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D. Scope And Intent Of This Report.

The purpose of this report is not to recommend particular amendments to the Alaska Longevity Bonus Program. As Section II, post makes plain, any "recommendation" is a function of the goals which the legislature seeks to achieve through this exercise.

Rather, the goal of this report is to assemble a comprehensive list of alternatives proposed by various interested parties, and to analyze the alternatives in light of:

1. constitutional constraints;
2. fiscal impacts;
3. practicability; and
4. the effect of any changes on the elderly's eligibility for other programs.[25]

In developing a list of alternatives, this report has included five options examined by the Sheffield Administration, and five alternatives developed by the authors of this report. The information presented with respect to each option is intended to be sufficient for a threshold determination of feasibility. The report attempts to anticipate the major problems and issues surrounding each option; however, it is not intended to exhaust the details of every proposal.

Rather, the report should be used as a basis for the Senate Judiciary Committee's preliminary indication of

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[25]See Section II.(C) post.

preference. We are recommending that the committee choose two or three primary options. We will then prepare implementing legislation and a detailed analysis of the primary options. Under this approach, the committee will not be required, at this early point, to make an "all or nothing" choice. It will also afford the committee flexibility in the event that, for some presently unforeseeable reason, one option becomes impracticable.

Draft implementing legislation and a detailed analysis of the committee's choices can be transmitted within two to three weeks, depending on the options chosen.

E. Alternatives Included In This Report.

The options included in this report, which are analyzed in turn in Section III, are:

1. expand the Alaska Longevity Bonus Program to include all elderly Alaskans with one-year's residency;

2. phase out the Alaska Longevity Bonus Program by gradually reducing benefits;

3. phase out the Alaska Longevity Bonus Program by gradually reducing benefits, while contemporaneously raising the eligibility limits for general state assistance;

4. providing a minimal base payment under the Alaska Longevity Bonus Program based solely on one-year's residency, with supplemental payments made on the basis of need;

5. phase out the Alaska Longevity Bonus Program by increasing the age eligibility each year;

6. create an annuity plan, with the annuity corpus consisting of permanent fund distributions. This option would necessitate a transition program for those persons 40 years and older;

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

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

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

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

II. CONSTRAINTS ON THE CHOICE OF OPTIONS

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

A. Constitutional Constraints.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As a general rule, attorneys have assumed that in cases not involving the "compelling state interest" standard, a one-year durational residency requirement is permissible as a presumption of domiciliary. See, Starns v. Malkerson, F. Supp. 325, 234 (Minn. 1970), affd. mem. 401 U.S. 985 (1971). Moreover, the State of Alaska has taken the position that in cases involving either particularly attractive benefits, or particularly transient populations, a durational residency requirement in excess of one year is constitutionally permissible. See Motion For Summary Judgment, September 8, 1982, Andress v. Baxter, et al., No. A82-307 Civil, U.S. District Court, (D. Alaska 1982).

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Varying Goals of Several Longevity Bonus Options.

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

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

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

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

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

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

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

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

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

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

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[33]See n. 8, ante.

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

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

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

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

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[34] AS 43.23.075.

[35] See 42 U.S.C. §1382(a)(b)(6).

[36] See IRS Revenue Rulings, 53-136, 1963-2 C.B. 19; 68-38, 1968-1 C.B. 446; 72-340, 1972-2 C.B. 31; 78-170, 1978-1 C.B. 24.

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

III. DISCUSSION OF ALTERNATIVES

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

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

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

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

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

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

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

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

B. Phase Out The Existing Longevity Bonus Program.

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

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

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

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

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

CHART 1.

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

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

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

CHART 2.

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

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

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

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

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

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

existing receipients -- $295 in FY 1984.

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

(1) Of the 3,968 elderly whom current data suggest could be eligible for the increased OAA program, 2500 will in fact apply. This figure arbitrarily discounts both those who will decline to apply for psychological reasons, and those who will not apply because the minimal benefits to them are simply not worth the bother;

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

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

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

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

CHART 3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. Gradual Increase In The Age Of Eligibility.

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

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

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

F. Self-Sustaining Annuities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[44]Reeves, Inc. v. State, 65 L.Ed. 2nd 244, (1981); see also White v. Massachusetts Council of Construction Employees, ___ U.S.___, No. 81-1003 (U.S.S.Ct., Feb. 28, 1983)(distinguishing Hicklin v. Orbeck, 437 U.S. 518 (1978).

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

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

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

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

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[45]cf. 26 U.S.C. §401-404

[46]See 26 U.S.C. §408.

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

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

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

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

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

[48] Id.

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

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

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

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

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[49] Id.

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

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

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

[51] See 42 U.S.C. §1382(a)(b)(2)(B).

[52] See n. 8, ante.

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

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

G. State Social Security System.

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

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

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

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

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

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

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

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

[54]Id.

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

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

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

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

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

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

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

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

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

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

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[55] 42 U.S.C. §414(a)(1)

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

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

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

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

H. Health Insurance For The Elderly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Tilly
586-2890
586-2559

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

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

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

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

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[64]42 U.S.C. §1382(a)(1)(B)

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

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

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

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

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

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

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

I. LONGEVITY BONUS PREMISED ON INDIVIDUALIZED RELOCATION HARDSHIP.

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

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

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

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

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

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

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

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

1. income;

2. location of family;

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[68]See AS 16.43

3. location of property; and

4. ethnic, religious, and cultural ties.

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

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

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

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

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

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

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

J. GRANDFATHERING

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

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

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

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

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

4. CONCLUSION

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

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT

RODNEY G. VEST,

Plaintiff,

v.

MARIAN SCHAFER and STATE OF ALASKA,

Defendants.

CONFIDENTIAL

Case No. 1JU-82-1103 Civ.

AGREEMENT AND ORDER OF SETTLEMENT

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

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

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

the rewarding of prior residency was a constitutionally permissible purpose;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOW THEREFORE THE PARTIES STIPULATE AND AGREE AS FOLLOWS:

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

(a) the certification of plaintiffs class

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED this __ day of _____, 1982.

