

ALASKA LEGISLATURE COMMITTEE, 1903-1904

3047 SSA SB 323 - SB 353

8672

ASSUMPTIONS

1. The bill will become effective on July 1, 1984.
2. The Pioneers' Home populations will remain stable, but the total number of residents receiving the stipend will increase from 154 to 165 due to inclusion of the persons who have less than \$100 monthly income.
3. The stipend payments will continue to be paid from the General Fund.
4. The rates for cost of care will remain at the present level of \$425 per month for residential care and \$525 per month for skilled nursing care.

# Stipend (FY85)

FY85 Budget (Gov's. Allowance)			S.B. 325 ④ \$100/mo.		Amount Increase
No. Persons	Amount		No. Persons	Amount	
Auch.	56	\$ 23,700	60	\$ 72,000	\$48,300
Fbx.	25	10,500	27	32,400	21,900
Ketch.	8	3,500	9	10,800	7,300
Palmer	40	16,800	42	50,400	33,600
Sitka	25	10,500	27	32,400	21,900
Totals	154	\$65,000	165	\$198,000	\$133,000

SENATOR  
ARLISS STURGULEWSKI

2957 SHELDON JACKSON  
ANCHORAGE, ALASKA 99508  
SENATE DISTRICT I, SEAT A

# Alaska State Legislature



## Senate

W. J. in Juneau  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-3818

### MEMORANDUM

16 January 1983

TO: Senator Vic Fischer  
Chairman, Senate State Affairs Committee

FROM: Senator Arliss Sturgulewski *AS*

As you have requested, I am providing some background material for Senate Bill 325: "An Act Relating to Residents of the Alaska Pioneers' Home".

Attached is a letter and a petition which both suggest that \$35 per month is an inadequate stipend, as well as an editorial from the Ketchikan Daily News. I have had several conversations with residents of the Anchorage Pioneers' Home who said that \$35 per month as a stipend is not enough to keep recipients provided with clothing, shoes, hair care services and items, stationery and other personal items.

It is estimated by the Division of Pioneers' Benefits that this legislation will raise the cost of the program to \$135,000 per year. There are 61 residents currently receiving the \$35 per month stipend - just under 10% of the total number of residents of the Pioneers' Homes.

In addition to the residents of the Pioneers' Homes receiving a stipend of \$35 per month, it has come to my attention that approximately 400 Medicaid patients in private nursing homes receive a Medicaid stipend of \$70 per month. In the interests of fairness, perhaps the committee could request Mr. Rod Betit of the Department of Health and Social Services to testify regarding the adequacy of that dollar amount.

Section three of SB 325 which provides that guardians of deceased residents may claim clothing and personal effects was included in the bill at the request of a resident of the Anchorage Pioneers' Home. This would allow guardians of persons without relatives and/or wills to have access to the personal effects of a deceased resident.



Official Business

# Alaska State Legislature

## Senate Committee on State Affairs

Vic Fischer, Chair • Pouch V  
Juneau, Alaska 99811  
(907) 465-4954

### MEMORANDUM

TO: Senate State Affairs Committee

FROM: Senate State Affairs Committee Staff

RE: SB 323 Income of Pioneer's Home Residents

DATE: January 19, 1984

There is a proposed committee substitute for SB 323 that would annually adjust the \$100 per month stipend in Section 1 to parallel the adjusted cost of living increase provided for in Section 2.

### Sectional Analysis of SB 323

Section 1: Increases the allowance of qualifying Pioneer Home residents from 35 dollars to 100 dollars; states that any money in excess of the stipend may be required by the Department of Administration.

Section 2: States that the money collected by the Department of Administration shall be transferred to the Commissioner of Revenue; raises from 35 dollars to 100 dollars the amount paid to Pioneer Home residents without funds, and adjusts that amount annually in accordance with the CPI of Anchorage.

### Fiscal information:

In FY 85, the costs due to the increase will be 133,000 dollars.

### Comparison of SB 323 and SB 325

Section 1: Same for both bills

Section 2: Same except that SB 323 will annually adjust the payments to residents in accordance to the Anchorage CPI.

Section 3: SB 323 does not include this section. This section of SB 325 outlines the process for releasing the personal effects of deceased residents.

Back-up information included

Proposed Senate State Affairs committee substitute  
Position paper by the Division of Pioneers' Benefits  
Fiscal note by the Division of Pioneers' Benefits  
Letter from Anchorage Pioneers' Home residents  
Newspaper article  
Letter concerning Pioneers' Home cost to residents  
Statutes affected by SB 323  
HB 451, Alaska Pioneers' Home  
HB 453, Alaska Pioneers' Home  
HB 503 income, allowances and debts of residents of the  
Alaska Pioneers' Home



Official Business

# Alaska State Legislature

## Senate Committee on State Affairs

Vic Fischer, Chair • Pouch V  
Juneau, Alaska 99811  
(907) 465-4954

### MEMORANDUM

TO: Senate State Affairs Committee  
FROM: Senate State Affairs Committee Staff  
RE: SB 323 Income of Pioneer Home Residents  
DATE: February 9, 1984

There is a new proposed committee substitute for SB 323.

### Sectional Analysis for CSSB 323 (State Affairs)

- Section 1: Increases the allowance to qualifying Pioneer Home residents from \$35 to \$100 a month; states that any money in excess of the stipend may be required by the Department of Administration.
- Section 2: States that the money collected by the Department of Administration shall be transferred to the Commissioner of Revenue; raises from \$35 to \$100 the amount paid to Pioneer Home Residents without funds.
- Section 3: Requires the Department of Administration to establish in regulation the daily or monthly rate charged to the resident to compensate the state, and requires the department to review the regulations at least every two years.
- Section 4: Outlines the expenses for which the resident of the home is responsible; states that the debt to the state is the first claim against the residents estate; exempts heirlooms from a claim by the state (page 2, lines 13-18); defines that money left in charge of Dept. of Admin. by a deceased resident shall be used for burial purposes; outlines the method by which personal effects of the deceased resident are to be dispersed (page 2, lines 22-28); Defines heirloom as a piece of personal property of sentimental value to the resident that has been in possession of the resident's family for 10 or more years or was a gift to the resident.

### Fiscal information

The proposed committee substitute does not change the fiscal impact reflected in the original fiscal note for this bill.



Original sponsors: V.Fischer, Ziegler,  
Kerttula, et al

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 323 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Pioneers' Home."

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

8 \* Section 1. AS 47.25.020(b) is amended to read:

9 (b) Every person admitted to the Pioneers' Home, except a person  
10 admitted under AS 47.25.030, who receives income from any source in  
11 excess of \$100 per [\$35 A] month may be required by the Department of  
12 Administration to pay the excess to the Department of Administration  
13 immediately upon receipt of the money in payment, or part payment, of  
14 the cost of the person's [HIS] maintenance.

15 \* Sec. 2. AS 47.25.020(c) is amended to read:

16 (c) At the end of each month the payments made under (b) of this  
17 section shall be transmitted to the commissioner of revenue together  
18 with the names of the persons making them and the amount paid by each.  
19 The Department of Administration may pay [THE SUM OF \$35 A MONTH] to a  
20 resident without funds the sum of \$100 per month.

