

3099

SSA

HB 289

-

HB 323

8672

3099

<p>I. <u>REQUEST</u>                  Bill/Resolution No.: <u>SCSCSHB 289</u>                  Title: <u>Opening of the polls on election day</u>                  Sponsor: <u>Representative Hayes</u>                  Requestor: <u>Senate State Affairs</u></p>	<p>II. <u>FISCAL DETAIL</u>                  Agency Affected: <u>Office of the Governor</u>                  Program Category Affected: <u>Exec. Operat. BRU, Program of Subprogram(s), Affected: Division of Elections</u></p>
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EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL	-0-	14.2	28.4	-0-	28.4	-0-
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
<b>TOTAL OPERATING</b>	-0-	14.2	28.4	-0-	28.4	-0-
<b>CAPITAL</b>						
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND	-0-	14.2	28.4	-0-	28.4	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: Information was not provided.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dana C. Coffman, Deputy Director Phone: 586-6181  
 Division: Division of Elections Date: June 1, 1983  
 Approved by Commissioner: *[Signature]* Date: June 1, 1983  
 Department: St. Governor

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

CSHB 289

"An Act relating to the time for opening the polls on election day."

ASSUMPTIONS:

1. Payments made to election board workers will not increase through FY 88. Chairperson receives \$8.00 per hour, and board members receive \$7.50 per hour.
2. The number of precincts remain the same through FY 88.
3. There are 437 voting precincts. Approximately 25 are large enough to require double boards. For purposes of computation 462 precincts is used. (437 + 25)
4. Presidential Preference Primary will be held on April 17, 1984. If legislation repealing that election passes, there will be zero fiscal impact in FY 84.

COMPUTATIONS:

Statewide elections - Presidential Preference Primary,  
Primary, General

1 election x 462 prec. x 7.50 x 3 members x 1 hr. = 10395  
1 election x 462 prec. x 8.00 x 1 member x 1 hr. = 3696  
14091

Absentee Voting Stations - required for all statewide elections.

10 locations x 7.50 x 2 people x 1 hr. = 150

I. REQUEST

Bill/Resolution No.: OSHR 289 (SA)  
 Title: Opening polls on election day  
 Sponsor: Representatives Hayes  
 Requestor: House Finance

II. FISCAL DETAIL

Agency Affected: Office of the Governor  
 Program Category Affected: Exec Operati  
 BRU, Program of Subprogram(s) Affected:  
 Division of Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		19.5	23.8	5.3	23.8	5.3
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	19.5	23.8	5.3	23.8	5.3
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	19.5	23.8	5.3	23.8	5.3
FEDERAL FUNDS						
OTHER (Specify Source)						

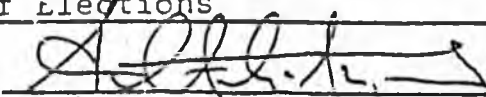
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Information was not provided.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dana C. Coffman, Deputy Director  
 Division: Division of Elections  
 Approved by Commissioner:   
 Department: Lieutenant Governor

Phone: 586-6181  
 Date: April 18, 1983  
 Date: 4/18/83

Distribution:  
 Original to Legislative Finance

"An Act relating to the time for opening the polls on election day."

ASSUMPTIONS:

1. Payments made to election board workers will not increase through FY 88. Chairperson receives \$8.00 per hour, and board members receive \$7.50 per hour.
2. The number of precincts remain the same through FY 88.
3. There are 437 voting precincts. Approximately 25 are large enough to require double boards. For purposes of computation 462 precincts is used. (437 + 25)
4. Presidential Preference Primary will be held on April 17, 1984. If legislation repealing that election passes, FY 84 expenditures will be reduced by 14.2
5. An average of six single precinct elections (local liquor option, and incorporation), are held annually.

COMPUTATIONS:

REAA/CRSA

168 precincts x 7.50 x 3 members x 1 hr. = 3780  
 168 precincts x 8.00 x 1 chairperson x 1 hr. = 1344  
5124

Various elections = 6

6 precincts x 7.50 x 3 members x 1 hr. = 135  
 6 precincts x 8.00 x 1 chairperson x 1 hr. = 48  
183

Statewide elections - Presidential Preference Primary, Primary, General

1 election x 462 prec. x 7.50 x 3 members x 1 hr. = 10395  
 1 election x 462 prec. x 8.00 x 1 member x 1 hr. = 3696  
14091

Absentee Voting Stations - required for all statewide elections.