DATED: August 9, 1982

Wilson L. Condon by JJ

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 40% federal 52% state funds	Vendor Payments	852.90	n/a	n/a	n/a	Yes	up to $450/mo.	$3600/mo.	app. 275* *includes app. 120 who are included in the 500 at risk for SSI
Medicaid - Regular	Provides payment for necessary medical care on behalf of recipients of Old Age Assistance federal, 52% state funds, 48%	Vendor Payment	546	802 (net)	n/a	n/a	Yes	app. 2300 eligible, of whom app. 943 use benefits each month	$1027/ useage	app. 1200* *includes 500 at risk in SSI progra

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

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

D

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC ASSISTANCE

POUCH H-07
JUNEAU, ALASKA 99811
PHONE:
465-3347

August 3, 1983

Cliff Groh
Legislative Assistant
to Representative Malone
P.O. Box 9
Kenai, Alaska 99611

Dear Mr. Groh:

You had inquired about our response to several points made by Jon Tillinghast in his report to the Senate on alternatives to the Alaska Longevity Bonus. That report is remarkable in demonstrating how well Mr. Tillinghast absorbed the public assistance intricacies involved in the ALB issue. However, there are inaccuracies on the three points you cite:

(1) Page 5, paragraph 1:

It is true that the Longevity Bonus is excluded in determining income eligibility for the aged, blind, and disabled (Adult Public Assistance), for Federal Supplemental Security Income (SSI), for Medicaid based on Adult Public Assistance eligibility, and for Energy Assistance.

However, the bonus counts as income in the Food Stamp, General Relief, General Relief-Medical, Catastrophic Illness, and Aid to Families with Dependent Children programs.

In all our programs, determining who is "needy" involves measuring both income eligibility and resource eligibility. Even those programs that disregard the bonus as income count saved bonus payments against the program resource limit. For example, an aged recipient who accumulates bonus payments in his savings account will lose his Old Age Assistance, his SSI payment, and his Medicaid coverage when his savings account balance reaches over $1500.

(2) Page 30, paragraph 2, residence:

No public assistance program has a 30-day durational residency requirement. In Old Age Assistance, Medicaid, and SSI, all that is required is best summarized as "present, with intent to remain". If we were to attempt to put any durational requirement on Medicaid residency, we would be declared out of compliance with federal regulations (42CFR 435.403, copy attached). Such non-compliance would threaten all federal matching Medicaid funds.

06-F61LH

(3) Page 30, paragraph 2, nursing homes:

This is presently a serious mis-statement, which perhaps results from Mr. Tillinghast having to severely condense a mass of extremely complex eligibility information. If you were to read that paragraph as I do, you would see that the possibility of a "remarkable in-migration problem" is raised with respect to needy elderly who are over income for old age assistance in their home state, or who receive it there but find it insufficient, who would tend to come to Alaska if our qualifying limits and payments were raised substantially. If they get assistance here, they will also qualify for all Medicaid services, including expensive nursing home care.

We already have one of the highest old age assistance levels in the nation, and we do occasionally see applicants who have come here precisely for that reason. In-migration is clearly a factor which must be considered, even if it can't be accurately measured. And migration related Medicaid costs must be considered as well.

I believe Mr. Tillinghast is not suggesting that increasing Old Age Assistance will produce a "run" on Alaska nursing homes by Outsiders. To suggest such a prospect would be misleading:

(a) There is a nation-wide income eligibility "cap" for Medicaid institutionalized persons. This cap is set by Congress. If you have $917 or more of gross monthly income, you will be ineligible for Medicaid institutional care in Maine, Florida, California, Alaska, or Guam.

(b) Medicaid nursing home patients don't generally receive assistance payments. Almost all of their monthly income, including the Longevity Bonus, must be paid to the nursing home to be applied to their bill. They keep only up to $70 per month for incidental personal needs. There is, therefore, no personal financial advantage to moving to an Alaska nursing home.

(c) By federal regulation, most Medicaid nursing home patients must be so medically needy that most of them would be incapable of making such a decision to relocate, and/or they would be prevented from doing so by their physicians, even if they were so atypical as to actually want to go far away from their home environment, friends, and relatives.

(d) There wouldn't be any beds in Alaskan nursing homes for them to inhabit even if they did choose to move here. (We'd be happy to show you our monthly reports of nursing home vacant beds, if you're interested.)

I do not mean to suggest that Medicaid coverage by itself would not be a motive to relocate to Alaska. It might well be, especially for an ambulatory person with a chronic and expensive illness or handicap and

a bit too much retirement income to qualify for Medicaid Outside. However, if this were a big factor in in-migration, I would suspect we'd have seen it already in our caseloads. As far as we can tell, we haven't. If new applicants from out-of-state mention why they came were, it is almost always because Alaska is their former home, or they have family here, or, rarely, that they wanted more Old Age Assistance.

If you were interested in investigating the in-migration problem further, I'd suggest you might contact California old age assistance program authorities. Apparently, despite the second highest assistance level in the nation, excellent health facilities and medical coverage, and a very benign climate, California appears to be rapidly losing its elderly population, especially to Gulf Coast States. It's my understanding that their Legislative research staff now looking into the causes for this out-migration.

If you have any further questions, please don't hesitate to call me.

Sincerely,

Gordon G. Landes
Program Officer
Public Assistance

Approved: _____
Jerry Harris, Acting Director

ccs: As requested

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receiving an optional State supplement as specified in § 435.230 or individuals in categories specified by the agency under § 435.121.

§ 435.402 Citizenship and alienage.

The agency must provide Medicaid to otherwise eligible residents of the United States who are—

(a) Citizens; or

(b) Aliens lawfully admitted for permanent residence or permanently residing in the United States under color of law, including any alien who is lawfully present in the United States under section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act.

§ 435.403 State residence.

(a) *Requirement.* The agency must provide Medicaid to otherwise eligible residents of the State.

(b) *Definition.* For purposes of this section, an individual is considered incapable of indicating intent if—

(1) His I.Q. is 49 or less or he has a mental age of 7 or less, based on tests acceptable to the mental retardation agency in the State;

(2) He is judged legally incompetent; or

(3) Medical documentation, or other documentation acceptable to the State, supports a finding that he is incapable of indicating intent.

(c) *Who is a State resident.* A resident of a State is any individual who:

(1) Meets the conditions in paragraphs (d) through (g) of this section; or

(2) Meets the criteria specified in an interstate agreement under paragraph (i) of this section.

(d) *Placement by States in an out-of-State institution.* If a State arranges for an individual to be placed in an institution located in another State, the State making the placement is the individual's State of residence, irrespective of the individual's indicated intent or ability to indicate intent.

