, who should be a man of executive ability and fitted in every way for the management of an institution of this kind, which calls for kindness, patience coupled with firmness, and good judgment in all circumstances.

The Board estimates that provision should be made by the Legislature for the maintenance of eighty-five inmates of the Home, on an average, for the next two years, or until May 1, 1917, and that the sum of \$50,000 will be required for the support of the institution for that period; and in addition to the above amount the sum of \$6,000 will be required for the purpose of erecting and equipping a new building in order to afford the necessary accommodations that will be needed with the increase of inmates; also \$2,000 for repairs and painting the present buildings.

Your attention is respectfully directed to the recommendations contained in the exhaustive report of the Superintendent, which are generally endorsed by this Board, for such action as you may deem proper in the premises.

The Board of Trustees feel that they can not close this report without rendering due acknowledgment of the invaluable services of Honorable Arthur G. Shoup, a member of your honorable body, in the establishment and conduct of the Home. The success achieved in its management has been due largely to his unselfish efforts in its behalf without other compensation than the knowledge that he was assisting in making the declining days brighter, happier and easier for men who have spent their years in Alaska as trail-blazers and pioneers in a new land.

Respectfully submitted,

J. F. A. STRONG,
Chairman.

W. P. MILLS,
Treasurer.

S. G. KOSTROMETINOFF,
Secretary.

Sitka, Alaska, February 27, 1915.

REPORT TO THE BOARD OF TRUSTEES

By the
SUPERINTENDENT OF
THE ALASKA PIONEERS' HOME.

To the Board of Trustees,
Alaska Pioneers' Home:

Gentlemen:

I have the honor to submit herewith a detailed report of the operations of the Alaska Pioneers' Home at Sitka, Alaska, since its establishment on July 4, 1913, to the close of December 31, 1914, together with tabulated statements concerning the inmates received and cared for, and financial reports for the said period.

HISTORY AND PURPOSE.

Inasmuch as this will comprise a part of the first official report of the Trustees, and as it may be of some future interest, I shall undertake to state briefly the history of, and reasons for the establishment of this institution.

By order of the Secretary of the Navy, on March 17, 1912, the United States marine guard at Sitka, Alaska, was withdrawn, leaving the barracks and other buildings of the station abandoned. Without referring to a somewhat voluminous previous correspondence, I quote the following letter, which fully indicates the manner in which the use of these buildings was acquired by the Territory:

Department of the Interior,
Washington, April 23, 1913.

The Honorable,
The Secretary of the Navy.

Sir:

By Department letter of January 22, 1913, your attention was invited to the fact that this Department had received letters from Honorable James Wickersham, Delegate from Alaska, dated January 16, 1913, and from Hon. Arthur G. Shoup, of the Alaska Legislature, dated December 16, 1912, requesting that the abandoned buildings of the Marine Barracks at Sitka be devoted to use as a home for indigent prospectors and old men who have spent their years in Alaska and have met with misfortune; and you

were requested to advise this Department as to whether the buildings mentioned were under your jurisdiction and control, and if so as to whether they might be used for the purpose suggested.

Under date of March 10, 1913, you replied:

"The Department is willing to allow the use of these buildings as suggested by Mr. Shoup, and requests that you designate a representative at Sitka to whom the custodian may transfer them. They will be turned over with the understanding that the buildings are to be kept in as good condition as they are at present."

In response I have to advise you that the Governor of the Territory of Alaska, at Juneau, Alaska, is hereby designated as the representative to whom the custodian may transfer the buildings in question for the purpose stated.

It is requested that your representative in Alaska be advised of this action at the earliest practicable date. I have this day advised Delegate Wickersham, Mr. Shoup and Governor Clark of my action in the premises.

Respectfully,

(Signed)

FRANKLIN K. LANE.

Agreeably to the foregoing letter, on May 3, 1913, Governor Clark designated Mr. Arthur G. Shoup, of Sitka, Alaska, to act as his representative in the matter of receiving these buildings from the Navy Department, with instructions to take them into his immediate charge, and on May 9, 1913, the following buildings and grounds were formally transferred to the representative of the Governor, namely:

- 1 Marine Barracks,
- 1 large coal house,
- 1 small coal house,
- 1 officers' quarters,
- 1 canteen building,
- 1 engine house,
- 1 store house.

U. S. Government grounds and water front belong to the above.

On December 23, 1914, the building formerly used as a residence by the Governors of Alaska, and afterwards used as a Naval Hospital, was receipted for to the representative of the Navy Department by the writer as the represen-

tative of the Governor of Alaska and the Department of the Interior. This building is about seventy years old and in a state of very poor repair. However, it is thought that with some repairs it can be used to advantage by the Alaska Pioneers' Home, and is of further value because of the excellent garden plot adjoining it. Many Alaskans feel that because of its unusual historical significance this building should be repaired and preserved by the Territory.

Under the act of the First Alaska Legislature, approved April 30, 1913, the Hon. J. F. A. Strong, as Governor of Alaska, appointed Mr. W. P. Mills, of Sitka, Alaska, Treasurer of the Board of Trustees of the Alaska Pioneers' Home, and Rev. S. G. Kostrometinoff, of Sitka, Alaska, Secretary of said Board, with the Governor as ex-officio President. On July 4, 1913, this Board met at Sitka and arranged for the use of the Marine Barracks buildings as a home for indigent prospectors and others who have spent their years in Alaska and became dependent. The Board of Trustees at this meeting appointed A. G. Shoup Superintendent, with instructions to purchase necessary furniture, make necessary repairs to the buildings, hire necessary help, make rules and regulations for the government of inmates, and to organize and operate the institution as a home for dependent men who have assisted in the exploration and development of Alaska.

The buildings at this time had been entirely unoccupied for fifteen months, and were becoming considerably dilapidated. The plumbing had frozen during the winter and a great many of the water pipes were burst, and had to be replaced. The lawns had been used as a playground by the children from the Indian village, and many of the windows were broken. The heating plant also required a number of expensive repairs. There was absolutely no furniture of any kind, excepting a kitchen range, and it was necessary to order needed furniture, dishes, cooking utensils, and other supplies. These we were able to buy at wholesale prices through the courtesy of the W. P. Mills mercantile company, which extended to the Home the benefit of its credit and buying facilities, resulting in a very material saving of funds. All of the furniture and permanent supplies purchased for the institution since its opening have been furnished by the W. P. Mills Company at actual cost.

OCCUPANCY.

The first inmates to arrive at the Home were Samuel Dutton and David Spencer, on July 28, 1914, but as the buildings were not then ready for occupancy, arrangements were made with the management of the Sitka Hot Springs, at Sanitarium, Alaska, for their temporary care. On August 10th John A. Hammill arrived from Nome, and he was also sent to Sanitarium. Frank Sears, of Circle, arrived at Sitka on August 29th, and he was cared for in a hospital at Sitka until the Home was opened. On September 2, 1914, we moved into the present quarters with five inmates. This number was increased to thirteen before the end of September. As will be seen by reference to tabulated statements herewith, the number of inmates constantly increased, as rapidly as it was possible to provide accommodations within the limits of available funds.

While it was known that many of the old-timers who had been on the frontier of Alaska were greatly battered by time and hardship, it was not anticipated that the need of a home in which they could spend their declining years was as great as the establishment of this institution has shown it to be. Owing to limited room, as well as very restricted funds, it has been necessary to refuse admission to many worthy Alaskans whom the Territory ought to provide for, and, from such investigation as it was possible to make, only the most urgent cases have been admitted.

The Legislature established the Home for Alaska pioneers, with the idea of providing a haven for old or disabled men who had spent their years in exploring, prospecting and developing Alaska, and had become unable to earn a living. It was thought that most of these men would still be able to do some work in connection with the operation of the institution, but experience has proved that practically all of the men who have been admitted are entirely unable to do anything at all. Many of them are altogether helpless and require constant personal attendance. This has unavoidably increased operating expenses beyond expectations, and even then the care we have been able to give the most invalid cases has been far from satisfactory. Moreover, it is inevitable that these men, who are far advanced in years and worn by severest hardships, should decline in strength after their arrival here, and I cannot too earnestly urge the provision of

more adequate hospital facilities. Another thing which has somewhat added to our troubles is that some communities, with a mistaken idea of the situation, have sent men here who were far advanced in sickness. Their condition was usually aggravated by the ordeals of travel. These men have in most cases lived but a short time after their arrival at Sitka. However, some of the apparently hopeless cases have greatly improved or recovered. A detailed statement of the physical condition of the inmates will be found in the accompanying report of the attendant physician.

RECOMMENDATIONS FOR IMPROVEMENTS.

So far as it is possible to estimate, the number of inmates in the Home will be increased in the next year to seventy-five or one hundred, and if that is so it will be necessary to increase the building space. As it is at present, we are compelled to quarter cripples, who are unable to climb stairs, in the ward with the bed-ridden invalids. That naturally works a hardship on both the sick men and the cripples, and there should be some dormitory space on the ground floor. The dining room is small and necessitates two sittings at table with the present number of inmates. There is much need also of an assembly and recreation room. With nothing to do, life naturally becomes more or less monotonous to these old men who have led active lives. A recreation and assembly room in which entertainments could be held is highly desirable. I would recommend, therefore, that a two-story building, about forty-six feet by sixty-six feet in size, be erected at the southeast end of the "Barracks" building. This would nearly double the sleeping quarters, and provide a new dining room and assembly room. The present dining room could then be used as a ward for semi-invalid cases. Such a building should be constructed for about six thousand dollars.

The need for a trained nurse is keenly felt, and it is hoped there will be sufficient funds to keep a competent nurse in attendance next year.

The heating plant is situated in a separate building. This plant was designed by the Navy Department for the double purpose of heating the building and operating an electric light plant. It consists of one 20 H. P. tubular marine boiler eighteen feet long and four feet wide, with two doors to the fire box; one switchboard panel; one elec-

tric generator, form "C", speed 450; one marine engine; form "D", speed 450, size 6 1-4 by 5; four traps in four-foot condensing; one receiver for returns from buildings, and one Dean steam pump, six-inch stroke. There are forty-four radiators in the buildings, and the boiler consumes about 1,200 pounds of bituminous coal per twenty-four hours. A material saving in expense could be made by installing a more economical heating plant.

CEMETERY.

