ALASKA LEGISLATURE COMMITTEE FILES 1983-1984
2925 HSA RESIDENCY #2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOW THEREFORE THE PARTIES STIPULATE AND AGREE AS FOLLOWS:

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

(a) the certification of plaintiffs class

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED this __ day of _____, 1982.

DATED: August 9, 1982 Wilson L. Condon by JHS
Attorney for Defendants
Marian Schaefer and
State of Alaska

WILSON L. CONDON
ATTORNEY GENERAL

DATED: August 6, 1982 Henry J. Camarot
Attorney for Plaintiff

Henry J. Camarot
Camarot, Sandberg & Hunter

DATED: 8/16/82

Attorney for Alaska
Legislative Council
Amicus Curiae

FOR William Ruddy
Robertson, Monagle,
Eastaugh & Bradley

O R D E R

IT IS SO ORDERED.

DATED: _____

Hon. Walter Carpeneti
Superior Court Judge

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

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

ATTACHMENT 8

Gilman v. Martin

IN THE SUPREME COURT OF THE STATE OF ALASKA

DON GILMAN, et al.,	)	
	)	
Appellants,	)	
	)	
v.	)	
	)	
HARRY V. MARTIN, et al.,	)	
	)	
Appellees.	)	Supreme Court No. 5937
	)	

SUPPLEMENTAL BRIEF OF AMICUS CURIAE STATE OF ALASKA

WILSON L. CONDON
ATTORNEY GENERAL

By: Robert M. Maynard
Assistant Attorney General
Department of Law
Pouch K, Capitol Building
Juneau, Alaska 99811
(907) 465-3600

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I. INTRODUCTION AND SUMMARY

In a series of cases -- Williams v. Zobel, 619 P.2d 422 (Alaska 1980) (Zobel I); Williams v. Zobel, 619 P 2d 448 (Alaska 1980) (Zobel II); and Zobel v. Williams, ___ U.S. ___, Op. No. 80-1146 (June 14, 1982) (Zobel III) -- this court and the United States Supreme Court ruled upon various residency distinctions relating to tax relief (Zobel I) and distribution of permanent fund dividends. Zobel II and Zobel III. These cases culminated in Zobel III, in which the United States Supreme Court overturned the then existing permanent fund dividend distribution plan.

After Zobel III, this court invited the State of Alaska to submit an amicus brief on the effect of Zobel III on the residency provisions of Kenai's land disposal program in light of the state's land disposal lottery program (AS 38.05.058). The state's program requires one-year residency in order to qualify for the lottery (AS 38.05.057). In addition, it grants a discount of 5% toward the purchase price for every year of residency up to a maximum discount of 50% (10 years) (AS 38.05.058).

The residency provisions of the Kenai land disposal program are almost identical to the provisions of the state program. As a result, a ruling on the Kenai program will be seen as a ruling on the state program. Consequently, the state will present its arguments in support of the state disposal program so that this court may make distinctions between the programs, if they exist, or treat the programs similarly if no distinctions exist. The state understands this to be the court's desire by

its express reference to AS 38.05.058 in its order inviting the state to appear as amicus curiae. In any event, the state urges the court to expressly consider AS 38.05.058 in its ruling on the Kenai land disposal program.

The position of the state is that both the one-year residence requirement and the residence provisions of the discount program are constitutional under Zobel III. As to the one-year residence requirement, Zobel III did not change the law regarding using length of residence as a test of bona fide citizenship. Consequently, that requirement is to be analyzed under preexisting law. Under that analysis the one-year requirement is constitutional.

The discount program is also constitutional under Zobel III. Zobel III, including the concurring opinion of Justice Brennan, would allow using length of residence as a basis for distinguishing among bona fide residents as long as the distinction is related to a valid state interest apart from simply rewarding longer term residents. E.g., Zobel III, Brennan concurrence at 5. 1/ The constitutionality of distinctions between residents, however, appears to be limited by the implication in Zobel III that even if there is a valid state interest, the Court

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1. All cites to Zobel III refer to the Court's slip opinion. The majority opinion by Chief Justice Burger is referred to as the "Burger opinion," the concurring opinions of Justices Brennan and O'Connor are referred to as the "Brennan concurrence" and "O'Connor concurrence," and the dissent by Justice Rehnquist is referred to as the "Rehnquist dissent."

will probably reject any distinctions which create an unlimited ever-expanding number of permanent classes (i.e., where a 60-year resident always wins over a 59-year resident, or a 10-year resident over a 9-year resident, etc.). As Justice Dimond noted in his dissent in Zobel II, it must be "at least likely that new residents would achieve equality." Zobel II at 468. Under the discount plan, a valid state interest is furthered and the number of classes of residents created is limited.

The Court's holding in Zobel III only established two propositions of law: (1) rewards for past contributions cannot be based on length of residence; and (2) recognizing residency accumulated prior to the date of enactment of a statute is not rationally related to the purpose of creating incentives to stay in the future. Those holdings potentially apply only to awarding discounts based on residency accumulated prior to 1978 (the date of enactment of the discount program, 1978 SLA, ch. 181, § 6). Otherwise, the discount program is unaffected by the holding in Zobel III.

A more difficult problem is the effect of the vigorous dicta in Zobel III that all programs which create unlimited and ever-expanding classes of residents are unconstitutional. Whether that dicta is the law of the land, however, need not be resolved. Even though the reasoning of that dicta would have overturned the dividend plan in its entirety, the court was unwilling to memorialize the dicta in a holding.

Therefore, the Zobel III dicta represents the water's edge of constitutional restraints on residency requirements. Since the residency discount is substantially less expansive in its distinctions between residents, there is no call for expanding the rationale of the Zobel III dicta further to encompass this program. Rather, the program should be analyzed solely under the modified rational basis equal protection test expressed in State v. Erickson, 574 P.2d 1 (Alaska 1978). Zobel II shows that the residency discount passes muster under that test.

Finally, the state urges this court to apply any adverse ruling prospectively only so as to: (1) not upset any ongoing property transactions (Moore v. State, 553 P.2d 8 (Alaska 1976); and (2) treat all participants in the program equally.

The state urges the court to look closely at the question of residency. There are numerous residency-based programs that will likely be affected by the analysis that will be developed in this case. Zobel III actually stands for a limited number of narrow propositions; it is of little help in assessing the constitutionality of a wide range of programs. Each program has a different purpose; consequently, a means of analysis that is broader than Zobel III must be developed. Length of residency measures different attributes and furthers different purposes in, for example, the student loan program (AS 14.40.763) and the Pioneers Home program (AS 47.25). Both of these are different from the land discount plan (AS 38.05.058). A broad rejection of all length of residence plans is clearly unwarranted.

Conversely, a case-by-case rejection or approval tends to throw doubt upon many perhaps legitimate programs.

A clarification of the law in this area is sorely needed. Zobel III added more confusion than it resolved. Because of that existing confusion, we urge the court to give an expedited consideration of the issues raised.

II. ARGUMENT

A. ZOBEL III STANDS FOR ONLY A FEW NARROW PROPOSITIONS

Despite its local notoriety, the United States Supreme Court opinion in Zobel III actually stands for only two propositions. First, making an award of benefits based on residency accumulated prior to the date of enactment is not rationally related to the purpose of granting incentives to continued residence. Second, a statute may not award benefits or rights based on past contributions measured solely by length of residence. 2/

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2. Although the majority opinion by Chief Justice Burger could be read to deny all awards based on past contributions, the concurrences of five of the justices would restrict its application to contributions measured by length of residence alone.

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

Zobel III, Brennan concurrence at 4 (emphasis added). See also Id., Brennan concurrence at 8-9 and O'Connor concurrence at 1, n.1.

Beyond these two holdings, the impact of Zobel III is in its strong implication that the United States Supreme Court will not tolerate a certain kind of discrimination between bona fide residents. This discrimination is the creation of "fixed, permanent distinctions between an ever-increasing number of permanent classes of concededly bona fide residents, based on how long they lived in the state." Zobel III, Burger opinion at 4. See also Id., Burger opinion at 9 (stating that it would be "clearly impermissible" to "divide citizens into expanding numbers of permanent classes"). Although the Court's opinion avoided ruling on the constitutionality of the "prospective" portion of the dividend distribution plan, the concurring opinions of Justices O'Connor and especially Brennan leave little doubt that that plan would not have passed constitutional muster.

The Court's opinion in Zobel III restated the three purposes advanced in justification of the distinctions among residents made by the dividend plan. Those purposes were stated as

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

Id., Burger opinion at 6.

The Court concluded that the distinctions among residents made under the plan did not satisfy the rational basis

test. Under the plan, residents were to receive greater benefits for greater durations of residency. The plan was also to be applied retroactively so that residency before enactment of the plan would also be counted toward increased benefits. The Court's opinion focused on the retrospective aspect of the plan. The Court failed to see any rational relationship between this retrospective aspect of the plan and the first two purposes noted above. In that regard, the Court stated:

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

Id., Burger opinion at 7.