(e) *Individuals receiving a State supplementary payment (SSP).* For any individual who is receiving an SSP, the State of residence is the State paying the SSP.

(f) *Non-institutionalized individuals.* (1) For any non-institutionalized individual under age 21 whose Medicaid eligibility is based on blindness or disability, the State of residence is the State in which he is living.

(2) For any other non-institutionalized individual under age 21, the State of residence is determined in accordance with 45 CFR 233.40, the rules governing residence under the AFDC program.

(3) For any non-institutionalized individual over age 21, the State of residence is the State where he is—

(i) Living with the intention to remain there permanently or for an indefinite period (or if incapable of stating intent, where he is living); or

(ii) Living and which he entered with a job commitment or seeking employment (whether or not currently employed).

(g) *Institutionalized individuals.* (1) For any institutionalized individual who is under age 21 or who is age 21 or older and became incapable of indicating intent before age 21, the State of residence is—

(i) That of his parents, or his legal guardian if one has been appointed; or

(ii) That of the parent applying for Medicaid on the individual's behalf, if the parents reside in separate States and there is no appointed legal guardian.

(2) For any institutionalized individual who became incapable of indicating intent at or after age 21, the State of residence is the State in which the individual was living when he became incapable of indicating intent. If this cannot be determined, the State of residence is the State in which he was living when he was first determined to be incapable of indicating intent.

(3) Under both paragraphs (g) (1) and (2) of this section, the State where the institution is located is the individual's State of residence unless that State determines that the individual is a resident of another State, by applying the rules under paragraphs (g) (1) and (2).

(4) For any other institutionalized individual over age 21, the State of residence is the State where he is living with the intention to remain there permanently or for an indefinite period.

(h) *Specific prohibitions.* (1) The agency may not deny Medicaid eligibility because an individual has not resided in the State for a specified period.

(2) The agency may not deny Medicaid eligibility to an individual in an institution, who satisfies the residency rules set forth in this section, on the grounds that the individual did not establish residence in the State before entering the institution.

(3) The agency may not deny or terminate a resident's Medicaid eligibility because of that person's temporary absence from the State if the person intends to return when the purpose of the absence has been accomplished, unless another State has determined that the person is a resident there for purposes of Medicaid.

(i) *Interstate agreements.* A State may have a written agreement with another State setting forth rules and procedures resolving cases of disputed residency. These agreements may establish criteria other than those specified in paragraphs (b) through (f) of this section, but must not include criteria that result in loss of residency in both States or that are prohibited by paragraph (h) of this section. The agreements must contain a procedure for providing Medicaid to individuals pending resolution of the case.

(j) *Continued Medicaid for institutionalized recipients.* If, on the effective date of this section, an agency is providing Medicaid to an institutionalized recipient who, as a result of this section, would be considered a resident of a different State—

(1) The agency must continue to provide Medicaid to that recipient for two years unless it makes arrangements with another State of residence to provide Medicaid at an earlier date; and

(2) Those arrangements must not include provisions prohibited by paragraph (h) of this section.

[44 FR 41437, July 17, 1979]

§ 435.404 Applicant's choice of category.

The agency must allow an individual who would be eligible under more than one category to have his eligibility determined for the category he selects.

Subpart F—Categorical Requirements for Eligibility

§ 435.500 Scope.

This subpart prescribes categorical requirements for determining the eligibility of both categorically and medically needy individuals specified in Subparts B, C, and D of this part.

Dependency

§ 435.510 Determination of dependency.

For families with dependent children who are not receiving AFDC, the agency must use the definitions and procedures set forth under the State's AFDC plan to determine whether—

(a) An individual under age 21 is a dependent child because he is deprived of parental support or care; and

(b) An individual is an eligible member of a family with dependent children.

Age

§ 435.520 Age requirements for the aged and children.

(a) The agency must not impose—

(1) An age requirement of more than 65 years;

(2) An age requirement that excludes an individual under age 19 who meets the definition of dependent child under the State title IV-A plan; or

(3) A lower age requirement than that under the State's AFDC plan.

(b) In determining age, the agency must use the common-law method (under which an age is reached the day before the anniversary of birth), except—

(1) For families and children, the agency must use the popular usage method (under which an age is reached on the anniversary of birth), if this method is used under the State's AFDC plan; and

(2) For aged, blind, or disabled individuals, the agency may use the popular usage method, if the plan provides under § 435.121, for coverage of aged, blind, or disabled individuals who meet more restrictive eligibility requirements than those under SSI.

(c) The agency may use [illegible] date, such as July 1, for an individual's age if the [illegible] the month, of his birth i

[43 FR 45204, Sept. 29, 1978; 46 FR 47987, Sept. 30, 1981]

Blindness

§ 435.530 Definition of bli

(a) *Definition.* The a[illegible] the same definition [illegible] used under SSI, except

(1) In determining [illegible] individuals whose Me[illegible] is protected under §§ 435.134, the agency [illegible] nition of blindness [illegible] under the Medicaid p[illegible] 1973; and

(2) The agency ma[illegible] strictive definition to [illegible] bility under § 435.121 [illegible] is no more restrictiv[illegible] under the Medicaid p[illegible] 1972.

(b) *State plan* [illegible] State plan must con[illegible] of blindness, expres[illegible] measurements.

§ 435.531 Determinat[illegible]

(a) Except as [illegible] (b) of this sectio[illegible] blindness—

(1) A physician [illegible] cases of the eye [illegible] whichever the indi[illegible] examine him, unles[illegible] cant's eyes are miss[illegible]

(2) The examin[illegible] report of examinat[illegible] agency; and

(3) A physician [illegible] cases of the eye [illegible] thalmologist or a[illegible] throat specialist[illegible] report and determ[illegible] agency—

(i) Whether the [illegible] definition of blin[illegible]

(ii) Whether a [illegible] tions are necess[illegible] terminations of [illegible] under § 435.916 c[illegible]

(b) If an ager[illegible] to individuals [illegible] basis of blindn[illegible] not apply for th[illegible]

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M July 15, 1983

SUBJECT: "Needs-based" longevity bonus program (Work Order No. 13-1503)

TO: Representative Hugh Malone

FROM: Linn H. Asper
Legislative Counsel

You have asked two questions about the constitutionality of a proposed longevity bonus program that would guarantee a certain floor level of income for elderly residents of the state.

