

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984

2922 HSA RES IDENCY #2

Q. Is the durational residency requirement designed to deter persons such as my client from coming to Alaska?

A. No.

Q. But it will deny her a loan.

A. Yes.

Q. And for what reason? What -- what purpose does the classification, the requirement serve in that instance?

A. If you're asking, is your client a victim of a two year residency requirement, when for all purposes she might otherwise be eligible, the answer would be yes, she is a victim of that residency requirement. When you impose any kind of a requirement -- I'm not a legislature -- legislator -- when you impose any kind of a requirement on a class of people you're going to treat all those people within the class as if they're the same, and I think quite often the outcome can be unfortunate. In her case it may be unfortunate. But if the legislature says we have to pick -- somehow -- again, let's go back to the beginning. We have a very mobile class of people, students, very mobile. Look at the age of them. Look at the income.

it's a mobile group of people. We know they shop. We know they shop in the Northwest, I know they do. I can give you testimony from other states that students shop. They shop loan programs; they shop WICHI support; they shop tuitions; they'll move around. But we're saying, in this state what the legislature's been saying for years is, "We are willing to support our students. We want to support them to pursue their educational goals and we want to have an educated populace." The State of Washington, the State Oregon, Idaho, don't support their students at the level we do. They don't. They don't have the same kind of program, and they seem to be unwilling to, or maybe unable to, but the point is, they don't. So the Alaska Legislature says, "We want to do this for our people."

Now we have to make sure, though, that they are, indeed, our people. We don't want to create a loan program and given -- and by all means, when you're talking five percent you're talking about a

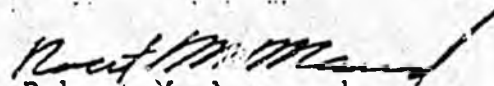
subsidized program. We don't want to have a five percent program for Washington students, residents of Oregon, we want it for Alaskans. And we think two years is reasonable. That's what the legislature has said through statute to us.

Romesburg Deposition at 43-45.

The legislature was correct. The two year requirement is reasonable test for determining the bona fides of residency for applicants for the Alaska Student Loan Program. It should be upheld.

DATED this 15th day of September, 1982.

WILSON L. CONDON
ATTORNEY GENERAL

By: 
Robert M. Maynard
Assistant Attorney General

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JUDITH ANDRESS,)	
)	
)	Plaintiff,
)	
vs.)	No. A82-307 Civil
)	
FRED J. BAXTER, MILDRED BANFIELD,)	
THELMA BUCHHOLDT, LEE DEMMERT,)	
THELMA LANGDON, MARY ELIZABETH)	
LOMEN, JOHN MALONE, JOHN)	
SHIVELY, TERRY STIMSON, DONNIS)	
THOMPSON, BLANCHE WALTERS, WALTER)	
WARD, KERRY ROMESBURG AND THE)	
ALASKA COMMISSION ON POSTSECONDARY)	
EDUCATION,)	
)	
)	Defendants.

OPPOSITION TO DEFENDANTS
MOTION FOR SUMMARY JUDGMENT

The plaintiff has covered most of the issues raised by the defendants in their motion for summary judgment in plaintiff's memorandum in support of plaintiff's motion for summary judgment and therefore will not repeat those arguments.

The defendants have attached to their memorandum in support of defendants' motion for summary judgment an affidavit of Kerry Romesburg which only reinforces the arguments made by plaintiff in support of her motion for summary judgment. On pages five through eight of that affidavit, the defendant Romesburg states that Alaska has the most generous student loan program and that in view of reduced student loan opportunities in

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1 attractive may migrate to Alaska and take up residency in the
2 state because of the student loan program. Romesburg goes on in
3 his affidavit on pages eight through eleven to describe the
4 effect of reducing the durational residency requirement imposed
5 for this program. Defendants are presenting the argument that
6 the generosity of the program justifies an overly restrictive,
7 durational residency requirement to inhibit migration to this
8 state that may be caused by the attractiveness of the program.
9 Such an argument is not a defense of the statute but a reason for
10 the statute to be struck down. The State of Alaska is not
11 permitted to set up generous programs and then create legal walls
12 between this state and the rest of the United States that are
13 allegedly necessary to stop migration caused by the
14 attractiveness of those programs. Solving the "problems" caused
15 by free movement cannot justify a classification based on recent
16 travel. As the Supreme Court said in Edwards v. California:

17 [T]he State asserts that the huge influx of
18 migrants into California in recent years has
19 resulted in problems of health, morals, and
20 especially finance, the proportions which are
21 staggering. . . . But this does not mean that there
22 are no boundaries to the permissible area of state
23 legislative activities. There are. And none is
24 more certain than the prohibition against attempts
25 on the part of any single state to isolate itself
26 from difficulties common to all of them by
27 restraining the transportation of persons and
28 property across its borders. It is frequently the
29 case that a state may gain a momentary respite from
30 the pressure of events by the simple expedient of
shutting its gates to the outside world but in the

1 framed under the dominion of a political philosophy
2 less parochial in range. It was framed on the
3 theory that the peoples of the several States must
4 sink or swim together, and that in the long run
5 prosperity and salvation are in union and not
6 division."

7 314 U.S. 173-74. The argument put forth by the defendants is
8 proof that the statute promotes an illegitimate purpose.

9 Defendant Romesburg's affidavit on pages eight through
10 eleven demonstrates that the durational residency requirement has
11 an actual deterrent effect on migration. Once an actual
12 deterrent effect is admitted by the defendants, it is not
13 necessary to decide whether the denial of the benefit involved is
14 a "penalty" on interstate migration. Penalty analysis focuses on
15 the denial of the benefit to create a presumption or the lack of
16 a presumption that interstate migration is effected. None of the
17 cases that dealt with the problems of durational residency
18 requirements in terms of "penalty" analysis were presented with
19 actual proof of deterrence of interstate migration. The low
20 level scrutiny advocated by the defendants is not justified when
21 there is an admitted impact upon interstate migration.
22 Defendants are admitting that this statute burdens migration and
23 therefore greater scrutiny is demanded.

24 On page three of defendants' memorandum it is stated
25 that, "Given the tremendous disparity between other states and
26 Alaska, it is not irrational to require two years as a test for
27 the bona fides of a student's residence." The defendants do not
28 explain what the disparity between programs in this state and
29 other states has to do with proof of whether a person is in fact
30 a resident of this state. Factors which determine whether a
31 person is a bona fide resident of this state do not change

1 programs offered in higher education. Those factors are
2 constant, and a greater or lesser disparity between states of the
3 Union and programs offered would not change those factors.
4 Comparisons between Alaska's programs and the programs available
5 in other state are not relevant in determining whether the
6 classification burdens the right of interstate migration. Strongy
7 v. Collatos, 593 F.2d 420, 422 (1st Cir. 1979); Barnes v. Board
8 of Trustees, 369 F.Supp. 1327, 1337 (W.D. Mich. 1973) (three-
9 judge court).

10 The defendants' citation to Vlandis v. Kline, 441 U.S.
11 at 453-454 for the proposition that a state can establish such
12 "reasonable criteria for in-state status" so as to make
13 "virtually certain" that non-residents do not receive the
14 benefits of the student loan program should not lead the court to
15 the conclusion that a two year durational residency requirement
16 is therefore permissible. The example of a reasonable residency
17 requirement which is given immediately after this statement is
18 one which focuses legitimately upon the factors that determine
19 domicile and not upon a durational period. 444 U.S. at 454. The
20 emphasis given by the defendants to the "virtually certain"
21 language ignores the gross underinclusiveness of a definition of
22 residency which makes large numbers of bona fide residents into
23 non-residents. It could be argued that a 10 year or even a 20
24 year durational residency requirement would make it "virtually
25 certain" that no aid was given to a non-resident. Such a
26 definition of residency would, however, be struck down because of
27 its underinclusiveness and the unreasonable length of the waiting
28 period. A two year period of time is not a short period of time
29 and is unreasonable in its relationship to the fact of bona fide
30 residence.
31

1 The first, and most obvious alternative to the defendants'
2 insistence upon a two year durational residency requirement is a
3 one year durational residency requirement. A one year
4 requirement would identify true "transients" as well as a two
5 year period but would not have the effect of defining many bona
6 fide residents, including the plaintiff, as non-residents. The
7 state could also use the two year period as a rebuttable
8 presumption that would put the burden upon the applicant, but
9 would yet give that applicant the opportunity to show factors
10 clearly bearing upon the issue of domicile. The Supreme Court
11 has recently noted in Elkins v. Moreno, 435 U.S. 647, (1978),
12 that Vlandis applies to "those situations in which a State
13 'purport[s] to be concerned with [domicile, but] at the same time
14 den[ies] to one seeking to meet its test of [domicile] the
15 opportunity to show factors clearly bearing on that issue." 435
16 U.S. at 660, quoting Weinberger v. Salfi, 422 U.S. at 771. The
17 State of Alaska in this case purports to be concerned with
18 domicile and the plaintiff should be able to prove her domicile
19 by showing that she is a bona fide resident despite the
20 durational period.

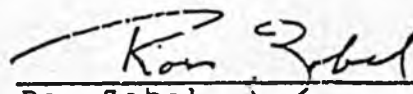
21 The defendants have completely ignored plaintiff's
22 other arguments because it is only to their advantage to ignore
23 the substantive limits for the way in which durational residency
24 requirements can be used. Those substantive limits are provided
25 by the Citizenship Clause^{1/} and the Privileges and Immunities
26

27
28 1/ Cf: Toll v. Moreno, 102 S.Ct. 2977 (1982) (State
29 University could not deny in-state status to non-immigrant aliens
30 because of supremacy clause) It is more than interesting that
31 aliens must be granted in-state tuition because of the protection
given them by the federal immigration laws. A U.S. citizen
cannot be said to have a lesser right to "enter and abide" in a
state of the Union unless it is going to be argued that the
federal immigration laws provide more protection to an alien than
the Citizenship Clause provides to a citizen of the United

1 Clause of both the Fourteenth Amendment and Article IV. The
2 statement by the defendants that nine Justices of the Supreme
3 Court have rejected Justice O'Connor's analysis of Privileges and
4 Immunities found in her concurrence in Zobel v. Williams is
5 incorrect. Only Justice Rehnquist rejects Justice O'Connor's
6 arguments. The appellants in Zobel v. Williams had made no
7 Privileges and Immunities Article IV claim, it was not briefed,
8 and it was not argued. It is therefore quite understandable that
9 seven of the eight Justices who voted to strike down the Alaska
10 Permanent Fund Dividend law did not find it necessary to base
11 their decision on the Privileges and Immunities Article IV
12 claim. That does not mean that it is invalid or that it has been
13 rejected by the Court.

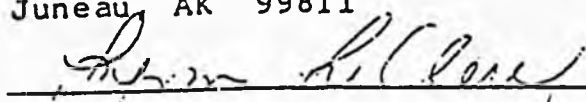
14 The defendants defense of the two year durational
15 residency requirement is insubstantial and should be rejected.
16 The plaintiff's motion for summary judgment should be granted.