10 locations x 7.50 x 2 people x 1 hr. = 150

# ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



May 31, 1983  
3:00 p.m.

Butrovich Room

## Members Present

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

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## Agenda

HB 289 Time for opening the polls on election day  
HB 306 Veterans burial benefits  
HB 406 National Guard reenlistment bonus  
HCR 9 Veterans' memorial

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HB 289 Time for opening the polls on election day

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Neil Phelps Munson, aide to Speaker Hayes (prime sponsor), testified for the bill.

Mary Lou Meiners, Director of the Division of Elections, testified for the bill as it would allow people to vote on the way to work.

Ginny Chitwood, Alaska Municipal League, testified that municipalities wanted to set the poll hours for municipal elections.

Senator Ray asked if the bill applied to municipalities. He suggested that a committee substitute be drafted to allow community input into the time for opening the polls in non-statewide elections.

Senator Fischer directed staff to prepare a committee substitute.

Offered: 6/3/83  
Referred: Rules

Original sponsors: Hayes and  
Szymanski

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE  
2 SENATE CS FOR CS FOR HOUSE BILL NO. 289 (State Affairs)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 THIRTEENTH LEGISLATURE - FIRST SESSION  
5 A BILL

6 For an Act entitled: "An Act relating to the time for opening the polls on  
7 election day."

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

9 \* Section 1. AS 15.15.080 is amended to read:

10 Sec. 15.15.080. TIME FOR OPENING AND CLOSING POLLS. (a) Except  
11 as provided in (b) of this section, on [ON] the day of any election,  
12 each election board shall open the polls for voting at seven [EIGHT]  
13 o'clock in the morning, shall close the polls for voting at eight  
14 o'clock in the evening, and shall keep the polls open during the time  
15 between these hours. The election board members shall report to the  
16 polling place at 6:30 [7:30] in the morning of an election day. [THE  
17 HOUR SHALL BE DETERMINED BY THE STANDARD TIME, OR DAYLIGHT SAVING  
18 TIME, THAT IS APPLICABLE TO THE POLLING PLACE.]

19 \* Sec. 2. AS 15.15.080 is amended by adding a new subsection to read:

20 (b) On the day of any election that is not a general election, a  
21 primary election, a special election, or a federal election held under  
22 this title, the director shall require each election board to open the  
23 polls for voting at eight o'clock in the morning, shall close the  
24 polls for voting at eight o'clock in the evening, and shall keep the  
25 polls open during the time between these hours unless the director  
26 sets other times for opening and closing the polls after consulting  
27 with representatives of the community or communities where the  
28 election is to be held. The election board members shall report to  
29 the polling place one-half hour before the polls are to open on

1 election day.

SENATE AMENDMENT

#1

By Senator Sackett

To: \_\_\_\_\_ SENATE BILL No. \_\_\_\_\_

To: Senate CS for CS for HOUSE BILL No. 289 (State Affairs)

PAGE: 1      LINE: 25 through 28

At Line 25 place a period after the word "hours" and delete the remainder of the sentence ending with the word "held" on Line 28.

## THE QUESTION OF POLLING HOURS FOR NON-STATEWIDE ELECTIONS

It was never the intent of the sponsor to require unincorporated communities to set their polling hours at 7am when they may only have 40 people who need to vote on an issue pertaining only to them (Neil Phelps-Munson in State Affairs mtg of 5/31/83). The purpose behind the introduction of this bill was to allow people in urban areas the option of voting on their way to work in statewide elections.

Since the state handles elections in unincorporated communities, polls would have to be open at 7am and close at 8pm for incorporation elections, any REAA or coastal resource service area election, liquor option elections, and any special elections. The State Affairs CS addresses that problem. Elections in unincorporated communities are handled by the state. With the passage of the Senate State Affairs CS, the hours of poll opening are left at 8am with the option for the time to be changed by the director of the division of elections after talking to "representatives of the community."

The words "representatives of the community" were chosen specifically to include informal village, tribal, or other organizations or persons that wanted to give input into the times the polls would be open.

You asked Neil Phelps-Munson at the committee meeting if he had any problems with the CS. He said no.

TO: VF

FROM: ST

DATE: 1/11

RE: HB 289

STATE AFFAIRS CS

The Senate State Affairs CS adds to the bill the requirements for opening the polls on election days in non-statewide elections. It leaves the hours for voting between 8am and 8pm, but allows the director of the division of elections to set different times after consulting with representatives of the community(s).

--requires election board members to be at the polls 1/2 hour before the polls open.