A plot of about one-half acre of ground was selected in the military cemetery at Sitka as a burial place for deceased inmates of the Alaska Pioneers' Home. A small portion of this has been cleared, and it is hoped that the funds will permit all of it to be put in first class shape next year. The estimated cost for clearing, grading and seeding this plot is about five hundred dollars. There should also be funds available with which to purchase permanent markings for the graves.

The men who have died in the institution have usually left a few personal belongings of nominal value. Some, however, have left a little money. Wherever there has been enough money to pay the funeral expenses it has been applied to that purpose, but the superintendent has in his possession several small amounts left by deceased inmates. This he is holding until it is decided what disposition should be made of such money. There should be a simple and uniform method of disposing of such moneys without probate procedure, either by reversion to the Home or payment to heirs. Whenever it has been possible to locate heirs such personal effects as might be valued have been sent to them.

CHARACTER OF INMATES.

Almost all of the men who have come to the Alaska Pioneers' Home are of the highest type of American trail-blazer. They are men who have lived alone in the silent places, and are of a naturally adventurous disposition. In fact, it is this very quality that has kept them upon the Alaska frontier, and it is to such men that the Territory must credit much of its development.

Some friends of the Institution have suggested that more rigid discipline should be enforced upon these old men in this Home. To me, however, it seems that to annoy these men with unnecessary restrictions would be an unkindness

that is not called for. The Alaska Pioneers' Home was established as a place where these men might spend their declining years in comfort, and is intended as a partial reward for their pathfinding services. To avoid restraint was one of the factors which made them independent prospectors and frontiersmen. And, as a matter of fact, the best way, in my opinion, to insure good conduct and avoid friction among such men is to allow them to follow their own inclinations as much as possible. They, like all of their kind, are big-hearted and generous to a fault, and are the last men in the world to impose upon the rights of others or to allow others to impose upon them. Of course, there have been some occasional cases of admitting men who never were of any use and they have given some trouble; but for such cases there is the simple remedy of summary dismissal from the Home. Instances of intoxication here have been exceptional. Owing to the weakened physical resistance of these men, if for no other reason, intoxication cannot be permitted among them under any circumstances, and that is one thing against which a positive rule has been established. The most effective factor in discouraging heavy drinking by an inmate of the Alaska Pioneers' Home is the bad standing he thereby establishes for himself among his comrades.

Much of the success of the Alaska Pioneers' Home so far, which has been under rather adverse conditions, is largely due to the hearty moral support tendered by the people of Alaska, and I wish particularly to thank those who have assisted with generous presents at each Christmas time, and in donating books for a library. For the support given, and confidence reposed by the Board of Trustees, I am deeply grateful.

Respectfully,

ARTHUR G. SHOUP,
Superintendent Alaska Pioneers' Home.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

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

August 31, 1982

The Honorable Randy E. Phillips
P. O. Box 142
Eagle River, AK 99577

Re: Andress v. Baxter
(Student Loan Lawsuit)

Dear Representative Phillips:

On August 3, 1982, a University of California Davis law student named Judith Andress filed a complaint in Anchorage District Court challenging the two year residency requirement for the student loan program. That challenge was brought under 42 U.S.C. 1983, a federal statute which allows personal suits against state officials for violations of an individual's civil rights. Ms. Andress alleged that her civil right to equal protection was being violated by enforcement of the two year requirement. Ms. Andress also asked for damages, both compensatory and punitive, against the commission members. Since the state of Alaska cannot be sued in federal court, the only persons liable under this action would be the commission members individually and Kerry Romesburg as Executive Director of the commission. Ms. Andress agreed to drop the damage claims in exchange for the interim issuance of a student loan to her. Ms. Andress also agreed to a court order requiring her to pay back the student loan immediately if and when she lost her suit. In addition, Ms. Andress agreed to an expedited briefing schedule whereby the issue would be briefed and argued before the federal court by early October.

On its own motion, the federal court judge, Judge Fitzgerald, requested briefs from the parties on whether or not the court should abstain from hearing the issue. The issue here was whether or not the court should delay ruling on the federal claims brought by Ms. Andress pending a resolution of state constitutional questions by the Alaska Supreme Court. After briefing and oral argument on that motion last week, the court decided not to abstain and to hear the issue. The major difference between the state constitutional equal protection test

The Honorable Randy E. Phillips
Re: Andress v. Baxter
(Student Loan Lawsuit)

August 31, 1982
Page 2

and the federal constitutional equal protection test is that the Alaska courts apply a more stringent standard of review in determining whether or not a person's equal protection right has been violated. Thus, theoretically at least, the state has a better chance of prevailing under the federal test than under the state test.

Opening briefs of the parties are due September 9, with reply briefs to be filed by September 16. Oral argument will be requested for the first part of October, and a decision should occur shortly thereafter. The deposition of Kerry Romesburg has already been taken, and no further discovery or other similar court procedures are contemplated.

If you have any questions, please do not hesitate to call.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By: 
Robert M. Maynard
Assistant Attorney General

RMM:lw

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

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

October 6, 1982

Representative Randy Phillips
P.O. Box 142
Eagle River, AK 99577

Re: Andress v. Baxter

Dear Representative Phillips:

This letter contains a brief update requested by the Legislative Council concerning Andress v. Baxter, the lawsuit challenging the two-year durational residency requirement for eligibility for student loans. The briefing in this case is complete, and copies of the briefs are enclosed for your information. Oral argument before Judge Fitzgerald of the U.S. District Court has been requested for as soon as possible in early October, and a decision is expected shortly thereafter. As our brief describes in more detail, the state is defending the two-year requirement as a rational means for determining whether or not student applicants are bona fide residents.

If you have any questions, please do not hesitate to call.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By: 
Robert M. Maynard
Assistant Attorney General

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

April 14, 1983

The Honorable Mitchell Abood
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Andress v. Baxter -
student loan case

Dear Representative Abood:

This letter is to confirm my advice to your committee that the Department of Law could defend the present requirement of the student loan program that a student must have lived in Alaska for two years at the time of application in order to establish the bona fides of residency. The primary reasons for the ability to defend a two-year requirement in this particular instance include the known and recognized mobility of the student population, the attractiveness of this loan program, and the portability of the loans. Enclosed are the briefs of the state in this matter along with the deposition and affidavits of Dr. Kerry Romesberg which sets forth in more detail the exact basis for our arguments to the court.

On the other hand, I wish to repeat my caution that there are substantial arguments that the two-year requirement is not constitutional. While we believe the Department of Law can defend the requirement, we do not mean to imply that the odds of succeeding in that defense are even 50 percent. Although we believe that the correct legal position that the court should take is that two-years is justifiable under the federal constitution, you should be aware that no court has ever upheld a residency requirement of greater than one-year under circumstances similar to these. On the other hand, no court has ever struck down a two-year requirement under these circumstances. Briefly, we are in uncharted constitutional waters, and there is substantial reason to believe that a court could find the two-year requirement is unconstitutional.

Since the matter is in litigation, I do not believe that it is in the state's interest to give a public assessment of all the strengths and deficiencies of our legal position. Therefore, I did not intend my testimony to either raise hopes that we would win the suit, nor, on the other hand, to exaggerate fears

that we would lose. My testimony is intended to be completely neutral on that question.

If you have any questions, please do not hesitate to call.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
Robert M. Maynard
Assistant Attorney General

RMM:mr

Enclosure

1145 - 12:45
Expect to set
tone lot

Communication Technology and Policy

Seminar

Orientation Materials

and

Program Description

An International Visitor Program

Sponsored by: The United States Information Agency (USIA)

and

The United States Telecommunications Training Institute (USTTI)

Administered by: The Academy for Educational Development, Inc.

Spring 1983

THE PROJECT SPONSORS

The United States Information Agency

The United States Information Agency (USIA) is part of the executive branch of the United States Government. Its mission is determined by the premise that it is in the national interest to encourage the sharing of ideas and cultural activities among the people of the United States and the people of other nations.

Under the authority of the Fulbright-Hayes Act of 1961, USIA annually invites some 1700 distinguished foreign leaders and specialists from many fields to visit the United States. This activity, called the International Visitor Program, works to strengthen and improve mutual understanding through direct, people-to-people contacts between citizens of other nations and people of the United States.

The United States Telecommunications Training Institute

The U.S. Telecommunications Training Institute (USTTI) has been established as an unprecedented joint venture between major American telecommunications firms and the U.S. Government to share American telecommunications advances with developing nations. Private sector firms are providing training, equipment and funding for the Institute. The federal government has served as a catalyst in bringing the corporations into the program and in establishing the course curriculum in discussions with representatives of developing nations.

THE PROJECT ADMINISTRATOR

The Academy for Educational Development

The Academy for Educational Development, founded in 1961, is an independent, non-profit institution active in many areas of education and communications around the world. Today the Academy embraces five Divisions, including the International Division established in 1965. Programs in the International Division include Telecommunication, Information Management, Sector Programs (health, education, agriculture, and international training) and visitor exchanges. The Academy has worked in over 80 countries, has over 90 professional employees and maintains offices in New York, Washington, Bolivia, The Gambia, Honduras, Indonesia, Kenya, Peru, Saudi Arabia, Sri Lanka, Botswana, Swaziland, and Tunisia.

Key activities of the Telecommunication program include the

Applications Management of the Rural Satellite Program funded by the United States Agency for International Development, consulting services to the U.S. Telecommunications Training Institute, and a series of studies.

During the last five years, the Academy's International Division has administered a number of specialized group projects for International Visitors sponsored by the United States Information Agency, the Agency for International Development, and the National Telecommunications and Information Administration. Recent visitor exchange programs have brought communication experts, journalists, educators, and filmmakers to the United States for travelling seminars and discussions with American counterparts.

ESCORTS

The group will be accompanied throughout the trip in the United States by three escorts and one Seminar Leader. The escorts' principal tasks are to interpret the United States for participants in a broad sense and to handle administrative matters. The Seminar Leader's main task is to assist participants in interpreting the various technical telecommunications components of the trip and to answer questions about them.

The Seminar Leader: Dr. Jay Miller. Dr. Miller, who holds a doctorate in Mass Communications, is presently Telecommunications Applications Specialist for the Academy's AID-funded inter-island project in the West Indies. He has been a consultant to Columbia University, Rutgers University, the University of the South Pacific, and various state governments in satellite communications and media based educational programs. Dr. Miller has held a Fulbright Senior Research Fellowship and is the author of various articles on public service applications of satellite communications.