17 Dated this 16th day of September, 1982, at Anchorage,
18 Alaska.

19
20
21 
22 Ron Zobel
Attorney for Plaintiff

23 I HEREBY CERTIFY that a copy of
24 the foregoing was mailed to the
25 following on 16th September, 1982:

26 Wilson Condon, Attorney General
27 c/o Robert Maynard, Assistant Attorney General
Pouch K
Juneau AK 99811

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RECEIVED
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Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JUDITH ANDRESS,

Plaintiff,

vs.

FRED J. BAXTER, MILDRED BANFIELD,
THELMA BUCHHOLDT, LEE DEMMERT,
THELMA LANGDON, MARY ELIZABETH
LOMEN, JOHN MALONE, JOHN SHIVELY,
TERRY STIMSON, DONNIS THOMPSON,
BLANCHE WALTERS, WALTER WARD,
KERRY ROMESBURG AND THE ALASKA
COMMISSION ON POSTSECONDARY
EDUCATION,

Defendants.

No. A82-307 Civil

AFFIDAVIT OF KERRY ROMESBURG

Kerry Dean Romesburg, being duly sworn, states as follows:

I. Qualifications

I am executive director of the Alaska Commission on Postsecondary Education, Pouch FP, 400 Willoughby Avenue, Juneau, Alaska 99811. As executive director I serve as the chief administrative official for the Alaska commission charged with: administration of the state Division of Student Financial Aid, coordination and planning of the State's postsecondary educational resources including facility and program expansion, review and recommendation of the annual budget requests of public higher education in all institutions, authorization and licensure of institutions to operate in the state, administration of the state's participation in the Western Interstate Commission for Higher Education, administration of the state's veteran's educational program approval, administration of a number of federally-funded programs, and general advisement and counsel to the executive branch and legislature on higher educational matters. The commission has a staff of 59 and an operating budget of 55.3 million dollars (including student loan funds). I received my B.A. from Arizona State University in June of 1967 in Mathematics and Education, I received my M.A. from Arizona State University in June 1968 in Mathematics and Education, and my Ph.D. in Education from Arizona State University in June of 1972. Prior

to being executive director of the Alaska Commission, I was executive director of the Arizona Commission on Postsecondary Education in 1974 to 1975. I am a member of the American Association for Higher Education, the American Association of Professors of Higher Education, the Association for Institutional Research, the National Education Association Higher Education, and the State Higher Education Executive Officers.

I am presently chairman of the Western Interstate Commission on Higher Education, and am a member of the National Advisory Council for United Student Aids Funds. Through my job and my professional associations, I am intimately familiar with both the Alaska Student Loan Program and student loan programs nationwide.

II. Introduction

The Alaska Student Loan Program was established by the Alaska State Legislature in 1971. Prior to that, a loan program did exist, but it was substantially different from the current program, which is based upon the 1971 program. Since 1971, the State of Alaska has awarded nearly 35,000 loans totaling over \$94 million to Alaska borrowers. During the 1981-82 school and loan year 9,898 loans were made, totaling over \$40 million. Of these loans, 45.0 percent were for attendance in Alaska and 55.0 percent were for out-of-state.

III. Terms of Loans

Alaskans can borrow up to \$6,000 per year for undergraduate or vocational study and up to \$7,000 per year for graduate study at any approved postsecondary education institution (including foreign institutions). The loans carry a 5% interest rate, and the borrower has ten years to repay the debt. While a borrower is in school, during the first year after ceasing full-time study (grace year), and during approved deferment periods, the borrower makes no payments and interest is paid by the state on behalf of the borrower. These periods of deferment do not count toward the ten-year repayment cycle. Additionally, if a person encounters difficulty making the regular monthly installments, the repayment period may be extended for up to five more years, for a total of fifteen.

In order to qualify for a loan, an applicant must have been a resident of Alaska (which requires physical presence) for at least two years, and must attend an approved institution.

Although AS 14.40.765(b) sets forth a point system based in part on length of residence, that system has never been used because enough money has been available in the past to fund all students. That point system will not be used either this year or in the future, even if there are insufficient monies to fund all students. Instead, in part on advice from the Department of Law, the Commission will award loans, if necessary, on a first-come first-served basis.

IV. Other States' Programs

During July 1982 each state was surveyed as to the type of student loan program available in that state. It was found that all states participated in the Federal Guaranteed Student Loan Program (GSL), and only the states of Alaska, Alabama, Georgia, Kansas, and Oregon had other student loans available at the state level. Nearly all individual institutions have short-term emergency loans available for students in attendance.

Of those states having programs in addition to the GSL, only Alaska's is non-restrictive by student need and field of study. Alabama provides loans for medical and dental study at a 7% interest rate and has no residency restriction. Georgia provides 9% loans for up to \$1,500 per year for study in "critical fields" of study. Residency is one year. Kansas provides "loans of last resort" to students. If a student can not qualify for a GSL, loans of up to \$1,500 for a first-time freshman, \$2,500 for other undergraduates, and \$5,000 for graduate students are made available at 9% interest. No residency restriction exists. Oregon provides for loans for medical and dental study at 9% interest. The loans are for up to \$2,500 per year and residency required is one year.

Comparing the GSL programs in each of the states becomes difficult, since individual lenders (usually banks) can set individual restrictions on loans. For instance, some lenders require that a borrower be a regular bank customer, others

require a specific grade point average, and some require varying lengths of residency. Since these are private lenders, with only a state and federal guarantee, the terms can be quite restrictive or quite generous depending upon the attitude of the lender.

... A comparison of the Alaska program and the general terms of the GSL is provided below. It can be seen that in all ways other than residency and part-time attendance, the Alaska program is more generous to the borrower than the GSL program.

<u>Terms/Conditions</u>	<u>GSL</u>	<u>Alaska Student Loan</u>
1. Amount of Loan, per year		
Undergraduate	\$2,500	\$6,000
Graduate	\$5,000	\$7,000
2. Total indebtedness		
Undergraduate	\$12,500	\$30,000
Graduate	\$25,000	\$35,000
	including undergraduate loans	but, for a combined total of no more than 8 years of loans undergraduate and graduate
3. Needs test required	Yes	No
4. Income cap	\$30,000	None
(a) Effect	loss of interest-waiver while in school	N.A.
5. Interest rate	9%	5%
6. Institutional restrictions	Accredited	Accredited or approved by Commission

7.	Residency required	Varies, usually 1 year	2 years
8.	Partial Cancellation	None	Up to 50%
9.	Loans to part-time students	Yes, Half-time students, or more	No, must be full- time
10.	Scholastic restrictions	Varies, usually "C" average - undergraduate "B" graduate	"C" average - undergraduate "B" average - graduate

V. Other Factors Affecting Loans

The federal program is becoming more restrictive under the current administration. Proposals are to lower the income cap to \$16,000, to charge interest while in school and in deferment, to raise interest to commercial rates, and to eliminate loans to graduate students. This trend toward a more restrictive federal program is creating a new clientele for Alaska loans. Increasingly, prospective students from other states are moving to Alaska to establish residency and borrow under the Alaska Student Loan Program. For many, this is the only way of obtaining access to desired postsecondary education and training.

Additionally, other federal programs such as Basic (Pell) Grants, Supplement Grants (SEOG), Incentive Grants (SSIG or SEIG), and College Work Study have all been targeted for reduction or elimination. This means students must increasingly turn to loans as the only form of financial aid available. When

this is coupled with the federal loan restrictions and fund reductions, Alaska's loan program becomes even more attractive.

-VI. Alaska Student Loan Volumes

The Alaska Student Loan Program has experienced dramatic growth the past few years, and this growth is expected to continue. Table 1 below reflects that growth.

TABLE 1
ALASKA STUDENT LOAN ACTIVITY
1979-80 through 1988-89*

Year	Awards	Amount
1979-80	3,918	\$ 9,373,949
1980-81	6,460	\$ 15,957,717
1981-82	9,898	\$ 40,559,499
1982-83	15,000	\$ 59,000,000
1983-84	17,500	\$ 80,500,000
1984-85	19,000	\$ 97,500,000
1985-86	21,000	\$121,800,000
1986-87	23,100	\$136,290,000
1987-88	25,600	\$151,040,000
1988-89	28,500	\$168,150,000

* 1982-83 through 1988-89 are projected.

These totals are based upon projections including current and projected Alaska population, secondary school attendance rates, and in-migration.

VII. Effect of Changing Residency

Should the two-year residency be reduced, the number of

eligible applicants would increase. Certainly, the more the reduction the larger the pool. There are two factors at work: one, those persons already living in Alaska, but having been here for less than two years would be added to the potential borrowing pool; and two, as the residency is reduced, the desirability of moving temporarily into the state for the sole purpose of obtaining a student loan is increased.

Estimates of the increased applicants are listed in Table 2. These estimates are based upon an increased immigration during the 1983-84 year and a leveling from then on.

The effects are quite far-reaching, but the inescapable conclusion is that the program will not be fully funded. Even in the first year of such a residency change, the program will be from six to nine million dollars underfunded. This translates to from 1,500 to 2,200 people who do not receive loans. In future years the number of persons turned away could reach 6,000, 7,000, or more.

If a needs test is employed, the true Alaskan resident will be at a decided disadvantage because of the inflated salaries of the state. This is the problem already encountered with federal programs. Alaskans can not qualify for many programs because of family income, even though the cost-of-living in Alaska is so much higher than other areas of the nation. If an Alaskan resident who has lived and worked in the state for a

number of years, or whose parents have lived or worked in the state for a number of years, is compared on a needs test with an Oregon or Washington resident who has come to the state for only six months or a year, possibly not even worked, the Alaskan must lose. The short-term "resident" would have a distinct advantage with a needs test.

If first-come first-served is used as a criterion, the individual moving to Alaska for the sole purpose of obtaining a loan would probably be wise enough to meet all application dates. Hence, first-come first-served would only result in everyone filing early except that person whose career is suddenly ended and new skills are unexpectedly needed. Again, this would most likely be the long-term resident and the individual that may need assistance most.

In general, opening the loan program to the short-term resident will result in a large number of persons coming to Alaska for the sole purpose of obtaining loans to finance their education. Those persons for whom this program was designed and has operated and served over the last eleven years will be squeezed out by residents of other states, states unwilling to commit resources to education of their citizens in the manner of Alaska.

TABLE 2
 PROJECTED ALASKA STUDENT LOAN RESIDENCY EFFECTS
 1982-83 through 1988-89

Two-Year Residency

Loan Year	Awards	Amount
1982-83	15,000	\$ 59,000,000
1983-84	17,500	\$ 80,500,000
1984-85	19,000	\$ 97,850,000
1985-86	21,000	\$121,850,000
1986-87	23,100	\$136,290,000
1987-88	25,600	\$151,040,000
1988-89	28,500	\$168,150,000

One-Year Residency

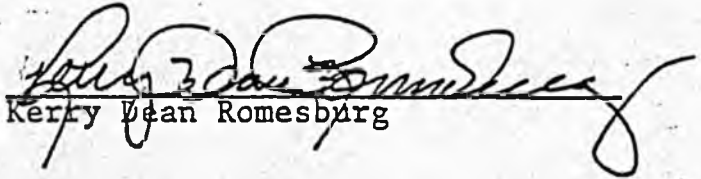
Loan Year	Additional* Awards	Additional* Amount	Total Program
1982-83	1,560	\$ 6,396,000	\$ 65,396,000
1983-84	2,783	\$12,801,800	\$ 93,301,800
1984-85	2,926	\$15,068,900	\$112,918,900
1985-86	3,759	\$21,802,200	\$143,602,200
1986-87	4,712	\$27,800,800	\$164,090,800
1987-88	5,862	\$34,585,800	\$185,625,800
1988-89	7,239	\$42,710,100	\$210,860,100

Six-Month Residency

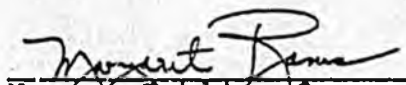
Loan Year	Additional* Awards	Additional* Amount	Total Program
1982-83	2,496	\$10,233,600	\$ 69,233,600
1983-84	4,453	\$20,482,880	\$100,982,880
1984-85	4,828	\$24,864,200	\$122,714,200
1985-86	6,202	\$35,971,600	\$157,771,600
1986-87	7,539	\$44,480,100	\$180,770,100
1987-88	9,379	\$55,336,100	\$206,376,100
1988-89	11,582	\$68,333,800	\$236,483,800

* Additional over two-year residency.