The CS was suggested by Ray to allow for community input.

HOUSE PASSED BILL (also in the state affairs cs)

--requires polls to be open at 7 o'clock on day of election in a statewide election.

--requires election board members to be at polls at 6:30 instead of

~~seven~~ 7:30

-----  
There is no effective date on the bill which would mean it probably  
wouldn't be implemented in the upcoming statewide election.

Fiscal impact is 33.8  
FY85 - 338

<CS FOR HOUSE BILL NO. 289 (SA)> by the State Affairs Committee, entitled:

"An act relating to the time for opening the polls on election day."

was read the first time and referred to the State Affairs Committee.

The State Affairs Committee considered <CS FOR HOUSE BILL NO.> <289 (SA)> (time for opening the polls on election day) and recommended it be replaced with

SENATE CS FOR CS FOR HOUSE BILL NO. 289 (SA)

with a majority do pass. The report was signed by Senator Vic Fischer, Chairman and concurred in by Senators Sturgulawski and Rodey.

The committee attached a new fiscal note which appears in Senate Supplement No. 38 to today's journal.

CS FOR HOUSE BILL NO. 289 (SA) was referred to the Rules Committee.

polling

THE QUESTION OF ~~SHORTER~~ HOURS FOR NONSTATEWIDE ELECTIONS

It was never the intent of the sponsor to require unincorporated communities to set their polling hours at 7am when they may only have 40 people who need to vote on an issue pertaining only to them.

(Neil Phelps-Munson in State Affairs mtg of 5/31/83)

The State Affairs CS addresses that problem. Elections in unincorporated communities are handled by the state. The state also handles local liquor option elections and incorporation elections. With the passage of the state affairs CS, the hours of poll opening are left at 8am with the option for the time to be changed by the director of the division of elections after talking to members of the community.

The words "representatives of the community" were chosen specifically to include informal village, tribal, or other organizations that wanted to give input into the times the polls would be open.

You asked Neil Phelps-Munson at the committee meeting if he had any problems with the CS. He said no.

TO: VF

FROM: ST

DATE: 1/11

RE: HB 289

SENATE AFFAIRS CS

The Senate State Affairs CS adds to the bill the requirements for opening the polls on election days in non-statewide elections. It leaves the hours for voting between 8am and 8pm, but allows the director of the division of elections to set different times after consulting with representatives of the community(s).

--requires election board members to be at the polls 1/2 hour before the polls open.

The CS was suggested by Ray to allow for community input.

HOUSE PASSED BILL (also in the state affairs cs)

--requires polls to be open at 7 o'clock on day of election in a statewide election.

--requires election board members to be at polls at 6:30 instead of seven.

## THE QUESTION OF POLLING HOURS FOR NON-STATEWIDE ELECTIONS

It was never the intent of the sponsor to require unincorporated communities to set their polling hours at 7am when they may only have 40 people who need to vote on an issue pertaining only to them (Neil Phelps-Munson in State Affairs mtg of 5/31/83). The purpose behind the introduction of this bill was to allow people in urban areas the option of voting on their way to work in statewide elections.

Since the state handles elections in unincorporated communities, polls would have to be open at 7am and close at 8pm for incorporation elections, any REAA or coastal resource service area election, liquor option elections, and any special elections. The State Affairs CS addresses that problem. Elections in unincorporated communities are handled by the state. With the passage of the Senate State Affairs CS, the hours of poll opening are left at 8am with the option for the time to be changed by the director of the division of elections after talking to "representatives of the community."

The words "representatives of the community" were chosen specifically to include informal village, tribal, or other organizations or persons that wanted to give input into the times the polls would be open.

You asked Neil Phelps-Munson at the committee meeting if he had any problems with the CS. He said no.

-----  
There is no effective date on the bill which would mean it probably  
wouldn't be implemented in the upcoming statewide election.

Vic - There is potential for  
great abuse on allowing comm-  
mittees to have less than...

Jim

Am talking about my type  
of commander.

H B

306

HB 306

SENATE JOURNAL - PAGE 964- 2 5/12/83

HOUSE BILL NO. 306 by Representatives Liska, Bussell, Ward and Uehling, entitled:

"An Act relating to burial allowances for veterans."

was read the first time and referred to the State Affairs Committee and the Finance Committee.

HB 306

SENATE JOURNAL - PAGE 1161- 1 6/ 1/83

The State Affairs Committee considered HOUSE BILL NO. 306 (burial allowances for veterans) and recommended do pass. The report was signed by Senator Vic Fischer, Chairman and concurred in by Senators Kelly, Sturgulewski, Rodey and Ray.