21 \* Sec. 3. AS 47.25.030 is amended by adding a new subsection to read:

22 (b) The Department of Administration shall adopt regulations  
23 establishing a daily or monthly rate for the compensation a resident  
24 is to be charged under (a) of this section. The commissioner of  
25 administration shall review this rate not less than once every two  
26 years.

27 \* Sec. 4. AS 47.25.070 is repealed and reenacted to read:

28 Sec. 47.25.070. INDEBTEDNESS OF PIONEERS' HOME RESIDENT TO  
29 STATE. (a) The following expenses incurred for a Pioneers' Home



1 resident under AS 47.25.010 - 47.25.110 are a debt to the state and  
2 may be recovered during the life of the resident:

3 (1) allowances paid under AS 47.25.020(c);

4 (2) costs of standard or nursing care provided in the  
5 Pioneers' Home each month to the resident not exceeding the rate  
6 established by the Department of Administration under AS 47.25.030,  
7 with credit given for any amounts paid by or collected from the  
8 resident;

9 (3) arrearages in fees for ~~television~~ services provided in  
10 the Pioneers' Home;

11 (4) prescription medicine; and

12 (5) burial and related expenses.

13 (b) The debt is a first, prior and preferred claim against the  
14 estate of the Pioneers' Home resident after the resident's death, and  
15 after all claims for food, clothing, fuel, shelter, medical aid, or  
16 burial expenses are paid. Heirlooms without regard to value are  
17 exempt from a claim by the state under this section.

18 (c) Money left in charge of the Department of Administration by  
19 a deceased Pioneers' Home resident may be used for the burial and  
20 funeral expenses of the resident and for the improvement of the burial  
21 plot of the Pioneers' Home.

22 (d) If the clothing and other personal effects of a deceased  
23 Pioneers' Home resident are not claimed within 60 days after the resi-  
24 dent's death by a person designated by the resident, or by a relative  
25 of the resident if no designee survives, then the clothing and effects  
26 may be used for the benefit of other residents, or they may be sold  
27 and the proceeds applied in the manner provided for money left by a  
28 deceased resident.

29 (e) For purposes of this section, "heirloom" means personal

1 property of sentimental value to a Pioneers' Home resident that has  
2 been in the possession of the resident's family for 10 years or more  
3 or was a gift to the resident.  
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Revision Date: \_\_\_\_\_

## REQUEST

Bill/Resolution No.: C.S.B. - 323 (State Affairs)  
 Title: Income of Pioneers' Homes Residents

## FISCAL DETAIL

Agency Affected: Administration  
 Program Category Affected: Social Servcs

Sponsor: Fischer

Requestor: \_\_\_\_\_

Date of Request: \_\_\_\_\_

BRU, Program of Subprogram(s) Affected:  
Pioneers' Homes

## EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS		133.0	139.1	145.5	152.2	159.2
800 MISCELLANEOUS						
TOTAL OPERATING		133.0	139.1	145.5	152.2	159.2
CAPITAL						
REVENUE						

## FUNDING: (Thousands of Dollars)

GENERAL FUND		133.0	139.1	145.5	152.2	159.2
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL		133.0	139.1	145.5	152.2	159.2

## POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

## SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not indicated by sponsor.

ANALYSIS: Attach separate page for any analysis

Prepared By: George W. MichaelDivision: Pioneers' BenefitsPhone: 465-4401Date: January 13, 1984Approved by Commissioner: Lisa RuddDepartment: ADMINISTRATIONDate: 1/19/84Revised: February 9, 1984

## FISCAL NOTE/BDGSF2

## Distribution:

Legislative Finance

Legislative Sponsor

Registrar

Office of Management and Budget

Impacted Agency(ies)

12/1/83

ASSUMPTIONS

1. The bill will become effective on July 1, 1984.
2. The Pioneers' Home populations will remain stable, but the total number of residents receiving the stipend will increase from 154 to 165 due to inclusion of the persons who have less than \$100 monthly income.
3. The amount of the monthly stipend will increase by 4.6% each year after FY 85. This rate of increase is the average of the last 3 years' increase in the Consumer Price Index for the Anchorage area for "all urban consumers," as determined by the United States Department of Labor, Bureau of Labor Statistics. It is assumed, (for lack of better indicators) that this average rate of increase will continue.
4. The stipend payments will continue to be paid from the General Fund.
5. The rates for cost of care will remain at the present level of \$425 per month for residential care and \$525 per month for skilled nursing care.

# Stipend (FY85)

FY85 Budget (Gov's. Allowance)			S.B. 323 ④ \$100/mo.		Amount of Increase
No. Persons	Amount		No. Persons	Amount	
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Sitka	25	10,500	27	32,400	21,900
Totals	154	\$ 65,000	165	\$198,000	\$133,000 + inflation @ 4.6% per year for FY86-88.



Grace Dillon  
Fouch 7-027  
Anchorage, Alaska 99510

Honorable Bill Sheffield  
Governor, State of Alaska  
Juneau, Alaska 99801

Sept. 1983

Dear Governor Sheffield,

In regard to the Anchorage Pioneer Home:

A \$200 and \$250 per month raise was given (From 225 to 425 for able residents & 275 to \$525 for nursing care)

This brings many of the residents into the not able to pay category, and others into a bare existence.

A poultry \$35 is returned to the penniless for personal necessities. Welfare does not have to be paid back, but these accounts are built up against the resident at a 6% charge. This is a disgrace to the State of Alaska. Why shouldn't the State continue to subsidize these Senior Citizens living on small Social Security and Longevity when they subsidize less worthy causes. This home had given most residents self respect by being able to pay their own way. They worry now about the probability of losing Longevity. Expecting them to pay their own way at this inflated raise is too great a financial burden. They came in here under conditions promised that would help them. The State should honor these promises. Many sold their homes. If they had not sold their home they would now be better off, as the \$900 it will now cost would buy their food and utilities. The State is wronging many of these old mental and physical disables by going into the rental business demanding full restitution.

Why should the present residents be so penalized anyway, when the new residents coming in will pay nothing at all. The new ruling gives destitutes preference. There will always be a destitute to absorb the new vacancy, many of which have drank and gambled their money away. In a very short time this home becomes a poor-house and not the original intent. Since no one will be paying in the near future, why are they so reluctant to help old people now trying to help themselves?

It seems as though all subsidies go to the younger generation and their needs.. Old people do not have parents, teachers, unions and everyone else fighting for them. Most are not any more able to fight for themselves than your small child. They need your help.