The Escorts: Miss Paula Doherty. Miss Doherty is a program associate at the Academy and has worked closely on the development of this particular project. She is a graduate of Brown University and has had extensive experience in international visitor programs.

Dr. Maurice Raiford. Dr. Raiford received his doctorate in Physics from Duke University in 1969. He has been a professor and consultant on solar energy as well as advisor to several foreign governments on energy matters. Since 1973, Dr. Raiford has been a frequent escort officer on international visitor programs of the U.S. Information Agency.

Ms. Marilyn Williams. Ms. Williams received her M.A. from the Fletcher School of Law and Diplomacy in Massachusetts. She worked with a Wall Street commodities firm for one year and, since 1974, has held various positions in the international visitor field, including that of escort on group programs.

COMMUNICATION TECHNOLOGY AND POLICY

Participants attending the Alaska portion, April 10 - 18, 1983:

<u>Country:</u>	<u>Participants name and title:</u>
BAHAMAS	Mr. Michael Patrick Thompson Director of Engineering Broadcasting Corp of the Bahamas
BAHRAIN	Mr. Mohammed Abdullah Al-Sherroqi Manager, Media and Public Relations Dept Ministry of Information
CAMEROON	Mr. William Tallah Deputy Director of Telecommunications Government of Cameroon
CYPRUS	Mr. Roghiros Michaelides Telecommunications Officer Ministry of Communications and Works
GAMBIA	Mr. Bakary Kebba N'Jie Director of Telecommunications Government of Gambia
HUNGARY	Mr. Peter Istenes Senior Official and Technical Advisor Hungarian Post, Telephone and Telegraph
IRELAND	Mr. Thomas F. Quinn Executive Secretary Radio Telefis Eireann (RTE)
ISRAEL	Professor Dror Sadeh Director of Physics and Astronomy Tel Aviv University
IVORY COAST	Mr. Ory Djete Director of Studies, Plans & Programs Ministry of Post & Telecommunications
JORDAN	Mr. Fares Hikmat Lubbadah Head, Master Switching Section and Contat Engineer with European Broadcast Union Jordan Television
KUWAIT	Mr. Harid Habib Al-Kattan Controller, Minor Stations International Telecommunications Department Ministry of Communications
MALAWI	Mr. Jasper Antoine Mbekeani Postmaster General Government of Malawi

Page 2 - Communication Technology and Policy
Participants

NIGERIA

Mr. Ezekiel Babafemi Fashiyiku
Chief Engineer, Space Communications Div
Telecommunications Branch
Ministry of Communications

PEOPLE'S REPUBLIC
OF CHINA

Mr. Hua Yuan
Chief Engineer
Shanghai Postal and Telecommunications Admin

SUDAN

Mr. Awad Babiker Abdel Gadir
Director of Planning
Sudan Telecommunications Public Corp.

UNITED KINGDOM

Mr. Paul Hodgson
Head of French Language Services
British Broadcasting Corporation

VENEZUELA

Ms. Maria Elena Rodriguez
Chief, Office of International Affairs
General Sector for Communications
Ministry of Transport and Communications

YEMEN

Mr. Mohammed Abdullah Al-Kassous
Deputy General Manager
Yemen Telecommunication Corporation

ZIMBABWE

Mr. Reward Kangai
Section Manager, Earth Station Systems
Ministry of Information, Posts and Telecom

1. SEMINAR LEADER

Dr. Jay Miller

SEMINAR ESCORTS:

Miss Paula Doherty
Dr. Maurice Raiford
Ms. Marilyn Williams

Module Two

Dates: Monday, April 11 to Sunday, April 17

Hotel: Captain Cook Hotel
5th and K Avenue
Anchorage, Alaska
(907) 276-6000

Program Overview:

The program in Alaska will begin on Monday with a welcoming address by ALASCOM officials, a film illustrating the history of Alaskan telecommunications, and a presentation on the existing telecommunications network in Alaska. Following lunch in the corporate cafeteria, afternoon discussions will focus on the Alaskan television network and the social and cultural impact of telecommunications in rural areas. Native leaders introducing discussion topics will include Mr. Willie Hensley, an Inupiat Eskimo and Board Chairman of United Bank Alaska.

Tuesday will be devoted to an all-day visit to a satellite earth station some distance from Anchorage. Participants will have an in-depth tour of the facility and meetings with technical personnel before returning to town in the late afternoon.

On Wednesday, the group will have visits and discussions at the ALASCOM Toll Center, the Legislative Affairs Agency of the Legislative Teleconferencing Network, and the University of Alaska Learn Alaska network. Activities on Thursday will revolve around an all-day trip to Kotzebue to observe the operations of rural satellite TV programming and the emergency medical telephone system operations. Meetings and discussions at these facilities will focus on technology applications and equipment.

Friday will be left open for specialized meetings and individual appointments, to be arranged by the program staff. ALASCOM engineers and experts will be available to discuss various topics such as microwave systems, fiber optics, etc., with small groups or individuals. In the evening, participants are invited to an ALASCOM-hosted dinner.

On Saturday, participants will have the opportunity to see some of the scenic attractions in the Anchorage area. They will be accompanied by local citizens and representatives of the Anchorage Chamber of Commerce who have offered their hospitality for these sightseeing activities.

INFORMATION FOR PARTICIPANTS ATTENDING THE ALASKA PORTION OF THE PROJECT

Alaska is, at once, the northernmost, westernmost, and easternmost state of the United States. It is the largest state, with a land area greater than 500,000 square miles extending north-south over 1500 miles and east-west over 2500 miles. It has the lowest population density of any state, averaging only .7 persons per square mile, but almost half the population lives in the vicinity of Anchorage, where your project will be based during the Alaska stay. Most of the remaining citizens of the State live in the ten larger communities of over 3000, or scattered throughout 150 villages with populations from 25-30. Many villages are over 150 miles from their closest neighbor, and most are not connected by roads.

The Communication Technology and Policy project is the first time in the 30 year history of USIA's International Visitor Program that a group of participants has spent a full week studying the State and its communications system. We will make every effort to provide you with written and video materials in San Francisco that will give you some idea of the geography and conditions of life in the State.

As you know, your stay in Alaska will include visits to small communities outside of Anchorage. ALASCOM, your local host during this week, will provide you with boots and parkas needed for the extremely cold weather. For this to be arranged, it is absolutely necessary for you to provide your American Embassy contact with your foot and jacket sizes in American standard sizes. If you do not know this, please do the following:

Place your foot flat on a piece of paper and, using a pencil held straight up and down, draw the outline of your foot.

Your embassy contact will then be able to judge the size and advise us here, and also can give us an approximation for your jacket size.

In addition, please bring the following with you for the cold weather: three pairs of warm socks, one woolen hat (if you have one, otherwise it will be provided), and one small suitcase for the overnight you will spend in an outlying community.

Wednesday April 13, 1983

8:30 a.m. Pick up at the Hotel Captain Cook Fifth avenue entrance.

9:00 a.m. Tour of the Toll center facility.

1-30
Ken Sprain and Leonard Jablonski will conduct the tour in two separate groups. Areas to be covered will be the T.V. Operating Room; SP-1 digital switch; TOPS and TSD Operator positions, Fiber Optic tie in with ATU; Network Services; and the overall functions of the Toll Center as it relates to the communications services offered by Alascom.

12:00 noon Lunch at the Tiki Cove

1:15 p.m. Charity Kadow to conduct a tour of the Legislative Affairs Agency. Participants will be able to view a teleconference network in actual operation with the Alaska State Legislature in the state capitol in Juneau.

3:00 p.m. Chuck Hickman along with Lori Hyde will conduct the tour of the "Learn Alaska Network" at the University of Alaska Instructional Television Center.

Questions and Answers.

5:00 p.m. Return to the Hotel Captain Cook.

Participants are on their own leisure time.

DRAFT

B

Norman C. Gorsuch
Attorney General

December 10, 1982

Ronald W. Lorensen
Deputy Attorney General

Robert M. Maynard
Assistant Attorney General
Oil and Gas-Juneau

Legislation to cure
problems in
residency

Of the numerous residency requirements that are probably or almost certainly unconstitutional, most of them can only be justified as an attempt to determine whether or not a person is a "bona fide" resident. Therefore, a general bona fide resident statute should be drawn up. If a durational requirement is to be used, it would be safest to use a period of no longer than one year as the outside limit. Otherwise, additional criteria such as voter's registration, drivers license, or similar indicia of residency could be used in this general provision.

The following list includes all residency requirements which we have previously said were more likely than not to be unconstitutional. Many of these requirements can be defended, although probably unsuccessfully. Therefore, they are prime candidates for legislative change.

LICENSES

The present statutes concerning occupational licenses contain many residency requirements. After Noll v. Alaska Bar

Association ___ P.2d ___, Op. no. 2546 (Alaska Supreme Court, August 13, 1982), it is clear that any residency requirement for licensure would almost certainly be struck down as unconstitutional. Therefore, the following requirements in the statutes and regulations should be eliminated with no new legislation concerning residency substituted in their place: public accountant (12 AAC 04.170); attorneys (Bar Rule 5(1)(a)); morticians (AS 08.42.110); guides (AS 08.54.100, AS 08.54.110, AS 08.54.120, AS 08.54.140, AS 08.54.142) (although the requirements of hunting experience are defensible); real estate brokers and salesmen (AS 08.88.171); and insurance solicitor (AS 21.27.220).

In eliminating these residency requirements, it may be possible in some instances to retain a residency requirement (or a bona fide residency requirement) as a means of distinguishing between the fees to be paid in order to be licensed. Those fees could only be justified, however, if they are directly related to the increased costs of monitoring the activities of out-of-state or nonresident licensees.

PUBLIC RIGHTS AND BENEFITS

General

Low-cost housing preference (AS 18.55.330, 470(4));
vocational substitution program (AS 39.25.115(g)). These two programs require a one-year durational residency requirement in order to qualify for the preference or the program. Instead, a bona fide residency requirement should be substituted.

To the extent that these programs can be seen to be similar to "welfare" or "basic necessities of life," even a one-year residency requirement would be challengable. Consequently, these two programs should have a bona fide residency test that does not have a durational residency element, but rather depends on other indicia of residency [such as election registration, short-term residency (i.e., 30 days), etc.].