HOUSE BILL NO. 306 was referred to the Finance Committee.

HB 306

SENATE JOURNAL - PAGE 1254- 4 6/ 9/83

Senator Bennett, Co-Chairman, moved and asked unanimous consent that the Finance Committee referral on HOUSE BILL NO. 306 (burial allowances for veterans) be waived. Without objection, it was so ordered.

HOUSE BILL NO. 306 was referred to the Rules Committee.

-----  
HB 306 Veterans burial benefits  
-----

Linda Edgewater, aide to Representative Liska (prime sponsor) testified for the bill. She said the bill is designed to correct a situation where survivors are denied federal veterans benefits if they are eligible for a lesser state benefit.

Paul Arnoldt, Director of the Division of Business Loans and Veteran's Affairs, testified for the bill. He reiterated the testimony of the previous witness.

Senator Rodey moved and asked unanimous consent that the bill pass from committee with individual recommendations. There was no objection.

-----  
HB 406 National Guard reenlistment bonus  
-----

Richard Roundtree, Department of Military Affairs, testified for the bill. He said the bill merely clarifies the intent of the existing law.

Senator Fischer asked if the bill granted additional benefits. The witness said "no".

Senator Kelly moved and asked unanimous consent that the bill pass from committee with individual recommendations. There was no objection.

-----  
HCR 9 Veteran's memorial  
-----

Committee staff presented a committee substitute for consideration.

Senator Ray objected to the resolution on the grounds that the sculpture "Nimbus" belongs to the court system and is not under the control of the Legislature. He said that a constitutional separation of powers question may be involved. He further suggested an amendment which would clarify that the memorial would honor veterans of undeclared wars, such as Vietnam and Korea, as well as declared wars.

Senator Rodey moved and asked unanimous consent for the committee to adopt the committee substitute as amended. There was no objection. He then moved and asked unanimous consent for the committee substitute to move from committee. There was no objection.

The meeting adjourned at 3:30 p.m.

STATE OF ALASKA  
FISCAL NOTE

Revision Date \_\_\_\_\_, 1983

I. REQUEST

Bill/Resolution No.: HB 306  
 Title: Veterans Burial Allowance  
 Sponsor: Liska, Busseil, Ward & Uehling  
 Requestor: \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected: Commerce & Econ. Developm  
 Program Category Affected: Development  
 BRU, Program of Subprogram(s) Affected: Loans & Veterans' Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
<b>TOTAL OPERATING</b>						
<b>CAPITAL</b>		[21,300]	<i>Reduction</i>			
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: D. A. Hostak *D. A. Hostak* Phone: 465-2510  
 Division: Loans & Veterans' Affairs Date: 4-5-83  
 Approved by Commissioner: Richard A. Lyon *R. Lyon* Date: 4/6/83  
 Department: Commerce & Economic Development

Distribution:

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

3/8/83

# Alaska State Legislature

## COMMITTEES

Vice Chairman — Judiciary

Vice Chairman — Legislative  
Regulations Review

Resources

Finance Sub Committee on Labor



While in Session

Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3733

Home - District 15  
Star Route Box 421  
Eagle River, Alaska 99577  
(907) 688-2526

## House of Representatives

John J. Liska

May 26, 1983

TO: Senate State Affairs Committee

FROM: John J. Liska, Representative - District 15

SUBJECT: Proposed Legislation Re: Veteran's Burial Allowances

Federal Statute 38 U.S.C.907 provides for an \$1,100 burial allowance to veterans who die of a service connected disability. At present, however, Alaskan veterans are denied the benefit of receiving the full amount, because this provision only applies if there is no State, Borough or City burial allowance available.

Because Alaska Statute provides for a \$750 burial allowance for these veterans, recipients in Alaska receive \$350 less than the Federal law allows.

To correct this unfairness I have submitted a proposed amendment to A.S.26.10.080 to restrict the State's funeral and burial allowance only to those veterans not eligible for the Federal Benefit.

There are two advantages: 1) Veterans will not lose their right to the full benefit provided by Federal Law because of the State's allowance, and 2) the number of benefit payments made by the State will be reduced as more veterans will be eligible under the Federal Program.

I will appreciate your support of this amendment.