Respectfully,

cc: Commissioner Lisa Rudd  
E. Louis Keller  
Louis Odsather  
Others

*Grace Dillon*



IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

CS FOR SENATE BILL NO. 323 (State Affairs)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

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6 established by the Department of Administration under AS 47.25.030,  
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20 funeral expenses of the resident and for the improvement of the burial  
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23 Pioneers' Home resident are not claimed within 60 days after the resi-  
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25 of the resident if no designee survives, then the clothing and effects  
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**DRAFT**

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

MEMORANDUM

January 28, 1984

SUBJECT: Sectional analysis of sponsor  
substitute for HB 503

TO: Representative Rick Uehling

FROM: Edward H. Hein  
Legislative Counsel

Section 1 raises from \$35 per month to \$100 per month the amount of income a destitute resident of the Pioneer's Home may retain under AS 47.25.020(b). The Department of Administration may require the resident to surrender any income in excess of that amount to offset the cost to the state of the resident's care.

Section 2 raises from \$35 per month to \$100 per month the allowance that the Department of Administration may pay a resident who has no income.

Section 3 inserts the term "cost-of-care fee" in AS 47.-25.030 to identify the standard monthly charge Pioneers' Home residents are required to pay.

Section 4 rewrites AS 47.25.070 to specify the kinds of expenses the state may seek to recover from a resident or a resident's estate. By establishing an exclusive list of expenses in subsection (a), this amendment prevents the state from seeking repayment for the roughly \$2,500 per month in standard care costs that the state currently subsidizes. Subsection (b) provides an exemption for all heirlooms and for \$10,000 of other personal property. Subsection (d) allows a resident to designate a person or persons to receive any clothing or personal effects left behind when the resident dies. If neither a designee nor a relative of the resident claims the clothing and effects within 30 days after the death, the home may give them to other residents or sell them.

EHH:esh  
C2/130

## Pioneer Home benefits

Mitch ~~is~~ thought of raising it more  
from \$ to just \$100.00.

How do you deal w/ the problem of  
people who are eligible to the Home  
but can't get ~~it~~ in. They  
~~are~~ may be in need just  
as much as those in Home.

Ask representative what  
kinds of Heirlooms might  
be passed on that are not personal.

Lon Keller -

Brought up 100 vs. 70.

Paintings, Jewelry, native Artifacts,

230 considered dist. to.



(for ambiguity)

070 - indistinct to 870

Do delete people get TV

2) Should we delete section . 070

The repetitions would be to

erase any indistincts that

a pt. said admitted under the

death a cause would

be obligated to pay the

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2) it would be putting into

state the current practice

TO ADDRESS

3) if delete section 4. 070-5-21

4) grandstand clause

13)

2) Definition of hair loss



SB 323/SB 325 PIONEER BENEFITS

— SNRG, Kelly, Ray, Fischer

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Rewrite  
323 — Relating to Pioneer Bonus

.030 / costs can be increased  
upon approval of  
the legislature

— NO cost of living adjustment

① — Check Rod Bea Betit.

② 70<sup>00</sup> what does it go toward.

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2636

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ST

TO: SENATORS VIC FISCHER, RAY, STURGULEWSKI, RODEY, AND KELLY

FROM: CORAL PINKSTON  
SITKA PIONEER HOME  
BOX 128  
SITKA, AK. 99835

RE: SB 323 AND SB 325

I'M WILLING TO ACCEPT ANYTHING THAT IS RIGHT. I CAN'T HARDLY LIVE ON  
\$35.00 A MONTH. NOTHING IS GOING DOWN -- ONLY UP. YOU'VE GOT TO HAVE  
THOSE LITTLE EXTRAS ONCE IN A WHILE TO KEEP YOUR SANITY.

JUST TO LIVE FOR THREE MEALS A DAY IS VERY HARD.

+++++ SITKA LIU 1-19-84 4998 ++++++

(ST)

MSG 84-00004998 PRY 1 01/19/84 15:22:57 ORIG: LS01 IN= 0005 OUT= 0110  
FROM: SITKA LIO TO: JUNEAU  
TARGET: LJHK SUBJ: POMS

THE FOLLOWING TWO MESSAGES ARE FROM RESIDENTS OF THE SITKA PIONEER HOME  
UNABLE TO ATTEND THE 1-19 TELECONFERENCE RE SB 323 AND SB 325:

TO: MEMBERS OF SENATE STATE AFFAIRS COMMITTEE... SENATORS VIC FISCHER,  
RAY, STURGULEWSKI, ROPEY, AND KELLY

FROM: STUART W. RADACH, SITKA PIONEER HOME  
PO BOX 198  
SITKA, ALASKA 99835

RE: SB 323 AND SB 325

AS THESE TWO BILLS READ, IT REFERS TO ALL RESIDENTS OF THE PIONEER HOME AND  
NOT TO THOSE WITH LACK OF FUNDS TO COVER THEIR STAY AT THE HOME. I AM IN  
FAVOR OF THE \$100.00 BUT NOT THE WAY IT READS.

+++++ SITKA LIO 1/19/84 4998 ++++++

SENATOR  
ARLISS STURGULEWSKI

2957 SHELDON JACKSON  
ANCHORAGE, ALASKA 99508  
SENATE DISTRICT F, SEAT A

# Alaska State Legislature



## Senate

White in Juneau  
FOUCH V  
JUNEAU, ALASKA 99811  
(907) 465-7818

MEMORANDUM

16 January 1983

TO: Senator Vic Fischer  
Chairman, Senate State Affairs Committee

FROM: Senator Arliss Sturgulewski *AS*

As you have requested, I am providing some background material for Senate Bill 325: "An Act Relating to Residents of the Alaska Pioneers' Home".

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It is estimated by the Division of Pioneers' Benefits that this legislation will raise the cost of the program to \$135,000 per year. There are 61 residents currently receiving the \$35 per month stipend - just under 10% of the total number of residents of the Pioneers' Homes.

In addition to the residents of the Pioneers' Homes receiving a stipend of \$35 per month, it has come to my attention that approximately 400 Medicaid patients in private nursing homes receive a Medicaid stipend of \$70 per month. In the interests of fairness, perhaps the committee could request Mr. Rod Betit of the Department of Health and Social Services to testify regarding the adequacy of that dollar amount.

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# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

November 26, 1982

Gerald L. Wilkerson  
Legislative Auditor  
Division of Legislative Audit  
Legislative Affairs Agency  
Pouch W  
Juneau, Alaska 99811

The Honorable Carole J. Burger  
Commissioner  
Department of Administration  
Pouch C  
Juneau, Alaska 99811

Re: Pioneers' Homes; Our files:  
366-188-83 and J99-101-80

Dear Mr. Wilkerson and Ms. Burger:

### I. INTRODUCTION

The Division of Legislative Audit has posed to this department two interpretation questions concerning the statutes establishing the Alaska Pioneers' Homes program. The Department of Administration has sought the assistance of this department with administrative regulations that raise fundamental questions as to the validity of the program.

The Alaska Pioneers' Homes program is one of the oldest Alaska institutions. It was established by the First Territorial Legislature in 1913 and has continued uninterrupted for nearly 70 years. Its operation was continuously approved by Congress until 1959, when Alaska became a state and congressional review of

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

November 26, 1982  
Page 2

territorial actions was no longer necessary (Organic Act, §§ 9, 20). Originally geared to prospectors, the program has always had as its goal the housing and care of persons who have lived in Alaska a significant period of time.