The Court relied upon Shapiro v. Thompson, 394 U.S. 618 (1969) to hold that the third objective -- to apportion benefits in recognition of past contributions to the state -- was not a legitimate state purpose. Thus, the Court concluded that the distinctions were invalid under the equal protection clause at least insofar as they were applied retroactively to provide greater benefits based on length of residence before enactment of the dividend plan.

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

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

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

Zobel III, however, neither disturbed the case law on using length of residence as a means of establishing the bona fides of citizenship, nor ruled that all discriminations between bona fide residents based on length of residency were unconstitutional per se. Even Justice Brennan, whose opinion is the harshest of the attacks on the distribution plan, stated that "length of residence may . . . be used to test the bona fides of citizenship." Id., Brennan concurrence at 6. Concerning distinctions between bona fide citizens, Justice Brennan would only automatically overturn residency discrimination having no independent valid state interest:

> It is, of course, elementary that the Constitution does not bar the States from making reasoned distinctions between citizens. Insofar as those distinctions are rationally related to the legitimate ends of the State

> they present no constitutional difficulty, as our equal protection jurisprudence attests. But we have never suggested that duration of residence vel non provides a valid justification for discrimination. To the contrary, discrimination on the basis of residence must be supported by a valid state interest independent of the discrimination itself.

Id., Brennan concurrence at 5.

It is noteworthy that the Court as a whole declined to take an additional step and invalidate the prospective component of the unlimited and ever-expanding dividend distribution plan. Although five justices signed on to the concurring opinions of Justices Brennan and O'Connor, and even though under the reasoning of the concurring opinions the entire program would have been expressly overturned, the Court refused to make that holding. Zobel III, therefore, also stands for the proposition that the residency provisions of the dividend plan represent "the water's edge"; i.e., that distinctions such as those made by the dividend program mark the boundary into per se unconstitutional territory. Distinctions between residents that are not unlimited and "ever-expanding" are not automatically invalid, and must be analyzed on a case-by-case basis.

This case brings before the court plans which are supported by legitimate state interests and which are not as pervasive as the permanent fund plan in their distinctions between residents. The question before this court is whether these plans are so extreme as to cross the boundary marked by the dicta in the Zobel III.

B. THE ONE-YEAR RESIDENCE REQUIREMENT IS A VALID TEST FOR ESTABLISHING THE BONA FIDES OF ALASKA RESIDENCE

Prior to reaching the specifics of the discount program, it is appropriate to discuss that part of the land disposal program which was not affected by the Zobel III decision: the requirement of one-year residence as a precondition to qualification. This is simply a length of residence requirement to test the bona fides of citizenship. It is an objective requirement which is constitutional since neither a fundamental political right or access to a basic necessity of life is involved.

In order to be eligible to participate in the land lottery itself, the only check on the bona fides of residency is the one-year residence requirement. AS 38.05.057(b). However, in order to qualify for the discount to the purchase price, additional criteria are added, namely that the person:

(1) has a place of residence in the state;

(2) be registered to vote in the state;

(3) has not claimed residence elsewhere for the previous year; and

(4) has otherwise acted in a manner to show that his intent is to remain in Alaska. AS 38.05.058(b)(2) - (5). If the person is able to meet these requirements, he is entitled to participate in the discount program.

The one-year residence requirement appears in both the statute authorizing the lottery [AS 38.05.057] and the statute authorizing the discount [AS 38.05.058]. Since the qualification for the discount applies only to those eligible to participate in

the lottery in the first place, the one-year residence requirement for the discount program is actually redundant of the one-year requirement to get into the lottery itself. Therefore, the issue is whether the state, as its only test, can require a one-year residence requirement in order to assure that only bona fide residents participate in the state land disposal lottery. 3/

There is little question that "length of residence may . . . be used to test the bona fides of citizenship." Zobel III, Brennan concurrence at 6. Here the purpose is not to create distinctions between citizens, or bona fide residents, but to determine whether a particular person should be considered a resident at all.

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3. What follows is an analysis grounded in equal protection. Theoretically, there is a distinction between discriminations between bona fide residents, which are analyzed under equal protection, and between residents and nonresidents, which are tested under privileges and immunities analysis. Unfortunately, an objective test using length of residency to determine whether a person has the requisite "intent" to be a bona fide resident falls in between. To the extent it denies benefits to those who have the subjective intent but do not meet the residence requirement, it is a distinction between bona fide residents to be analyzed under equal protection. To the extent that it withholds benefits from nonresidents, the requirement is to be analyzed under privileges and immunities. In addition, the existing vagaries of the right to travel analysis is at the core of the problem. The confusion on this score is manifest in the United States Supreme Court opinions in Zobel III. Since, however, "a state has more authority to draw distinctions between residents and non-residents than between long- and short-term residents" (Zobel II at 451, n.7), if the one-year residence requirement passes muster under equal protection analysis of the right to travel, it should suffice for privileges and immunities purposes.

Unfortunately, the terms "resident" and "residence" are often used loosely, even in court opinions. Bona fide residency, or domicile, involves two separate elements: (1) physical presence; and (2) intent to remain. See, e.g., State v. Adams, 522 P.2d 1125 (Alaska 1974). "Residence" or "being a resident" in the sense of owning a home or otherwise living at a particular location, meets only the first criterion.

Determining intent, however, is a more difficult problem. There are two means by which intent can be measured. First, a "subjective" or individualized inquiry could be made. This would entail looking at indicators of the individual's state of mind such as voter registration, drivers' licenses, affidavits or sworn statements, or other such indicators of subjective intent. Second, an objective measurement, traditionally length of residence, could also be used.

> Domicile is established by an actual physical presence in the state coupled with a coincident intent to make the state one's permanent place of abode. Domicile cannot be established by mere physical presence in the state for a fixed period without the intent to permanently reside there, but the strong presumption of domicile which arises from physical presence is usually difficult to rebut. Thus, as a practical matter, domicile may be established either through a "subjective test" -- examination of the proponent's state of mind -- or through an "objective" test -- e.g., a durational residency requirement.
>
> The subjective test is, of course, dependent to a large extent upon conduct traditionally indicative of domicilliary intent, e.g., local voter registration.

State v. Adams, 522 P.2d 1125, 1126-27 (Alaska 1974) (emphasis added).

The obvious advantage to an objective residency test is that it is more easily administered than 400,000 individualized determinations. Id. Therefore, unless the state's interest in a generally administered objective test of bona fide residency is outweighed by a more important individual interest, it is a reasonable and legitimate tool. Vlandis v. Kline, 412 U.S. 441, 452-[illegible]9, Starns v. Malkerson, 326 F.Supp. 234 (Minn. 1970), aff'd, 401 U.S. 985 (1971). But if the individual interest involved requires that the state program be analyzed with strict scrutiny, then the state cannot generally use the objective test of length of residency to determine bona fide residency. Instead, a subjective or individualized test must be used. Dunn v. Blumstein, 405 U.S. 330 (1972); Shapiro v. Thompson, 394 U.S. 618 (1969); Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974); State v. Adams, 522 P.2d 1125, 1126-27 (Alaska 1974). 4/ Where strict scrutiny applies, a state can use length of residence as a qualification only when and to the extent that it is necessary for the administration of the program, or is otherwise "necessary to promote a compelling governmental interest." Shapiro v. Thompson, supra at 634; Dunn v. Blumstein, supra;

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4. The Adams position that all infringement on the right to travel requires a compelling state interest has been abandoned (Zobel II at 450-451). Therefore, all infringements on the right to travel do not require strict scrutiny and the subjective residence requirement necessary under strict scrutiny.

State v. Van Dort, 502 P.2d 453 (Alaska 1972). Furthermore, the only time a "compelling state interest" must be advanced is when either a fundamental political right or a basic necessity of life is being withheld. Zobel I at 426-427; Zobel III, Burger opinion at 9, n.11; Memorial Hospital v. Maricopa County, 415 U.S. 250, 259 (1974).

Unlike the right to vote, welfare benefits, or access to medical care, qualification for participation in a state land lottery does not involve a fundamental political right or a basic necessity of life. Therefore, strict scrunity is not appropriate. Instead, the residency qualification is to be tested under the modified rational basis standard set forth in State v. Erickson, 574 P.2d 1 (Alaska 1978).

> We will no longer regard all durational residency requirements as automatically triggering strict scrutiny and requiring a showing that such a classification is absolutely necessary to promote a compelling state interest. Instead, we will balance the nature and extent of the infringement on this right [the right to travel] caused by the classification against the state's purpose in enacting the statute and the fairness and substantiality of the relationship between that purpose and the classification.

Zobel II at 453. 5/

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5. There is some indication that this court may be moving away from the Erickson test in favor of the old rational basis test. E.g., Rose v. Commercial Fisheries Entry Commission, __ P.2d __, Op. No. 2515 (Alaska, June 11, 1982) at 31, n.6 (Rabinowitz, J., dissenting). If so, then both the one-year residence requirement and the discount program would be subject to even less strict review. Since, however, both pass muster even under the Erickson test, they would meet a revived rational basis analysis as well.