Industrial incentive tax credits (AS 43.26.095(b)(3));
bounties for certain animals (AS 16.35.130). These two programs give preference to one-year residents or, concerning the bounties, one year's residence in the game unit. Both these programs are for all practical purposes not operating, and probably should be eliminated anyway. If they are decided to be continued

the requirements should be eliminated (although our chart of September shows the industrial incentive tax credit to be "probably" unconstitutional, it is not exactly clear to me what the basis of this unconstitutionality is).

LOAN AND GRANT PROGRAMS

The following loan programs contain five-year residency requirements which should be changed to a bona fide residency requirement: fisherman's mortgage program (AS 16.10.680(a)); commercial fishing loan (AS 16.10.310(a)); limited entry permit loans (AS 44.81.220(a)(20)); Alaska Housing Finance Corp. veterans preference (AS 18.56.101); veterans loans (AS 26.15.130(1)). Fishing loans may possibly be defensible with a residency requirement of up to two years because of special problems that would occur because of the transient nature of fisherman.

The Alaska student loan and the Alaska educational grant program have two-year residency requirements imposed by AS 14.40.765(b) and the application forms. This issue is presently being litigated in Andress v. Baxter, and probably should not be changed until that case is decided. Backup legislation should, however, be drafted for rapid action in case the court rules adversely during the upcoming legislative session. The

point preference system for loan applicants in AS 14.40.767, however, is unconstitutional and should be eliminated. This point system has never been utilized by the commission in any event.

LAND DISPOSAL PROGRAMS

Both the one-year residency requirement to qualify for the program and the 5% per year discount for each year of residency up to ten years (AS 38.05.057(b)(2) and .058) have both been challenged in Gilman v. Martin, a case before the Alaska Supreme Court. The court will almost certainly rule on these issues prior to or during the upcoming legislative session. Backup legislation for at least the 5% per year discount portion of the program should be drafted.

The homesite entry program requires three years residency in order to apply and gives an absolute priority to the longest resident. AS 38.08.030(a)(2), 040(b). These should be replaced with simple bona fide residency requirements.

SPECIAL OLD AGE PROGRAMS

The longevity bonus program (AS 47.45.010(a)); the pioneers' home program (AS 47.25.020(a), 035); and the senior

citizen exemption from fishing license requirement (AS 16.05.400) all require lengthy residency requirements as conditions for qualification. Although preference for senior citizens is not unconstitutional, attaching a lengthy residency requirement raises severe constitutional problems. The longevity bonus program has already been settled and requires immediate attention by the legislature. Although we have ruled that the pioneers' home program is defensible, attention may be directed towards this program (although it is difficult to see how the program could be restructured without the residency requirements). The senior citizens exemption for the fishing license requirement could simply become a senior citizen program with the bona fide residency requirement.

RMM:mr

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Alaska State Legislature



Representative Mitch Abbot
CHAIRMAN

House Committee on State Affairs

The enclosed chart on durational residency, originally prepared by former Attorney General Wilson Condon and Assistant Attorney General Bob Maynard, in 1982, has been used extensively in the preparation and drafting of "An Act relating to residency and residency requirements; and providing for an effective date." The Committee, staff and consultants would like to extend their appreciation to the invaluable research done by Mr. Condon and Mr. Maynard.

To help clarify the statutory changes contained in the House State Affairs' residency bill, we have included these changes as they apply to the programs appearing on Mr. Condon's chart. They are:

- 1) The left-hand margins reflect the section numbers found in the residency bill.
- 2) material enclosed by brackets and asterisks (** . **), indicate effect of the residency bill on the various programs listed.

DURATIONAL RESIDENCE IN ALASKA

After an exhaustive review we have come up with the attached eight page table and accompanying appendix setting forth the durational residence requirements imposed by Alaska State law. The table is organized into three main parts, I PUBLIC OFFICE HOLDING, II LICENSES, and III PUBLIC RIGHTS AND BENEFITS. The five columns in the table speak for themselves. With respect to the column "Constitutional Problem" some explanation is required. If "No" appears under Constitutional Problem, it is the opinion of the Department of Law that the durational residence requirement is constitutionally sound. Where the word "Maybe" appears in that column, it is the opinion of the Department of Law that that durational residence requirement is also constitutionally sound; however, we believe that it is possible someone might initiate litigation challenging the requirement. Where the term "Probably" appears in the Constitutional Problem column, we believe there is more than a remote possibility a court might find this durational residence requirement unconstitutional. Where "Yes" appears in the Constitutional Problem column, we believe it is highly likely that a court would find the durational residence requirement unconstitutional.

Because of the Alaska Supreme Court's recent ruling in the case of Noll v. Alaska Bar Association, ___ P.2d ___, Op. No. 2546. (August 13, 1982), we have also included all residence requirements, whether durational or not, which apply to eligibility for entrance into regulated occupations in Alaska. After the Noll decision it would appear that any residence requirement for entrance into a regulated occupation in Alaska will be held unconstitutional except in the most unusual circumstances.

TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE
A. <u>General</u>				
1. Governor	7 Years	Al. Const. art. III, § 2	No	--
2. Lieutenant Governor	7 Years	Al. Const. art. III, §§ 2 & 7	No	--
3. Board of Education Member	3 Years	AS 14.07.075	No	--
4. Legislator	3 Years	Al. Const. art. II, § 2 AS 24.05.030	No	--
5. Supreme Court Justice	5 Years	AS 22.05.070	No	--
6. Court of Appeals Judge	5 Years	AS 22.07.040	No	--
7. Superior Court Judge	5 Years	AS 22.10.090	No	--
8. District Court Judge	5 Years	AS 22.15.160(a)	No	--
9. Magistrate	6 Months	AS 22.15.160(b)	No	--
10. Ombudsman	3 Years	AS 24.55.030	No	--
11. Borough Mayor	Up to 3 Years	AS 29.23.130(b)	No	--
12. Borough Assembly	Up to 3 Years	AS 29.23.050	No	--
13. City Mayor	Up to 3 Years	AS 29.23.250(a)	No	--
14. City Council	Up to 3 Years	AS 29.23.200(b)	No	--
15. Municipal Charter Commission	3 Years	AS 29.13.010	No	--

TITLE	RESIDENCE REQUIREMENT	AUTHORITY	PROBLEM	PENDING, IF APPLICABLE
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B. Boards and Commissions other than Occupational Licensing Boards. There are 98 Boards and Commissions, other than Occupational Licensing Boards, which are a part of or affiliated with state government. There is a durational residence requirement for membership on seven of those boards and commissions. */

1. Rural Affairs Commission	5 Years	AS 44.19.102	Maybe **/	None
2. Board of Fisheries	1 Year	AS 16.05.221 AS 16.05.940	No	--
3. Board of Game	1 Year	AS 16.05.221 AS 16.05.940	No	--
4. Judicial Qualifications Commission	10 years practice in Alaska	Ak. Const. art. IV, § 10 AS 22.30.010	Maybe **/	--
5. Municipal Bond Bank Authority	30 days (qualified voter)	AS 44.85.030	No	--
6. Personnel Board	30 days (qualified voter)	AS 39.25.060	No	--
7. Alaska Power Authority	30 days (qualified voter)	AS 44.83.020	No	--

*/ This list includes only boards and commissions which have express durational residency requirements. Many boards have ex officio members who must meet residency requirements for those offices or positions. These boards include:

- (1) Alcohol Beverage Control Board (certain licensees);
- (2) Capital Site Planning Commission (borough mayors);
- (3) Coastal Policy Council (mayors, assembly and council members);
- (4) Code Revision Commission (members of legislature);
- (5) Citizens Advisory Commission on Federal Management Areas in Alaska (governor and other public officers);
- (6) Commission on Conference of the Law of the Sea (members of legislature);
- (7) Rural Development Council (members of legislature);
- (8) Teacher's Retirement Board (resident who is receiving retirement benefits);
- (9) Tourism Advisory Board (members of legislature); and
- (10) Governor's Commission on the Administration of Justice (judicial officers, legislators and municipal officials)

*/ It is difficult to imagine someone complaining about any possible constitutional problems here.

Occupational Licenses. The State of Alaska requires occupational licenses in 28 separate occupational areas. Residence requirements are imposed for the receipt of these licenses in seven of these occupational areas. For reasons set forth in Appendix A, we believe any residence requirement, even of zero durational length, will in most cases be unconstitutional.

TITLE	DURATIONAL, RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE
1. Public Accountant (**delete residency requirement**)	1 Year (rebuttable)	AS 08.04.280 12 AAC 04.170	Yes	None
2. Attorney (** no change **)	Residence	Bar Rule 5(1)(n)	Yes	Declared unconstitutional in Noll v. Alaska Bar Ass'n 8/13/82
Law Clerk (**delete residency requirement **)				
3. Collection Agencies (** no change **)	1 Year, but non-resident may receive license on same basis as resident, except fee for branch offices is higher	AS 08.24.110 AS 08.24.370	No	- -
4. Morticians (** no change **)	1 Year in-state apprenticeship	AS 08.42.110	Yes	None
5. Guides				
Master Guide (** no change needed; comes in through registered guide reference **)	Residence plus hunted 10 years	AS 08.54.100	Yes	None
Registered Guide (** deleted **)	Resident	AS 08.54.110 (2)	Yes	None
Class A Assistant Guide (** no change **)	20 years experience in guide district in which he is to be employed although not a specific residence requirement.	AS 08.54.120	Yes	None
Assistant Guide (** deleted **)	Resident	AS 08.54.140 (2)	Yes	None
Transporter (** deleted **)	Resident	AS 08.54.142 (a)(1)	Yes	None

	TITLE	RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE
<u>Occupational Licenses (Cont.)</u>					
	6. Junk Dealer & Metal Scrapper	(**no change*) No resident requirement, but defines "resident" as present for one year.	AS 08.60.030	No	---
Sec. 4	7. Real Estate Brokers and Salesmen (** delete residency requirement. **)	Resident	AS 08.88.171	Yes	None
Sec. 9	8. Insurance Brokers, Agents and Solicitors	(**delete residency requirement.	No fee change -- keep differential **)		
	Resident Insurance Salesmen or Broker (non residents can be licensed but may pay a higher fee)	1 year	AS 21.27.090 (a)(2) res.	No	---
			AS 21.06.250 fees (no change)		---
Sec. 13	Insurance Solicitor	** deleted ** 1 year (residency requirement)	AS 21.27.220 (1)	Yes	None

B. Other Licenses

	1. Alcoholic Beverage License	(**no change**) 1 year	AS 04.11.390	Maybe	None
	2. Resident Fish and Game License (resident license costs less than non-resident license) (** no change **)	12 consecutive months	AS 16.05.940	Maybe	None