TO: John J. Liska  
Representative  
House of Representatives

FROM: American Legion  
Department of Alaska

SUBJECT: State Burial Allowance

Under our present system, there is a \$750.00 burial allowance for all honorably discharged veterans who were residents of the State of Alaska. Under federal regulations, there is a \$1,100.00 burial allowance for those veterans who died of a service connected disability, however, this benefit is not available if there is a State, Borough or City burial allowance available for the veteran.

In order to restore the \$1,100.00 burial allowance for those veterans who died of a service connected disability, it will require a change in our regulations.

Under Section 26.10.080, Burial Allowance(a) after time of death add except those veterans who died of a service connected disability.

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

# 306

MEMORANDUM

March 24, 1983

SUBJECT: Veteran's burial allowances  
(Work Order No. 13-1101)

TO: Representative John Liska

FROM: Thomas A. Sofka *TAS*  
Legislative Counsel

The enclosed bill draft would deny those veterans that die as a result of a service connected disability the \$750 burial allowance available under AS 26.10.080. The rationale for such an amendment to the Alaska Statutes is contained in 38 U.S.C. 907, a copy of which is attached to this memo. That section already provides for a burial allowance of \$1,100 in the case of a veteran who dies of a service connected disability.

If you have any further questions regarding this subject, please do not hesitate to contact me.

TAS:ljb

Enclosures  
12/007

HB 306 FISCAL NOTE ANALYSIS

It is estimated that there would be approximately a 10% reduction in the number of eligible applicants. The FY '84 budget request was for \$213,000, resulting in a reduction of \$21,300.

## APPENDIX

### CODE OF FEDERAL REGULATIONS

### TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

#### CHAPTER 1—VETERANS ADMINISTRATION

##### Part 3—Adjudication

As amended to March 17, 1982

#### SUBPART A—PENSION, COMPENSATION, AND DEPENDENCY AND INDEMNITY COMPENSATION

##### RATINGS AND EVALUATIONS: SERVICE CONNECTION

§ 3.307. Presumptive service connection for chronic, tropical or prisoner of war related disease; wartime and service on or after January 1, 1947

(a) General. A chronic, tropical or prisoner of war related disease listed in § 3.309 will be considered to have been incurred in service under the circumstances outlined in this section even though there is no evidence of such disease during the period of service. No condition other than one listed in § 3.309(a) will be considered chronic.

*[See main volume for text of (1)]*

(2) Separation from service. For the purpose of paragraph (a)(3) and (4) of this section the date of separation from wartime service will be the date of discharge or release during a war period, or if service continued after the war, the end of the war period. In claims based on service on or after January 1, 1947 the date of separation will be the date of discharge or release from the period of service on which the claim is based.

*[See main volume for text of (3) and (4)]*

(5) Diseases specific as to former prisoners of war. The diseases listed in § 3.309(c) shall have become manifest to a degree of 10 percent or more at any time after discharge or release from active service. (38 U.S.C. 312)

(b) Evidentiary basis. The factual basis may be established by medical evidence, competent lay evidence or both. Medical evidence should set forth the physical findings and symptomatology elicited by examination within the applicable period. Lay evidence should describe the material and relevant facts as to the veteran's disability observed within such period, not merely conclusions based upon opinion. The chronicity and continuity factors outlined in § 3.303(b) will be considered. The diseases listed in § 3.309(a) will be accepted as chronic, even though diagnosed as acute because of insidious inception and chronic development, except (1) where they result from intercurrent causes, for example, cerebral hemorrhage due to injury, or active nephritis or acute endocarditis due to intercurrent infection (with or without identification of the pathogenic micro-organism); or (2) where a disease is the result of drug ingestion or a complication of some other condition not related to service. Thus, leukemia will be accepted as a chronic disease whether diagnosed as acute or chronic. Unless the clinical picture is clear otherwise, consideration will be given as to whether an acute condition is an exacerbation of a chronic disease.

[See main volume for text of (c) and (d)]

3. Disease subject to presumptive service connection

[See main volume for text of (a) and (b)]

Diseases specific as to former prisoners of war. If a veteran is (1) a former prisoner of war and (2) as such was interned or detained for not less than 30 days, the following diseases may be considered service connected if manifest to a degree of 10 percent or more at any time after discharge or release from active military, naval, or air service even though there is no record of such disease during service.

- (1) Malaria.
- (2) Typhoid (including beriberi heart disease).
- (3) Dysentery.
- (4) Anthrax.
- (5) Malnutrition (including optic atrophy associated with malnutrition).
- (6) Pellagra.
- (7) Other nutritional deficiency.
- (8) Schistosomiasis.
- (9) The anxiety states.