There is little question that the state has "the right to impose . . . , as one element in demonstrating bona fide residence, a reasonable durational residency requirement." Zobel III, Brennan concurrence at 6. The question, then, is whether the 12-month requirement is reasonable in light of the Erickson test.

First, a comparison with other constitutional residency requirements indicates its reasonableness. A one-year requirement for resident tuition has been held constitutional by the United States Supreme Court (Starns v. Malkerson, 326 F.Supp. 234 (D. Minn. 1970), aff'd, 401 U.S. 985 (Vlandis v. Kline, 412 U.S. 441 (1973)) as has a one-year requirement for divorce (Sosna v. Iowa, 419 U.S. 393 (1975). 6/ The state's interest in assuring that persons buying state land are actually bona fide residents is surely equal to its interest in student tuition or divorce.

In applying the elements of the Erickson test, first, the right to travel is only slightly impacted by the requirement, if at all. The privilege gained is the right to enter a lottery for the right to purchase property. If that person wins, he or she can buy the property at market value. It is extremely doubtful that the withholding of this benefit to participate in the

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6. This court overturned a one-year requirement for divorce in State v. Adams, supra, however, the basis for that ruling was expressly abandoned in Zobel II. Zobel II at 450-451.

lottery for a period of one year could be any penalty or infringement on the right to travel. Zobel II at 458.

Even if there is some marginal infringement, the state's interest in permanently disposing of one of its most valuable resources to bona fide residents is surely great. And, a one-year residence requirement is reasonable as a sorting device. For example, given the seasonal nature of much of the employment in Alaska, a one-year requirement assures that a person is not merely temporarily here for seasonal employment. Overall, a one-year requirement is a substantial enough but not overlengthy period so that it could reasonably be said that a person intended to make Alaska his or her home.

C. THE DISCOUNT PROGRAM IS CONSTITUTIONAL.

1. The Program is Valid Under the Standards Set Forth in Zobel II and Erickson.

A more substantial equal protection problem is raised by the residency discount. Without Zobel III the only question would be whether the program meets the Erickson test. Zobel II, supra, at 452-453. As will be shown first, the discount plan would be constitutional under that test. The final question is whether Zobel III would change that result.

Since no fundamental political right or access to a basic necessity of life is involved, the discount program is to

be measured under the Erickson balancing test. 7/ Zobel I at 426-427, Zobel II at 452-453. The first inquiry is to "the nature and extent of the infringement on [the right to interstate travel] caused by the classification." Zobel II at 453.

The infringement is de minimus. The discount program awards increasing benefits in the form of discounts of up to 50% from the appraised market price. Applying the analysis of this court in Zobel II, this grant of differing discounts cannot be characterized as a penalty or infringement on the right to travel.

> The new resident does, in fact, receive financial gain for exercising his or her right to move into Alaska; and whatever "penalty" may accrue from the fact that the gain is not as large as that realized by a long-term resident we regard as de minimus.

Zobel II at 458. In fact, the infringement here is much less in this case than that of the permanent fund dividend. Unlike the dividend, the discount is not automatically available. The longer term resident must win a parcel of land in a lottery; a lottery in which all bona fide residents compete equally. Therefore, the discount program does not automatically confer greater benefits on longer term residents -- the longer term resident may never get the opportunity to exercise his or her discount, while the shorter term resident may enjoy whatever discount he or she has accrued immediately. This precondition of having to win a

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7. Assuming that the Erickson balancing test is still applicable. See supra, n.5.

Zobel II at 458. 8/ The legitimacy and importance of this purpose was endorsed by this court in Zobel II. Id. at 459-460, n.33 at 459, and 461.

There is a fair and substantial relationship between increased discounts toward the purchase price of state land based on length of residency and the purpose of stabilizing the population and encouraging residents to stay in Alaska. As this court concluded in Zobel II

> The second of the listed purposes [population stability and encouraging residents to stay] is clearly related to the classification system. A significant financial incentive is created to encourage persons to maintain residency in Alaska; and the stabilization of long-term residents clearly reduces population turnover. . . . As above, we do not regard this system as imposing a "penalty" on new residents. Thus we hold this purpose to be permissible and the relationship clear . . . .

Id. at 461.

This conclusion is directly applicable to the discount program. The prospect of increasing discounts surely encourages people to stay in the state. Further, applying that discount to the purchase of a piece of property in Alaska greatly enhances a person's ties to the state. This system is at least as

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8. The discount program is either an incentive program or a reward program, or both. To the extent that the program is a reward for past contributions, that justification cannot be used as a basis for its constitutionality. Consequently, this court should analyze the discount program only as an incentive to induce the future action of maintaining residence.

stabilizing and encouraging of continued residence as the receipt of cash dividends. Coupled with the de minimus infringement on the right to travel, the discount program is constitutional under Zobel II and Erickson.

2. Zobel III Does Not Alter the Results of the Erickson Analysis.

As explained previously, the dicta in Zobel III represents the water's edge for any per se constitutional restraints on residency requirements. Plans which do not create unlimited and ever-expanding classes of residents, or otherwise fall outside of the Zobel III dicta, must be analyzed on a case-by-case basis in light of preexisting equal protection analysis.

As for the Zobel III decision itself, it would potentially only affect a small portion of the discount program. As was mentioned previously, Zobel III held that for the permanent fund dividend program, recognizing residency prior to the date of enactment was not rationally related to the purpose of encouraging people to remain in the future. Under this holding, it would only be residency accumulated prior to 1978 (the date of enactment of the discount program) which would be called into question.

In this case, however, the recognition of residency accumulated prior to 1978 is only an incidental effect. See Zobel II at 467, n.37. The program had to start somewhere, and, unlike the dividend program, the award of increased discounts to longer term residents does not directly lessen the portion of the

"pie" to be given newer residents. The value of the newer residents' discount would remain the same whether or not the older resident began with a larger discount at start-up. Second, invalidating residency accumulated prior to 1978 does not further the legitimate purposes of the program; namely, creating an incentive to stay. The legislature assumed a 10-year or longer resident needs no further increased discount as an incentive. Treating a 10-year resident in 1982 as a four-year resident will not reawaken that incentive. Thus, unlike the permanent fund dividend plan, to apply the Zobel III holding to the discount program would serve no real purpose.

As for the Zobel III dicta, the land discount program makes for more limited distinctions between residents than did the dividend distribution plan. Even under the prospective operation of the dividend program, a 50-year resident would be preferred over a 49-year resident, who in turn was preferred over a 48-year resident, and so on. This unlimited and ever-expanding discrimination was viewed as much too pervasive by the Court in Zobel III. But the discount plan does not distinguish between the 50-year resident over the 49-year resident, over the 48-year resident, etc. All are equal after 10 years. Instead, it is only during the first 10 years of residency that distinctions are made. These distinctions are rational and are drawn as part of a program to induce persons to stay a significant period of time. During that time a person may establish such roots that it is unlikely he or she will leave. In addition, the person can use

the discount in purchasing property and further establish roots in the state. Zobel III would not prevent this purpose or plan.

The United States Supreme Court did not rule on the question of awards based on residency accumulated after the date of enactment. The Court held that "[I]n our view Alaska has shown no valid state interests which are rationally served by the distinction it makes between citizens who established residence before 1959 [sic] and those who have become residents since then." Zobel III, Burger opinion at 10 (emphasis added).

The Court was seriously divided in its views of the prospective operation of the dividend plan. There were not five votes to overturn the plan in its entirety. The dividend plan represented the extreme which triggered severe expressions of concern, but not outright rejection. As a result, the Court stated that: "We need not consider whether the State could enact the dividend prospectively only." Id. Therefore, Zobel III does not directly impact the continued operation of the discount program.

On the other hand, there is language in the concurring opinions of Justices Brennan and O'Connor which would lead to the conclusion that even the prospective operation of the dividend plan would have been unconstitutional. Justice Brennan wrote:

> I write separately only to emphasize that the pervasive discrimination embodied in the Alaska distribution scheme gives rise to constitutional concerns of somewhat larger proportions than may be evident on a cursory reading of the Court's opinion. In my view, these concerns might well preclude even the prospective operation of Alaska's scheme.

Id., Brennan concurrence at 1. Later, Justice Brennan simply states that "[a] scheme of the sort adopted by Alaska is inconsistent with the Federal structure even in its prospective operation." Id. at 3.

Justice O'Connor would have applied privileges and immunities analysis and, under her approach, would have stricken both the retroactive and prospective applications of the program. Justice O'Connor believed that distinguishing between residents, or between residents and nonresidents, infringes a fundamental right for purposes of the Privileges and Immunities Clause:

> Certainly the right infringed is "fundamental." Alaska's statute burdens those nonresidents who choose to settle in the state. It is difficult to imagine a right more essential to the nation as a whole than the right to establish residence in a new state."

Id., O'Connor concurrence at 6.

Justice O'Connor's approach would not distinguish between residency accumulated before the date of enactment and after the date of enactment. Thus, five justices, the three joining with Justice Brennan's concurring opinion plus Justice O'Connor, would likely rule that the prospective application of the dividend plan was unconstitutional. Consequently, it is instructive to see if the apparent reasons for their dissatisfaction would necessarily attach to the discount program.