DATED at Tuneau, Alaska, this 1st day of
September, 1982.


Kerry Dean Romesburg

SUBSCRIBED AND SWORN to before me this 1st day of
September, 1982.


Notary Public, State of Alaska
My commission expires: 7/21/88

FINAL REPORT
TO THE
HOUSE COMMITTEE ON STATE AFFAIRS:

ALASKA STATUTES CONTAINING
DURATIONAL RESIDENCE REQUIREMENTS

By

William R. Hudson

March 28, 1983

HOUSE COMMITTEE ON STATE AFFAIRS

Honorable Mitch Abood, Chairman

Honorable Mike Miller

Honorable Anthony Vaska

Honorable John Cowdery

Honorable Walt Furnace

Honorable Ronald L. Larson

Honorable Dick Schultz

ACKNOWLEDGEMENTS

I wish to express my appreciation for the cooperation and support of the chairman's 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 the U.S. Constitution and minimize the chances of costly litigation and disruption of programs affecting the citizens of the State of Alaska.

I would also like to express my gratitude to the Legislative Information Offices for participating in this program, and to their teleconference personnel for tallying the questionnaire returns at the first residency teleconference on March 2¹, 1983.

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1. Attorney Burke's Report and Omnibus Bill
2. Department of Law's List with Commentary
3. U.S. Supreme Court Report on Zobel III
4. Will Condon on Pioneers' Home Issue
5. Andress v. Baxter
6. Vest v. Schaefer
7. Tillinghast Report
8. Gilman v. Martin
9. Ron Zobel letter

INTRODUCTION

The U.S. Supreme Court's Zobel decision and the subsequent court challenges to the Alaska Longevity Bonus Program placed a serious burden on the legislature to find solutions to all programs where residence requirements are or may be constitutionally unacceptable.

By far the most significant of these programs is the unique Alaska Longevity Bonus Program, followed by the Pioneers' Home Program. Changes to these programs could have, literally, life and death impacts on many of the almost 10,000 older Alaskans involved in them.

Solutions to these problems must be more than constitutional; they must consider the additional cost factors to the state, the potential of increased migration to Alaska, and the often overlooked question of program administration and manageability.

I have assembled and reviewed all of the existing written materials and statutes concerning programs which contain residence requirements. Included in this research was a study of past, pending, and current litigation. At the direction of the Chairman of the House State Affairs Committee, I consulted with former Attorney General Avrum Gross and his partner Susan Burke, as well as with Attorney Ron Zobel. These attorneys gave freely of their time and expertise and their input was an important tool in obtaining the needed perspective to recommend guidelines for Committee action. They spoke constructively on their feelings of how we should approach and resolve this complex issue. To my knowledge, this was the first time that these attorneys, who only recently argued opposing sides before the U.S. Supreme Court regarding the original Permanent Fund dividend distribution plan, were asked on behalf of our state to assist in correcting the problems brought about by that Supreme Court decision.

Input from the general public was seen as a necessity. Due to the time constraints under which we were working, we thought it best to prepare a set of questionnaires and distribute them to groups and individuals having a vested interest in the major programs affected by the residence question. Accordingly, questionnaires on the state's special old age programs, student loan program, land disposal program, and fisherman's loan programs were mailed on March 15, 1983 to 180 groups and individuals in Alaska. In addition to our targeted mailing,

we also made these questionnaires available to the Legislative Information Offices across the state. They tallied returns from persons who filled out questionnaires while attending the first residency teleconference on March 21, 1983.

I will compile the results of these questionnaires and present them to the Committee at a later date. A copy of each questionnaire is included in this report (Appendix III). The distribution list is on file in the Chairman's office.

In addition to my position as consultant to the Committee, Attorney Susan Burke has recently been retained under separate contract to prepare draft legislation which will define bona fide residence. I feel that it is my responsibility, after the completion of Attorney Burke's draft, to report on the potential administrative problems and cost-effectiveness of implementing a bona fide residence statute as it applies to the specific programs which will be impacted by a change in the number of years of residence currently required. This report will also be submitted to the Committee.

DURATIONAL RESIDENCE REQUIREMENTS

"Durational" residence occurs as a requirement in over 53 Alaska statutes and authorities. This requirement affects, among others, holding a public office; participation in numerous loan programs; membership on some regulatory and advisory boards and commissions; obtaining some occupational licenses; the right to vote in Alaska; obtaining a resident hunting and fishing license; selling alcoholic beverages; obtaining and gaining preference for low-cost housing; participation in land lotteries; receipt of partial forgiveness of debt owed the state for loans on land purchased and student aid given; obtaining residence in one of the five Pioneers' Homes and receiving the Longevity Bonus; and, finally, receiving a dividend from the earnings of the Permanent Fund.

The length of residence required in these statutes varies from 30 days to 30 years. Benefits that citizens of Alaska are authorized to receive by these laws represent millions of dollars and affect the lives of thousands of people.

The complete list of durational residence requirements set by state law as of March 1983 is provided in the following pages.

Durational Residence Requirements in Alaska State Law

<u>TITLE</u>	<u>DURATION</u>	<u>AUTHORITY</u>
<u>PUBLIC OFFICE</u>		
GOVERNOR	7 years	AK Constitution, Art. III, § 2
LIEUTENANT GOVERNOR	7 years	AK Constitution, Art. III, §§ 2, 7
LEGISLATOR	3 years	AK Constitution, Art. II, § 2
SUPREME COURT JUSTICE	5 years	AS 22.05.070
COURT OF APPEALS JUDGE	5 years	AS 22.07.040
SUPERIOR COURT JUDGE	5 years	AS 22.10.090
DISTRICT COURT JUDGE	5 years	AS 22.15.160(a)
MAGISTRATE	6 months	AS 22.15.160(b)
OMBUDSMAN	3 years	AS 24.55.030
BOROUGH MAYOR	to 3 years	AS 29.23.130(h)
BOROUGH ASSEMBLYMAN	to 3 years	AS 29.23.050
CITY MAYOR	to 3 years	AS 29.23.250(a)
CITY COUNCIL	to 3 years	AS 29.23.200(b)
MUNICIPAL CHARTER COMMISSION	3 years	AS 29.13.010
BOARD OF EDUCATION MEMBER	3 years	AS 14.07.075
<u>BOARDS AND COMMISSIONS</u>		
GENERAL:		
RURAL AFFAIRS COMMISSION	5 years	AS 44.19.102
FISHERIES BOARD	1 year	AS 16.05.221
GAME BOARD	1 year	AS 16.05.940
COMMISSION ON JUDICIAL QUALIFICATIONS	10 years practice in Alaska	AK Constitution, Art. IV, § 10
MUNICIPAL BOND BANK BOARD	30 days	AS 44.85.030
PERSONNEL BOARD	30 days	AS 39.25.060
ALASKA POWER AUTHORITY	30 days	AS 44.83.020

Durational Residence Requirements in Alaska State Law (Continued)

<u>TITLE</u>	<u>DURATION</u>	<u>AUTHORITY</u>
OCCUPATIONAL:		
PUBLIC ACCOUNTANCY BOARD	1 year	AS 08.04.020
CHIROPRACTIC EXAMINERS BOARD	2 years	AS 08.20.020
DENTAL EXAMINERS BOARD	5 years	AS 08.36.010
ARCHITECTS, ENGINEERS, AND LAND SURVEYORS REGISTRATION BOARD	3 years	AS 08.48.031
GUIDE LICENSING AND CONTROL BOARD	10 years	AS 08.54.010
PHARMACY BOARD	3 years practice in Alaska	AS 08.80.010
OPTOMETRY EXAMINERS BOARD	3 years	AS 08.72.040
VETERINARY EXAMINERS BOARD	5 years practice in Alaska	AS 08.98.010
<u>LICENSES</u>		
OCCUPATIONAL LICENSES:		
PUBLIC ACCOUNTANT	1 year	AS 08.04.280
ATTORNEY	Residence	Bar Rule 5(1)(a)
COLLECTION AGENCY	1 year	AS 08.24.110
MORTICIAN	1 year in-state apprenticeship	AS 08.42.110
GUIDES		
MASTER GUIDE	Residence plus 10 years hunting experience	AS 08.54.100
REGISTERED GUIDE	Resident	AS 08.54.110
CLASS A ASSISTANT	20 yr experience in district	AS 08.54.120
ASSISTANT	Resident	AS 08.54.140
TRANSPORTER	Resident	AS 08.54.142
JUNK DEALER, ETC.	Resident defined but not required	AS 08.60.030
REAL ESTATE BROKER, AGENT, & SALESMAN	Resident	AS 08.88.171
INSURANCE BROKER, AGENT, & SOLICITOR	1 year	AS 21.27.050 AS 21.06.250 AS 21.27.220
OTHER LICENSES:		
ALCOHOLIC BEVERAGE LICENSE	1 year	AS 04.11.390
RESIDENT FISH AND GAME LICENSE	12 consecutive months	AS 16.05.940

Durational Residence Requirements in Alaska State Law (Continued)

<u>TITLE</u>	<u>DURATION</u>	<u>AUTHORITY</u>
<u>PUBLIC RIGHTS AND BENEFITS</u>		
VOTING	30 days	AS 15.05.010 AK Constitution, Art. V, § 1
ANNULMENT OF MARRIAGE	1 year	AS 09.55.130
LOW-COST HOUSING PREFERENCE	1 year	AS 18.55.330 AS 18.55.470(4)
VOCATIONAL SUBSTITUTION PROGRAM	1 year	AS 39.25.155(g)
INDUSTRIAL INCENTIVE TAX CREDIT	Percent of one year residence	AS 43.26.095(b)(3)
BOUNTIES FOR CERTAIN ANIMALS	1 year abode in game unit, plus continuous residence in Alaska	AS 16.35.130
<u>LAND DISPOSAL PROGRAMS</u>		
LOTTERY PROGRAM	1 year	AS 38.05.057(b)(2)
PRICE DISCOUNT PROGRAM	5% discount per yr of residence	AS 38.05.058
HOMESITE ENTRY PROGRAM	3 yr immediately prior to entry, or 20 yr cumulative residence	AS 38.08.030(a)(2)
HOMESITE ENTRY PRIORITY CLAUSE	Priority to longest residence	AS 38.08.040(b)
REMOTE PARCEL LEASING PROGRAM	1 year	AS 38.08.077(1)(2)
<u>SPECIAL OLD AGE PROGRAMS</u>		
ALASKA LONGEVITY BONUS PROGRAM	25 years, with residence established before statehood	AS 38.08.030(a)(2)
PIONEERS' HOME PROGRAM	15 yr immediately before appli- cation, or 30 yr cumulative	AS 47.25.020(a) AS 47.25.035
SENIOR CITIZEN SPECIAL ASSESSMENT EXEMPTION	12 months	AS 29.63.065(d)(1)
FISHING LICENSE EXEMPTION	30 years total residence	AS 16.05.400
<u>LOAN AND GRANT PROGRAMS</u>		
FISHERMAN NOTE AND MORTGAGE	5 years	AS 16.10.680(a)
COMMERCIAL FISHING LOAN	5 years	AS 16.10.310(a)
LIMITED ENTRY PERMIT LOAN	5 years	AS 44.81.220(a)(2)
AGRICULTURE AND FISHING (CFAB)	1 year	Policy Requirement
AHFC VETERANS 1% RATE REDUCTION	1 year	AS 18.56.101