Relatively recent United States Supreme Court opinions have placed that fundamental element of the program in severe jeopardy -- the Court has ruled that discriminations between persons based on length of residency are often unconstitutional. The opinions of the Court leave only a few narrow arguments available to save the program.

## II. SUMMARY

In a September 20, 1982, letter, the Division of Legislative Audit posed two questions regarding the legislative intent behind AS 47.25.030, one of the statutes governing the Pioneers' Homes program. AS 47.25.030 provides, in relevant part:

A citizen of the United States over 65 years of age who is a resident of the state and has been a resident for not less than 15 years continuously immediately preceding his application, but who is not destitute, may on application be admitted to the home upon his agreement to pay to the state a sum for each day as the Department of Administration considers sufficient to compensate the state for the cost of care and support of the person at the home.

The division wished to know the intent behind the "sufficient to compensate the state" language and whether the legislature wanted destitute persons (those eligible for admission to the Homes



under AS 47.25.020) to have priority in admission over those able to pay.

In addition, the Department of Administration has requested our assistance in drafting and reviewing proposed regulations for the Pioneers' Homes. These regulations include implementation of the statutory standards for admission set forth in AS 47.25.020, AS 47.25.030 and AS 47.25.035. Briefly, these standards are that persons of any age who are "destitute and in need of the aid or benefit of the home because of physical disability or other cause" and have continuously resided in the state for 15 years may be admitted to the home without payment. Non-destitute persons over the age of 65 who have continuously resided in the state for 15 years may also be admitted upon payment of a certain sum to the state which is "sufficient to compensate" the state for their care. The 15-year continuous residency requirement may be forgiven if the applicant has otherwise resided in the state for 30 years.

Under AS 44.62.060(b), this department must review each regulation and make a written statement concerning a regulation's "legality, constitutionality, and consistency with other regulations." AS 44.62.060(b)(1). The lieutenant governor may not accept regulations for filing unless there is such a statement from this office approving the regulations. This opinion sets out our constitutional analysis of those regulations.

The courts analyze residency requirements under different standards of review, depending on whether the right or benefit denied is a "fundamental political right" or "a basic necessity of life." Memorial Hospital v. Maricopa County, 415 U.S. 20 (1974); Hawaii Boating Association v. Water Transportation Facilities, 651 F.2d 661 (9th Cir. 1981); Williams v. Zobel, 619 P.2d 448, 453 (Alaska 1980), rev'd on other grounds: Zobel v. Williams, \_\_\_ U.S. \_\_\_, 72 L.Ed 2d 672 (1982). If access to the Pioneers' Homes is considered to be access to a "basic necessity of life," then the state must show that a distinction based on length of residence is "absolutely necessary to promote a compelling state interest" -- a test that is rarely met. Williams v. Zobel, 619 P.2d at 453. The Pioneers' Homes residency requirement would not survive this analysis.

On the other hand, if the Pioneers' Homes program does not involve access to a "basic necessity of life," then a much less strict standard of review is used, and arguments can be advanced for the constitutionality of the program.

We believe that the Pioneers' Homes program arguably does not involve access to a "basic necessity of life" so as to invoke the strict standard of review. Consequently, there are defenses of the constitutionality of the entire program.

Finally, it is our opinion that the destitute and disabled have priority in admission to the Pioneers' Homes and

the statutory requirement that non-destitutes pay an amount "sufficient to compensate the state" was not intended to mandate the recovery of all costs of a person's care.

Our conclusion that the Pioneers' Homes program can possibly be sustained does not mean that we believe a court would, if faced with the question, necessarily rule that it is constitutional. In other words, while there are legitimate arguments to support it, we cannot guarantee their success in court. Indeed, there are numerous serious and potential fatal attacks that could be mounted against the entire program. But, since the program has continued uninterrupted for approximately 70 years, we believe that it is appropriate for the courts rather than this department to make the final judgment rejecting all serious arguments in support and, if it is the proper conclusion, stopping the program. In the absence of that court ruling, therefore, we believe it is appropriate to continue the program and finish the proposed regulation project.

### III. ANALYSIS

#### History

Before addressing these questions, a brief overview of the history of the Pioneers' Homes program is helpful. The Pioneers' Homes program has been an important institution in Alaska for almost 70 years.

In 1913 the first territorial legislature in Alaska accepted the offer of the United States government to turn over

some Marine barracks buildings in Sitka for use as a home for indigent ailing persons who wished to stay in Alaska. Chapter 80, SLA 1913, set up a three-member, unpaid board of trustees to manage and control "a home for indigent prospectors and others who have spent their years in Alaska and become dependent." The home was declared open to "[e]very worthy pioneer, or other person, who shall have been a resident of the Territory of Alaska for five years preceding his application for admission and who shall need the aid or benefit of said Home in consequence of physical disability or other cause within the scope of the regulations of the board." 1/ The legislature appropriated \$10,000 for the operation of the Sitka home. 2/

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1. Although nothing in the 1913 act specifically limited eligibility to men, this apparently was the intent, as evidenced by § 6, ch. 64, SLA 1915 (setting up the allowance program discussed later in this memorandum): "Women who are otherwise qualified to apply for relief under this Act, may make application hereunder, and if entitled thereto shall receive the allowance herein provided for, notwithstanding the fact that as women they might not be eligible to be received in the Alaska Pioneers' Home."

2. Also in 1913, the legislature established the Board of Aged Prospectors Home Commission, to "investigate as to the climatic and other conditions of the several hot springs in Interior Alaska, the adaptability of same for use as a home for aged prospectors, the title price and possible methods of securing same, and to secure options on property adjoining any such springs as may be determined upon as desirable for such purpose." Ch. 78, SLA 1913. Apparently nothing became of this investigation, since this legislation was repealed in 1923. Ch. 7, SLA 1923. A Pioneers' Home was finally opened in Fairbanks in 1967.

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The home opened on September 2, 1913, with 5 residents, and quickly expanded to 51 residents by February, 1915. According to the initial report of the board, operations were successful. A copy of that report is enclosed with this opinion.

In 1915 the legislature enacted an alternative program for Alaska's impoverished older residents. Chapter 64, SLA 1915 established a predecessor program to the current longevity bonuses (AS 47.45): any "pioneer" 65 or older, who had resided in Alaska for ten consecutive years since 1905 and who was "entitled to the benefits of the Alaska Pioneers' Homes" could, in lieu of applying for admission to the Homes, apply to the Homes' board of trustees for a monthly allowance not to exceed \$12.50, to be paid out of the "revenues" of the Homes "in excess of suitable provisions for inmates of said Homes and those likely to be admitted thereto," and set according to the applicant's needs. The board could in its discretion deny the application if it found the applicant's case not "worthy." In 1917 the age requirement for women was lowered to 60, and the ceiling on allowances for them raised to \$25 a month. Chapter 49, SLA 1917. Chapter 17, SLA 1919 increased the residency requirement to 15 years immediately preceding the application, and specifically excluded from eligibility "Natives or other Indians," who were defined as not being



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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

Of the <sup>643</sup>519 persons presently participating in the Pioneers' Homes program, <sup>579</sup>515 were admitted under the non-destitute, over 65 and paying clause (AS 47.25.030), while only four were admitted under AS 47.25.020 because they were destitute and disabled. Thus, the program now is for practical purposes no longer a home for the needy -- at least as the

*at \$10,000/year =  
5.9 million  
in income*

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"country club"

Are needy  
people on  
waiting  
list?