III. PUBLIC RIGHTS AND BENEFITS

A. General

	1. Voting	(** no change **) 30 days	AS 15.05.510	No	---
Sec. 5	2. Annulment of Marriage	(** delete 1 yr. 1 Year retain 30 days **)	AS 09.55.130	Maybe	None

	TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE	
<u>General (Cont.)</u>						
Sec. 13	3. Low-Cost Housing Preference (** delete 1 yr. retain 30 days **)	1 Year	AS 18.55.330 AS 18.55.470(4) ** deleted	Probably	None	
Sec. 13	4. Vocational Substitution Program (** " " *)	1 Year	AS 39.25.155(g)	Probably	None	
Sec. 13	5. Industrial Incentive Tax Credits (* " " *)	Depends on % of 1-year residents	AS 43.26.095(b)(3)	Probably	Program is for all practical purposes no longer operating.	
Sec. 8	6. Bounties for Certain Animals (* " " *)	1 year abode in Unit plus "continually maintained residence in the state . . ."	AS 16.35.130	Yes	The program is a dead letter because it has not been funded for several years.	
B.	<u>Loan and Grant Programs.</u> Approximately 41 loan programs are provided for under Alaska Statutes. 35 of these are currently active programs. Of these 35, seven have some sort of durational residency feature. The dormant programs are inactive because of lack of funding. The state has one grant program requiring a period of residency for eligibility.					
	1. Fisherman's Note and Mortgage Program	NOTE: this was repealed in 1982.	5 Years	AS 16.10.680(a)	Yes	AG opinion pending
	2. Commercial Fishing Loan	See HB 15 which deleted 5 yrs. & used 2 years.	5 Years	AS 16.10.310(a)	Yes	AG opinion pending
Sec. 12	3. Limited Entry Permit Loans (CFAB) (** delete 5 yrs., insert 2 years **)	5 Years	AS 44.81. ²¹⁰ (a)(20)	Yes	Program inactive pending Court determination of legality of limited entry program in State v. Ostrosky.	
	4. Agriculture and Fishing Loan (CFAB) (** no change **)	1 Year	Board Policy	Maybe	None	
Sec. 8	5. Alaska Housing Finance Corp. One Percent Veterans' Housing Loan Rate Reduction (** delete 5 yrs., insert 2 years. **)	5 Years	AS 18.56.101(β)	Yes	AG opinion 7/14/82 Instructed agency not to enforce.	
Sec. 10	6. Veterans Loans (** delete 5 yrs., insert 2 years. **)	5 Years	(a) AS 26.15.130(1)	Yes	Inactive because not currently funded.	

TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE
<u>and Grant Programs (Cont.)</u>				
7. Mining Business Loans (** no change **)	Residency and 5 Years Mining Experience in State.	AS 27.09.020	Maybe	None
8. Memorial Scholarship Loan Fund ** no change **)	No durational requirement to apply. 1/5 loan forgiven for each year employed in specialized field in Alaska.	AS 14.40.825(e)	No	---
9. Student Loan Program				
(a) eligibility to apply (** no change **)	2 Years	AS 14.40.765(b)	Probably	Issue pending in Andress v. Baxter
(b) 1/10 forgiven for each year of residency after education up to 50% of loan. (** no change **)	--	AS 14.40.763(1)	Maybe	May be covered by Gilman v. Martin which is now pending in Alaska Supreme Court
(c) Point Preference System for loan applicants (** repealed **)	1 Point; 2-5 Years 2 Points; 5-10 Years 3 Points; 10+ Years	renumber to 14.43.130 AS 14.40.767	Yes	Point system has not previously been utilized as Legislature has always funded all applicants.
10. Alaska Educational Incentive Grant ** no change **)				
<u>Land Disposal Programs</u>				
1. Land Disposal by Lottery (** no change **)	1 Year	AS 38.05.057(b)(2)	Maybe	Should be decided by Gilman v. Martin.
2. Land Purchase Price Discount Program (** repealed **)	5% per year discount for each year of residency on to 10 years	AS 38.05.058	Probably	Should be decided by Gilman v. Martin.

TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING IF APPLICABLE
<u>d Disposal Programs (Cont.)</u>				
3. Homesite Entry Program (** delete 3 yrs. and 20 yrs. require 1 year. **)	3 years (or 20 years of earlier residency) to apply	AS 38.08.030(a)(2)	Yes	AG opinion pending
	Priority given longest resident:	AS 38.08.040(b) Sec. 13	**repealed**	
4. Remote Parcel Leasing Program (** no change **)	1 Year	AS 38.08.077(1)(2)	Maybe	Should be decided by Gilman v. Martin.

Special Old Age Programs

1. Longevity Bonus Program (** no change in this bill **)	25 years and presence in State at or before statehood.	AS 47.45.010(a)	Yes	Issue Pending in Vest v. Schafer
2. Pioneers' Home Program (** no change in this bill **)	15 years immediately before application, or 30 years cumulative	AS 47.25.020(a) AS 47.25.035	Yes.	None
3. Senior Citizen Special Assessment Exemption (** delete 1 yr and retain 30 days. **)	12 months	AS 29.63.065(d)(1)	Maybe	None
4. Senior Citizen Exemption from Fishing License Requirement (** delete 30 years and insert 1 year **)	30 years total residence	AS 15.05.400	Yes	None

- The federal constitution's Privileges and Immunities Clause seeks to prevent discrimination against nonresidents, to further the concept of federalism, and to create a national economic unit. Shely v. Alaska Bar Ass'n, 620 P.2d 640, 642 (Alaska 1980) ("Sheley"). Although the Clause does not preclude some disparity of treatment between residents and nonresidents, it does protect activities which are "fundamental rights": i.e., "basic and essential activities, interference with which would frustrate the purposes of the formation of the Union." Baldwin v. Fish & Game Comm'n, 436 U.S. 371, 388 (1978).

One such "fundamental right" is the right to engage in "common callings" and to pursue "ordinary livelihoods." Toomer v. Witsell, 334 U.S. 385, 403 (1948). This includes "professional occupations." Sheley, 620 P.2d at 643.

In order to discriminate against nonresidents when a fundamental right is involved, there must be: (1) some showing that nonresidents are "a peculiar source of the evil" which the residence requirement is meant to remedy; and (2) the discrimination against nonresidents must "bear a substantial relationship to the particular 'evil' they are said to present." Hicklin v. Orbeck, 437 U.S. 518, 526-527 (1978). For example, there cannot be less restrictive means to combat the problems attempted to be solved by the residency requirement. Sheley, 620 P.2d at 645.

A good example is the recent Alaska Supreme Court case Noll v. Alaska Bar Ass'n, ___ P.2d ___, Op. No. 2546 (August 13, 1982). In Noll, a nonresident challenged the constitutionality of Alaska Bar Rule 5(1)(a), which required that an applicant for admission to the state bar be domiciled in Alaska when he or she was actually admitted. The bar association argued that the residency requirement was needed:

(1) to assure the competency of the members of the bar;

(2) to assure familiarity with local practice and local issues;

(3) to facilitate service of process and communication with other attorneys; and

(4) to assure that members of the state bar are readily amenable to discipline and fee arbitration and are available for service on the committees that administer those procedures.

The Alaska Supreme Court rejected each and every reason offered. Although recognizing the legitimacy of those goals, the court either found these goals were not "substantial" enough to justify the discrimination, could be attained by other nondiscriminatory means, or were not furthered by the discrimination. As can be seen, this constitutional test is difficult to meet. Consequently, all residency requirements for occupational licensing are called into substantial doubt.

fundamental right is involved. There has been some showing that the requirements are necessary to the public interest. The court applied the substantial justification test and found that the requirements were not justified. The court held that the requirements were not necessary to the public interest and that the requirements were not justified. The court held that the requirements were not necessary to the public interest and that the requirements were not justified.

TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING IF APPLICABLE
<u>Land Disposal Programs (Cont.)</u>				
Sec. 11 3. Homesite Entry Program (** delete 3 yrs. and 20 yrs.) require 1 year. **	3 years (or 20 years earlier residency) to apply	AS 38.08.030(a)(2)	Yes	AG opinion pending
	Priority given longest resident	AS 38.08.040(b)	Sec. 13 **repealed **	
4. Remote Parcel Leasing Program (** no change **)	1 Year	AS 38.08.077(1)(2)	Maybe	Should be decided by Gilman v. Martin.
<u>D. Special Old Age Programs</u>				
1. Longevity Bonus Program (** no change in this bill **)	25 years and presence in State at or before statehood.	AS 47.45.010(a)	Yes.	Issue Pending in Vest v. Schafer
2. Pioneers' Home Program (** no change in this bill. **)	15 years immediately before application; or 30 years cumulative	AS 47.25.020(a) AS 47.25.035	Yes.	None
Sec. 13 3. Senior Citizen Special Assessment Exemption (** delete 1 yr and retain 30 days. **)	12 months	AS 29.63.065(d)(1)	Maybe	None
Sec. 6 4. Senior Citizen Exemption from Fishing License Requirement (** delete 30 years and insert 1 year **)	30 years total residence	AS 16.05.400	Yes	None

STATE OF ALASKA
FISCAL NOTE

Revision Date 4/6, 1983

I. REQUEST

Bill/Resolution No.: HB 323
 Title: Act Re: Residency
 Sponsor: House State Affairs Committee
 Requestor: House State Affairs Committee

II. FISCAL DETAIL

Agency Affected: Education
 Program Category Affected: Postsecondary Comm.
 BRU, Program of Subprogram(s) Affected: Student Loan Program

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING						
CAPITAL	N.A.	-0-	-0-	-0-	-0-	-0-
REVENUE	N.A.	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND	N.A.	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Kerry D. Romesburg Phone: 465-2854
 Division: Commission on Postsecondary Education Date: 4/6/83

Approved by Commissioner: _____ Date: _____
 Department: _____

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/8/83

JON K. TILLINGHAST REPORT DATED MARCH 8, 1983.