Durational Residence Requirements in Alaska State Law (Continued)

<u>TITLE</u>	<u>DURATION</u>	<u>AUTHORITY</u>
MINING BUSINESS LOAN	Residency and 5 years mining experience in Alaska	AS 27.09.020
MEMORIAL SCHOLARSHIP	No durational residence required, 1/5 of loan forgiven for each year employed in special field	AS 14.40.825(e)
<u>STUDENT LOAN PROGRAM</u>		
ELIGIBILITY TO APPLY	2 years	AS 14.40.765(b)
FORGIVENESS	10% off for each yr of residence after completing education; maximum 50% forgiven	AS 14.50.763(1)
PREFERENCE (SYSTEM OF AWARDING PRIORITY)	1 point, 2-5 yr residence 2 points, 5-10 yr residence 3 points, 10 plus yr	AS 14.40.767(a)(2)
ALASKA EDUCATIONAL INCENTIVE GRANT	2 years	Application Form
<u>OTHERS</u>		
CHILD CARE EXPENSE REFUND	30 days	Form DR600
POLITICAL CAMPAIGN CONTRIBUTION CREDIT	30 days	Form DR600

CURRENT LITIGATION

The Committee should be aware of three law suits currently in the courts that either involve the State of Alaska directly as a defendant or indirectly through other challenges, and could affect existing state programs. All three cases involve durational residence requirements and are mentioned here to alert the Committee so that they may wish to abstain from public comment or action on these matters pending their outcome in the courts.

Andress v. Baxter

Alaska District Court No. A82-307 civil

Judith Andress has challenged the two-year durational residence requirement for student loan eligibility (AS 14.40.765(b)) and the selection criteria that award priority to applicants based on the number of continuous years of residence in Alaska (AS 14.40.767(a)(2)).

Status: Pending in the court.

Vest v. Schaefer

Superior Court No. 1JU-82-1103 civil

This suit challenges the 25-year pre-statehood residence requirement contained in the Alaska Longevity Bonus Program (AS 38.08.030(a)(2)).

Status: Court action resulted 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 until June 30, 1983, whichever comes first. In this agreement the court ordered the Legislative Council to use its best efforts to secure the enactment of legislation that would, in effect, open the program to all bona fide one-year residents during this legislative session.

Gilman v. Martin
Alaska Supreme Court No. 5937

This suit involves a challenge to the Kenai Peninsula Borough's land disposal program. Its resolution could affect the state's land lottery program, the one-year residency provision to qualify for the lottery (AS 38.05.057(b)(2)), and the discount of 5 percent for every year of residence for up to 50 percent of the total price (AS 38.05.058).

Alaska has filed an amicus curiae brief defending the Kenai Peninsula Borough's program as being constitutional. The outcome of this will be seen as a ruling on similar land distribution plans operated by the state.

Status: A ruling is expected at any time.

THE CONSTITUTIONAL TEST

The most difficult task of this study has been the development of standards or tests that could logically be applied to present and future statutes where a durational residence requirement is to be used.

The question, "What is a resident?" has never been satisfactorily answered in Alaska. Although durational residence requirements run from 30 days to 30 years, in many cases I could find no relationship between the purpose of the statute and the duration specified.

Analysis of the 53 statutes requiring some use of residence or durational residence demanded that I first determine what tests or standards should be used. The treatise which follows is the result of my efforts, and became my guide for measuring those statutory references against the requirements imposed by the U.S. Constitution. I could find no other tests that I could use to conduct this review.

Obviously there is no master that will apply in each and every case. Were that to be so, the state would not be in litigation over the student loan and longevity bonus programs at this time. Most of the laws enacted involve a great deal of judgement on the part of their authors. I hope my analysis of the subject will help future lawmakers in that process.

This treatise should also be a good guide for others who must deal with legislation that hinges on some form of residence as a requirement. I have attempted to establish some basic guidelines for the average person, who is not an attorney or student of our Constitution, to use in setting policy or enacting legislation that uses residence or durational residence as one of the requirements.

I have been told that no definition or statement on this matter will guarantee satisfaction with our U.S. Constitution; and I totally agree! This treatise is only a layman's guide, and not a legal instrument, but I trust it will stimulate further investigation and prove useful to anyone who must approach this very complex subject.

The Constitution of the United States of America

The U.S. Constitution serves as our master authority on the uses of residency as a requirement in state law. It is right for us to begin with this document.

What follows are quotations that apply to this subject matter:

Article 6, Clause 2: The Constitution and the laws made in pursuance thereof, and all treaties made or shall be made, by the United States, shall be the supreme law of the land.

Article 6, Clause 2: All officers, legislative, executive, and judicial, of the United States, and of the several States, shall be bound by an oath to support the Constitution.

Article 9: Powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

Article 6, Clause 2: Judges in every State shall be bound by the Constitution.

Amendment XIV, Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

Nor shall any State deprive any person of life, liberty, or property without due process of law.

Nor deny to any person within its jurisdiction the equal protection of the law.

Article 4, Section 2: The citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States.

Article 1, Section 2: Members of the House of Representatives shall be 25 years of age, seven years a citizen of the United States and an inhabitant of the State which chosen.

Article 1, Section 3: Senators shall be 30 years of age, nine years a citizen of the United States and an inhabitant of the State which chosen.

Article 2, Section 1: Neither shall any person be eligible to the office of President who shall not have attained the age of 35 and been 14 years a resident within the United States.

Article 1, Section 10: States shall not grant any title of nobility.

Article 1, Section 7 [summarized]: The right to vote shall not be denied on account of race, color, or previous servitude.

Articles 15, 19, and 24 [summarized]: States shall not deny a person the right to vote.

The authorities above clearly lay out the intentions of the Constitution as it applies to equal treatment of all citizens of our nation. The use of residence as a requirement to receive a benefit, reward, or other privilege will normally be measured against one or more of the above authorities.

Pertinent Court Cases

Since the U.S. Constitution can only provide us the basic intentions of its authors, and would leave a great deal to individual interpretation of its meaning, we must go to the rulings and findings of our courts for specific applications and explanation of the document's true meaning.

Court cases that refer to residence or durational residence include the following:

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

Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974).

Moore v. State, 553 P.2d 8 (Alaska 1979).

Plumley v. Hale, 574 P.2d 497 (Alaska 1979).

Rose v. Commercial Fisheries Entry Commission, __ P.2d __,
Op. No. 2515 (Alaska, June 11, 1982).
Shapiro v. Thompson, 394 U.S. 618 (1969).
Sosna v. Iowa, 419 U.S. 393 (1975).
Starns v. Malkerson, 326 F.Supp. 234 (Minn. 1970).
State v. Adams, 522 P.2d 1125 (Alaska 1974).
State v. Erickson, 574 P.2d 1 (Alaska 1978).
State v. Van Dort, 502 P.2d 453.
Vlandis v. Kline, 412 U.S. 441 (1973).
Warwick v. State ex rel chance, 540 P.2d 384 (Alaska 1976).
Williams v. Zobel, 619 P.2d 422 (Alaska 1980) (Zobel I).
Williams v. Zobel, 619 P.2d 448 (Alaska 1980) (Zobel II).
Zobel v. Williams, __ U.S. __, Op. No. 80-1146 (June 14,
1982) (Zobel III).

The findings of our courts are construed to have the full force of law. Lawmakers fashioning new laws, therefore, must comply with these court rulings if the statutes are to be considered constitutional. I have only the common terms in my references, and the interpretation is general in context.

Sosna v. Iowa: The judges granted the use of a one-year durational residence requirement to obtain a divorce.

Starns v. Malkerson: Granted the use of a one-year durational residence requirement to be eligible to obtain a less expensive tuition as a resident. The court found that a state could charge higher fees for nonresidents attending a college in that state.

Shapiro v. Thompson,
Vlandis v. Kline,

Memorial Hospital v. Maricopa County: All three of these cases established clearly that states could not require duration of residence as a requirement in fundamental political rights or when basic necessities of life are involved. These two areas are considered sacred by the courts and only in the rarest of cases will they permit any durational requirement to apply.

Vlandis v. Kline: In this case, as well as others, it was held that length of residence could be used as an objective test or reasonable and legitimate tool for determining the genuineness or bona fides of residence, when used for the administration of a program or for other compelling public interests.

The test is to determine if a state's interests outweigh the interests of the individual. As stated previously, in cases where the law relates to fundamental political rights or basic necessities the courts have applied strict scrutiny and normally will not let durational residence stand.

Zobel I, II, III: These court cases are perhaps the most widely known in Alaska because of the wide press coverage and notoriety they were afforded. Following are relevant opinions or other statements that bear on the use of durational residence as a requirement in law:

Justice Brennan said that the length of residence may be a valid test of the bona fides of residence or citizenship.

Justice Diamond in Zobel II provided some insight into the legitimacy of using length of residence as a fair measurement of hardships that might be caused by disrupting one's ties to the state and for instilling allegiance and attachments to the state.

The Supreme Court in Zobel III found that income distributed to the citizens of the state based on duration of residence, where the amount of reward was to be disbursed in set but different amounts solely on the basis of how long a person had resided in the state, was a violation of the Equal Protection Clause of the Constitution, where no compelling public interests were shown for those distinctions.

They found that rewarding citizens for prior contributions, real or intangible, was a violation of the Constitution; that citizens of one state shall enjoy the same privileges which citizens of another state enjoy; that freedom to travel between states and to receive benefits of citizenship must be preserved; that the Constitution does not allow differing degrees of citizenship or residence on the basis of length of residence; and that the business of a state is not with the past, but with the present.

A statement was made that sets the tone of the courts quite well: "The Constitution places the newest naturalized citizen from a foreign shore on equal footing as a citizen born here in America."

Noll v. Alaska Bar Association: This relatively recent Alaska Supreme Court decision found the use of any duration of residence in obtaining a license as an attorney to be unconstitutional. Further, in Ward v. Maryland, we found that "The Constitution secures and protects the right of a citizen of one state to pass into any other State of the Union for the purpose of engaging in lawful commerce, trade, or business; and to acquire personal property and hold real estate without molestation."