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

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

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



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

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

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

#### Constitutionality of Residency Requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. The choice of the level of scrutiny usually determines the outcome of the analysis. Zobel 11, 619 P.2d at 452. This is particularly evident in durational residency cases. For a period of time there was substantial confusion concerning whether strict scrutiny was always required in durational residency cases or was limited to only those instances where significant deprivations resulted from failure to meet the residency requirement. E.g., Memorial Hospital v. Maricopa County, 415 U.S. at 257; Cole v. Housing Authority of City of Newport, 435 F.2d 807 (1st Cir. 1970). As a result, various courts have ruled differently on almost identical issues. E.g., compare Larsen v. Gallogly, 361 F.Supp. 305 (D. R.I. 1973) (two-year residency requirement for divorce subject to strict scrutiny; held unconstitutional) with Mendez v. Heller, 380 F.Supp. 985 (E.D. N.Y. 1974) aff'd on other grounds, 530 F.2d 457 (2d Cir. 1976) (two-year requirement for divorce subject to rational basis test; held constitutional); Bolanewski v. Raich, 330 F.Supp 724 (D.C. Mich. 1971) (three-year residency requirement for mayor subject to strict scrutiny; held unconstitutional) with Walker v. Yucht, 352 F.Supp. 85 (D.C. Del. 1972) (three-year residency requirement for candidates for General Assembly subject to rational basis test; held constitutional); State v. Wylie, 516 P.2d 142 (Alaska 1973) (one-year residency requirement for state employment subject to strict scrutiny; held unconstitutional) with Ostendorf v. Turner, 411 So.2d 330 (Fla. App. 1982) (five-year residency requirement for homestead exemption subject to rational basis; held constitutional). It is extremely rare for a durational residency requirement to be overturned under the rational basis test, and usually will only occur in exceptional cases. E.g., Antonio v. Kirkpatrick, 579 F.2d 1147 (8th Cir. 1978) (ten-year residency requirement in order to run for state auditor); Massey v. Appollonio, 387 F.Supp. 373, 376-377 (D. Me. 1974) (three-year residency requirement in order to be licensed as a lobsterman).

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

- (1) to reward long-term residents for their past contributions to the state and their persevering through past economic hardship;
- (2) to prevent present suffering and hardship to such persons that would be caused by their having to retire outside the state, including loss of contact with family; and
- (3) to retain in Alaska those persons' personal knowledge of Alaska's past history, so that it is accessible to present and future generations.

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

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



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

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

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

Id. at 461.

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

[A]dmission to pioneer homes, AS 47.25.020-.030 . . . require[s] lengthy residency periods. [The program is] apparently designed to help those individuals who would like to retire in the state but cannot do so because of the high cost of living. The state might well want to limit these benefits to those that would suffer the most hardship by being forced to leave, and it seems reasonable to suppose that a long period of residency would be some indicia of close ties to Alaska and the disruption that leaving might cause.

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

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

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

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

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

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

incentives to continued residence. Second, a statute may not award benefits or rights based on past contributions measured solely by length of residence. Beyond these two holdings, the impact of Zobel III is in its strong implication that the United States Supreme Court will look closely at discriminations between bona fide residents based on their respective lengths of residency.

Zobel III, however, did not rule that all discriminations between bona fide residents based on length of residency are unconstitutional per se. Even Justice Brennan, whose concurring opinion is the harshest of the attacks on residency requirements, stated that "length of residence may . . . be used to test the bona fides of citizenship." Id., Brennan concurrence at 684. Concerning distinctions between bona fide citizens, Justice Brennan would only automatically overturn residency discriminations having no independently valid state interest:

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

Id., Brennan concurrence at 684. Justice Brennan, however,

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

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

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

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

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

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



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

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

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

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

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

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

Response to Division of Legislative Audit

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

the second, the first group must be given preference.

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

Under Office of Gov. NOT HESS to  
no reg's = administrative rather than  
legislative intent

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

indicates a strong lobby + is favors Gov. non

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

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

#### IV. CONCLUSION

Therefore, it is our opinion that

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

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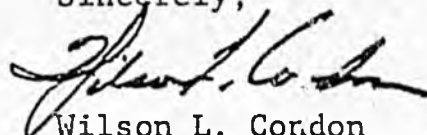
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(2) destitute and disabled applicants receive priority over paying applicants; and

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

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

Sincerely,



Wilson L. Condon  
Attorney General

WLC:mr

Enclosure



## ALASKA PIONEERS' HOME.

To the Senate and the House of Representatives:

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

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

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

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

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

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

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

Respectfully submitted,

J. F. A. STRONG,

Chairman.

W. P. MILLS,

Treasurer.

S. G. KOSTROMETINOFF,

Secretary.

Sitka, Alaska, February 27, 1915.

## REPORT TO THE BOARD OF TRUSTEES

By the  
SUPERINTENDENT OF  
THE ALASKA PIONEERS' HOME.

To the Board of Trustees,  
Alaska Pioneers' Home:

Gentlemen:

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

### HISTORY AND PURPOSE.

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

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

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

The Honorable,

The Secretary of the Navy.

Sir:

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

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

Under date of March 10, 1913, you replied:

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

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

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

Respectfully,

(Signed)

FRANKLIN K. LANE.

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

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

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

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

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

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

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

## OCCUPANCY.

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

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

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

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

## RECOMMENDATIONS FOR IMPROVEMENTS.

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

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

The heating plant is situated in a separate building. This plant was designed by the Navy Department for the double purpose of heating the building and operating an electric light plant. It consists of one 80 H. P. tubular marine boiler eighteen feet long and four feet wide, with two doors to the fire box; one switchboard panel; one elec-



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

#### CEMETERY.

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

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

#### CHARACTER OF INMATES.

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

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

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

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

Respectfully,

ARTHUR G. SHOUP,  
Superintendent Alaska Pioneers' Home.





Official Business

# Alaska State Legislature

## Senate Committee on State Affairs

Vic Fischer, Chair • Pouch V  
Juneau, Alaska 99811  
(907) 465-4954

### MEMORANDUM

TO: Senate State Affairs Committee  
FROM: Senate State Affairs Committee Staff  
RE: SB 323 Income of Pioneer Home Residents  
DATE: February 9, 1984

There is a new proposed committee substitute for SB 323.