Your first question is what residency requirement would be constitutionally mandated by such a program. Assuming that the program is a constitutionally established public assistance program for elderly people with limited income, there can be no more than a nominal residence requirement. In Shapiro v. Thompson, 22 L.Ed.2d 600 (1969), the United State Supreme Court conclusively established that public assistance benefits may not be denied to an otherwise eligible applicant on the basis of a durational residence requirement. In that case a one-year residence requirement was struck down, but the holding makes it clear that any durational residence requirement, other than a minimal one to determine if the applicant intends to reside in the state, is prohibited. Applying Shapiro to a needs-based longevity bonus program would indicate that a 30-day residence requirement is the most that could be required of an applicant who is otherwise qualified for the program.

Your second question relates to a constitutionally acceptable standard for the determination of need for the new longevity bonus program. This question can only be answered in general terms.

Past court decisions make it clear that it is not a violation of the equal protection clause to discriminate between classes of people on the basis of economic need.

That is, public assistance programs that aid persons who fall below certain income guidelines are constitutional even though people who have income levels above the established limits do not receive assistance. However, there is a grey area in the situation you outline in that if the income limits are set at high levels persons whose income exceeds the limits can argue that the established limits do not restrict the program to needy persons and that if the program is not based on need it must be extended to all persons or terminated. Using federally established guidelines to make need determinations is a safe way to approach the question because such guidelines have the value of established precedent in determining who is needy and who is not. Using limits that exceed existing federal or state income guidelines for public assistance would increase the risk of a successful equal protection challenge. If income limits are set far in excess of federal or state guidelines a court would probably find that the new program is not really based on financial need and invalidate it.

LHA:ljb
26/011

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ERICKSON & ASSOCIATES

Consultants in Economics and Public Policy
526 Main Street, Juneau, Alaska 99801
Telephone 907/586-3118

28 July 1983

The Hon. Lisa Rudd
Commissioner of Administration
Pouch C
Juneau, Alaska 99811

Dear Lisa:

One of the major concerns about transforming the longevity bonus program into a universal generational entitlement has been the potential such a new program would have for encouraging in-migration to Alaska among those over 65. There is some evidence that an increasing number of persons over or approaching 65 are already being attracted to the state, usually to join their children and grandchildren already here. Since the average disposable income of persons over 65 in the U.S. is less than $8,000, an annual generational entitlement of $3,000 might be expected to increase the rate at which these parents of Alaskans choose to become Alaskans themselves.

I wonder if we are really correct in assuming that this kind of migration would be a bad thing for Alaska. I do know that Alaska's rates of suicide, alcoholism, child abuse, divorce, crime and other indices of personal disintegration and social disaffiliation are among the nation's highest. I suspect that these high rates are associated with the abnormally skewed age structure of our population, and with the lack of extended families associated with the relatively small cohort of people over 65 in Alaska society. As the attached graph shows, only about three percent of Alaskans are over 65, compared to 11 percent of all Americans. Could it be that Alaska society would be better off if we were to encourage not only the preservation of the extended families we have, but also the extension of presently nuclear families through in-migration of absent parents?

I and virtually all my contemporaries in urban Alaska of the 1950s grew up without the benefit of grandparents living nearby. I am thankful that my children have not experienced the same deprivation, and thankful that in rearing them I have had the

support of my own parents. But urban Alaska, where most Alaskans now live, is still a very mobile society, and as the population profile suggests, many families do not have these advantages.

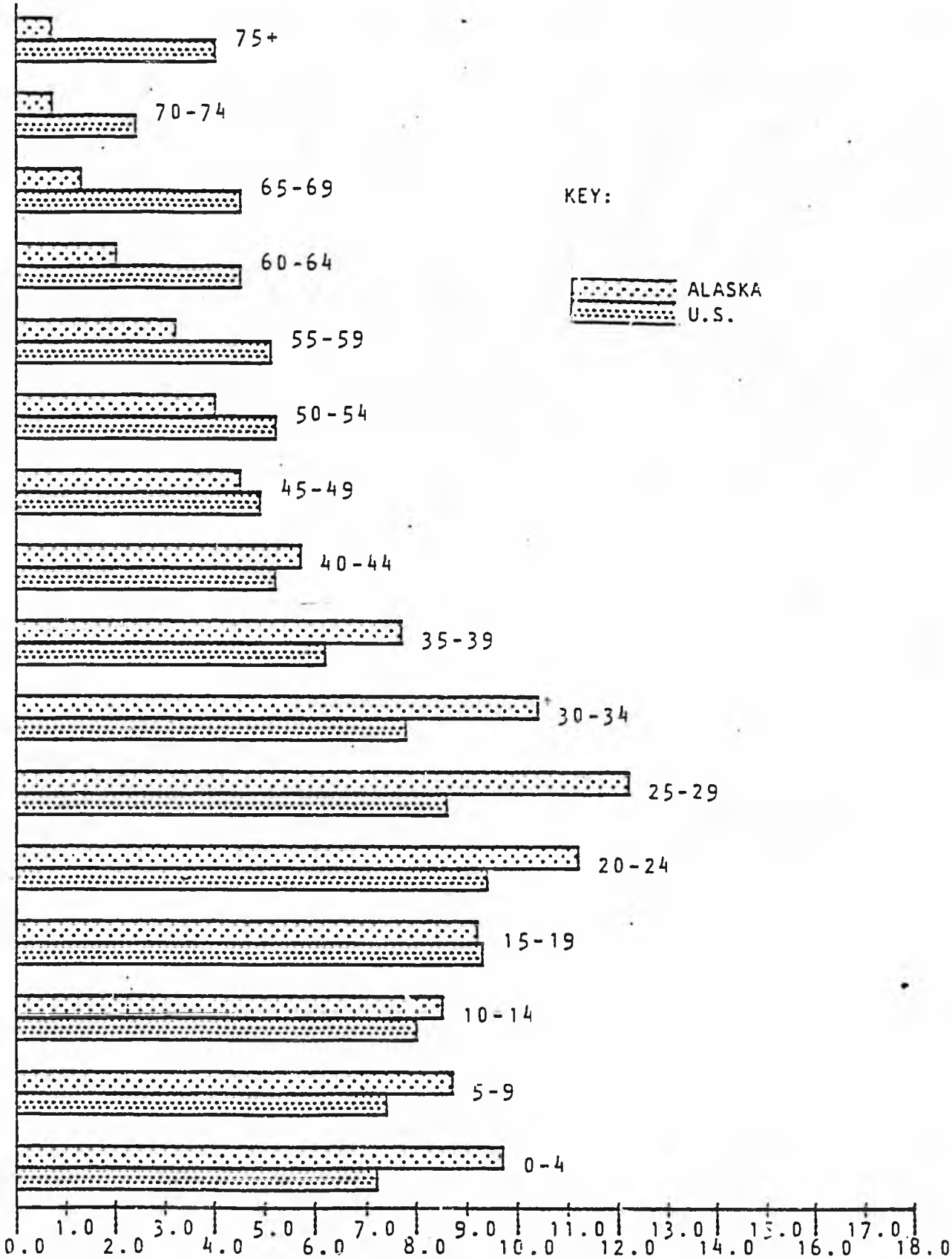
I wish I could give you hard research and statistics to support the theory that more extended families would reduce Alaska's many social problems. Or that I could confirm the hypothesis that in-migration and reduced out-migration stimulated by an Alaska generational entitlement would result in more extended families. If there is evidence for both of these notions, then it might provide a rational basis for replacing the current longevity bonus with a program providing for payments to all one year residents over 65, but gradually phasing out those payments as the percentage of Alaskans over 65 approached (say) half of the national average.