From the above statements we begin to see the mind of those entrusted with the interpretation of our Constitution. Though we may prefer to restrict our resources unto ourselves or occasionally bar someone from outside our state from receiving benefits or from participating in our market with his or her skills, surely we can see that, given challenge, the courts will require we show overriding public interests to be evident.

We are all citizens of the one great union. We can be different, we can compete for excellence and a better way of life; but we cannot discriminate one citizen from another.

Questions

What is residence?

Residence is a term often used in law to apply to persons who have established residence or domicile in a state and who have intentions to remain in that state on a permanent or long term basis.

When a person claims residence in one state he or she forfeits the right to claim residence in another state.

Residence requires that one be a citizen of the United States in normal application as used in the laws to distribute benefits or to hold public office, etc. It implies some degree of attachment and allegiance to the state one claims for his or her residence.

How can residence be used in state law?

First, residence is usually only one criterion or requirement used to determine eligibility for reward or benefit. It will be found as follows:

- To seek and hold public office and membership on boards, etc.
- To establish qualifications for citizens to receive in-state tuition.
- To protect public and human resources.
- To encourage new residents to settle in Alaska.
- To share a part of the state's wealth.
- To encourage the development of our industries or resources.
- To qualify for housing, medical care, welfare, or other needs.
- To encourage its citizens to seek an education.
- To settle lands and distribute state lands to private ownership.
- To assure protection for the public from quacks.
- To measure by time in the state one's knowledge.
- To disburse monies to the elderly.
- To qualify for entry into one of our unique Pioneers' Homes.
- Finally, to promote any other compelling public interest.

What is bona fide residence?

Bona fide residence is residence made in good faith. It is a very personal commitment that is difficult to attach a length of time to. It can occur the instant a person sets foot on Alaska soil, or it may occur months or years after one arrives.

Can we establish a duration that we can use?

Simple residence has been generally accepted to be 30 days or more. For voting and access to the basic necessities of life, no duration is normally permitted by the courts.

The probable duration that most courts will accept is no longer than one year, and that for cases where political rights or basic necessities are not involved. One year has held up for in-state student tuition and for divorces.

Are there acceptable durations beyond
the one year mentioned above?

Some believe we can use varying durations so long as they are realistic requirements due to any compelling state interest. In Alaska the uses have generally been established without documented reasons and so far the courts have not upheld any duration beyond one year.

The state is holding to a view that two years of residence is necessary to test the bona fides of residence of persons securing student loans, and more for persons securing the fishing loans made available by the state. The justification is that these two groups of residents are more migratory than the average citizen of our state and, therefore, it takes two years to make an objective test of their intent to remain.

What are subjective and objective tests
as applied to bona fides of residence?

A subjective test would simply be to ask the person if he or she is a citizen, and to look to other signs of attachment as well. Among these other signs are: registered to vote in Alaska; purchased or leased a home; enrolled his children in our schools; seeking public office; joining a church, clubs, or other societies; and licensing one's automobile.

An objective test would be to substitute a duration of residence as a measure of one's bona fides in lieu of asking directly. Where a state is administering programs to thousands of its citizens, it is unreasonable to try to contact each one individually, so the courts have permitted an objective test to be used.

What other requirements may be used to
assure proper program administration?

First, it is well to say here that every state has a right to restrict some of its more costly benefits to its own bona fide citizens or residents. No state is expected to foot the bill for citizens from all over the USA. Each state is sovereign unto itself yet a part of the greater union of the United States of America.

Other requirements include professional qualifications, age, income level, handicap, experience in the field, local familiarity, creditability, veteran status, education, and, of course, always to be a U.S. Citizen.

FINDINGS AND RECOMMENDATIONS

Public Office

Findings: Substantial reasons exist to justify using terms of residence longer than one year in determining the qualifications for holding major public offices. Both the statutes and constitutional references are likely to be held in compliance with the U.S. Constitution.

Recommendation: Take no action at present.

Boards and Commissions

Findings: Substantial reasons exist to justify using terms of residence longer than one year in determining the qualifications for membership on the numerous state regulatory and advisory boards and commissions. Both the statutes and constitutional references are likely to be held in compliance with the U.S. Constitution.

Recommendation: Take no action at present.

Licenses

Findings: The courts have already ruled against the use of any duration of residence as a requirement for an attorney's license (Noll v. Bar Association). A thorough review of the records indicated little tolerance by the courts for the use of any specific length of residence that might bar the employment of an individual's occupational skill between different states.

The only occupational license not requiring residence is that for morticians; rather, it requires in-state apprenticeship for a duration of one year. In my review of the various cases on record, I concluded that the apprenticeship period probably was defensible.

Recommendations: Amend the statutes dealing with the occupations listed below, repealing the various residence requirements and making no substitutions:

Public Accountant (AS 08.04.280).
Attorney (Bar Rule 5(1)(a)).
Collection Agency (AS 08.24.110).
Master Guide (AS 08.54.100).
Registered Guide (AS 08.54.110).
Class A Assistant Guide (AS 08.54.120).
Assistant Guide (AS 08.54.140).
Transporter (AS 08.54.142).
Junk Dealer (AS 08.60.030).
Real Estate Broker and Salesman (AS 08.88.171).
Insurance Broker, Agent, and Solicitor (AS 21.27.090,
AS 21.06.250, AS 21.27.220).

The in-state apprenticeship requirement for a Mortician License (AS 08.42.110) should be left in the law.

I recommend no change in the durational residence requirements for an Alcoholic Beverage License (AS 04.11.390) or a Resident Fish and Game License (AS 16.05.940).

Public Rights and Benefits

Findings: The 30-day requirement to vote in Alaska is constitutional.

The one-year residence requirement for annulling a marriage and participating in the low-cost housing and vocational substitution programs appears excessive. This is especially so for the Low-Cost Housing Preference Program which the courts would likely construe as a "basic necessity of life" wherein no durational residence requirement has ever been permitted by the courts. The one-year residence requirement for being able to claim an industrial incentive tax credit and bounties on animals are likewise excessive, but the point may be academic because neither of these programs have been active in years.

Recommendations: No change is necessary in the residence requirement for Voting (AS 15.05.010), unless the Committee chooses to substitute simple residence and require 30 days in which to handle the registration process.

The one-year residence requirement for Annulment of Marriage (AS 09.55.130), the Low-Cost Housing Preference Program (AS 18.55.330, .470(4)), and the Vocational Substitution Program (AS 39.25.155(g)) should be modified to simple residence.

In addition, the legislature should consider the repeal of the Industrial Incentive Tax Credit (AS 43.26.095(b)(3)) and Bounties for Certain Animals (AS 16.35.130).

Land Disposal Programs

Findings: Alaska is awaiting the court ruling on the Kenai Peninsula Borough's land disposal program, which may affect the state's land lottery and price discount programs.

The requirement of three years of residence immediately prior to participation in the Homesite Entry Program, or 20 years of earlier residence, clearly is not defensible. The Priority Clause, giving priority to persons having the longest residence, is also not defensible and most likely unconstitutional.

The one-year residence requirement for participating in the Remote Parcel Leasing Program appears to be constitutional.

Recommendations: No action should be taken on the residence requirements for Land Disposal by Lottery (AS 38.05.057(b)(2)) or the Price Discount Program (AS 38.05.058), pending the decision of the court in the Kenai case.

The durational residence requirement in the Homesite Entry Program (AS 38.08.030(a)(2)) should be amended to repeal the existing requirements and you should substitute residence of one year's duration. I recommend repeal of the priority clause (AS 38.08.040(b)).

The residence requirement for the Remote Parcel Leasing Program (AS 38.08.077(i)(2)) should be left alone.

Special Old Age Programs

Findings: The greatest problem concerning durational residence before the legislature this session is how to handle the very sensitive Alaska Longevity Bonus Program. The Vest v. Schaefer settlement reached last fall clearly mandates a change in how the program has been handled thus far. The questions surrounding this program involve much more than the requirements for durational residence. Policies on funding, extent of application, life of the program, and other matters require that this statute be given exclusive treatment as an issue and

not be lumped into the Omnibus Bill (Attachment 1) that we are proposing for the other statutory changes.

I would be pleased to work with the House on this matter, as I believe this issue will involve some hard administrative questions and not simply residence requirements.

I concur with former Attorney General Wilson Condon's assessment of the Pioneers' Home Program. The 15-year residence requirement is defensible and related to compelling public interest. The exceptional time is necessary to measure the exceptional attachments a resident must have to receive a room in the homes. A lesser duration would not apply in my judgement.

I believe that the one year of residence required to be eligible for the Senior Citizen Special Assessment Exemption is too close to the "basic necessity" question and would not hold up under challenge.

Similarly, I believe the 30-year residence requirement for exemption from fishing license requirements is too severe and probably unconstitutional.

Recommendations: I strongly recommend that the Alaska Longevity Bonus Program (AS 38.08.030(a)(2)) be set aside and dealt with as a single issue; with full participation from the public, both houses of the legislature, and the administration. The organizational and structural changes that are tied to whatever residence solution is found are totally intertwined.

I recommend no changes in the Pioneers' Home Program residence requirement statutes (AS 47.25.020(a), .035).

The Senior Citizen Special Assessment Exemption residence requirement (AS 29.63.065(d)(1)) should be amended to simple residence.

The 30-year residence requirement for obtaining a free license to fish (AS 16.05.400) should be amended to one year of residence.

Loan and Grant Programs

Findings: The various residence requirements in the state loan and grant programs are inconsistent and not well founded.

The fisherman's loan programs now require five-year durational residence and I can find nothing to support that length of time. A standard one-year period, however, may not serve as a bona fide test for fishermen due to their unusually migratory lifestyle. I agree with current efforts to set a two-year period as an objective test of bona fide residence and believe it will stand up under challenge.

The difference in the durational residence requirements for a veteran's loan (five years) and AHFC's 1% rate reduction to veterans (one year) is not well justified.

The Mining Business Loan and Memorial Scholarship Loan Fund do not stipulate durations of residence and I believe are satisfactory as written.

The two-year residence requirement for student loans and the point preference system based on number of years of residence are being litigated. The point preference system is clearly flawed.

Recommendations: I recommend changing the fishing loan program requirements (AS 16.10.680(a), .310(a); AS 44.81.220(a)(20)) from five years to two years.

The residence statute in the Veterans Loan Program (AS 26.15.130(1)) should be amended to replace the five-year requirement with a standard one-year requirement.

No changes should be made in the residence requirements for the Mining Business Loan (AS 27.09.020) or Memorial Scholarship Loan (AS 14.40.825(e)) programs.

The Student Loan Program residence requirement (AS 14.40.765(b)) should be left alone, pending court settlement. The point preference system (AS 14.40.767(a)(2)) should be done away with, and I recommend outright repeal.

The Educational Incentive Grant falls in the same category as the Student Loan Program and action should await the court decisions.

CLOSING STATEMENT

In closing, Mr. Chairman, permit me to say that I am prepared to work with Susan Burke, your staff, or anyone else to help prepare legislation needed to effect these statutory changes. I remain available at your call for hearings or other meetings you may require.

I am in the process of compiling the responses to our four questionnaires and will present a synopsis of the public input near the April 2, 1983 deadline for return specified in those forms.