### Sectional Analysis for CSSB 323 (State Affairs)

- Section 1: Increases the allowance to qualifying Pioneer Home residents from \$35 to \$100 a month; states that any money in excess of the stipend may be required by the Department of Administration.
- Section 2: States that the money collected by the Department of Administration shall be transferred to the Commissioner of Revenue; raises from \$35 to \$100 the amount paid to Pioneer Home Residents without funds.
- Section 3: Requires the Department of Administration to establish in regulation the daily or monthly rate charged to the resident to compensate the state, and requires the department to review the regulations at least every two years.
- Section 4: Outlines the expenses for which the resident of the home is responsible; states that the debt to the state is the first claim against the residents estate; exempts heirlooms from a claim by the state (page 2, lines 13-18); defines that money left in charge of Dept. of Admin. by a deceased resident shall be used for burial purposes; outlines the method by which personal effects of the deceased resident are to be dispersed (page 2, lines 22-28); Defines heirloom as apiece of personal property of sentimental value to the resident that has been in possession of the resident's family for 10 or more years or was a gift to the resident.

### Fiscal information

The proposed committee substitute does not change the fiscal impact reflected in the original fiscal note for this bill.



Official Business

# Alaska State Legislature

## Senate Committee on State Affairs

Vic Fischer, Chair • Pouch V  
Juneau, Alaska 99811  
(907) 465-4954

### MEMORANDUM

TO: Senate Finance Committee  
FROM: Senator Vic Fischer *[Signature]*  
RE: SB 323 Pioneer home residents  
DATE: February 23, 1984

Attached you will find a copy of a proposed finance committee substitute for SB 323. The proposed CS amends the State Affairs version of SB 323 by adding a provision that would require the Department of Administration to give written notice to all pioneer home residents 60 days before a rate increase is adopted. This language comes from lines 10-15 of SB 405.

The State Affairs Committee recently heard SB 405. It was the consensus of the committee and Senator Josephson that the notice requirement to Pioneer Home residents in SB 405 be included in SB 323. This decision resulted from the fact that CSSB 323 (State Affairs) already included a procedural section on rate increases for Pioneer Home residents.

In effect, then, the finance CS addresses the problem of rate increases by requiring the department to:

- 1) establish in regulation the compensation to be charged pioneer home residents,
- 2) review the rate every two years,
- 3) give notice to residents of the homes 60 days before an increase.

### Fiscal information

FY 85 133.0 thousand  
FY 86 139.1 thousand  
FY 87 145.5 thousand

### Back up information

Sectional analysis  
All version of SB 323  
Copy of SB 405  
Department of Administration position paper and fiscal note for SB 405  
Department of Administration position paper and fiscal note for CSSB 323 (State Affairs)  
A copy of relevant statutes

February 23, 1984

Sectional Analysis for CSSB 323 (Finance)

- Section 1: Increases the allowance to qualifying Pioneer Home residents from \$35 to \$100 a month; states that any money in excess of the stipend may be required by the Department of Administration.
- Section 2: States that the money collected by the Department of Administration shall be transferred to the Commissioner of Revenue; raises from \$35 to \$100 the amount paid to Pioneer Home Residents without funds.
- Section 3: Requires the Department of Administration to establish in regulation the daily or monthly rate charged to the resident to compensate the state, and requires the department to review the regulations at least every two years. This section also requires the department to give 60 day notice before a rate increase is adopted.
- Section 4: Outlines the expenses for which the resident of the home is responsible; states that the debt to the state is the first claim against the residents estate; exempts heirlooms from a claim by the state; defines that money left in charge of Dept. of Admin. by a deceased resident shall be used for burial purposes; outlines the method by which personal effects of the deceased resident are to be dispersed; defines heirloom as personal property of sentimental value to the resident that has been in possession of the resident's family for 10 or more years or was a gift to the resident.

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3411

# COMMITTEE REPORT

## SENATE

FURTHER: Judiciary

1/10/84

Date: 1-17-84

Mr. President:

The Committee on State Affairs has had SB 341

Amending statutory references to the Pacific time zone; cfd.

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- ☒ do pass ☐ do not pass
- ☐ do pass with attached amendments(s)
- ☐ replace with CS for \_\_\_\_\_ ☐ same title  
☐ new title
- and recommends \_\_\_\_\_
- ☐ AND attaches a "Letter of Intent" ☐ New Fiscal Note
- ☐ reports it back without recommendation
- ☐ referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

Bill Harg  
Tom Kelly  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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MEMBERS HAVING  
OTHER RECOMMENDATIONS:

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Chairman  
CHAIRMAN





Official Business

# Alaska State Legislature

## Senate Committee on State Affairs

Vic Fischer, Chair • Pouch V  
Juneau, Alaska 99811  
(907) 465-4954

### COMMITTEE REPORT

January 17, 1983  
3:00pm

Butrovich room  
Capitol Building

#### Members Present:

Senator Vic Fischer, Chair  
Senator Pat Rodey  
Senator Tim Kelly  
Senator Arliss Sturgulewski  
Senator Bill Ray

The meeting was called to order at 3:05pm

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#### SB 353 Presidential primary

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Lieutenant Governor Stephen McAlpine reviewed this and other bills repealing the presidential primary election. He outlined a number of reasons why the primary election should be repealed. He gave reasons why section 2 of the bill should be deleted. The Lieutenant Governor suggested that one of those reasons was the possibility of section 2 inviting a law suit.

Senator Vic Fischer asked what would happen to the remaining funds that had been appropriated to hold the election.

Lt. Governor Stephen McAlpine said they would probably lapse into the general fund.

Senator Ray stated that he supports the idea of a presidential primary, but that some voters must change their party affiliation which makes the election undesirable.

Lieutenant Governor McAlpine related some of the problems concerning ballot secrecy and the election. He said that many voters will forfeit their ballot secrecy because their party will have only one candidate.

Senator Vic Fischer expressed his concern that the state is giving the public the right to vote in the primary and then taking away that right.

Senator Ray moved that a new section be added to lapse any unexpended moneys to the general fund.

Senator Vic Fischer said that without any objection the new section would replace section 2 of the original bill.

Senator Tim Kelly related his disappointment that Alaska will not have a primary.

The bill was moved out of committee as amended.

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SB 341 Statutory references to the time zone

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Mirt Charney, Director of the Legislative Affairs Agency, reviewed the bill. He said SB 341 was a housecleaning bill bringing the statutes up to date by replacing Pacific with Alaska standard time zone.

Senator Bill Ray made a motion to move the bill out of committee with individual recommendations.

The bill was moved out of committee.

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SB 310, SB 311 establishing Bob Bartlett and Earnest Gruening Day

-----

Senator Vic Fischer gave a brief statement on these bills.

Senator Sturgulewski moved to delete sentence 2 and 3 from SB 311.

The 3rd sentence was also deleted from SB 310.

Committee substitutes for these two bills were moved out of committee with individual recommendations.

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SCR 32 World Food Day

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Senator Vic Fischer gave a brief statement on this resolution.

Senator Tim Kelly made a motion to include "be encouraged to" between state and participate on pg. 2, line 1.

A committee substitute was adopted making the changes above.

Senator Pat Rodey made a motion to move the resolution out of committee.