ALTERNATIVES SUBMITTED:

- Admin. 1. Expand the Alaska Longevity Bonus Program to include all elderly Alaskans with one-year's residency.
- Admin. 2. Phase out the Alaska Longevity Bonus Program by gradually reducing benefits.
- Admin. 3. Phase out the Alaska Longevity Bonus Program by gradually reducing benefits, while contemporaneously raising the eligibility limits for general state assistance.
- Admin. 4. Providing a minimal base payment under the Alaska Longevity Bonus Program based solely on one-years residency, with supplemental payments made on the basis of need.
- Admin. 5. Phase out the Alaska Longevity Bonus Program by increasing the age eligibility each year.
- J.T. 6. Create an annuity plan, with the annuity corpus consisting of Permanent Fund Distributions. This option would necessitate a transition program for those persons 40 years and older.
- J.T. 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 distribution distributions.
- J.T. 8. Replacing the Alaska Longevity Bonus Program with a comprehensive health insurance program for elderly Alaskans.
- J.T. 9. Condition eligibility for a longevity bonus upon a demonstration of hardship which would be suffered by being unable to continue Alaska residency .
- J.T. 10. Open the Alaska Longevity Bonus Program to all one-year residents, and terminate the program--giving Fy84 recipients a grandfather right to continued bonuses.

RESIDENCE: HOW TO DETERMINE WHEN TO USE, WHAT DURATION IS ACCEPTABLE.

~~ZOBIE~~ #1... GENERAL STATEMENTS FROM RECENT COURT CASES :

INCOME DISTRIBUTED TO THE CITIZENS OF THE STATE BASED ON DURATION OF RESIDENCE VIOLATES THE EQUAL PROTECTION CLAUSE IN THE 14TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA, WHERE NO VALID PUBLIC INTERESTS ARE RATIONALLY SERVED BY SUCH DISTINCTION MADE BETWEEN CITIZENS ON THE BASIS OF ESTABLISHED RESIDENCIES...

REWARDING CITIZENS FOR PAST CONTRIBUTIONS IS NOT A LEGITIMATE STATE PURPOSE.

CITIZENS OF ONE STATE SHALL ENJOY THE SAME PRIVILEGES WHICH CITIZENS OF ANOTHER STATE ENJOY.

IMPOSITION OF A THRESHOLD WAITING PERIOD MAY BE VALID. LIKewise TESTS OF BONA FIDE RESIDENCY MAY BE ACCEPTABLE.

DURATIONAL RESIDENCE REQUIREMENTS MAY FIX A MINIMUM PERIOD OF RESIDENCY TO BE ELIGIBLE FOR BENEFITS AVAILABLE ON A EQUAL BASIS TO ALL OTHER RESIDENTS.

A ONE YEAR RESIDENCE IS PROBABLY ACCEPTABLE IF IT IS USED AS A TEST OF BONA FIDE RESIDENCE..

A REWARD FOR PAST CONTRIBUTIONS SUCH AS TAXES, OR OTHER CONTRIBUTIONS SUCH AS SUFFERANCE OF HARDSHIPS, REAL OR INTANGIBLE HAS BEEN DEEMED BY THE COURTS AS NOT A LEGITIMATE STATE PURPOSE. THE EQUAL PROTECTION CLAUSE IN THE CONSTITUTION PROHIBITS IT.

Freedom TO TRAVEL BETWEEN STATES AND TO RECIEVE ALL BENEFITS OF CITIZENSHIP MUST BE PRESERVED.

A STATE MAY ENHANCE THE ADVANTAGES OF INDUSTRY, ECONOMY AND RESOURCES. MAY MAKE ITS RESIDENTS LIFE BETTER AND ITS LIFESTYLE MORE ATTRACTIVE, BY OFFERING DIRECT BENEFITS IN THE FORM OF PUBLIC SERVICES, LOWER TAXES, ~~OR~~ OR GENEROUS SPENDING, BETTER MAINTENANCE OF ROADS, PARKS, PUBLIC STANDARDS; BUT IT MUST SHARE ALL SUCH BENEFITS WITH ALL BONA FIDE CITIZENS ON AN EQUAL BASIS.

THE CONSTITUTION DOES NOT ALLOW DIFFERING DEGREES OF CITIZENSHIP OR RESIDENCY.. CITIZENSHIP IS EQUATED TO RESIDENCY.

Distinctions BETWEEN CITIZENS OF A STATE MUST BE SUPPORTED BY A VALID STATE INTEREST AND MUST NOT BE DISCRIMINATORY..

LENGTH OF RESIDENCY TO RUN FOR PUBLIC OFFICE IS SUPPORTED, BUT THATS PROBABLY ONE OF THE RARE EXCEPTIONS... NORMALLY THE COURTS HAVE ACCEPTED ONE YEAR AS AN ~~TEST~~ OBJECTIVE TEST OF WHAT CONSTITUTES BONA FIDES OF RESIDENCE...

MORE THAN ONE YEAR MUST BE SUPPORTABLE AND WILL NORMALLY BE MORE SUSCEPTABLE TO CHALLENGE ON THE EQUAL PROTECTION CLAUSE... ~~THE~~

NO LAW CAN IMPOSE AN INFERIOR STATUS ON A NEW CITIZEN BY DENIAL OF BENEFITS, PRIVILEGES, OR IMMUNITIES ENJOYED BY ANOTHER ON A BASIS OF DURATION OF RESIDENCE...

THE COURTS HAVE BEEN SENSATIVE TO THE IDEA OF REWARDING CITIZENS FOR PAST HARDSHIPS, BUT NOT WHEN THE REWARD IS GIVEN DISSIMILARLY TO PERSONS ON THE BASIS OF VARYING LENGTHS OF RESIDENCE.

IN THE CASE OF THE LOTTERY PROGRAM, ALL ONE WINS, BY HAVING THE TIME IN STATE, IS A RIGHT TO COMPETE FOR LAND SOLD AT FAIR MARKET VALUE..

ONE YEAR TEST IS TO ASSURE THAT A PERSON ISNT JUST HERE SEASONALLY, OR A SHOPPER FOR FREE BENEFITS.. THE RIGHT TO BENEFITS SHOULD BE ABLE TO ASSURE TO THE STATE THAT THE PERSON NOT ONLY RECIEVES EQUALLY, BUT PARTICIPATES EQUALLY....

LOAN DISCOUNTS FOR LAND SERVES AS AN INDUCEMENT FOR PEOPLE TO SETTLE AND REMAIN ON THE LAND.. IT SERVES A PUBLIC ~~PURPOSE~~ ^{PURPOSE} IF IT STABILIZES THE POPULATION..

STUDENT LOAN LOW INTEREST RATES MAKE IT AFFORDABLE, ACCESS TO THE MONEY INCOURAGES ONE TO GO TO SCHOOL. ~~IS~~ PUBLIC EDUCATION IS A VIABLE GOAL OR PUBLIC PURPOSE TO SEEK..

loan DISCOUNTS SIMILIARLY ENCOURAGE PERSONS WHO HAVE EDUCATION TO COME BACK HOME AND TO USE THAT EDUCATION..

THE CONSTITUTION PLACES THE NEWEST NATURALIZED CITIZEN ON EQUAL FOOTING WITH THE BORN ~~CITIZEN~~ WHO TRACES HIS LINAGE BACK ~~FOUR~~ ^{FOUR} CENTURIES.

NO DURATIONAL RESIDENCE CAN BE USED FOR THE USE OF POLITICAL PURPOSE OR BASIC NECESSITIES OF LIFE...

THE COURTS HAVE HELD THE ONE YEAR TEST VALID IN DIVORCE AND RESIDENT OR LOWER TUITION...

DURATIONAL RESIDENCE REQUIREMENT (CONT'D)

<u>TITLE</u>	<u>DURATION</u>	<u>AUTHORITY</u>
<u>SPECIAL OLD AGE PROGRAMS</u>		
1. LONGEVITY BONUS (ALB)	25yrs, with res. est. pre statehood	AS 38.08.030(a)(2)
2. PIONEERS' HOMES	15 yrs immed. before application, or 30 yrs cumulative	AS 47.25.020(a) AS 47.25.035
3. SR CIT. SPEC. ASSESSMENT EXEMPTION	12 mo.	AS 29.63.065(d)(1)
4. FISHING LIC. EXEMPTION	30 yr. total res.	AS 16.05.400

LOAN AND GRANT PROGRAMS

1. FISHERMAN NOTE AND MORTGAGE	5 yr	AS 16.10.680(a)
2. COMMERCIAL FISHING LOAN	5 yr	AS 16.10.310(a)
3. LIMITED ENTRY PERMIT LOAN	5 yr	AS 44.81.220(a)(20)
4. AGRIC. & FISHING (CFAB)	1 yr	POLICY REQUIREMENT
5. AHFC VETS 1% rate reduc.	1 yr	AS 18.56.101
6. VETERANS LOANS	5 yr	AS 26.15.130(1)
7. MINING BUSINESS LOANS	Residency and 5yr mining experience in Alaska	AS 27.09.020
8. MEMORIAL SCHOLARSHIP	No dur. resid. reqd. one fifth of loan forgiven for each yr emp. in spec. field.	AS 14.40.825(e)

STUDENT LOAN PROGRAM

9. ELIGIBILITY TO APPLY	2 yrs	AS 14.40.765(b)
FORGIVNESS (1/10 OFF FOR EACH YR OF RESID. AFTER COMPLETING EDUC. MAX. 50 PERCENT FORGIVEN....		AS 14.40.763(i)
PREFERANCE (SYSTEM OF GIVING PRIORITY OF AWARDING)	1Point-2-5yr res. 2Point-5-10 years 3Point-10 plus yr.	AS 14.40.767
10. AK EDUC. INCENTIVE GRANT	2 yrs	APPLIC. FORM
11. CHILD CARE EXPENSE REFUND	30 days	FORM DR600
12. POLITICAL CAMP. CONTRIB. CR.	30 days	FORM DR600

DURATIONAL RESIDENCE REQUIREMENT

STATEMENT: The following list constitutes a complete listing of all DURATIONAL RESIDENCE REQUIREMENTS set by state law.