In this analysis, Justice Brennan's concurrence is central. His opinion is the harshest attack on the dividend plan and Justice O'Connor's analysis is expressly not favored by the

other eight members of the Court. Id., Burger opinion at 7, n.3; Brennan concurrence at 2; Rehnquist dissent at 4, n.3. 9/

The core of Justice Brennan's concern was the extreme nature of the plan. He was alarmed by the all-inclusive and "pervasive discrimination embodied in the Alaska distribution scheme." Id. As he explained later, the notion of a society permanently divided solely on the basis of the assumption that past residence means greater worth is an anathema to our national ideals. At one point Justice Brennan explained the specific aspect of the dividend plan he found offensive:

> The Constitution places the recently naturalized immigrant from a foreign land on an equal footing with those citizens of a State who are able to trace their lineage back for many generations within the state's borders. The eighteen-year-old native resident of a state is as much a citizen as the fifty-five-year old native resident. But the Alaska plan discriminates against the recently naturalized Alaska citizen, in favor of the Alaska citizen of longer duration: or discriminates against the eighteen-year old native resident, in favor of all residents of longer duration. If the Alaska plan were limited to discriminations such as these, and did not purport to apply to migrants from sister states, interstate travel would not

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9. Besides the disagreement on Justice O'Connor's views on the right to travel and its sole location in the Privileges and Immunities Clause, it is unlikely that the Court would accede to her view that all distinctions between residents and nonresidents who have a place of abode in the state impinges on a fundamental right. This would lead to more limitations on the right of a state to draw distinctions between nonresidents and residents than between residents themselves. This result is not consistent with prior case law. See Zobel II at 451, n.7.

> be noticably burdened - yet those discriminations would surely be constitutionally suspect.

Id., Brennan concurrence at 4 (emphasis added).

This pervasive and unlimited aspect also troubled Chief Justice Burger. He wrote

> "Alaska's reasoning [that past contributions should be rewarded] . . . . would permit the states to divide citizens into expanding numbers of permanent classes. Such a result would be clearly impermissible."

Id., Burger opinion at 9. Justice Dimond, in his dissent in Zobel II, touched on this concern when he distinguished Sosna v. Iowa, supra, and other durational residency requirements from the dividend plan by explaining "[i]n Sosna it was at least likely that new residents could achieve equality." Zobel II at 468.

Thus it was the unlimited and pervasive discrimination that disturbed the Court -- where a longer term resident would always be preferred over a shorter term resident, whether it was 50 years of residency over 49, or 10 years over 9 years. Unlike other durational residency requirements, where equal treatment was achieved at some point, equality could never be achieved under the dividend plan. Like a race on a treadmill with a width of one person, the second to enter could never catch up. Although not specifically expressed, a majority of the Court clearly viewed such an unlimited plan as inherently so indiscriminate as to be presumed to reward residency solely for its own sake.

The Court would have recognized distinctions based on residency, but those distinctions had to be drawn for a purpose

other than simply rewarding long-term residents. Whatever that independent reason may be, a majority of the Court could not view that reason as justifying an unlimited preference that would be unending. They apparently believed that the state simply could never rationally make a distinction between a 50-year resident over a 49-year resident over a 48-year resident, and so on down to the brand new resident. They viewed such distinctions as so inherently arbitrary that the real purpose must be the belief that length of residence is a badge of worth. As Justice Brennan concluded:

> In my view, it is difficult to escape from the recognition that underlying any scheme of classification on the basis of duration of residence, we shall almost invariably find the unstated premise that some citizens are more equal than others. We rejected that premise and, I, believe, implicitly rejected most forms of discrimination based on length of residence, when we adopted the Equal Protection Clause.

Id., Brennan concurrence at 7.

But even Justice Brennan would allow distinctions based on length of residence so long as simply rewarding residence was not the underlying purpose.

> [T]he Constitution does not bar the states from making reasoned distinctions between citizens. Insofar as those distinctions are rationally related to the legitimate ends of the State they present no constitutional difficulty, as our equal protection jurisprudence attests. But we have never suggested that duration of residence vel non provides a valid justification for discrimination. To the contrary, discrimination on the basis of residence must be supported by a valid state interest independent of the discrimination itself.

Id., Brennan concurrence at 5 (emphasis added). Justice Brennan believes that such valid independent interests are few and far between:

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

Id., Brennan concurrence at 5-6 (citations omitted).

Although we agree that the instances where length of residence has an independent utility as a device to further a legitimate state interest may be rare, the state does not believe that they are as rare as Justice Brennan implies. Justice Brennan implied that there were only two categories that would admit of an independent interest: testing bona fide residence and qualifying for public office. Id. We believe that there are other legitimate instances. For example, as Justice Dimond noted in his dissent in Zobel II, length of residence might be a reasonable tool to measure the present hardship that would be caused by disrupting ties to the state. Zobel II at 469, n.13.

Whatever other instances may or may not exist, it is surely legitimate to use length of residence as a tool for instilling allegiance and attachment. For example, AS 14.40.763 and AS 14.40.825 provide for forgiveness of student loans based on years of residence after completing school, with a forgiveness of up to 50% (6 years). This use of graduated length of

residence is clearly permissible. The purpose of the loan program is to provide the state's residents with education -- it is in the state's interest to have an educated citizenry. Consequently, it is in the state's interest to have those to whom it loans money return to the state with the benefits of that education. The best means to induce persons either to stay or to return after their education is to give an incentive to return and stay. The best way to apportion that incentive is to relate the benefit to future residence in the state. Such a program does not create a preferred class of citizens, reward past contributions, or otherwise partake of the characteristics that the Court found objectionable in Zobel III. But such a program does make distinctions between residents based upon the length of their residence.

The same rationale applies to the discount program. It is not a "reward" for past contributions or for simply being in the state longer. It is not intended to create a preferred class of citizens. Instead it is an incentive -- an incentive to establish roots in Alaska.

After 10 years the legislature assumed that no further discount or incentive is needed; it assumed that a person's roots are established and will not be significantly influenced by the prospect of even greater discounts. Thus it does not continue to grant incentives for residency solely because of the length of residence. The statute treats everyone equally for purposes of the effect of the incentive after that 10 years. It does not

reflect a legislative belief that comparatively longer residency in and of itself justifies preferential treatment. It is only longer residency during those years when the incentive has a reasonable chance of influencing future behavior which is preferred.

The resident land discount program therefore furthers an independent and valid interest; as such, it would survive even Justice Brennan's analysis. What better way is there to encourage people to stay than to give increasing discounts based on length of residence during the first years of residence in the state? After a period of time, perhaps, it would be irrational to believe that the increasing discount will further that person's allegiance and attachment. A 40-year resident is unlikely to require a greater benefit than that given a 25-year resident -- their likelihood of staying or leaving will be dependent on other factors than the existence of sufficient roots in the state.

But that is not true for brand new residents, or those who have been here for comparatively few years. The prospect of substantially increasing discounts during those years could make the difference between staying in Alaska and leaving. A one-year resident might stay an extra year to take advantage of the discount, as might a two-year resident. During that extra time other roots will be established, and the state's goals of stabilizing the population and creating incentives to stay is furthered.

The legislature decided that after 10 years there was no need to continue to increase the discount. The state believes that this is a reasonable time under the Erickson analysis, particularly given the de minimus infringement on interstate travel on the other side of the scale.

The underlying rationale expressed in the various opinions in Zobel III is relatively straightforward. It is hard to argue with the view that length of residence in and of itself cannot entitle a citizen to preferential treatment. Nor do we necessarily disagree that an unlimited and ever-expanding preference measured solely by comparative residency leads to the conclusion that it is, in reality, simply a preference for longer term residents. After a certain period of residence, comparative residency will probably not be a valid indicator of relevant distinctions between people separated by a few years.

But Zobel III stands only for those propositions. It does not prohibit distinctions based on length of residence, nor does it prohibit a limited number of classes distinguished by length of residence. To the extent that using length of residence fairly and substantially furthers an independent, valid state interest it is constitutional. The land discount, given its limited scope and its fair and substantial relationship to the valid state interests in stabilizing the population and encouraging state residence, is constitutional under Erickson, Zobel II, and Zobel III.

D. IF THE COURT FINDS THE LAND DISPOSAL PROGRAM TO BE UNCONSTITUTIONAL, IT SHOULD APPLY ITS RULING PROSPECTIVELY ONLY

If this court rules that a portion, or all, of the land discount program is unconstitutional, substantial, inequitable and unnecessary hardship will occur unless this court makes its ruling prospective.

In Warwick v. State ex rel. Chance, 540 P.2d 384, 393 (Alaska 1976), this court stated:

> A state supreme court has unfettered discretion to apply a particular ruling either purely prospectively, purely retroactively, or partially retroactively, limited only "by the jurisprudential philosophy of the judges . . . , their conceptions of law, its origin and nature." The decision is not a matter of law, but a determination based on weighing the merits and demerits of each case.