The resolution was moved out of committee.

The meeting was adjourned at 4:05



Official Business

# Alaska State Legislature

## Senate Committee on State Affairs

Vic Fischer, Chair • Pouch V  
Juneau, Alaska 99811  
(907) 465-4954

### MEMORANDUM

TO: Senate State Affairs Committee

FROM: Senate State Affairs Committee Staff

RE: SB 341 Changing references of Pacific Time Zone to Alaska Time Zone

DATE: January 17, 1983

This piece of legislation changes the statutory references on time zones from Pacific to the Alaska time zone in keeping with Alaska's time zone change.

There is no fiscal impact.

Revision Date: 1/13/84

## REQUEST

Bill/Resolution No.: SB 341Title: An Act Amending Statutory References to Pacific Time Zone & Providing for an Effective Date.Sponsor: Rules CommitteeRequestor: Senator V. FischerDate of Request: 1-11-84

## FISCAL DETAIL

Agency Affected: \_\_\_\_\_

Program Category Affected: \_\_\_\_\_

BRU, Program or Subprogram(s) Affected: \_\_\_\_\_

## EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

## FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL						

## POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

## SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

This bill will have no fiscal impact on the operations of the State.

ANALYSIS: Attach a separate page for any Analysis

Prepared By: C. J. GasparekDivision: S.E. PlanningPhone: 364-4331Date: 1-13-84Approved by: Deputy Commissioner: Ju SainDepartment: DOT/PE IIDate: 1/16/84

Distribution: (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

12/1/83

SB 341

SB 341 is a house cleaning bill to change existing legislation with statutory references to the Pacific Time Zone. In four locations, AS 01.10.070(b), AS 01/10.070(c), AS 01.10.070(d), and AS 45.55.080(c) the reference to Pacific Standard Time is revised to Alaska Standard Time.

This bill also amends AS 24.05.090 by deleting the reference to Pacific Standard Time as it relates to the convening of the Alaska State Legislature.

The reference to Alaska Standard Time is the correct name substitution for the Pacific Standard Time as changed by HR 3959; Public Law 98 wherein the Congress renamed three of the four zones which had been in Alaska to reflect the changes made by the Department of Transportation rulemaking, [OST Docket No. 9; Amendment 71-20].



S B

353

# SENATE STATE AFFAIRS COMMITTEE

Date received \_\_\_\_\_

Bill Number \_\_\_\_\_ Title presidential primary

Fiscal Position	Date requested	From	Amount	Date Rec'd
Note	Paper	Note	Paper	
X	<del>1-13</del>	1-13	UnGov	
X	✓	1-13	UnGov	

## CONTACTS

## Backup list

✓ Mark Johnson 586-1434  
 Bill Hudson (Amig)  
 Bill Cullen (586-1174)  
 ✓ Dave Allison 586-1328  
 Norma Lange 364-2553  
 Marlene Neve

①  
 ②

## HEARING INFORMATION

Heard - 1-17-1982

## NOTES:

sb 353 let

FINAL ACTION \_\_\_\_\_ DATE \_\_\_\_\_

PRESIDENTIAL PARTY PRIMARY ELECTION  
March 13, 1984

Background

In the 1980 legislative session, members of the state House and Senate were successful in getting statutory authority for Alaska's first Presidential party primary. AS 15.25.220-280 authorizes this primary for 1984. The primary was approved chiefly because of the argument that candidates would come to Alaska, campaign, and learn more about the state. This primary election was to be binding on the delegate selection process by the terms of the statute.

In May 1983, the U.S. Supreme Court issued its opinion in LaFollette vs. U.S., concluding that in order for a presidential primary election to be binding on political parties in the delegate selection process, the conduct of the election must comply with party rules. Both Democratic and Republican party rules require a CLOSED primary election before the results can bind the delegate selection process. In order to comply, the Division of Elections had hoped that a voter's party preference could be declared without physically changing his or her registration. This plan was rejected by both of the parties because it failed to comply with national party rules.

The Division of Elections then adopted what is known as the Massachusetts plan for presidential primaries. This requires registered party members to vote their party's ballot while non-partisans may choose which party to join on election day. As a result, only those voters who declare a party preference and are willing to have their voter registration changed will be allowed to vote on March 13 in Alaska.

Since 58% (151,500) of Alaska's voters are non-partisan or registered "other", a procedure was adopted to accommodate all voters; by allowing this 58% and the 1,017 registered Libertarians (who chose not to appear on the ballot) to declare a party affiliation up to and including election day, while requiring any Democrats or Republicans that wish to change their party affiliation to do so no less than 30 days prior to March 13.

Reasons for Repeal

1) Approximately \$.8 million would be saved by repeal of AS 15.25.220-280.

2) The method of voting is both objectionable and confusing to voters. Every letter and communication received on this issue has been vehemently opposed to the method of conducting the primary. Alaskans seem satisfied with the present, "blanket," open primary system of voting; they pride themselves on their status as informed independents.

3) The primary is an undue administrative burden on the many citizens that serve Alaska's polling places. In addition to the many hours of new training necessary to explain the primary to these workers, the sharp change in the regular rules of voting will focus undeserved criticism on the poll workers for a one-time method of primary election. Confusion over voter eligibility will also tend to discourage voters from casting a primary ballot. This problem is exacerbated in the absentee-by-mail voting process.

4) Only one of the nine major Presidential candidates have traveled to Alaska to campaign. It appears that the chief argument for the primary has not occurred. (Nine other states are also having primaries on this date.)

5) Alaska's delegate strength to the two major party conventions is so small, .4 of 1% of delegate votes, that spending up to \$1 million on such an election could easily be viewed as a waste of money by the majority of the electorate.

6) Since only one candidate will appear on each the Republican and Alaska Independence Party ballots, the secrecy of the vote is compromised.

7) If the primary is repealed, the political parties will return to the traditional methods of apportioning delegates by caucus and convention.

(FROM DIVISION OF ELECTIONS)

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(FROM DIVISION OF ELECTIONS)



MSG 84-00004402 PRTY Y 01/18/84 11:13:13 ORIG: LA02 IN= 0000 OUT= 0050  
FROM: MARCIE, ANC INFO TO: POM, JUNEAU INFO  
TARGET: LJHK SUBJ: P O M

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TO: ALL MEMBERS OF THE LEGISLATURE

FROM: WILLIE RATCLIFF, 835 NELCHINA, ANC 99501  
H 277-3733

ALL ALASKANS INCLUDING INDEPENDENTS KNOW THAT A MAJOR PARTY NOMINEE  
WILL BE ELECTED PRESIDENT IN NOVEMBER. CANCELLING THE PRESIDENTIAL  
PARTY PRIMARY DISENFRANCHISES US ALL AND DRAWS NATIONAL ATTENTION TO  
ALASKA AS A STATE WHERE BACK ROOM POWER PLAYS COUNT MORE THAN PEOPLE.  
FRUSTRATING VOTERS NOW MAY BACKFIRE IN NOVEMBER.