Sincerely,

Gregg K. Erickson

attachment

AGE STRUCTURE OF ALASKA AND US POPULATION, 1980



Prepared by ERICKSON & ASSOCIATES from U.S. Census data
(cohorts 65-69 and 70-74 estimated by Scott Goldsmith)

FIGG

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BIRCH, HORTON, BITTNER, PESTINGER AND ANDERSON

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SUZANNE C. PESTINGER
MICHAEL V. REUSING
ELISABETH H. ROSS
WILLIAM R. SATTERBERG
E. BUDD SIMPSON
DANIEL W. WESTERBURG

*NOT ADMITTED IN ALASKA

April 25, 1983

Senator Bill Ray
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: "GRANDFATHER OPTION": Sandberg, 4-12-83 Letter

Dear Senator Ray:

By letter of April 15, 1983, you asked for my views on Mark Sandberg's letter regarding the "grandfathering" option discussed in my March 8, 1983 report.

Under that option, the class of Longevity Bonus recipients would be expanded in FY 1984 to include all one-year Alaska residents. Then, the program would be terminated, with all FY 1984 recipients afforded a "grandfather right" to receive a longevity bonus for life. Mr. Sandberg, in an April 12, 1983 letter, expressed concerns about legislation "closing the class and funding an on-going program every year."

"Grandfather clauses" are rather common, and "have generally withstood equal protection challenges." Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d. 1255, 1267 (Alaska 1980). Frequently, individuals come to rely on a particular governmental program, and would suffer a peculiar hardship if that program were terminated. Nonetheless, and obviously, the legislature is under no obligation to continue any particular benefit program. The nearly universal judicial rule—shared by Alaska courts—is that the equal protection clause "does not forbid...statutory changes to have a beginning and thus to discriminate between the rights of an earlier and later time." Sperry & Hutchinson Company v. Rhodes, 220 U.S. 502, 505 (1911).

Usually, then, it would be reasonable for the legislature, in terminating a particular social program, to protect those who had come to rely upon the benefits accorded by the program. There are, however, two arguments which could be made that the general rule does not apply to this particular proposal.

First, the legislature would be "grandfathering" not only those who had come to rely upon the program for several years, but as well a substantial number of new recipients who had received the bonus for the first time in FY 1984. In discriminating between one-year residents who qualified before July 30, 1984, and those who reach 65 or moved to Alaska subsequent to that date, the "reliance" rationale may be difficult to support. Even under traditional equal protection analysis, which requires only a "rational basis" for any such distinction, an arbitrary dividing line under the guise of "grandfathering" is impermissible. State ex rel Bacich v. Huse, 59 P.2d. 1101 (Wash. 1936). Under state equal protection analysis, which requires a "fair and substantial relationship" between the goal of the statute and the discriminatory means chosen[1] the problem may be even more troublesome.

The short answer to this first issue is that the class which has come to rely upon the longevity bonuses is unconstitutionally defined. It would surprise me if the courts were to require a broadening of the class of eligible recipients and at the same time invalidate grandfathering legislation because the grandfathered class was overbroad. Plainly, constitutional constraints are a weighty consideration in determining whether a particular distinction is "fairly and substantially related" to the purposes of the enactment, and if the class grandfathered is "overbroad," it is certainly no broader than that constitutionally necessary.

The second potential issue is one raised both by Mr. Sandberg and the Department of Law. Both believe that there is some significance to the fact that the grandfathered class in this situation would continue to receive state benefits over a period of many years. Thus, for example, in FY 2000 the Department of Administration would continue to make payments to those who were elderly one-year residents as of June 30, 1984. This, they believe, may make the proposal akin to the existing longevity bonus, where one measure of eligibility is residency as of January 1, 1959.

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[1] State v. Erickson, 574 P.2d. 1, 12 (Alaska 1978)

However, grandfather provisions invariably contemplate future government action based upon prior status. In the case of Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d. 1255, the Alaska Supreme Court upheld a grandfather provision under which 1980 eligibility for a limited entry permit was conditioned upon possession of a gear license prior to January 1, 1973.

Drawing distinctions based upon a person's status as of the date of a program amendment or termination has been accepted outside the licensing field. It has been upheld, for example, with respect to tax exemptions. United States v. Maryland Savings Share Insurance Corporation, 400 U.S. 4 (1970). More to the point, it was upheld with respect to social security benefits in Califano v. Webster, 430 U.S. 313, 320-321 (1977). That case involved certain benefit formula computations which benefited men more than women, and which were repealed in 1972. The 1972 amendments provided that men reaching the age of 62 in 1975 and thereafter would be unable to use the prior formula. The court upheld the grandfather clause of the 1972 law. [2].

Taken to its logical conclusion, Mr. Sandberg's concerns would lead to the result that states may not "grandfather" existing recipients of a residency-based benefits program, because future legislative funding would, in essence, be tantamount to conferring present benefits based upon past residency. This, presumably, would be contrary to the court's ruling Zobel v. Williams, 72 L. Ed. 2d. 672 (1982).