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

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

A ruling of unconstitutionality in this case was not foreshadowed. In fact, the reasoning in Zobel II would have lead to upholding the discount program in its entirety. The partial

reversal in Zobel III was not foreshadowed and has only confused the constitutional analysis of residence requirements. In large measure this court's ruling on this case will be one of first impression.

Second, there has been justifiable reliance on an alternative interpretation of the law. Here the "alternative interpretation" is the plain reading of AS 38.05.057 and AS 38.05.058. It is surely justifiable for citizens and administrators to depend on a statute which was unchallenged for a number of years.

There are two types of equitable hardship that should be avoided by a prospective only application of an adverse ruling. First, persons who have entered and won land in the lottery should not have their title impaired or the land transfer impeded by a ruling that the program was flawed. Not unwinding settled property transactions was found to be sufficient reason to apply a ruling propectively only in Moore v. State, 553 P.2d 6 (Alaska 1976), and that reasoning applies with equal force here. Consequently, lotteries held prior to the issuance of this court's opinion should be allowed to proceed to completion of formal transfer of title under the original terms of the program.

Second, there is an equitable hardship in applying a ruling that residency accumulated prior to the date of enactment cannot be counted. Many persons have already received their land at the stated discount -- it would be unfair to those who either were not lucky enough to win a parcel, waited to apply for a

different piece of property, or waited in order to receive a larger discount. In fact, it would be residents who were already here in 1978 who acted in the manner hoped for by the legislature and remained an extra year or two to take advantage of an increased discount who could be harmed the most. They may find that, instead, their discount has been slashed by elimination of residency acquired prior to 1978.

The intended effect of a holding of unconstitutionality would not be advanced by striking the pre-enactment portion of the discount. Here the application of that ruling would not increase the benefit to the newer citizens: their discount would be exactly the same. And, since the underlying sale is by lottery, their access to land is equal to that of every other resident. The only effect of applying that rule to the discount program would be to make the purchase of land more difficult for some citizens. This is contrary to the main policy of the entire program, namely, that "[p]rivate land use rights are integral to the material well-being of the people of Alaska and our society." AS 38.04.005(d).

Nor, as was mentioned previously, is the legitimate purpose of the program furthered by not recognizing residency accumulated prior to the date of enactment. The legislature assumed that persons with more than 10 years residence did not need any additional discount as an incentive to stay. That lack of incentive will not be recreated by "assuming" for purposes of the program that a 10-year resident in 1982 is only a four-year

resident. It is an assumed state of mind that is measured by the residence requirement. Artificially assuming that a four-year resident has the state of mind of a 10-year resident does not further the legitimate purposes of the legislation. The program had to start somewhere, and it is otherwise appropriate to recognize the real period of residence of program participants than it is to assume that they all arrived in 1978.

Therefore, this court's ruling was not clearly foreshadowed, there was justifiable reliance on the existing law, the equitable considerations favor allowing the program to continue or, at the very least, not undoing existing transactions, and the intended effect of this court's holding would not be furthered by applying the rule to this program. Consequently, the state urges the court to apply its ruling prospectively only.

III. CONCLUSION

For the reasons stated in this brief, the state urges this court to uphold Kenai's land disposal program and, by express implication, to approve the analogous state program in AS 38.05.057 and AS 38.05.058.

DATED this 23rd day of July, 1982.

WILSON L. CONDON
ATTORNEY GENERAL

By: Robert M. Maynard
Robert M. Maynard
Assistant Attorney General

ATTACHMENT 9

Ron Zobel Letter

HELLÉN & PARTNOW
A PROFESSIONAL CORPORATION
LAWYERS
425 G STREET, SUITE 710
ANCHORAGE, ALASKA 99501

THEODORA ACCINELLI
ADRIENNE P. FEDOR
OLOF K. HELLÉN
IVAN LAWNER
PETER C. PARTNOW
RON ZOBEL

TELEPHONE
(907) 276-2713

March 15, 1983

William Hudson
c/o Representative Mitch Abood
State House of Representatives
Pouch V (MS 3100)
Juneau, AK 99811

Dear Mr. Hudson:

I have been giving some thought to our recent conversation concerning durational residency requirements and would like to clarify two points that we were discussing.

We generally agreed that there was benefit in having a uniform durational period as proof of bona fide residency. Generally, I agree that a one year durational residency requirement could be imposed for special state benefits not based on need, such as subsidized state loans or lower tuition at the university. However, such a uniform statute may be somewhat difficult to write. The seminal cases in this area dealt with one year durational residency requirements for eligibility for welfare (Shapiro v. Thompson, 394 U.S. 618 (1969)) and eligibility for voting (Dunn v. Blumstein, 405 U.S. 330 (1972)). A one-year uniform waiting period for proof of bona fide residency could not be made to apply to voting or basic necessities of life or it would be quickly subject to court challenge. I think that a one year waiting period is, in most instances, reasonable, but in the case of voting, welfare benefits, medical care, or even housing, there is much case law striking down one year waiting periods. Those cases may make the establishment of a uniform one year requirement less feasible than I indicated when I talked to you on the phone, because it would necessarily have to contain a number of exceptions in order to avoid a court challenge.

I have been doing additional thinking about the proposal I made to you that those persons who had qualified for an Alaska student loan but who had not returned to the state might be charged a higher or market rate of interest. I certainly think that a statute could be structured which would have the effect of telling persons who applied for an Alaska student loan that if their education was to be used out of state they are going to have to bear the market rate for the loan which they receive. If the rebate provision in the present law is permissible, and I believe it is, applying the same prinicple to the rate of interest paid for the loan would not seem to present any insurmountable legal problems. Certainly, the State of Alaska

has no obligation to subsidize the loans of non-residents, but so as to avoid any attack on such a provision as a penalty on the right to travel interstate, I would structure the provision so that everyone who took an Alaska Student Loan would pay the market rate of interest, but add a provision that would reduce that rate of interest to 5%, or whatever level was chosen, if the person subsequently was employed in the State of Alaska. That would make the loans much less attractive to persons who have no intentions of ever returning to this state to make use of their education here. If a person knew that he was going to take his loan, go to another state, get an education and never come back, the interest rate on a $7,000.00 loan would have to be a major consideration. This provision would discourage those persons who have no intention of remaining residents of the state from applying for a loan, but would not discriminate against persons of rather short residency (one to two years) who need a loan to further their education and do intend to make a contribution to the state with it.

Also, if this "rebate" interest rate was reduced upon gaining employment in the state, it would not be based upon residency at all. For example, the upper-middle class person who studied Chinese literature just for the fun of it would not get a subsidized loan. I would question whether the State has any real need to provide such a subsidized loan in the first place. The point I am making is that if the loan is reduced from the market rate to a subsidized rate and that rate is tied to employment in the state, the State would achieve the dual purpose of targeting persons who have no intent to ever use their education in the state and likewise achieve the purpose of only subsidizing loans which have some direct relationship to bettering the economy of the state. Such a provision would be more defensible in the courts and likewise would seem to make more economic sense than giving a subsidized loan to a person who has lived in the state for ten years and who has no intention of ever returning to the state and denying a loan to a resident of a year and a half who has a real commitment to make his or her future here. I hope these clarifying comments are of some help to you.

Yours truly,

Ron Zabel

RZ:ap

Sec. 08.04.110. PERSONAL REQUIREMENTS.

An applicant for the certified public accountant certificate shall be

(1) Repealed by sec. 3 ch 127 SLA 1974.

(2) a resident of this state;

(3) at least 19 years of age; and

(4) of good moral character.

Sec. 08.08.207. LAW CLERKS.

(a) Every person who desires subsequently to qualify as a general applicant for admission to the Alaska Bar without having been graduated from an approved law school shall register as a law clerk as provided by this section. The person must be a bona fide resident of the state and shall present satisfactory proof that the person has been granted a bachelor's degree (other than bachelor of laws) by a college or university offering the degree on the basis of a four-year course of study and has successfully completed the first year of studies at a law school.

(b) The applicant shall obtain regular and full-time employment as a law clerk in the office of a judge of a court of record or an attorney or firm of attorneys licensed to practice law in Alaska and engaged in the general practice of law. The person by whom the applicant is employed, or, if the applicant is employed by a firm, the person under whose direction the applicant is to study, must have been admitted to practice law in this state for at least five years at the time the application for registration

is filed, and be otherwise eligible to act as tutor. Before the commencement of the study of law under this section, the applicant shall file with the university an application to register as a law clerk. The application shall be made on a form to be provided by the university and shall require answers to interrogatories the university may determine from time to time to be relevant to a consideration of the application. Proof of a fact stated in the application may be required by the university. If the applicant fails or refuses to furnish any information or proof or answer any interrogatory required by the application, or independently by the university, in a manner satisfactory to the university, the application may be denied.

(c) Accompanying the application there must be submitted a statement under oath of the person by whom the applicant is employed as a law clerk, or, if the applicant is employed by a firm, of the person under whose direction the applicant is to study, certifying to the fact of the employment and that that person will act as tutor for the applicant and will faithfully instruct the applicant in the branches of the law prescribed by the courts of study adopted by the university. No person is eligible to act as tutor while disciplinary proceedings (following the service of a formal complaint) are pending against the person, or if the person has ever been censured, reprimanded, suspended or disbarred. If a registered law clerk finds it necessary to change tutors during the period of study, a new application for registration as a law clerk is required and such credit given for study under a prior tutor as the university may determine.