I received only one set of the references used in this report, and since they are quite lengthy I will attach copies only to your report. Should any of the Committee members desire a copy, we will need to secure them from the Department of Law or make copies.

One of the requirements in my contract was to look at all the changes that would be necessary in present statutes and provide you with an overview of what additional costs and problems were evidenced in making these changes. At this time I see no significant costs or management problems should the Legislature agree with the actions we have recommended. I am certain that the final solution to fix the Longevity Bonus Program will involve major administrative and management considerations. Since this is the one program you have chosen to set aside to deal with by itself, I am prepared to work with whatever committee is given this responsibility. In many ways, that program is more in line with my background than the performance rendered thus far. I do have several germane ideas on alternative funding, and management of the program.

I have enjoyed working with you on this project, Mr. Chairman, and believe this effort will aid future legislators in their deliberation on residence-based matters.

Respectfully Submitted

William R. Hudson

March 28, 1983

APPENDIX I
TEN ALASKA LONGEVITY BONUS OPTIONS

Appendix I

TEN ALASKA LONGEVITY BONUS OPTIONS

From Jon K. Tillinghast Report Dated March 8, 1983

Alternatives submitted by the Administration and Jon Tillinghast to the Senate Judiciary Committee:

- 1) Expand the Alaska Longevity Bonus Program to include all elderly Alaskans with one year of residency. (Admin.)
- 2) Phase out the Alaska Longevity Bonus Program by gradually reducing the 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) Provide a minimal base payment under the Alaska Longevity Bonus Program based solely on one year of residency, with supplemental payments made on the basis of need. (Admin.)
- 5) Phase out the Alaska Longevity Bonus Program by increasing the age for eligibility each year. (Admin.)
- 6) Create an annuity plan, with the annuity corpus consisting of Permanent Fund distributions. This option would necessitate a transition program for persons 40 years and older. (J. T.)
- 7) Fund the Alaska Longevity Bonus Program through a "pay as you go" social security system, using approximately 25% of the existing Permanent Fund distribution. (J. T.)
- 8) Replace the 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. (J. T.)

APPENDIX II
HUDSON CONTRACT

Contract Between

State of Alaska
Legislative Affairs Agency
Pouch Y
Juneau, Alaska 99811

and

William R. Hudson
3379 Meander Way
Juneau, Alaska 99801
phone 789-7376

CONTRACT AMOUNT \$7,500.00

The parties to this agreement are the Legislative Affairs Agency on behalf of Representative Mitch Abood, Chairman, House Committee on State Affairs, hereinafter referred to as the "Agency," and William R. Hudson, hereinafter referred to as the "Consultant."

THE PURPOSE OF THIS AGREEMENT is to provide the Contractor with a thorough analysis of the numerous residency requirements that are now deemed to be, or suspected to be, unconstitutional with regards to State programs, along with proposed alternatives to make all such programs constitutional.

IT IS THEREFORE MUTUALLY AGREED THAT:

Clause I - Statement of Work

- (a) The Consultant shall assemble all existing written materials on these numerous programs where residency requirements now exist, and display same in a format that can be easily understood and identified by specific topic.

The above display will be amplified to reflect current and projected costs; persons affected; policy affected; a statement of manageability and pertinent commentary on each.

- (b) The Consultant shall seek input from representative individuals and groups that represent persons affected by the various laws or regulations surrounding these "residency required" programs.

- (c) The Consultant shall present, in written form, a Final Report that shall reflect the existing program criteria and, where possible, changes to each program to make them constitutional, cost effective, manageable, and to the extent possible, preservative of original legislative intent.
- (d) The Consultant will make himself available throughout the period of this contract for discussion, amplification of subject, alternatives proposed or other instructions, research, etc. requested by the Chairman of the House Committee on State Affairs on matters that pertain to subject programs.
- (e) The Chairman of the House Committee on State Affairs shall provide the Consultant all reasonable and necessary administrative support such as secretarial, copy service, telephone use, and public documents that are required in this report.
- (f) The Consultant will provide office space and supplies for the conduct of this contract.
- (g) The Consultant shall assist the Chairman of the House Committee on State Affairs in the preparation of new legislation to affect the changes needed to make programs constitutional.

Clause II - Period and Dates of Performance

- (a) The work under this contract shall be performed from March 1, 1983 to March 31, 1983.
- (b) Unless extended by written agreement, this contract expires on March 31, 1983.

Clause III - Project Director

The Project Director shall be Representative Mitch Abood, Chairman of House Committee on State Affairs, acting on behalf of the Committee.

Clause IV - Compensation and Method of Payment

- (a) For the work specified in this contract, the Consultant shall be paid a flat fee of \$7,500.00, with 20% of the fee paid in advance, and the balance upon completion of the contract requirements as specified by the Chairman of the House Committee on State Affairs.

Clause V - Office Space, Equipment, Clerical Support

- (a) Office space, equipment and clerical support of the Consultant that will be necessary to carry out his obligations under this contract shall be supplied as specified in Clause I of this contract.

Clause VI - Records, Documents, Audit

- (a) The Consultant shall maintain accurate records as may be required by the Chairman of the House Committee on State Affairs. The records are subject to inspection by the Agency or by the Chairman of the House Committee on State Affairs at all reasonable times. All documents, reports and writings generated as a consequence of work done under this contract shall become the property of the State of Alaska and, on completion of the work or at the termination of this contract, shall be delivered to the (Agency/Chairman of the House Committee on State Affairs) for disposition under Rule 23 of the Uniform Rules of the Alaska State Legislature.

Clause VII - Disputes

- (a) Any dispute arising about the terms or conditions of this contract shall be reduced to writing and delivered to the consultant. Every effort to dispose of any such disagreement by informal, reasonable means shall be undertaken.
- (b) A dispute concerning a question of fact arising under this contract which is not disposed of by agreement between the Agency and the Consultant shall be decided by the Chairman of the House Committee on State Affairs; the decision shall be reduced to writing and delivered to the consultant at the address specified in Clause VIII, Paragraph (a) of this contract. The decision of the Chairman of the House Committee on State Affairs is final and conclusive.

Clause VIII - Termination

- (a) This contract may be terminated by the Chairman of the House Committee on State Affairs at any time, upon delivery of written notice to the Consultant delivered to William Hudson, 3379 Meander Way, Juneau, Alaska 99801.
- (b) If this contract is terminated, the Consultant shall be compensated for services provided under the terms of this contract to the date of termination if the Consultant provides the Agency and Chairman of the House Committee on State Affairs with a written report containing a description of any research or analyses performed, a statement of the result or conclusions formed based upon the research or analyses and a copy of all data acquired by the Consultant or his agents in conjunction with this contract.

Clause IX - Venue

- (a) In the event that the parties to this contract find it necessary to litigate the terms of the contract, venue shall be the Superior Court of the State of Alaska, First Judicial District, at Juneau and the contract shall be interpreted according to the laws of Alaska.

Clause X - Assignment, Transfer and Subcontracting

- (a) No assignment, transfer, or subcontracting of this contract may be made unless all parties agree in writing.

Clause XI - Reports

- (a) The Consultant shall provide progress reports, either in writing or verbally, as requested by the Chairman of the House Committee on State Affairs and is reasonable within the short time frame of this contract.

Clause XII - Modifications and Previous Agreements


- (a) This contract contains the entire agreement between the parties. A statement, promise, or inducement made by a party or an agent of a party is not valid or binding unless the statement promise, or inducement is contained in this written contract. This contract may not be enlarged, modified, or altered except upon written agreement signed by all parties to the contract.

Clause XIII - Certification

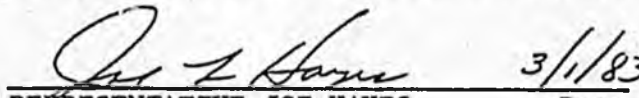
- (a) Execution of this contract by the Executive Director of the Legislative Affairs Agency, or his designee, hereby constitutes a certification that funds have been appropriated and encumbered for the amount of this contract.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates noted.


CONSULTANT


WILLIAM R. HUDSON 3/1/83 Date
Ak Bus Lic No. 034043
SSN # 518-30-5617

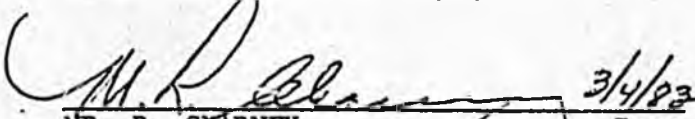
ALASKA STATE HOUSE OF REPRESENTATIVES


REPRESENTATIVE JOE HAYES 3/1/83 Date
SPEAKER OF THE HOUSE

PROJECT DIRECTOR


REPRESENTATIVE MITCH ABOOD 3/2/83 Date
CHAIRMAN, HOUSE COMMITTEE ON
STATE AFFAIRS

LEGISLATIVE AFFAIRS AGENCY


MR. R. CHARNEY 3/4/83 Date
EXECUTIVE DIRECTOR


BILLY G. BERRIER 3/13/83 Date
AGENCY LEGAL COUNSEL

APPENDIX III
RESIDENCE QUESTIONNAIRES

RESIDENCY QUESTIONNAIRE

GENERAL DISCUSSION:

Last year the United States Supreme Court heard arguments on the controversial Permanent Fund dividend distribution plan proposed by the Governor and the Legislature of Alaska (Zobel II & III).

That Court found the proposed legislation to be unconstitutional on several key grounds. First, the dividend plan violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, in that it would have distributed unequal dividends to citizens based solely on the number of years each citizen had resided in Alaska.

Secondly, the Supreme Court decision clearly stated that any reward or benefit that was based upon a citizen's contribution to his/her state made in past years, would be in conflict with the U.S. Constitution; regardless of whether that contribution was tangible or intangible.

Taking it one step further, the Court also ruled that no law is acceptable which acts as a bar to free travel between the States or that denies any citizen full access to every privilege or benefit afforded to another citizen.

Finally, the Court did allow that a State may extend certain benefits to its bona fide citizens when a reasonable public purpose for the benefit exists and is so stated in the law.

HOW THE SUPREME COURT DECISION ON THE PERMANENT FUND DIVIDEND AFFECTS OTHER ALASKAN PROGRAMS

Soon after the nationwide publicity and notoriety of the Supreme Court decision regarding residency requirements, attention was focused on numerous other Alaska statutes that contained durational residency requirements. There are currently 53 programs containing some kind of provision based on residency. The most critical of these programs deals with key loan plans such as the Student Loan Program and Fisherman's loans as well as the twin pioneer's programs: the Alaska Longevity Bonus and the Pioneer's Home Program.

FACTORS TO CONSIDER

Every public program administered in Alaska is based on statutes established through the legislative process. Every statute should consider the following factors:

Does the program serve a valid public purpose?

Does it meet the test of law and does it conform to the constitutions of the United States and Alaska?

What are the long-term costs and other potential liabilities?

Some proof of residency is appropriate; however, it is generally-repeat-generally conceded that one (1) year of residency constitutes a valid intent to remain in the state and to be a citizen of it.

Some state benefits or requirements may justify more than one year's residency, but it must be clearly proven that the public purpose is served by a residency requirement exceeding one year. Some benefits or privileges such as for driver's licenses, voting, etc. cannot be justified for even one year.