I disagree with that conclusion, and the applicability of Zobel. If current one-year elderly residents were "grandfathered," a legislative appropriation to that class in FY 2000 would not represent an attempt by that legislature to reward those who were present in Alaska in 1984. It was this "reward of past residency" which was fatal to the permanent fund dividend program in Zobel.

Rather, the purpose of the "grandfathering" proposal is to alleviate the hardship which recipients would suffer by losing their longevity bonus. This purpose is plainly permissible, and "fairly and substantially" furthered by a grandfather clause. The fact that future government action is necessary to fully accord existing recipients their grandfather rights seem inconsequential under applicable case law.

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[2]The grandfather clause was tested under the equal protection component of the Fifth Amendment to the U.S. Constitution. The Equal Protection Clause of the Fourteenth Amendment, of course, applies only to the states. However, the Supreme Court has repeatedly held that equal protection analysis under the Fourteenth Amendment as to states, and under the Fifth Amendment as to the federal government, is identical. Weinberger v. Salfi, 422 U.S. 749, 770 (1975)

In sum, I personally do not believe that the "grandfather" option creates serious constitutional problems. Of course, the mere fact that schooled attorneys disagree obviously raises at least the possibility of litigation. This alone may set this option apart from the other nine alternatives considered in my report.

If I can be of further assistance, please do not hesitate to let me know.

BIRCH, HORTON, BITTNER,
PESTINGER AND ANDERSON

Jon K. Tillinghast

JKT:rdg

TABLE 1

SUMMARY OF PROJECTED LONGEVITY BONUS COSTS UNDER SELECTED OPTIONS
(Millions of Nominal Dollars)

Fiscal Year	INCOME LIMIT			ELIGIBILITY AGE INCREASE	
	$15,000 (Individual)	$20,000 (Individual)	$30,000 (Household)	Starting in FY 85	Starting in FY 89
1985	$33.5	$38.2	$36.2	$42.0	$47.2
1986	35.3	40.2	38.1	38.5	48.3
1987	37.1	42.2	40.0	35.3	49.9
1988	39.0	44.4	42.1	32.3	51.1
1989	41.0	46.7	44.3	29.5	46.9
1990	43.1	49.1	46.5	26.8	43.0
1991	45.3	51.6	48.9	24.4	39.4
1992	47.6	54.2	51.4	22.1	36.0
1993	50.1	57.0	54.1	19.9	32.9
1994	52.6	59.9	56.8	17.9	29.9
1995	55.3	63.0	59.8	16.1	27.1
1996	58.2	66.2	62.8	14.4	24.6
1997	61.2	69.6	66.0	12.8	22.2
1998	64.3	73.2	69.4	11.3	19.9
1999	67.6	77.0	73.0	9.9	17.8
2000	71.1	80.9	76.7	8.7	15.9
2001	74.7	85.1	80.7	7.5	14.1
2002	78.6	89.4	84.8	6.5	12.5
2003	82.6	94.0	89.2	5.6	11.0
2004	86.8	98.8	93.7	4.7	9.6
2005	91.3	103.9	98.5	3.9	8.3

House Research Agency
10/17/83

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

RODNEY G. VEST,

Plaintiff,

vs.

MARIAN SCHAFER and STATE OF ALASKA,

Defendants.

No. 1JU-82-1103 CIV

DEFENDANTS STATE OF ALASKA AND MARIAN SCHAFER'S MEMORANDUM IN SUPPORT OF CROSS MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION AND SUMMARY

Alaska provides a special monthly benefit to a small portion of its people -- those over 65 years of age who are veterans of territorial Alaska. Enacted in 1972, and effective on January 1, 1973, the longevity bonus program provides $250 per month to those 65 and over who were resident in Alaska before it became a state on January 3, 1959. Some 9,000 Alaskans, about 3 percent of the state's population, presently benefit from the program. Although additional veterans of the territorial days will become beneficiaries as they turn 65, the great majority of Alaska citizens are not now and never will become eligible for this benefit.

The program serves important and legitimate state purposes. By providing this benefit to those who suffered the unique hardships of life in territorial Alaska, and who now face a particularly difficult time in a state with an exploding economy, the program makes it possible for those who are a unique repository of Alaska's cultural heritage to remain in the state.

The present lawsuit, brought by Rodney Vest on behalf of himself and others over 65 but ineligible for the benefit, challenges the program under the equal protection clause and related guarantees of the state and federal constitutions. Like the majority of the state's people, plaintiff Vest was not a

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participant in territorial Alaska and thus is not eligible for this special program. A resident of Alaska since shortly after statehood was achieved, he stands just over the inevitable line the legislature was required to draw in determining who would be included within the program.

As the U.S. Supreme Court has repeatedly noted, "a legislature must necessarily engage in a process of line drawing." United States Retirement Board v. Fritz, 449 U.S. 166 (1980). "The 'task of classifying persons for ... benefits ... inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line' and the fact that the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration." Id. at 176. Since the classification the legislature has made in this case neither impinges upon a suspect class nor burdens the exercise of a fundamental right, and since it is rationally related to the promotion of permissible state goals, it fully satisfies both the U.S. and Alaska Constitutions.

In more than a dozen major decisions of the past decade, the U.S. Supreme Court has reaffirmed its historic position that it will not second guess state legislative choices concerning the proper allocation of public benefits and governmental subsidies. The Court has sustained legislative choices granting subsidies to widows but not to widowers; to veterans but not to non-veterans; to small families but not to large ones; to those who have been pushcart vendors in New Orleans for more than eight years and not to those who have begun that trade more recently; to those with 25 years railroad employment and not to those with less. In 1980 the Court emphasized once again in sweeping language the proper standard to be applied in cases such as these: "In more recent years ... the Court in cases involving social and economic benefits has consistently refused to invalidate on equal protection grounds legislation which is simply unwise or inartfully drawn." United States Retirement Board v. Fritz, 449 U.S.

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166 (1980). The same result applies under the Alaskan "sliding scale" equal protection test. Williams v. Zobel, 619 P.2d 448 (Alaska 1980); State v. Ostrosky, ___ P.2d ___, Op. No. 2702 (Alaska, July 19, 1983).