	<u>TITLE</u>	<u>DURATION</u>	<u>AUTHORITY</u>
	<u>PUBLIC OFFICERS</u>		
A	1. GOVERNOR	7yr	AK CONST.art. 111,ss 2
	2. LT GOVERNOR	7yr	AK CONST.art. 111,ss 2&7
	3. LEGISLATOR	3yr	AK CONST.art. 11,ss2
	4. SUP. COURT JUSTICE	5yr	AS 22.05.070
	5. COURT OF APPEALS JUDGE	5yr	AS 22.07.040
	6. SUP. COURT JUDGE	5yr	AS 22.10.090
	7. DIST. COURT JUDGE	5yr	AS 22.15.160(a)
	8. MAGISTRATE	6mo	AS 22.15.160(b)
	9. OMBUDSMAN	3yr	AS 24.55.030
	10. BOROUGH MAYOR	to 3yr	AS 29.23.130(b)
	11. BOROUGH ASSEMBLYMAN	to 3yr	AS 29.23.050
	12. CITY MAYOR	to 3yr	AS 29.23.250(a)
	13. CITY COUNCIL	to 3yr	AS 29.23.200(b)
	14. MUNI CHARTER COMM.	3yr	AS 29.13.010
	15. BOARD OF ED MEMBER	3yr	AS 14.07.075

BOARDS AND COMMISSIONS

GENERAL:

B	1. RURAL AFF. COMM.	5yr	AS 44.19.102
	2. BOARD OF FISHERIES	1yr	AS 16.05.221 AS 16.05.940
	3. BOARD OF GAME	1yr	AS 16.05.221 AS 16.05.940
	4. JUDICIAL QUAL. COMM.	10yr practice in Alaska	AK CONST. ART.1V ss 10
	5. MUNI BOND BANK AUTH	30 days	AS 44.85.030
	6. PERSONNEL BOARD	30 days	AS 39.25.060
	7. ALASKA POWER AUTH.	30 days	AS 44.83.020

OCCUPATIONAL:

1. PUBLIC ACCOUNTING BD	1 yr	AS 08.04.020
2. BD OF CHIROPRACTIC EXAM.	2 yr	AS 08.20.020
3. BD OF DENTAL EXAMINERS	5 yr	AS 08.36.010
4. BD OF REGIS. FOR ARCHIT., ENGINEERS, AND LAND SUR- VEYORS	3 yr	AS 08.48.031
5. GUIDE LIC.&CONTROL BD.	10 yr	AS 08.54.010
6. BD OF PHARMACY	3 yr pract. in Alaska	AS 08.80.010
7. BD OF OPTOMETRY EXAM.	3 yr	AS 08.72.040
8. BD OF VET. EXAMINERS	5yr practice in Alaska	AS 08.98.010

DURATIONAL RESIDENCE REQUIREMENT (CONT.)

<u>LICENSES</u>	<u>TITLE</u>	<u>DURATION</u>	<u>AUTHORITY</u>
OCCUPATIONAL:			
1,	PUBLIC ACCOUNTANT	1yr	AS 08.04.280
2.	ATTORNEY	Residence	Bar Rule 5(1)(a)
3.	COLLECTION AGENCIES	1yr	AS 08.24.110
4.	MORTICIANS	1yr in state appren.	AS 08.42.110
5.	GUIDES.....		
	Master	Residence plus 10 hunt exp.	AS 08.54.100
	Registered	Resident	AS 08.54.110
	Class A Asst.	20 yr exp. in dist.	AS 08.54.120
	Assistant	Resident	AS 08.54.140
	Transporter	Resident	AS 08.54.142
6.	JUNK DEALER, ETC.	Resident defined but not required	AS 08.60.030
7.	REAL EST. BROKERS AND SALESMEN	Resident	AS 08.88.171
8.	INSUR. BROKERS, AGENTS & SOLICITORS	1 yr	AS 21.27.090 AS 21.06.250 AS 21.27.220

OTHER LICENSES

1.	ALCOHOLIC BEVERAGE LIC.	1 yr	AS 04.11.390
2.	RES. FISH AND GAME LIC.	12 consec. mo.	AS 16.05.940

PUBLIC RIGHTS AND BENEFITS

GENERAL:

1.	VOTING	30 days	AS 15.05.010 AK CONST.art.v sec. 1.
2.	ANNULMENT OF MARRAIGE	1 yr	AS 09.55.130
3.	LO COST HOUSING PREF.	1 yr	AS 18.55.330 AS 18.55.470(4)
4.	VOCATIONAL SUB. PROG.	1 yr	AS 39.25.155(g)
5.	INDUST. INCENT. TAX CRED.	% of one yr res.	AS 43.26.095(b)(3)
6.	BOUNTIES FOR CERT. ANIM.	1yr abode in game unit, plus cont. maintained res. in Alaska	AS 16.35.130

LAND DISPOSAL PROGRAMS

1.	BY LOTTERY	1yr	AS 38.05.057(b)(2)
2.	PRICE DISCOUNT PROG.	5% disc.per year of residence	AS 38.05.058
3.	HOMESITE ENTRY PROG.	3yr or 20yr earlier Prior. to longest res.	AS 38.08.030(a)(2) AS 38.08.040(b)
4.	REMOTE PARCEL LEASING	1 yr	AS 38.08.077(i)(2)

HOUSE STATE AFFAIRS COMMITTEE

A STUDY OF ALASKA STATUTES WHERE DURATIONAL RESIDENCY
REQUIREMENTS ARE USED

FINAL REPORT

BY

WILLIAM R. HUDSON
March 22, 1983

HOUSE STATE AFFAIRS COMMITTEE
MEMBERSHIP

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HONORABLE RONALD L. LARSON

ACKNOWLEDGEMENTS

I WISH TO EXPRESS MY APPRECIATION FOR THE COOPERATION AND SUPPORT OF THE CHAIRMANS EXCELLENT STAFF IN THE CONDUCT AND PREPARATION OF THIS STUDY.

I WISH FURTHER TO THANK FORMER ATTORNEY GENERAL AVRUM GROSS AND ATTORNEY RON ZOBEL FOR OFFERING FREELY THEIR COUNSEL ON WAYS TO FASHION LAWS IN ALASKA THAT WILL MEET THE TEST OF OUR U.S. CONSTITUTION AND MINIMIZE THE CHANCES OF COSTLY LITIGATION AND DISRUPTION OF PROGRAMS AFFECTING THE CITIZENS OF THIS STATE.

METHODOLOGY AND PRESENTATION

The performance requirements stipulated in this contract were necessarily broad in nature and general in tone. The extent of application and even more important the scope of the problems simply were not known.

The employment of a Non-Attorney to conduct this search was in the words of the Chairman, "to produce a plain language action plan that can be understood by the common man" . We were benefited in this mission by a list of all Statutory referances wherein some use of Durational Residence was employed. That list was prepared by the Dept. of Law, and served as an invaluable tool.

Chairman Abood wanted the early exploratory phase of this study open to his personal involvement. Almost Daily discussions were held for the first 10 days and priorities were established to maximize the limited time available and the sheer volume of material to review.

The question of Constitutionality that pervaded this broad study required professional counsel from attorneys with experience and knowledge in that complex arena. The Chairman felt that we should go direct to the attorneys with the most direct and recent experience in this field of expertise.. Ron Zobel and former Attorney General Avrum Gross and his assistant Susan Burke. All three Attorneys gave freely and constructively their opinions and guidance in how they felt we should approach this matter. It was very unusual, but invaluable to obtain the perspectives of three persons who only recently had argued both sides of a major case before the U.S. Supreme Court and more so since that decision centered largely around the use of Durational Residence as a requirement for disbursement of millions of dollars to the Alaska public. Surely their input would be relevant . It was!!!!

Input from the general public was seen as a necessity, and given the timeline, we chose to develop a printed set of Questionnaires and limit the mailing to select persons and groups who had a vested interest in major programs under study due to the residence question. Those questionnaires should be returning over the next few weeks and will serve the Committee as they deliberate this study.

With the aid of Attorney Susan Burke, we hope to present a full picture of what the problem is, what needs fixing, what should be left alone and hopefully will leave a guide for future Lawmakers to use in determining how to employ the use of DURATIONAL RESIDENCE as a requirement in a manner that should minimize litigation and comply with the U.S. Constitution.

INTRODUCTION

The use of durational residence as a requirement in Alaska Statutes have been found in 53 separate authorities. Durational residence exists in Statutes pertaining to HOLDING PUBLIC OFFICE, NUMEROUS LOAN PROGRAMS, SOME REGULATORY AND ADVISORY BOARDS AND COMMISSIONS, FOR SOME OCCUPATIONAL LICENSES, TO VOTE IN ALASKA, TO OBTAIN A RESIDENT FISHING AND HUNTING LICENSE, TO SELL ALCOHOLIC BEVERAGES, TO OBTAIN AND GAIN PREFERENCE FOR LOW COST HOUSING, TO PARTICIPATE IN LAND LOTTERIES, TO RECIEVE PARTIAL FORGIVENESS OF DEBT OWED THE STATE FOR LOANS ON LAND PURCHASED AND STUDENT AID GIVEN, TO OBTAIN RESIDENCE IN ONE OF THE FIVE PIONEERS' HOMES AND TO RECIEVE THE LONGEVITY BONUS AND FINALLY THE DIVIDEND FROM THE PERMANENT FUND EARNINGS.

Length of residence used throughout the Statutes vary from 30 days to 30 years. Benefits authorized by these laws represent millions of dollars and affect the lives of thousands of Alaskas' citizens. For this reason alone, it is right to give them careful scrutiny.

When the notorious ZOBEL v WILLIAMS U.S. Supreme Court decision came down last June 14, 1982, many doubts surfaced over the fate of other state Statutes that used durational residence as a prime requirement.

The House State Affairs Committee has been given the task to review all such Statutes and to recommend changes that are needed to reduce or minimize the states potential liability in these residence based matters.

Chairman Abood has contracted for the services of this consultant to assist the Committee determine what Statutes use durational residence, to develop a methodology to use as a measure of each statute against the U.S. Constitution and to recommend action required to bring the laws in conformance with the Constitution of the United States of America.

Attorney Susan Burke has been hired under separate contract to prepare a draft bill on Bona Fide Residence. The work of attorney Burke is to be coordinated with this consultant and should compliment my findings.

The report that follows will attempt to satisfy the above obligations.

EXECUTIVE SUMMARY

- A. TASK: The task of this report was to determine the extent of use in Alaska Statutes and Executive policy of DURATIONAL RESIDENCE as a requirement.
- To search all available pertinent court documents and legal briefs that centered around length of residence requirements to develop CRITERIA that could be applied to existing and future Statutes to make them Constitutional, or as nearly so as possible.
- To report the findings to the Chairman, House State Affairs Committee in a "Plain Language Format" and to recommend action deemed necessary by this study.
- B. PENDING LITIGATION: We need be aware that three directly related law suits are now in the courts and involve the State as defendants or have other indirect affect. All three cases involve DURATIONAL RESIDENCE REQUIREMENTS and are mentioned here to alert the Committee that they may wish to abstain from comment or action pending the outcome in the courts...