EOM



ST

MSG 84-00003259 PRTY 1 01/13/84 14:47:36 ORIG: LM00 IN: 0008 OUT: 0058  
FROM: MARTIE/MATSIJ TO: JUNEAU INFO  
TARGET: LJHK SUBJ: POM'S

TO: REPS. AROOD AND MARTIN  
COPIES TO ALL LEGISLATORS

FROM: BEVERLY FROST  
BRADFORD E. PARKER, JR.  
PO BOX 80  
SUTTON 99674  
745-4171

RE: PRESIDENTIAL PRIMARY

WE ARE AGAINST THE PRESIDENTIAL PRIMARY BECAUSE OF THE COST AND BECAUSE WE FEEL  
THAT A LOT OF PEOPLE WILL NOT PARTICIPATE.

\*\*\*\*\*

MEMORANDUM

TO: Senate State Affairs Committee

FROM: Senate State Affairs Committee staff

RE: SB 353 Repealing the presidential party primary election

DATE: January 16, 1983

This bill would repeal the March 13, 1984 presidential primary election.

The impact of this legislation would save the state up to .8 million dollars (depending on effective date of legislation).

Enclosed as back-up you will find:

1) An information sheet from the Division of Elections outlining the history of Alaska's presidential primary election, and giving reasons for the election's repeal.

2) An information sheet from the Division of Elections outlining the expenses of holding the '84 presidential primary election.

Persons Contacted:

Mark Johnson

Dave Allison

Diane O'Connell

HB 430

passed in 1980.

① be held  
② bound delegate election process  
may 1980 La Follett Decision

1) must follow rules in order to be binding.

2) Would be necessary to be member of party.

58% are registered non-partisan.

both parties wanted person be registered in party.

---

La Follett

a state can hold election any way. But if it's going to be binding, then the election has to be conducted follow national party rules.

---

our statutes require binding election

---

looked at Massachusetts plan  
— they have a number of non-partisan.  
— some large change.

By Jan. 24, 25 million spent



District 11 republicans support  
repeal of primary.

MR. Tweedy,

non-partisan but it is  
violation of his rights ~~that~~  
that he has to register in Party  
& in order to vote.

Garry Hume (Newman)

supports primary because  
a many as ~~to~~ can be involved  
should be involved.

Judging success or failure too  
quickly.

Dr. Joe Donnenman

for

Mark Ripley —

Support H.R. 430. Does not want  
to declare party, why not let  
Demos & R pay for their own  
primaries.



Official Business

# Alaska State Legislature

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Vic Fischer, Chair • Pouch V  
Juneau, Alaska 99811  
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- 2) An information sheet from the Division of Elections outlining the expenses of holding the '84 presidential primary election.
- 3) A list of other states having presidential primaries.



House Bills 430, 459, 460 - Repeal of March 13 Presidential Primary Election.

A timely repeal of this primary could save considerable monies. The dates and activities noted in each block are deadlines for the fraction of monies committed. By February 12, approximately  $\frac{1}{2}$  of the funds to be expended will be committed. Any bill to repeal must have an immediate effective date incorporated. February 20th, when ballots have been shipped by certified mail and final notices are committed to advertising seems to be a date, admittedly arbitrary, when the election should proceed.

JANUARY 9  
1/8 funds

Travel/Training  
election board wkrs  
(ongoing)

initial ordering of:  
-special forms  
-posters, other  
materials  
-voter ID cards  
-voter register-  
ation forms

program costs for  
party affiliation  
& precinct regist-  
ration changes

temporary staff  
hired

JANUARY 24  
1/4 funds

Travel/Training  
election board wkrs

order all ballots

sign program  
contract

initial advertising  
(print & video  
contracted)

purchase supplies &  
postage to all  
precincts

40 day notices sent  
out  
mass mailings

FEBRUARY 12  
1/2 funds

Travel/Training  
election board wkrs

airmail all  
remaining material

contract for com-  
munications  
(election returns  
cable hoodups, sites)

ballots separated  
& shipped from  
printer

FEBRUARY 20  
3/4 funds

Travel/Training  
election board wkrs

10 day notices sent  
out

secondary advertis-  
ing contracted  
(print, radio,  
video)

certify-mail all  
ballots to  
precincts

MARCH 13  
Total funds

payment of all  
election workers,  
including:  
tally teams  
counting teams  
canvass boards

rents for halls

transportation of  
ballots, troopers

polling place set-  
ups by contractors

(FROM: DIVISION OF ELECTIONS)

MEMORANDUM  
January 16, 1984

TO: Rep. Miller

FROM: Denise Zachary *dz*

SUBJECT: Dates/ Presidential Primaries - Republican and Democrat

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	Presidential Primary	Candidate Filing Deadline
Alabama	March 13	January 14, 1984
Arkansas	March 13	December 28, 1983
Alaska	March 13	December 28, 1983 <i>Jan. 24, 1984</i>
California	June 5	March 23, 1984
Connecticut	March 27	February 20, 1984
Florida	March 13	January 16, 1984
Georgia	March 13	February 20, 1984
Idaho	May 22	April 23, 1984
Illinois	March 20	December 30, 1983
Indiana	May 8	March 9, 1984
Louisiana	April 7	March 2, 1984
Maryland	May 8	February 27, 1984
Massachusetts	March 13	January 6, 1984
Montana	June 5	March 17, 1984
Nebraska	May 15	March 16, 1984
New Hampshire	February 28	January 3, 1984
New Jersey	June 5	April 26, 1984
New Mexico	June 5	March 16, 1984
New York	April 3	February 16, 1984
North Carolina	May 8	February 7, 1984
North Dakota	June 12	April 18, 1984
Ohio	May 8	February 23
Oregon	May 15	March 6, 1984
Pennsylvania	April 10	January 31, 1984
Rhode Island	March 13	January 6, 1984
South Dakota	June 5	April 3, 1984
Tennessee	May 1	March 6, 1984
Texas	May 5	February 6, 1984
Vermont	March 6	January 16, 1984
West Virginia	June 5	March 31, 1984
Wisconsin	April 3	March 1, 1984
Washington D.C.	May 1	March 2, 1984
Puerto Rico	March 18	February 9, 1984

This information from NCSL this date.

1/13/84

R E V I S E D  
SENATE STATE AFFAIRS COMMITTEE  
MEETING SCHEDULE

Butrovich Room, Capitol Building

January 17, Tuesday 3:00pm

SB 310	Establishing April 20 as Bob Bartlett day
SB 311	Establishing February 6 as Ernest H. Gruening Day
SB 341	Amending statutory references to the Pacific time zone
SB 353	Repealing the Presidential primary
SCR 32	Requesting the Governor to designate October 16 as World Food Day

January 19, Thursday 3:00pm

SB 323	Changing income limits of residents of Pioneer Homes---TELECONFERENCE
SB 325	Changing income limits of residents of Pioneer Homes---TELECONFERENCE

January 24, Tuesday 3:00pm

Overview of Department of Administration: Personnel, Equal Employment Opportunity, Retirement, Labor Relations