(d) A law clerk whose registration has been approved by the university must pursue a course of study for three calendar years of at least 44 weeks each year, with a minimum each week of 35 hours of study (it being understood that the time actually spent in the performance of the duties of law clerk is to be considered as time spent in the study of law). The tutor must give personal direction regularly and frequently to the clerk, must examine the law clerk at least once a month on the work done in the previous month, and must certify monthly as to compliance with the requirements of this subsection and (e) and (g) of this section.

(e) The examinations shall be written and not oral, and shall be answered by the clerk without research or assistance during the examination. The monthly certificate of compliance submitted by the tutor shall be accompanied by the originals of all written examinations and answers given during the period reported. If the certificates, together with the required attachments, are not filed timely with the university, no credit may be given for any period of the default.

(f) If a registered law clerk does not furnish evidence of completion of law studies within a period of six years after registration, the university may cancel the registration.

(g) The course of study to be pursued by a registered law clerk shall cover subjects, text books, case books, and other material the university may from time to time require.

(h) A registered law clerk who has attended either an approved or a nonapproved law school may, in the discretion of the university, receive credit for work done and obtain advanced

standing. In no event will credit be given for fractional parts of semesters or terms, or for correspondence school work.

(i) As used in this section

(1) "law school" means a law school accredited, approved or meeting the standards of the Council of Legal Education of the American Bar Association or the Association of American Law Schools; or a school in Alaska offering a course of study which the university approves as the equivalent to a year's study in a law school under this section;

(2) "university" means the University of Alaska.

Sec. 08.54.100. QUALIFICATIONS FOR A MASTER GUIDE LICENSE.

A person is entitled to be licensed as a master guide if the person

(1) has legally hunted in the state for a part of each of 10 years during which time a substantial source of the person's income was from guiding or related activities directly contributing to the person's experience and competency as a guide;

(2) meets all the requirements of a registered guide and has been actively engaged in licensed guiding activities in the state for at least five years preceding application;

(3) has not been convicted of a violation of federal or state sport fishing, game or guiding laws or regulations within the preceding five years;

(4) has consistently performed in a superior manner as evidenced by required reports submitted to the board and by inquiries made by the board to at least two of the guide's clients of record; and

(5) meets additional qualifications which the board may require.

Sec. 08.54.110. QUALIFICATIONS FOR REGISTERED GUIDE LICENSE.

A person is entitled to be licensed as a registered guide if the person

(1) is 21 years of age or more;

(2) is a resident of the state and maintains a permanent place of abode in the state;

(3) has practical field experience in the handling of firearms, hunting, judging trophies, field preparation of trophies, first aid and photography;

(4) is familiar with the terrain and transportation problems in the district for which the license is requested;

(5) has passed the qualification examination prepared and administered by the board;

(6) has demonstrated to the board sufficient standards of competence and ethical conduct and has not been convicted of a crime involving moral turpitude;

(7) has legally hunted in the state for all or part of each of five years in a manner directly contributing to the person's experience and competency as a guide;

(8) has been licensed as and performed the services of an assistant guide in the state for a part of each of three years;

(9) submits a written recommendation to the board from a registered guide for whom the applicant has worked;

(10) is capable of performing the physical duties associated with guiding activities;

(11) has been favorably recommended in writing by two hunters that the person has guided or assisted in guiding during each year of the person's three years as an assistant guide, whose recommendations have been solicited by the board from a list provided by the applicant;

(12) meets additional qualifications which the board may require.

Sec. 08.54.120. QUALIFICATIONS FOR A CLASS-A ASSISTANT GUIDE LICENSE.

A person is entitled to be licensed as a class-A assistant guide if the person

(1) has been employed for at least one season as a licensed assistant guide;

(2) has had at least 20 years experience in the guide district in which the person is to be employed; for the purposes of this paragraph physical presence at some time of the year during each of the 20 years constitutes adequate evidence of experience, and military service outside the state for no more than six years shall be accepted as part of the required 20 years experience;

(3) has been recommended in writing as qualified by a registered or master guide to the board.

Sec. 08.54.140. QUALIFICATIONS FOR ASSISTANT GUIDE LICENSE.

A person is entitled to be licensed as an assistant guide if the person

(1) is 19 years of age or more;

(2) is a resident of the state;

(3) is favorably recommended to the board, in writing, by a registered guide;

(4) meets additional qualifications which the board may require;

(5) is in sound physical condition.

Sec. 08.54.142. QUALIFICATION FOR TRANSPORTER LICENSE.

(a) A person may not engage in the activity of transporting unless the person is licensed as a transporter under this chapter. A person may be licensed as a transporter if the person

(1) is a resident of the state;

(2) is familiar with the terrain and transportation problems in the district or districts for which the license is requested;

(3) obtains a business license to do business as a transporter under AS 43.70.030.

(b) A person may not engage in the activity of transporting by air without an air commerce certificate as required by AS 02.05.040.

Sec. 08.88.171. ENTITLEMENT TO LICENSE.

(a) A person is entitled to a real estate broker license if the person is a resident of the state, if the person passes the real estate brokers examination, if the person applies for a license within six months after the person has taken the real estate brokers examination, if the person has had at least 24 months of active and continuous experience as a licensed real estate salesman, if the person is not under indictment for, or seven years have elapsed since the person has completed a sentence imposed upon conviction of, forgery, theft, extortion, conspiracy to defraud creditors, or any other felony involving moral turpitude, and if the person is an owner of a real estate business or employed as a real estate broker by a corporation or a partnership, and if that corporation or partnership does not

have an existing licensed broker. Unless the broker fails to pay the biennial renewal fee or unless the broker's license is suspended or revoked under AS 08.88.071(a)(3), the real estate broker's license continues in effect so long as the broker is an owner of a real estate business, or the broker is employed as a real estate broker by a corporation or a partnership. If the broker stops being an owner of a real estate business, or stops being employed as a real estate broker by a corporation or partnership, the broker's license is suspended from the time the broker stops until

(1) the broker again becomes an owner of a real estate business or is again employed as a real estate broker by a corporation or a partnership; or

(2) the broker is employed by a licensed real estate broker as an associate real estate broker, in which case the real estate broker license is returned to the commission, and the commission issues the broker an associate real estate broker license.

(b) A person is entitled to an associate real estate broker license if the person is a resident of the state, if the person passes the real estate brokers examination, if the person applies for a license within six months after the person has taken the examination, if the person has had at least 24 months of active and continuous experience as a licensed real estate salesman, if the person is not under indictment for, or five years have elapsed since the person has completed a sentence imposed upon conviction of, forgery, theft, extortion, conspiracy to defraud creditors, or any other felony involving moral turpitude, and if the person is employed by a licensed real estate broker as an associate real estate broker. Unless the associate broker fails

to pay the biennial renewal fee or unless the associate broker's license is suspended or revoked under AS 08.88.071(a)(3), the associate real estate broker's license continues in effect so long as the associate broker is employed by a licensed real estate broker as an associate broker. If the associate broker stops being employed by a licensed real estate broker, the associate broker's license is suspended from the time the associate broker stops until

(1) the associate broker again is employed by a real estate broker as an associate broker; or

(2) the associate broker becomes an owner of a real estate business, in which case the associate broker's associate real estate broker license is returned to the commission, and the commission issues the associate broker a real estate broker license.

(c) A person is entitled to a real estate salesman license if the person is a resident of the state, if the person passes the real estate salesman examination, if the person applies for a license within six months after the person has taken the examination, if the person is at least 19 years old, if the person is not under indictment for forgery, theft, extortion, conspiracy to defraud creditors, or any other felony involving moral turpitude, or, if convicted of such an offense, the person has completed the sentence imposed upon conviction, and if the person is employed by a real estate broker. Unless the salesman fails to pay the biennial renewal fee or unless the real estate salesman's license is suspended or revoked under AS 08.88.071(a)(3), a real estate salesman's license continues in effect so long as the salesman is employed as a salesman by a

licensed real estate broker. If the salesman stops being employed as a real estate salesman, the real estate salesman's license is suspended from the time the salesman stops until he again is employed as a salesman by a licensed real estate broker.

(d) A licensee shall promptly inform the commission of a change in business association that affects the status of the licensee's license under this section.

Sec. 09.55.130. RESIDENCE REQUIREMENTS FOR ACTION TO DECLARE MARRIAGE VOID.

When a marriage has been solemnized in the state and the plaintiff is a resident of the state, an action to declare the marriage void may be brought at any time. If the marriage has not been solemnized in the state, the action may be maintained only when the plaintiff has been a resident for at least one year before the commencement of an action.

Sec. 16.05.400. PERSONS EXEMPT FROM LICENSE REQUIREMENT.

(a) A license is not required of a resident or nonresident person under the age of 16 years for sport fishing nor shall a license be required of any resident under the age of 16 for hunting or trapping.