SUBPART B—BURIAL BENEFITS

3.1600. Payment of burial expenses of deceased veterans

For the purpose of payment of burial expenses the term "veteran" includes a person who died during a period deemed to be active military, naval or air service under § 3.8(b)(6). The period of active service upon which the claim is based must not have been terminated by discharge or release from active service under conditions that are dishonorable.

(a) Service-connected death burial allowance. If a veteran dies as a result of a service-connected disability or disabilities, an amount not to exceed \$1,100 (or if entitlement is under § 3.8(c) or (d), a rate in Philippine pesos equivalent to \$550) may be paid toward the veteran's funeral and burial expenses including the cost of transporting the body to the place of burial. Entitlement to this benefit is subject to the applicable further provisions of this section and §§ 3.1601 through 3.1610. Entitlement of the service-connected death burial allowance is in lieu of payment of any benefit authorized under paragraph (b), (c) or (f) of this section. (38 U.S.C. 907)

(b) Non-service-connected death burial allowance. If a veteran's death is not service-connected, an amount not to exceed \$300 (or if entitlement is under § 3.8(c) or (d), a rate in Philippine pesos equivalent to \$150) may be paid toward the veteran's funeral and burial expenses including the cost of transporting the body to the place of burial. Entitlement is subject to the following conditions:

- (1) At the time of death the veteran was in receipt of pension or compensation (or if the receipt of military retirement pay would have been in receipt of compensation); or
- (2) The veteran has an original or reopened claim for either benefit pending at the time of the veteran's death;
- (3) In the case of an original claim there is sufficient evidence of record on the date of the veteran's death to have supported an award of compensation or pension effective prior to the date of the veteran's death, or
- (4) In the case of a reopened claim, there is sufficient prima facie evidence of record on the date of the veteran's death to indicate that the deceased would have been entitled to compensation or pension prior to date of death. If the Veterans Administration determines that additional evidence is needed to confirm that the deceased would have been entitled prior to death, it shall be submitted within 1 year from date of request to the burial allowance claimant for submission of the confirming evidence. If the confirming evidence is not received by the Veterans Administration within 1 year from date of request, the burial allowance claim shall be denied; and
- (5) The applicable further provisions of this section and §§ 3.1601 through 3.1610.

(38 U.S.C. 502)

(c) Death while properly hospitalized. If a person dies from nonservice-connected causes while properly hospitalized by the Veterans Administration, there is payable an allowance not to exceed \$300 for the actual cost of the person's funeral and burial, and an additional amount for transportation of the body to the place of burial. (38 U.S.C. 903(a)). (If the hospitalized person's death is service connected, entitlement to burial benefits falls under paragraph (a) of this section instead of this paragraph.)

[See main volume for text of (d) and (e)]

(f) Plot or interment allowance. When a veteran dies from non-service-connected causes, \$150 (or where entitlement is based on § 3.8(c) or (d), a rate in Philippine pesos equivalent to \$75) may be paid as a plot or interment allowance. The plot or interment allowance is payable to the person or entity who incurred the expenses. (For payment to a State or political subdivision thereof, see § 3.1604(c).) Entitlement is subject to the following conditions:

(1) The deceased veteran is eligible for the burial allowance under paragraph (b) or (c) of this section; or

(2) The veteran either served during a period of war or was discharged from the active military, naval, or air service for a disability incurred or aggravated in line of duty (or at time of discharge has such a disability, shown by official service records, which in medical judgment would have justified a discharge for disability; the official service department record showing that the veteran was discharged or released from service for disability incurred in line of duty will be accepted for determining entitlement to the plot or interment allowance notwithstanding that the Veterans Administration has determined, in connection with a claim for monetary benefits, that the disability was not incurred in line of duty); and

(3) The veteran is not buried in a national cemetery or other cemetery under the jurisdiction of the United States; and

(4) The applicable further provisions of this section and §§ 3.1601 through 3.1610. (38 U.S.C. 903(b))

[See main volume for text of (g)]

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## TITLE 39

### POSTAL SERVICE

#### CHAPTER 1—POSTAL POLICY AND DEFINITIONS

##### § 101. Postal policy

###### Supplementary Index to Notes

Constitutionality 1/2  
Preemption 1a

###### 1/2 Constitutionality

The Postal Reorganization Act [see Tables volume], as applied to preempt municipal trespass ordinance that explicitly required United States postal letter carriers to obtain express consent from residents before crossing their lawns in the course of mail delivery, did not violate U.S.C.A. Const. Amend. 10. U. S. v.