LITIGATION

ANDRESS v BAXTER: Alaska District Court No. A82-307civil

Judith Andress challenges the two year durational requirement in the application for Student Loans (AS 14.40.765(b) and the selection criteria for applicants that provides Priority to applicants based on the number of continuous years residency in Alaska. (AS 14.40.767(a)(2))
Status - Pending

GILMAN v MARTIN: Alaska Supreme Court No. 5937

The State has submitted a Supplemental Brief of Amicus Curiae and the outcome will be seen as a ruling on parallel land distribution plans operated by the State. The suit involves a challenge to a Kenai Borough land disposal program. It would affect the State land lottery program (AS38.05.058) the one year residence provision to qualify for the lottery (AS 38.05.057) and the discount of 5% in price for every year of residency up to 50%. (AS 38.05.058)
Status -Pends. Results expected any time now!!!

VEST v SCHAFER: Superior Court No. 1JU-82-1103 civil

This suit challenged the 25 year, pre-statehood

residence requirement in the Alaska Longevity Bonus program.

Status - Court action consummated in a settlement agreement that Stayed all actions and proceedings through and including the date of ADJOURNMENT of the first regular session of the 13th ALASKA LEGISLATURE or JUNE 30th, 1983 whichever comes first.

In this agreement the court ordered the Legislative Council to use its best efforts to secure enactment of legislation that would in effect open the program to all bona fide residents of one year during this session.

C. CONSTITUTIONAL TEST (MEASUREMENTS): The development of standards or measurement tests that could logically be applied to present and future Statutes where a DURATIONAL RESIDENCE REQUIREMENT is to be used, has been the most difficult task of this study.

The question "What is a resident" has obviously never been established before at least in Alaska. Durations of residency run from 30 days to 30 years, and I could find little relationship to the Purpose of the Statute in many cases..

As a Layman (Non-Attorney) I have sought the counsel of several attorneys, including Legislative Legal Council and have been informed repeatedly that it is impossible to set forth a definition of what constitutes a BONA FIDE RESIDENT that would satisfy the many complex applications found in the Statutes, and would bear up under test of the Constitution of the the United States of America.

One look at the U.S. Constitution, specifically the XIVth Amendment that is most used in determining acceptance or rejection of a residence requirement may tell us what the authors intended but not what a RESIDENT is. To determine th's we have to go to a library of Court documents for the interpretations handed down over the years by the High court Justices.

I concur with the Attorney General in that we must make some effort at establishing the Bona Fides of residency. To accomplish this, I have recommended and the Chairman has concurred that Juneau Attorney Susan Burke be hired to prepare a Draft Bill on Bona Fides of Residence and present same to the Legislature for their consideration.

Because of the complexity of developing any uniform standards, I have penned by findings and reasoning in separate form, attached as Appendix B.

D. RECOMMENDED ACTIONS: Mr. Chairman, I am recommending you consider the following actions: All references are related to the master list included in this report.

That list was prepared by someone (its unsigned) in the office of the Attorney General and has been used extensively throughout this study. The comments of that Office will be useful and for this reason, I have included the original list provided as an Attachment.

DURATIONAL RESIDENCE REQUIREMENTS

ACTIONS...

1. PUBLIC OFFICERS (A)

FINDINGS: That substantial reason exists to justify the use of longer terms of residence in determining qualifications to hold major Public Office.

RECOMMENDATIONS: Take no action. the Statutes and Constitutional references are likely in compliance with the U.S. Constitution..

2. BOARDS AND COMMISSIONS (B)

FINDINGS: That the durations currently used are inconsistent with the Purpose stated in several of these Statutes, and serve no valid public interest. Further that any duration beyond one year could be challenged and may be found invalid.

RECOMMENDATIONS: That you consider repealing the existing durational residence requirements in all of these laws and substitute the Bona Fide residence required to be prepared by Attorney Susan Burke.

That the Statutes be amended to require Bona Fide residence and a reasonable number of years experience in the two laws relating to the Board of Registration for Architects, Engineers and Land Surveyors and the Guides Licensing and Control Board. Some exceptional experience appears useful and defensible.

3. OCCUPATIONAL LICENSES (C)

FINDINGS: That the courts have already struck down the use of any duration of residence as a requirement (NOLL v BAR ASSOCIATION) for the attorneys license; and only simple residence is permitted. A thorough review of the records indicate little tolerance by the courts for the use of any length of residence that might bar the employment of ones occupational skill between the several states..

RECOMMENDATIONS: That Statutory authority listed in 1 thru 8 be amended to repeal the present residence requirements and substitute " Simple Residence".

Susan Burke should be able to define " Simple Residence" to use in this case and others I will recommend.

For OTHER LICENSES listed under this category, such as the ALCOHOLIC BEVERAGE LICENSE AND THE RESIDENT FISH AND GAME LICENSE I recommend you repeal the present durational residence requirements and substitute as follows: For the Alcohol License-- replace with simple residence. There appears to be no reason for duration in the state except to serve as a Bar to the license. For the Resident Fish and Game license, I recommend you substitute Bona Fide Residence.

4. PUBLIC RIGHTS AND BENEFITS (D)

FINDINGS: That the 30 day requirement to vote in Alaska is probably constitutional and should stand.

That the one year requirement for the other 5 programs appear excessive, especially the LOW COST HOUSING PREFERANCE which the courts would likely construe as a "BASIC NECESSITY OF LIFE" wherein no durational residence has been permitted in the courts.

RECOMMENDATIONS: That no change is necessary for AS 15.05.010. Unless you want to substitute simple residence, and require 30 days to handle the registration process.

That the other laws be modified to simple residence.

That the Legislature consider repealing AS 43.26.095(b)(3) and AS 16.35.130 (INDUSTRIAL INCENTIVE TAX CREDIT AND BOUNTIES FOR CERTAIN ANIMALS) neither of these programs have been active for years.

5. LAND DISPOSAL PROGRAMS (E)

FINDINGS: The State is currently before the courts alongside the Kenai Peninsula Boro on this matter and probably should make no changes pending settlement.

RECOMMENDATIONS: That your committee take no action until the court decision is in hand.

6. SPECIAL OLD AGE PROGRAMS (F)

FINDINGS: The greatest problem with durational residence before the Legislature rests with the twin Pioneers' programs: the ALASKA LONGEVITY BONUS PROGRAM AND THE PIONEERS' HOME PROGRAM.

The settlement reached last August 25, 1982 is

a mandate for the Legislature to take corrective action or the Courts will. Clearly with regards to the ALB the 25 year durational residence with the requirement that it commence before Statehood is lost. A one year duration of residence appears to be an acceptable replacement.

With regards to the PIONEERS' HOME PROGRAM, I concur with the opinion rendered by former Attorney General Wilson Condon that the program is probably defensible with its unique 15 year residency requirement. It is not established as a welfare home and it does not deny anyone needing such care from receiving it thru other programs offered by the state.

Fifteen years is reasonable to use as a measure of attachment to the state by citizens who must be 65 years old and the average age of which is 82 years old. The Homes are just that Homes for elderly Alaskans who would likely be forced to leave their state were it not for the Pioneers' Home. Certainly a measure of attachment and Allegiance for these category folks would not be met with a simple one or two year requirement. The last 15 years before one has to face this go or no go decision is a bona fide measure.

I have found that the SPECIAL ASSESSMENT AND FISHING LICENSE EXEMPTIONS ARE probably not well founded and would not stand up under a test.

RECOMMENDATIONS: That you call for the repeal of the 25 year ,Pre-Statehood eligibility requirements and substitute the Bona Fide residence requirement in Susan Burkes Bill draft. That the Legislature consider carefully the future of this important program. I believe there may be other FUNDING SCENARIOS beyond those 10 listed in Jon Tillinghasts report to the Senate Judiciary Committee. I have ideas that may aid in finding a good long term solution. Though it falls outside the terms of my contract, I would be pleased to work with whatever body is designated to handle this problem and opportunity.

I recommend no immediate changes to the PIONEERS' HOME program. Rather we need to develop a fall back plan in case it suffers from some action by the courts similiar to the ALB.

That the ASSESSMENT AND FISHING LICENSE exemptions be determined by Bona Fide Residence requirements being developed by Susan Clark.

7. LOAN AND GRANT PROGRAMS (G)

FINDINGS: That there is a great deal of inconsistency in the established requirements for residency in these 41 programs. That many programs require no residency, that one even states that it is open to Nonresidents and that I was not able to find documentation to affirm the justification for many of these varying durations of residence.

That the STUDENT LOAN PROGRAM is pending in ANDRESS v BAXTER and should be left alone until the courts are done with the case. However I will present a separate paper on these issues as relate to the forgiveness clause and application of the low interest provisions. This will be outside of this report.

That THE FISHING LOAN PROGRAMS now probably require excessive, non-defensible durations of residence, but that the one year Bona Fide residence requirement may not provide adequate measure of these MIGRATORY applicants. I tend to agree with the Director of Legislative Legal Council, that a more rational duration would be two years.

That programs listed in No. 4,5,6,7,8 and 10 will likely be best served to use the Bona Fide Residence Requirement. That residence requirements for REFUND OF POLITICAL CONTRIBUTION AND CHILD CARE EXPENSES most likely fall in SIMPLE RESIDENCE requirement, since they fall under the category of POLITICAL RIGHTS AND BASIC NECESSITIES OF LIFE, and the courts do not support durational residency in these matters..

- RECOMMENDATIONS:
1. That no action be taken on the Student Loan programs until the courts conclude.
 2. That you consider repealing the present 5 year residence requirements in the Fisheries Loan programs and substitute a 2 year residence requirement.
 3. That you consider applying a Bona Fide requirement for all other loan programs as a normal course of action, except where the program relates to "Basic Necessities" or "Political Rights".

CLOSING STATEMENT

In closing Mr. Chairman, permit me to say that I am prepared to work with Ms Burke, your staff or any other body you wish me to in preparing the Legislation you wish to present. I am available for hearings or other meetings you desire me to attend.

I have gathered volumes of court record, statistical information and other correspondence which I will tender to you with this report.. I have enjoyed working with you and believe you will do future Legislators a favor by guiding them in these matters, by way of this report.

Respectfully Submitted

William R. Hudson