With this brief information in mind, will you now review the attached questionnaire and give us your ideas and answers. Please don't worry about using a handwritten response. As long as I can read it, all will be well. Use additional paper as you may require. Thank you for your comments.

ALASKA LONGEVITY BONUS

Currently, over 9,000 older Alaskans receive a \$250 monthly bonus check, if they have continuously resided in the State for 25 years or more, are 65 years of age or older, and have established their first residency in the State on or before January 3, 1959 (Statehood).

A class-action suit filed by attorneys for Mr. Rodney Vest in the First Superior Court of Alaska charged that these requirements violated the constitutional rights of Mr. Vest and other older Alaskans. By mutual agreement, the court action has been suspended until the Alaska State Legislature can act during this current legislative session to correct this residency problem.

The Longevity Bonus Program in 1983 will cost the State of Alaska approximately \$28 million dollars. If the 25-year pre-statehood provision is dropped, the program would add about 4,000 more older Alaskans to the current rolls. That would in turn swell the yearly cost of the program from \$28 million to almost \$40 million.

Clearly, in light of the U.S. Supreme Court's decision regarding residency and the permanent fund dividend distribution program, the State of Alaska will have to drop its 25-year residency requirement. When this happens, the program will cost almost \$12 million more to operate. Several serious questions need to be addressed.

QUESTIONS

1. Should we continue the longevity bonus program for all persons over the age of 65 who have lived in Alaska at least one year?

Yes _____ No _____

2. Shall we attempt to phase out the program ?

Yes _____ No _____

3. Should we establish a limit on the amount of money to be appropriated by the Legislature, and set the monthly bonus amount on total funds available, divided by the number of applicants?

Yes _____ No _____

4. Would you support a new funding source? For example; if we were to use the permanent fund dividend monies as a funding source to establish a major new trust fund for the longevity bonus program. If it were properly invested, where the earnings (interest) could then be distributed to any citizen 65 years of age or older in whatever amounts were permitted by these earnings?

Yes _____ No _____

Comments: _____

5. Other ideas or comments? _____

ALASKA PIONEER'S HOMES

Over 600 Alaskans can be housed in the five Pioneer's homes now currently operating in Alaska. A sixth home, to be built in Juneau, will add another 50 beds or more.

Current requirements call for an applicant to have resided in Alaska for 15 or more consecutive years. The Pioneer home program does not require a resident to be destitute, and it has no needs test.

Monthly costs for residents in the homes are \$225 per month and \$275 per month, depending on the level of care required. Costs to the state to provide the care have been stated as approximately \$1,800 per month. Annual costs to the State now exceed \$20 million dollars.

It is possible that the program as it is now administered, including the 15 year residency requirement may be all right, and left alone. We are leaning toward that position at this time. However, we should think about a fall back position, should the program be adversely affected or found to be at fault with the law.

QUESTIONS

1. Would you support the Pioneer's Home program if the one-year residency requirement is used?

Yes _____ No _____

2. What priorities should be used, if the costs of the program were to increase dramatically because of the lower requirements?

a. Only on physical need? Yes _____ No _____.

b. Only serve the most needy? Yes _____ No _____.

c. Serve all, regardless of needs; first come, first served?

Yes _____ No _____

3. Should the low monthly costs to residents of the home continue as they are now?

a. Yes _____ No _____

or should we:

b. Charge more? Yes _____ No _____

c. Charge less? Yes _____ No _____

4. Any other ideas? _____

Thank you for your cooperation.

WE ASK YOU TO PLEASE RETURN THIS QUESTIONNAIRE TO US BEFORE

APRIL 2, 1983.

Send to: House State Affairs Committee
Pouch V
Juneau, Alaska 99811

STUDENT LOANS

A challenge to the student loan program which is currently under litigation (Andress v. Baxter); is the two (2) year durational residence required to be eligible for a loan of either \$6,000 (undergraduates) or \$7,000 (graduates) maximum each school year.

The student loan program was established in 1971 and since that time has issued over 35,000 loans with a current average per student/year of over \$4,000. These loans carry a 5 per cent interest rate, to be repaid in 10 years, with one five-year extension available.

Added to this, is a significant forgiveness clause that can reduce an applicant's debt by up to 50 percent if he or she returns to Alaska or resides in our state for up to five years after graduation.

QUESTIONS

1. Do you support the Alaska Student Loan Program as it exists now?

Yes _____ No _____

2. Do you believe it is good public policy to forgive or eliminate up to 1/2 of the total amount of the loan in return for having these students back in Alaska?

Yes _____ No _____

3. Do you believe the five (5) percent interest rate on these loans is:

Okay _____,

Low _____

High _____

It should be _____ percent.

4. Since the two-year residency requirement is now being challenged in the courts, what should we do?

a. Keep it as it is until the Courts act? Yes _____ No _____.

b. Reduce the residency requirement to one year? Yes _____ No _____.

c. Other alternative? _____

5. Please tell us what methods of control and administration you believe is needed and proper in administering these loans.

Thank you for your cooperation.

WE ASK YOU TO PLEASE RETURN THIS QUESTIONNAIRE TO US BEFORE

APRIL 1, 1983.

Send to: House State Affairs Committee
Pouch V
Juneau, Alaska 99811

LAND DISPOSAL

Many Alaskans have always favored a liberal land distribution plan, and seem to favor some requirements and restrictions that are based on the length of residency.

The current Alaska land distribution plan has not yet been challenged in the courts, but it is indirectly under fire, since it is closely related to the Kenai land disposal plan, which is now under litigation.

QUESTIONS

1. Do you favor continuation of the distribution of public lands to Alaska citizens?

Yes _____ No _____.

2. How would you like to see the land distributed? _____

3. Should the present discount plan be continued?

Yes _____ No _____.

4. Since there may not be enough suitable land for everyone, what priorities do you favor?

Thank you for your cooperation.

WE ASK YOU TO PLEASE RETURN THIS QUESTIONNAIRE TO US BEFORE
APRIL 2, 1983.

Send to: House State Affairs Committee
Pouch V
Juneau, Alaska 99811

FISHERMAN'S LOANS

Several low-interest loan plans now exist that were designed to foster the growth and development of our fisheries. Most of these loans have stipulated a five-year residency requirement.

QUESTIONS

1. Do you support loan plans as an incentive to develop a particular industry, such as fishing, mining, tourism, etc.?

Yes _____ No _____

2. If the five-year residency is declared unconstitutional, what time period do you believe is a proper length of residency, given the migratory lifestyle of commercial fisherman?

_____ Number of years

3. Please tell us what methods of control and administration you believe are needed and proper in administering these various fisheries loans?

Thank you for your cooperation.

WE ASK YOU TO PLEASE RETURN THIS QUESTIONNAIRE TO US BEFORE
APRIL 2, 1983.

Send to: House State Affairs Committee
Pouch V
Juneau, Alaska 99811

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ATTACHMENT 1

Attorney Burke's Report and Omnibus Bill

LAW OFFICES
GROSS & BURKE
A PROFESSIONAL CORPORATION
424 NORTH FRANKLIN STREET
JUNEAU, ALASKA 99801

AVRUM M. GROSS
SUSAN A. BURKE

(907) 586-2777

March 22, 1983

MEMORANDUM

TO: Honorable Mitch Abood
Chairman, House State Affairs Committee

FROM: Susan A. Burke *SAB*

RE: Residency Requirements

You have asked me to review the Alaska statutes that presently impose residency requirements and to recommend to the Committee the amendment or repeal of those residency requirements that more than likely would be held unconstitutional if challenged in court. You have also asked me to draft a statute defining "bona fide" residence. That draft is attached, along with comments.

In reviewing the residency requirements imposed under current law, I was primarily concerned with two questions -- first, whether it is constitutionally permissible to impose any kind of residency requirement having the effect of excluding nonresidents, and second where the statute imposes a durational residency requirement longer than 30 days, whether the period of residency specified is within

constitutional limits.^{1/} The statutes which contain residency provisions fall into several broad subject matter categories. Attached is a chart prepared by the Department of Law which lists all of the statutes containing residency requirements, with the statutes organized according to subject matter. The chart also includes an assessment of the constitutional problems, if any, presented by each statute. Rather than duplicate this work, I have used this chart as the basis for my review. The review will discuss the statutes listed in each subject matter category in the chart prepared by the Department of Law.

I. Residency Requirements for Eligibility to Hold Public Office

The durational residency requirements established for public office holding range from six months in the case of magistrates (AS 22.15.160(b)) to 10 years for members of the Judicial Qualifications Commission (Alaska Const. art IV, sec. 10; AS 22.30.010). Durational residency requirements for public

^{1/} In general, a person is entitled to claim residency in Alaska if the person is physically present in the state with the intent to remain here indefinitely and make a home here. With rare exceptions, a durational residency requirement will be valid only if it used as a way of testing whether the person actually has the necessary "residential" intent. For some programs, like welfare or medical care, and for fundamental rights such as voting, the state may impose only the shortest durational period necessary to make residency determinations. This period has been held to be no more than 30 days for voting and welfare. For other programs, as discussed below, a longer period of residency is permissible to require.

office holding have been challenged both in Alaska and elsewhere.^{1a/} These durational residency requirements have almost universally been upheld (even fairly lengthy ones), on the theory that they are a legitimate way to measure whether a person has sufficient knowledge of local problems and concerns to be qualified for public office and to insure that the voters have had a sufficient period of time in which to become familiar with the candidate. This same rationale would apply with equal force to durational residency requirements imposed for eligibility to serve on certain boards and commissions. While some questions

^{1a/} Gilbert v. State, 526 P.2d 1131 (Alaska 1974); Chimento v. Start, 414 U.S. 802 (1973).

might be raised as to the reasonableness of the length of residency required in a particular instance, it is probable that none would be struck down if challenged. I do not recommend that any amendments be made to these statutes.

II. Residency Requirements for Occupational Licensing

With only a few exceptions, I agree with the conclusions contained in the Department of Law's survey as to the serious constitutional problems presented by the statutes which require persons to be residents in order to be licensed to engage in certain professions. The recent Alaska Supreme Court decision in Noll v. Alaska Bar Association, 649 P.2d 241 (Alaska 1982), makes it almost certain that these requirements would be struck down if challenged. Close review of the statutes, however, suggests that in some instances, the residency requirements may have been prompted by perfectly legitimate concerns -- such as the difficulty or added expense of disciplining nonresident practitioners. Further, it appears that in some instances residency requirements may have been imposed as a "quick" way of insuring that persons who practiced certain professions in the state had some degree of "local" knowledge. After Noll, it seems likely that even though these are legitimate problems, they may not be solved by simply barring nonresidents from licensure. By the same token, there may be ways of dealing with these problems that do not raise constitutional questions. For instance, in the case of disciplining nonresidents, a higher fee could be charged to nonresidents to

offset additional costs that may be associated with disciplining nonresidents. "Local knowledge" concerns could be addressed through additional testing procedures. In any event, despite the serious constitutional problems with these statutes, it may be undesirable simply to repeal the residency requirements without providing solutions to whatever problems may be posed by granting licenses to nonresidents. The Committee might want to consider repealing the residency requirements, but having a delayed effective date until perhaps June 30 of 1984. Persons who wish to recommend alternative ways of addressing the kinds of concerns I have suggested would then have time to bring their recommendations to the legislature next year before the repeal of the residency requirements took effect.