City of Pittsburg, Cal., C.A. Cal. 1981, 661 F.2d 783.

###### 1a. Preemption

Municipal trespass ordinance explicitly requiring United States postal letter carriers to obtain express consent from residents before crossing their lawns in course of mail delivery interfered with postal carriers' federal duty under the Postal Reorganization Act [see Tables volume] to deliver mail efficiently and was therefore unconstitutional under U.S.C.A. Const. Art. 6, cl. 2. U. S. v. City of Pittsburg, Cal., C.A. Cal. 1981, 661 F.2d 783.

§ 3.1600 etc

Part I—Veterans Administration

§ 3.1600

dependents was reduced under § 3.1600(b) because of hospitalization, institutional or domiciliary care by the Veterans Administration, or an award of disability pension, compensation or emergency officers' retirement pay was discontinued under § 3.557(b) because the veteran was hospitalized by the United States or a political subdivision and had an estate which equaled or exceeded \$1,500, and the veteran dies before payment of amounts withheld or not paid by reason of such care, no part of such amount will be paid to any person. The provisions of this section are applicable to amounts withheld for periods prior to as well as subsequent to the rating of incompetency. The term "dies before payment" includes cases in which a check was issued and the veteran died before negotiating the check. (38 U.S.C. 3203(b))

(39 FR 30349, Aug. 22, 1974)

§ 3.1008 Accrued benefits payable to foreign beneficiaries.

In case of death of the payee of any check in payment of periodic monetary benefits (other than insurance and servicemen's indemnity) accruing under laws administered by the Veterans Administration, while the amount thereof remains in the special deposit account established by Pub. L. 828, 76th Congress, such amount will be payable under section 3 of that act. (31 U.S.C. 125) However, the accrued amount will be payable only if the person on whose behalf checks were issued and the person claiming the accrued amount have not been guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or of its allies.

(20 FR 1609, Feb. 24, 1961)

§ 3.1009 Personal funds of patients.

The provisions of this section are applicable to gratuitous benefits deposited by the Veterans Administration either before, on, or after December 1, 1959, in a personal funds of patients account for an incompetent veteran who was incompetent at the date of death. Where the veteran died after November 30, 1959:

(a) *Eligible persons.* Gratuitous benefits shall be paid to the living person first listed as follows:

- (1) His or her spouse, as defined in § 3.1000(d)(1);
- (2) His or her children (in equal shares), as defined in § 3.57 but without regard to their age or marital status;
- (3) His or her dependent parents (in equal shares) as defined in § 3.59 or the surviving parent, provided that the parent was dependent within the meaning of § 3.250 at the date of the veteran's death.

(4) In all other cases, only so much may be paid as may be necessary to reimburse a person who bore the expense of last sickness or burial. (See § 3.1002.) (38 U.S.C. 3202(d))

(b) *Claim.* Application must be filed with the Veterans Administration within 5 years after the death of the veteran. If, however, any person otherwise entitled is under legal disability at the time of the veteran's death, the 5-year period will run from the date of termination or removal of the legal disability.

(1) There is no time limit for the submission of evidence.

(2) Failure to file timely claim, or a waiver of rights, by a preferred dependent will not serve to vest title in a person in a lower class or a claimant for reimbursement; neither will such failure or waiver by a person or persons in a joint class serve to increase the amount payable to another or others in the class.

(27 FR 5539, June 12, 1962, as amended at 28 FR 10487, Sept. 28, 1963; 39 FR 30349, Aug. 22, 1974)

Subpart B—Burial Benefits

AUTHORITY: 72 Stat. 1114, 1169, as amended; 38 U.S.C. 210, 902-905.

§ 3.1600 Payment of burial expenses of deceased veterans.

For the purpose of payment of burial expenses the term "veteran" includes a person who died during a period deemed to be active military, naval or air service under § 3.6(b)(6). The period of active service upon which the claim is based must have

39 FR 11893, Dec. 1, 1974; 39 FR 15126, May 1, 1974

§ 3.1602 Political subdivisions of United States.

No part of any accrued benefits will be used to reimburse any political subdivision of the United States for expenses incurred in the last sickness or death of any beneficiary. (See § 3.1000.) (38 U.S.C. 3021(b) and (d))

(39 FR 15126, May 1, 1974)

§ 3.1603 Returned and canceled checks.