(b) A sport fishing, hunting or trapping license is not required of a resident who is 60 years of age or more and has been a resident for 30 consecutive years or more. The commissioner of revenue shall issue a permanent identification card without charge to persons who qualify by age and residence and who complete the forms required by the commissioner for implementation of this subsection. A person who is issued a permanent identification card under this subsection shall have it in his possession while sport fishing, hunting or trapping.

Sec. 16.05.940. DEFINITIONS.

In AS 16.05.010 - 16.05.950

(1) "a board" means either the Board of Fisheries or the Board of Game;

(2) "commercial fisherman" means an individual who fishes commercially for, takes, or attempts to take fish, shellfish, or other fishery resources of the state by any means, and includes every individual aboard a boat operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, whether participation is on shares or as an employee or otherwise; however, this definition does not apply to anyone aboard a licensed vessel as a visitor or guest who does not directly or indirectly participate in the taking; and the term "commercial fisherman" includes the crews of tenders or other floating craft used in transporting fish;

(3) "commercial fishing" means the taking, fishing for, or possession of fish, shellfish, or other fishery resources with the intent of disposing of them for profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid subsistence permit in possession, if required by statute or regulation, is considered prima facie evidence of commercial fishing if commercial fishing gear as specified by regulation is involved in the taking, fishing for, or possession of fish, shellfish or other fish resources;

(4) "commissioner" means the commissioner of fish and game unless specifically provided otherwise;

(5) "department" means the Department of Fish and Game unless specifically provided otherwise;

(6) "fish" means any species of aquatic finfish, invertebrates and amphibians, in any stage of their life cycle, found in or introduced into the state;

(7) "fish or game farming" means the business of propagating, breeding, raising, or producing fish or game in captivity for the purpose of marketing the fish or game or their products, and "captivity" means having the fish or game under positive control, as in a pen, pond, or an area of land or water which is completely enclosed by a generally escape-proof barrier;

(8) "fur dealing" means engaging in the business of buying, selling, or trading in animals skins. The term does not apply to a hunter or trapper selling the animal skins he has legally taken, or to a person, other than a fur dealer, purchasing animal skins for his own use;

(9) "game" means any species of bird and mammal, including a feral domestic animal, found or introduced in the state, except domestic birds and mammals; and game may be classified by regulation as big game, small game, fur bearers or other categories considered essential for carrying out the intention and purposes of AS 16.05.010 - 16.05.950;

(10) Repealed by sec. 2 ch 32 SLA 1968;

(11) "hunting" means the taking of game under AS 16.05.010 - 16.05.950 and the rules and regulations promulgated under it;

(12) "nonresident" means a person who is not a resident;

(13) "operator" means the individual by law made responsible for the operation of the vessel;

(14) "resident" means a person who for 12 consecutive months has maintained a permanent place of abode in the state and who has continually maintained his voting residence in the state; and in the case of a partnership, association, joint stock company, trust, or corporation, "resident" means one that has its main office or headquarters in the state; however, a member of the military service who has been stationed in the state for the preceding 12 consecutive months is a resident for the purposes of AS 16.05.010 - 16.05.950, and the dependent of a resident member of the military service, who has been living in the state for the preceding year is a resident for the purposes of AS 16.05.010 - 16.05.950, and a person who is an alien but who for one year has maintained a permanent place of abode in the state is a resident for the purposes of AS 16.05.010 16.05.950;

(15) "seizure" means the actual or constructive taking or possession of real or personal property subject to seizure under AS 16.05.010 - 16.05.950 by an enforcement or investigative officer charged with enforcement of the fish and game laws of the state;

(16) "sport fishing" means the taking of or attempting to take for personal use, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries;

(17) "subsistence fishing" means the taking, fishing for, or possession of fish, shellfish, or other fisheries resources for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(18) "take" means taking, pursuing, hunting, fishing, trapping, or in any manner disturbing, capturing, or killing or attempting to take, pursue, hunt, fish, trap, or in any manner capture or kill fish or game;

(19) "taxidermy" means tanning, mounting, processing, or other treatment or preparation of fish or game, or any part of fish or game, as a trophy, for monetary gain, including the receiving of the fish or game or parts of fish or game for such purposes;

(20) "trapping" means the taking of mammals declared by regulation to be fur bearers;

(21) "vessel" means a floating craft powered, towed, rowed, or otherwise propelled, which is used for delivering, landing, or taking fish within the jurisdiction of the state, but for the purposes of AS 16.05.010 - 16.05.950 does not include aircraft;

(22) "visitor" means a nonresident or alien temporarily sojourning in the state as a visitor or tourist;

(23) "aquatic plant" means any species of plant, excluding the rushes, sedges and true grasses, growing in a marine aquatic or intertidal habitat;

(24) "fish derby" means a contest in which prizes are awarded for catching fish;

(25) "fishing derby association" means a civic, service or charitable organization in the state, not for pecuniary profit, whose primary purpose is to promote interest in fishing for recreational purposes and which has been in existence for five years before applying for a permit under AS 16.05.010 -

16.05.950, but does not include an organization formed or operated for gaming or gambling purposes.

(26) "subsistence uses" means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter or sharing for personal or family consumption; for the purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

(27) "barter" means the exchange or trade of fish or game, or their parts, taken for subsistence uses

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature;

(28) "domestic mammals" include musk oxen, bison and reindeer, if they are lawfully owned.

(29) "nonresident alien" means a person who is not a citizen of the United States and whose permanent place of abode is not in the United States.

Sec. 16.10.310. POWERS OF THE DEPARTMENT.

(a) The department may

(1) make loans to

(A) individual commercial fishermen who have been state residents for a continuous period of five years immediately preceding the date of application for a loan under AS 16.10.300 - 16.10.370 and have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for any one of the past five years, and who actively participated in the fishery during that period, for the purchase of entry permits;

(B) an individual who has been a state resident for a continuous period of five years immediately preceding the date of application for a loan under AS 16.10.300 - 16.10.370, who (i) because of lack of training or lack of employment opportunities in the area of residence does not have occupational opportunities available other than commercial fishing; or (ii) is economically dependent on commercial fishing for a livelihood and commercial fishing has been a traditional way of life for the individual in Alaska, for the repair, restoration or upgrading of existing vessels and gear, for the purchase of entry permits and gear, and for the construction and purchase of vessels;

(C) corporations, partnerships, or joint ventures, 100 percent of which are owned by individual commercial fishermen who have been state residences for a continuous period of five years immediately preceding the date of application for a loan under AS 16.10.310(a)(1)(B) and have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for any one of the past five years, and who actively participated in the fishery during that period, for the repair, restoration or upgrading of existing vessels and gear, for the purchase of gear, and for the construction and purchase of vessels;

(2) designate agents and delegate its powers to them as necessary;

(3) adopt regulations necessary to carry out its functions;

(4) establish amortization plans for repayment of loans, which may include extensions for poor fishing seasons or for adverse market conditions for Alaskan products;

(5) enter into agreements with private lending institutions, other state agencies, or agencies of the federal government, to carry out the purposes of AS 16.10.300 - 16.10.370;

(6) enter into agreements with other agencies or organizations to create an outreach program to make loans under AS 16.10.300 - 16.10.370 in rural areas of the state.

(b) The department shall consult with the Department of Fish and Game on regulations and procedures established under this chapter.

Sec. 16.10.680.

Eligibility for loans.

(a) The commissioner may purchase a mortgage or note under AS 16.10.660(b) if it secures a loan to an individual who meets one of the requirements of (b) of this section and who

(1) has been a resident of Alaska for at least five years;

(2) does not qualify for a loan for the purposes described in AS 16.10.670 under a state loan program;

(3) has not previously participated in the loan program established in AS 16.10.650 - 16.10.720 or in any other state loan program for the purposes described in AS 16.10.670; and

(4) meets the guidelines established by the commissioner to determine whether the applicant is reasonably likely to succeed as a commercial fisherman and be able to repay the loan.

(b) In addition to the requirements of (a)(1) (4) of this section, the commissioner may purchase a mortgage or note under AS 16.10.660(b) only if it secures a loan to an individual who demonstrates under guidelines established by the commissioner that

(1) because of his lack of training or the lack of employment opportunities in the area in which he resides, he does not have occupational opportunities available to him other than commercial fishing; or

(2) he is economically dependent on commercial fishing for a livelihood and commercial fishing has been a traditional way of life for him in Alaska.

(c) The commissioner may not refuse to purchase a mortgage or note from a private financial institution under AS 16.10.660(b) solely because the applicant for the loan does not have a credit history.

(d) In determining whether the applicant is reasonably likely to be able to repay the loan under (a)(4) of this section, the private financial institution shall consider the applicant's income from commercial fishing and from other sources.

Sec. 16.35.130. BOUNTY NOT TO BE PAID.

No bounty may be paid under secs. 50 - 120 of this chapter to a person who for the immediately preceding year has not maintained a permanent place of abode inside the game management unit or part of the game management unit in which the animal was taken and a bounty is paid, or to a person who has not continually maintained his legal residence in the state, or to a salaried employee of a federal or state agency which is engaged in fish or game protection, management, research activity, or to any person whose bounty claim results from a trophy hunt as publicly declared by the Department of Fish and Game.