III. Public Rights and Benefits

A. General

I agree with the Department of Law's conclusion that a one year durational residency requirement for annulment of marriage may be unconstitutional, though I would rate this as "probably" rather than "maybe" unconstitutional. The Alaska Supreme Court in 1974 struck down a one year durational requirement for obtaining a divorce. State v. Adams, 522 P.2d 1125 (Alaska 1974). The state's interests in requiring one year residence to obtain an annulment of a marriage are more than likely identical to those advanced in support of the one year requirement for divorce. The court did not find

those interests sufficiently important to justify a one year requirement for divorce. Although the Alaska Supreme Court seems to be moving toward a much less restrictive view of durational residency requirements,^{2/} it is unlikely that it would overrule its earlier decision in Adams, if the annulment statute were challenged. I would recommend that this statute be amended to require that a person simply be a resident.

I also agree with the Department's assessment of the other statutes listed in the "General" category, which impose one year durational requirements, and recommend that these statutes be amended to require that a person simply be a resident.

B. Loan and Grant Programs

The statutes governing the various loan programs impose durational residency requirements ranging from one to five years. I agree that the five year requirements are almost

^{2/} In State v. Adams, 522 P.2d 1125, 1131 (Alaska 1974), the Alaska Supreme Court stated:

. . . all such [durational residency] requirements are prima facie invalid and will be countenanced only when they serve a compelling state interest.

However, in Williams v. Zobel, 619 P.2d 448 (Alaska 1980) (permanent fund dividends), the court retreated from its earlier view in Adams, and indicated that unless the requirement affected fundamental rights (such as voting) or basic necessities of life (like welfare or medical care), the court would henceforth use a "balancing" approach to durational residency statutes. The importance of the state's interests will be weighed against the importance of the benefit denied or delayed by the durational requirement.

certainly unconstitutional.^{3/} The question is whether a durational requirement beyond 30 days would be constitutional, and if so, what is the maximum length that could be imposed within constitutional limits. Apart from public office holding, the United States Supreme Court has upheld durational residency requirements of up to one year in two cases -- eligibility for preferential resident tuition at state universities, and as a prerequisite to filing for divorce.^{4/} These cases were decided under the United States Constitution, and the Alaska Supreme Court may, and has, interpreted the Alaska Constitution in similar cases as imposing stricter requirements.^{5/} As noted above, the Alaska Supreme Court has until recently maintained the view that any durational residency requirement will be struck down unless the state can demonstrate that the requirement is necessary to further a compelling state interest. This is an extremely difficult burden to meet, and except in very rare instances it is an impossible burden. Because it appears that the Alaska court

^{3/} A different question is presented by the five year local mining experience requirement for mining loans under AS 27.09.020. This may be a permissible requirement, particularly if it is demonstrated that it does not operate as a practical matter to exclude persons who are currently residents, but who gained their Alaska mining experience as nonresidents.

^{4/} Vlandis v. Kline, 412 U.S. 441 (1973) (university tuition); Sosna v. Iowa, 419 U.S. 393 (1975) (divorce).

^{5/} For example, the Alaska court struck down a one-year residency requirement for divorce under the Alaska constitution, State v. Adams, 522 P.2d 1125 (Alaska 1974). One year later the U.S. Supreme Court upheld an identical requirement in Iowa's statute. Sosna v. Iowa, supra, note 4.

is moving toward a less restrictive approach toward durational residency, our court would probably uphold durational residency requirements of reasonable length for loan programs.

Under this less restrictive approach, the Alaska Court would balance the state's interests in imposing a durational residency requirement for a state loan against the importance of the challenger's interest in obtaining a loan before the requirement had been met. In the case of the loan programs, the state's interest is in assuring that state funds are not used to benefit nonresidents. Since resident status depends in large part on a person's state of mind, it is extremely difficult to know with certainty whether a recent arrival in fact has the requisite "residential" intent, and it is extremely difficult to disprove a false claim of residency. Further, it is costly to require the state to make individualized determinations of residency. There are in most instances alternative sources of loan funds through commercial lenders, and it is likely that our court would find that the state's interest in assuring that its benefits are not granted to persons who are not bona fide Alaska residents outweigh the slight inconvenience that a newly arrived resident might suffer by having to wait for some period of time in order to qualify for a state loan.

A more difficult question is what period of residency would be permissible. The state is currently in litigation in the Federal District Court in Alaska, defending the two

year durational residency requirement under the student loan program. The state has argued that the two year requirement is reasonable in light of the transience of student populations, the generous loan amounts under the Alaska program and the fact that there is no requirement that the loan funds be used at an Alaska institution. The plaintiff in that case has conceded that a one year requirement would be reasonable. Assuming the Alaska Supreme Court continues in its present trend in durational residency cases, a one year durational residency requirement for the loan programs would more than likely be upheld.^{6/} A two year requirement might be upheld, but it carries a much higher risk of being struck down than would a one year requirement. The Committee may want to defer proposing any amendments to the two year residency requirement for student loans until the pending litigation is resolved. The Committee may also want to defer action on the other loan programs until after the Alaska Supreme Court renders its decision on the one year residency requirement for participation in the Kenai land disposal lottery (Gilman v. Martin). That decision may provide some indication as to how our court would rule on a one year residency requirement for state loans.

^{6/} The one loan program for which a one year residency requirement would most likely not be upheld is the AHFC program for home mortgages -- at least as long as there continues to be a requirement that the loans will be made only for owner-occupied dwellings. As has been noted earlier in this memorandum, with rare exceptions, durational residency requirements may be used only as a way of measuring whether a person has the intent to remain in the state and make his or her home there. Purchasing a dwelling under a loan program requiring owner occupancy as a condition of the loan is such a strong indication that a person's claimed residential intent actually exists, that a court would most likely find that there was no valid state purpose in imposing an additional one year residency requirement.

I would, however, recommend that the sliding scale preference for accepting student loan applications that is based on years of residency be repealed, even though it has apparently never been applied. This provision is so similar to the dividend plan struck down in Zobel v. Williams that it is virtually certain to be struck down on the same constitutional grounds. On the other hand, the provisions of AS 14.40.763(j), providing for graduated forgiveness of portions of student loans based on continued residence in Alaska after graduation seem to be based on an entirely different rationale. Those provisions are not based on past residency, but seek to affect future behavior. Providing graduated loan forgiveness seems closely tied to the purpose of encouraging students to return to or remain in Alaska after they have received their educations. I believe that that provision would most likely be upheld if it were to be challenged, and that there is no need to repeal it because of constitutional vulnerability.

C. Land Disposal Programs

As mentioned above, the Alaska Supreme Court now has under consideration a case in which the Kenai land disposal program has been challenged. (Gilman v. Martin.) The Kenai ordinances governing its program are almost identical to the state's land lottery provisions in AS 38.05.057 and AS 38.05.058. Thus, the decision in Gilman will almost

certainly answer any constitutional questions that might be raised concerning the state's program. I agree with the assessment of the constitutional problems with these statutes contained in the Department of Law's chart. I believe that a one year residency requirement to participate in either the land lottery or the homesite entry program would probably be upheld. I have serious doubts about the constitutionality of the provision under which discounts of the purchase price are granted based on years of residency in the state. The committee may, however, wish to defer proposing amendments to this provision until after the decision in Gilman is rendered, since the residency based discounts are also at issue in that case.

D. Special Old Age Programs

I also agree with the assessment made by the Department of Law as to the durational residency requirements contained in the programs providing benefits or preferences to older residents of the state. With respect to the one year residency requirement for the senior citizen special assessment exemption under AS 29.63.065(d)(1), I have doubts about whether that requirement would be upheld, for the same reasons I outlined concerning a one year residency requirement for AHFC loans in footnote 6, above. A one year requirement for the senior citizen exemption from the fishing license requirement would probably be upheld; a 30 year requirement is clearly unconstitutional.

I also agree that the residency requirements for the longevity bonus are almost certainly unconstitutional. There are arguments that could be made in defense of the Pioneers' Home residency provisions, but it is far from certain that those requirements would be upheld. (The arguments in support of the Pioneers' Home residency requirements are contained in the November 26, 1982 opinion by Wilson Condon, a copy of which is among the Committee's files.) However, any recommendation as to how the residency requirements for these two programs might be amended to meet constitutional requirements necessarily has tremendous fiscal implications. The residency questions in these two programs are so intertwined with the structure and operation of the programs, that they cannot be dealt with separately, but can be addressed only as part of a total structural and operational review of those programs. That kind of review is, as I understand it, beyond the scope of the work that the Committee has asked me to perform.

SAB:yw

DRAFT
3/22/83
Susan A. Burke

A BILL

For an Act entitled: "An Act relating to residency and residency requirements; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA

* Section 1. AS 01.10 is amended by adding a new section to read:

Sec. 01.10.055. RESIDENCY. (a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state indefinitely and to make his or her home in the state.

(b) A person demonstrates the intent required under (a) of this section

(1) by maintaining his or her principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law, ^{or regulation} and

(2) by providing other proof of intent as may be required by law or regulation; including but not limited to proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state.

(c) A person who establishes residency in the state remains a resident during a period of absence from the state unless during the absence the person establishes or claims residency in another state, territory or country, or performs other acts or is absent under circumstances that are inconsistent with the intent ~~to remain a resident of this state.~~
~~to remain a resident of this state.~~

[*Sec. 2 and following sections would contain amendments and repeals of specific residency provisions.]

RESIDENCY LEGISLATION

Comments to 3/22/83 Draft

This draft is intended to provide first a basic definition of residency. This definition is contained in section 1. The remaining sections of the draft would contain amendments to or repeals of the particular statutes containing residency provisions. These amendments will be prepared by the Legislative Affairs Agency.

The residency definition in section 1 of the draft is intended to be a very general definition. The basic definition is contained in subsection (a), and represents the constitutionally approved definition of the requirements for establishing residency, which largely depend on a person's state of mind. It is thus possible for a person to become a resident of Alaska the moment he or she first arrives. When the person wishes to apply for a state benefit, privilege or license, the only permissible inquiry the state may make is whether the person actually has the intent required to be a resident.

Subsection (b) addresses the question of how a person demonstrates that "residential intent." At a minimum a person must have resided in the state for 30 days. There are some state programs for which it is permissible to require a longer period of residence as proof of intent, and subsection (b) provides that particular statutes may impose longer durational periods. Subsection (b) also contemplates that some statutes or regulations will include specific proof requirements such as those contained in the permanent fund dividend statutes.

In other instances, such as driver's license applications, requiring elaborate proof would only bog down the bureaucracy.

Subsection (c) is intended to clarify the question of when a person loses Alaska residency by an absence from the state. As with subsection (b), it is contemplated that a more detailed listing of "allowable" absences would, where appropriate or necessary, be included in the statute governing a particular program or in regulations adopted to administer the program.

As with any draft, I would anticipate that it will need refinement as others review it and suggest possible "loopholes" that I may have overlooked in preparing the draft.

ATTACHMENT 2

Department of Law's List with Commentary

DRAFT

Norman C. Gorsuch
Attorney General

December 10, 1982

Ronald W. Lorensen
Deputy Attorney General

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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