Notwithstanding the sweeping mandate of these cases, however, the plaintiff in this action contends that this court should undertake to impose its own view of the proper allocation of governmental subsidies in place of the judgment reached by the legislature. Such a result, the plaintiff suggests, is required by Zobel v. Williams, ___ U.S. ___, 72 L.Ed.2d 672 (1982)("Zobel III").

Zobel III is, however, a fundamentally different case from the one now before this court. Speaking with several voices, the Court in Zobel III invalidated Alaska's permanent fund dividend plan under which every resident of the state was granted $50 for each year of residency since statehood. For Chief Justice Burger, the Dividend Plan fell for the simple reason that the state failed to offer in its support any permissible legislative objective. Two of the suggested goals -- prudent management of the permanent fund and provision of a general incentive for remaining in the state -- had no connection to the statute's recognition and reward of residency acquired before the date of enactment of the statute. The third goal -- rewarding persons for their "contribution" to the state measured solely by how many incremental years a person had resided in Alaska -- was constitutionally impermissible. Thus, no reason at all remained to support the statutory classifications.

Other justices saw in the Permanent Fund Dividend Plan's "pervasive discriminations" a threat to the important constitutional interest in free interstate migration, often referred to as the right to travel. Each person choosing to come to Alaska would, under the plan, have been treated differently, and less well, than every person who came before. The recent arrival was to be treated as less worthy than the entire population of

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existing residents. The resulting burden on the freedom of interstate movement was clearly unacceptable to the Court.

The longevity bonus plan is altogether different. Rather than benefitting all 'insiders' against each succeeding group of newcomers, the longevity bonus plan provides an important benefit to a carefully defined group of beneficiaries -- a group of senior citizens who suffered the particular hardships of territorial days and who could by remaining provide a critically important cultural memory. In contrast to the Zobel facts, one who comes now to Alaska is not treated differently from the bulk of Alaska's citizens. One who chooses now to migrate to Alaska does not qualify for a payment under this plan -- and neither do the great majority of those already in residence. This is emphatically not a case in which those lacking political power -- such as outsiders and recent arrivals -- are singled out for less favored treatment. Those who have been in the state for more than two decades and who hold dominant political power will never benefit from this program. They have nonetheless chosen to continue to grant to a smaller group of citizens a particular benefit for which most Alaskans, old and new, are and will remain ineligible.

The particular concerns implicated in Zobel v. Williams are thus not applicable here. Passed in 1972, the longevity bonus plan did not single out the recent arrival for disadvantageous treatment. The dominant majority of Alaskans who supported this program, even though they will not benefit from it, are not a "discrete and insular minority" deserving of the special judicial scrutiny accorded legislation involving suspect classes. Unlike the legislation struck down in Zobel III, the plan under attack here does not burden the exercise of any constitutional right. Since no suspect classification is involved and no fundamental interest burdened by this law, it is to be judged by the same deferential standard of review that the U.S. and Alaska Supreme Courts have afforded to numerous governmental programs that allocate public benefits.

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II. THE PURPOSES OF THE LONGEVITY BONUS PROGRAM

The basic classification made by the Act is that it divides all Alaskans into two groups: those who were here in territorial days and those who were not. In order to receive a bonus, one must have resided in Alaska before January 3, 1959. Thus, no matter how long a person lives in Alaska, one year or fifty, that person will never qualify for the longevity bonus if he or she did not live in Alaska during territorial days. Rodney Vest, for example, is not precluded from participating in the bonus program because he has only resided in Alaska for 24 years, but rather is and always will be precluded because he did not arrive in Alaska until after Alaska became a state. Within the group of persons who resided in Alaska in territorial days, there are further classifications: a person must be 65 years old or older, and must have maintained continuous "domicile" for 25 years.

Alaska's rich and wonderful history is an important part of the fabric of Alaskan society today. Few who have come here recently or who come here now would be encouraged to remain if it were not for the strong link with the past which sets Alaska apart from anyplace else in the world. If living in Alaska were just like living in Los Angeles or Cleveland, few would put up with the climate and distance from the rest of the United States, and would instead live in Los Angeles or Cleveland. But most of us who arrive here are immediately taken with the sense of magic, the frontier spirit, the fierce independence and the uniqueness which are still evident reminders of a not too distant past. Every Alaskan, new or old, who is fortunate enough to make the acquaintance of some of the real old-timers is enriched by that experience. Whether that old-timer be a miner, trapper, or fisherman, or an Eskimo or Athapaskan old enough to remember the old days, the stories that person can tell will hold any audience of younger, newer Alaskans spellbound.

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While the rest of the United States traveled through the eighteenth and nineteenth centuries, and on into the twentieth, in a slow and more orderly procession, Alaska is catapulting through those years in record time. Indeed, some remote villages have raced from the stone age to the present in a few decades. Oil wealth has placed many aspects of present Alaskan life at the leading edge of modern development. Remote villages which a few years ago had no communication whatsoever with the rest of the world, save a weekly mail plane, now have modern telecommunication set-ups, telephones in every cabin, and more varied television than is available in most big cities. Whether the process is good or bad, it is undeniable that we are in the midst of the few short decades which mark the inevitable change from Alaska being thoroughly different from the rest of the nation to a time when the similarities are more common than the differences. But this process has been so rapid that there are still many old folks around today who hold in living memory the history of an era long departed from the rest of the nation.

This cultural memory bank is a valuable present state asset. Collectively, this memory knows how to build a fish wheel or sew a skin parka, can still speak Inupiat or Yupik or Athapaskan, remembers when Nordstrom's was the Northern Commercial Company, remembers the channels on the Nenana or the Yukon, remembers mining operations in Wiseman, Poorman, Fox, Iditarod, Douglas and Thane, remembers the first mail flight to Nome or the Aleutians, and remembers the hard battle fought and won to achieve statehood. Times were different then, and every present day Alaskan is vicariously proud of the heritage and history inherited from these old-timers who provide that link with the past. Just as most Alaskans think Alaska is a nicer place to live than the rest of the nation because it can still support a grizzly bear, an eagle or a wolf, modern Alaskans take pleasure in the presence in their midst of those who lived here when Alaska was truly a frontier. And just as the state will now devote

financial resources to the conservation of eagles, wolves and bears, or to the preservation of historic buildings, the more newly arrived Alaskans are willing to continue to subsidize the presence of this repository of cultural heritage.