Sec. 18.55.330.

Preference to veterans.

units in a housing project for rent or sale to veterans. The offer shall be by publication of reasonable notice in a newspaper circulated in the area in which the housing project is located. The authority shall set aside these units for rental or sale to veterans for at least 30 days following first publication of the notice before making them available to other residents. If, after an additional 30 days a unit remains unassigned, the authority may rent or sell it to any person in the state, provided that residents have first preference.

Sec. 18.55.470.

Definitions.

In AS 18.55.300 - 18.55.470

(1) "authority" means the Alaska State Housing Authority;

(2) "moderate cost" means a cost determined by the authority which is below the level at which private enterprise is currently building a needed volume of reasonably safe and sanitary dwellings for sale in the locality involved;

(3) "moderate rental" means a rental rate determined by the authority which is below the level at which the dwellings are currently being offered for rent by private persons in the locality involved;

(4) "resident" means a person who has lived in the state continuously for any one year;

(5) "veteran" means a person honorably separated from the military service of the United States who has at any time resided continuously for at least a year in the state and who served in the armed forces of the United States for at least 90 days or whose service was for less than 90 days because of injury or disability incurred in the line of duty, between (A) September 16, 1940 and July 25, 1947; (B) June 25, 1950 and January 31, 1955; or (C) August 4, 1964, and a date six months after the termination of hostilities involving forces of the United States in Viet Nam; "veteran" also includes the spouse or widow or widower of a veteran.

Eligibility for veterans' interest rates.

The following persons are eligible veterans for the purposes of AS 18.56.098(g) and (h):

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

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

(B) who, not being a bona fide resident of the territory or state at the time of entry into the service, has been a resident of the territory or state for at least one year at the time of the loan application and has been a resident of the territory or state for at least five years; and

(C) whose discharge was under honorable conditions;

(2) the widow or widower of a member of the armed forces or an eligible veteran if

(A) the member or veteran was a resident of the territory or state for one year before induction into the service;

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

(C) his discharge was under honorable conditions;

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

Sec. 21.06.250. FEES AND LICENSES.

(a) The director shall collect required fees in advance. The fees are as follows:

(1) certificate of authority

(A) for filing an application for certificate of authority, articles of incorporation and other charter documents, bylaws, financial statement, examination report, power of attorney to the director, and all other documents and filings required in connection with such application, and for issuance of an original certificate of authority, if issued domestic insurers ..... $100 foreign insurers 100

(B) annual continuation of certificate of authority ..... $ 65

(C) reinstatement of certificates of authority ..... $ 65

(D) amending certificate of authority ..... $ 10

(2) filing amendments of articles of incorporation, domestic and foreign insurers .... $ 10

(3) filing bylaws or amendments thereto, where required ..... $ 10

(4) filing annual statement of insurer, other than as part of application for original certificate of authority .... $ 10

(5) general agent or agent license, property, casualty, surety, title insurance agents, and including disability insurance without additional license or fee when written by property, casualty, or surety insurer otherwise represented by the general agent or agent

(A) application for original license, and including issuance of license, if issued,

(i) individual ..... $ 35

(ii) firm or corporation 75

(B) annual renewal or continuation of license

(i) individual ..... $ 35

(ii) firm or corporation 75

(C) appointment of agent or general agent, each insurer ..... $ 5

(D) annual renewal of appointment of general agent or agent, each insurer .... $ 5

(E) temporary license ..... $ 35

(6) nonresident general agent or agent's license

(A) individual ..... $ 75

(B) firm or corporation $150

(C) annual renewal or continuation of license ..... $ 75

(7) broker license

(A) application for original license and including issuance of license if issued - resident

(i) all line broker $100

(ii) property-casualty broker 75

(iii) life-disability broker 75

(B) annual renewal or continuation of license resident

(i) all line broker $100

(ii) property-casualty broker 75

(iii) life-disability broker 75

(C) application for original license and including issuance of license, if issued - nonresident

(i) all line broker $250

(ii) property-casualty broker 150

(iii) life-disability broker 150

(D) annual renewal or continuation of license nonresident

(i) all line broker $250

(ii) property-casualty broker 150

(iii) life-disability broker 150

(8) solicitor license

(A) application for original license, including issuance of license if issued ..... $ 15

(B) annual continuation of license ..... $ 15

(9) general agent or agent license, life, disability insurance and annuities

(A) application for original license, including issuance of license, if issued,

(i) individual ..... $ 35

(ii) firm or corporation 75

(B) annual renewal or continuation of license,

(i) individual ..... $ 35

(ii) firm or corporation 75

(C) appointment of general agent or agent, each insurer $ 5

(D) annual renewal of appointment of general agent or agent, each insurer ..... $ 5

(10) examination for license as general agent, agent, broker, solicitor or adjuster, each examination ..... $ 10

(11) surplus line broker license

(A) application for original license and for issuance of license, if issued - resident $100

(B) application for original license and for issuance of license if issued - nonresident $300

(C) annual renewal or continuation of license resident $100

(D) annual renewal or continuation of license nonresident $300

(12) adjuster license

(A) application for original license and for issuance of license if issued - resident .....$ 35

(B) annual renewal or continuation of license resident .....$ 35

(C) application for original license and for issuance of license, if issued - nonresident .....$ 75

(D) annual renewal or continuation of license nonresident .....$ 75

(13) insurance vending machine license, each machine, each year ..... $ 35

(14) for issuing any other certificate required or permissible under law ..... $ 5

(15) for accepting service of process ..... $ 5

(16) for copy of insurance code, actual printing cost plus postage;

(17) for copy of insurance report, actual printing cost plus postage;

(18) for any printed material furnished by the director not mentioned above, the director may charge the actual cost of printing plus handling and postage;

(19) for limited license (travel insurance agent) ..... $ 25

(20) Repealed by sec. 6 ch 113 SLA 1974, effective January 1, 1975.

(21) rating bureaus (for a three-year license) $100

(b) The director shall promptly deposit with the commissioner of revenue to the credit of the general fund of this state all fees received by him under this section.

Sec. 21.27.090. AGENT AND BROKER QUALIFICATIONS.

(a) To qualify for an agent or broker license an applicant must comply with this title and

(1) be 19 years of age or over, if an individual;

(2) if for a resident agent's or broker's license: be a bona fide resident for a period of not less than one year of continuous residency, immediately before issuance of license, and actually residing in Alaska; or if a corporation, be other than an insurer and maintain a lawfully established place of business in this state, except as provided in AS 21.27.270;

(3) be empowered to be an agent or broker, as the case may be, under its members' agreement, if a firm, or by its articles of incorporation, if a corporation;

(4) successfully pass any examination required under AS 21.27.060;

(5) be a trustworthy person;

(6) not intend to use or use the license for the purpose principally of writing controlled business, as defined in AS 21.27.030;

(7) if for an agent license, be appointed as its agent by one or more authorized insurers, subject to issuance of the license;

(8) if for broker license, have had experience either as an agent, solicitor, adjuster, general agent, broker, or as an employee of insurers or representatives of insurers, or special education or training of sufficient duration and extent reasonably to satisfy the director that he possesses the competence necessary to fulfill the responsibilities of broker.

(b) If the director finds that the applicant is qualified and that the license fee has been paid, he shall issue the license. Otherwise, the director shall refuse to issue the license.

Sec. 21.27.220. SOLICITOR'S QUALIFICATIONS.

A person is entitled to be licensed as a solicitor if he

(1) is a bona fide resident of Alaska and has been a continuous resident for at least one year immediately before issuance of a license;

(3) intends to and does make the soliciting and handling of insurance business under his license his principal gainful occupation;

(4) is to represent and be employed by but one licensed agent or broker;

(5) has passed any examination required under this chapter;

(6) is otherwise qualified under this title.

Sec. 26.15.130. ELIGIBILITY FOR LOANS.

(a) Qualifications for loans under AS 26.15.010 26.15.160 are:

(1) persons who served in the armed forces of the United States for 90 days or more, or whose service was for less than 90 days because of injury or disability incurred in the line of duty, between April 6, 1917, and November 11, 1918, and beginning September 16, 1940, to November 7, 1975, or in a combat zone during any period of armed conflict, who were separated from the armed forces with a discharge other than dishonorable, and

(A) who, at the time of induction into the service, were residents of the territory, who had been residents for not less than one year immediately before their induction, and who returned to the territory or state after discharge as residents with the intention of remaining in the territory or state; or

(B) who, not being bona fide residents of the territory before their entry into the service, have been residents of the territory or state for five or more years;

(2) persons who were dependent on a member of the armed forces or a veteran of World War II at the time of the member's or veteran's death, if

(A) the member or veteran was a resident of the territory for one year before induction into the service; and

(B) he served in the armed forces for at least 90 days between September 16, 1940, and July 25, 1947, but no benefits for loans accrue to dependents of an enlistee or re-enlistee for time served after November 1, 1945, regardless of whether the