Alaska's population has more than doubled since statehood, and many of those here in 1959 have left the state. Thus, the majority of present Alaskans cannot remember the days when Alaska was a territory. To the extent that one can pick out a date that signifies the entry of Alaska into the mainstream of American life, that date is the day Alaska became a state. It is the day that Alaskans became able to participate in the national government which had been affecting their lives for years. It is the day that Alaskans could choose a governor themselves, instead of accepting whomever Washington, D.C. sent. It is the day that Alaska took charge of its fish and game resources. Statehood closed the chapters of the past, and opened the chapter of the present.

By 1972, 13 short years later, the population had already grown to half again its strength at statehood. The state was gearing up for full involvement in the largest privately funded construction project the nation had ever seen -- the Trans-Alaska Pipeline. Already, miles of 48-inch pipe were stacked at Dietrich Pass. The massive Prudhoe Bay lease sale had taken place two years earlier. While the pipeline was eagerly anticipated by some and fought by others, it was clear Alaska was about to enter into development on a scale which would dwarf any past endeavors. The 1972 legislature was aware that the rich and unique past was slipping away, that the days of pioneering were over, and the twentieth century had truly begun.

The Alaska longevity bonus program was passed in 1972 with three important purposes. These goals emerge from the Act's statement of purpose. That section states as its "sole" purpose the objective of providing Alaskans of retirement age "an incentive to continue uninterrupted residency in the state." AS

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47.45.170. The purpose of encouraging old-timers to remain is, however, threefold. First, it recognizes that due to the harsh climate and high cost of living, many older Alaskans "have been forced to live out their retirement years in areas far away from the land they loved and nurtured and [illegible] by also suffering, in many cases, the loss of familial relationship with their own kin, an experience that is sad and frustrating to them..." Id. Thus, this purpose is to prevent present hardship by providing old-timers with the economic means to remain in the state.

Second, the goal of encouraging these pioneers to remain in the state serves the present purpose of providing all Alaskans the opportunity to benefit from the wealth of experience and history residing in the memories of these pioneers; that if these old-timers leave the state, it "deprive[s] new generations of Alaskans of the benefits of their wisdom and experience..." Id.

Finally, the Act is intended to compensate a certain group of old-timers for the peculiar type of past hardship which only that group has suffered: the deprivation of full citizenship which resulted from Alaska's territorial status. "These pioneers are the same Alaskans, who in the prime of their life were in effect treated as second-class citizens by the federal government and who paid much of their hard-earned income to a government in which they did not have the right to participate through the power of the ballot." Id. This compensation for past hardship additionally "recognizes the economic hardships suffered by many elderly Alaskans, Alaskans who through their tenacity and perseverance molded Alaska as we know it through skillful application of their talents." Id.

III. THE EQUAL PROTECTION CLAUSES OF THE FEDERAL AND ALASKA CONSTITUTIONS GRANT TO THE STATE BROAD DISCRETION IN THE ALLOCATION OF PUBLIC BENEFITS

Both the Alaska and U.S. Constitutions provide to every citizen a fundamental guarantee of equal treatment before the

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law. In its Citizenship and Equal Protection Clauses the Fourteenth Amendment to the federal constitution mandates that "all persons ... are citizens of the United States and of the state wherein they reside. No state shall ... deny to any person within its jurisdiction the equal protection of the law." This same right is insured by article I, section 1 of the Alaska Constitution, which provides that "all persons are equal and are entitled to equal right...."

It is the very nature of legislation, however, to draw lines that determine who among all possible citizens is to be benefitted or burdened by a particular law. To satisfy the requirements of equal protection, a distinction drawn between some citizens and others "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." Isakson v. Rickey, 550 P.2d 359, 362 (Alaska 1976).

When the statute in question relates to the enjoyment of a fundamental constitutional interest (such as voting or freedom of expression) or where the statute operates to the disadvantage of a suspect class (such as aliens) the "fit" between the classification and the object of the legislation must be extremely close and the state must show a "compelling interest" to sustain the legislation. State v. Erickson, 574 P.2d 1, 11 (Alaska 1978). Aside from these particular circumstances, however, a state statute will generally be sustained as long as the object of the legislation is a legitimate state goal and a reasonably close relation between the classifications created and the legislative objective is shown to exist. Williams v. Zobel, 619 P.2d 448, 452-453 (Alaska 1980)("Zobel II"). State v. Ostrosky, ___ P.2d ___, Op. No. 2702 (Alaska, July 19, 1983).

Here, the classifications created do not infringe upon a fundamental right, a basic necessity of life, or deal with a suspect classification. Zobel II, 619 P.2d at 454-457. Nor is

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there any real question concerning the "fit" between the purposes of the legislation and the class created. The desire to compensate territorial residents for their "second class" citizenship would naturally require the date of statehood to identify that class. A lengthy Alaskan residency, in turn, is necessary in order to meet the purposes of identification with the state, attainment of "pioneer" status, and present hardship that would be suffered by forced retirement outside the state.

Rather, the problem presented by this case is whether the purposes identified in AS 47.45.170 are legitimate objects for state attention. In particular, Zobel v. Williams, ___ U.S. ___, 72 L.Ed. 672 (1982)(Zobel III) raises questions about whether the state may treat the territorial pioneers as a separate class from other citizens of this state.

As this brief will show, Zobel III should not be read to strike down this legislative allocation of public benefits. The U.S. Supreme Court has consistently reaffirmed the breath of legislative discretion in the granting of governmental subsidies. This approach is not changed by the application of the "sliding scale" equal protection test set out most recently in State v. Ostrosky, ___ P.2d ___, Op. No. 2702 (Alaska, July 19, 1983). The sole question, therefore, is whether in Zobel III the U.S. Supreme Court changed the general analysis so as to render the purposes of the longevity bonus program unconstitutional. Neither the text of Zobel III, nor the history of the expansion of equal protection, requires this result.

A. The Major U.S. Supreme Court Decisions of the Past Decade have Reaffirmed the Breath of Legislative Discretion in the Granting of Governmental Subsidies

In more than a dozen significant cases decided during the 1970s and 1980s, the U.S. Supreme Court has firmly adhered to the view that courts should not second guess legislative judgments concerning the expenditure of public funds. In Dandridge v. Williams, 397 U.S. 471 (1970), the Court, in sustaining

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