For the purposes of §§ 3.1000 and 3.1600, where the payee of a check for benefits has died on or after the last day of the period covered by the check, and the check is returned and uncashed, the amount represented by the check which is payable as limited by § 3.500(g), or any amount recovered by improper negotiation of such a check will be payable to the living veteran or persons in the order of preference listed. This does not apply to checks for lump sums representing amounts withheld under § 3.551(b) or § 3.551(c) which will be subject to the provisions of § 3.1001 or § 3.1007, as applicable. (38 U.S.C. 3022)

There is no time limit for the filing of a claim, or the retroactive date covered by the award, or the receipt of evidence.

The fact that one or more persons surviving a higher order of precedence than the beneficiary will not be paid to a claimant who is otherwise entitled if it is shown that at the time the claim is adjudicated the persons are deceased.

(20 FR 1609, Feb. 24, 1961, as amended at 27 FR 10487, Sept. 28, 1963)

§ 3.1606 [Reserved]

§ 3.1607 Hospitalized incompetent veteran.

Where an award of disability pension is made to an incompetent veteran with-

**CORRECTION**

**CORRECTION**

5

§ 3.1600 etc

§ 3.1600

Chapter I—Veterans Administration

ions, Bonuses, and Veterans' Relief

se treatment or care was terminat-  
against medical advice or as the  
ult of disciplinary action. (38 U.S.C.  
3).

FR 1609, Feb. 24, 1961, as amended at 27  
5539, June 12, 1962; 27 FR 8177, Aug. 15,  
27 FR 11893, Dec. 1, 1962; 19 FR  
25, May 1, 1974]

302 Political subdivisions of United States.

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ed to reimburse any political sub-  
sion of the United States for ex-  
ses incurred in the last sickness or  
al of any beneficiary. (See  
301). (38 U.S.C. 3021(b) and  
301)

FR 15126, May 1, 1974]

303 Returned and canceled checks.

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of the period covered by the  
4, and the check is returned and  
eled, the amount represented by  
check which is payable as limited  
3.500(g), or any amount recovered  
improper negotiation of such a  
will be payable to the living  
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s for lump sums representing  
ts withheld under § 3.551(b) or  
7 which will be subject to the  
sions of § 3.1001 or § 3.1007, as  
table. (38 U.S.C. 3022)

There is no time limit for the  
of filing claim, or the retroactive  
s covered by the award, or the  
of receipt of evidence.

The fact that one or more per-  
aving a higher order of prece-  
survived the beneficiary will not  
de payment to a claimant who is  
ise entitled if it is shown that  
time the claim is adjudicated  
ersons are deceased.

1609, Feb. 24, 1961, as amended at 27  
53, Dec. 1, 1962]

4—3.1006 [Reserved]

Hospitalized incompetent veter-

an award of disability pen-  
an incompetent veteran with-

out dependents was reduced under  
§ 3.551(b) because of hospitalization,  
institutional or domiciliary care by the  
Veterans Administration, or an award  
of disability pension, compensation or  
emergency officers' retirement pay  
was discontinued under § 3.557(b) be-  
cause the veteran was hospitalized by  
the United States or a political subdivi-  
sion and had an estate which  
equaled or exceeded \$1,500, and the  
veteran dies before payment of  
amounts withheld or not paid by  
reason of such care, no part of such  
amount will be paid to any person.  
The provisions of this section are ap-  
plicable to amounts withheld for peri-  
ods prior to as well as subsequent to  
the rating of incompetency. The term  
"dies before payment" includes cases  
in which a check was issued and the  
veteran died before negotiating the  
check. (38 U.S.C. 3203(b))

[39 FR 30349, Aug. 22, 1974]

§ 3.1008 Accrued benefits payable to for-  
eign beneficiaries.

In case of death of the payee of any  
check in payment of periodic mone-  
tary benefits (other than insurance  
and servicemen's indemnity) accruing  
under laws administered by the Veter-  
ans Administration, while the amount  
thereof remains in the special deposit  
account established by Pub. L. 828,  
76th Congress, such amount will be  
payable under section 3 of that act.  
(31 U.S.C. 125) However, the accrued  
amount will be payable only if the  
person on whose behalf checks were  
issued and the person claiming the ac-  
crued amount have not been guilty of  
mutiny, treason, sabotage, or render-  
ing assistance to an enemy of the  
United States or of its allies.

[28 FR 1609, Feb. 24, 1961]

§ 3.1009 Personal funds of patients.

The provisions of this section are ap-  
plicable to gratuitous benefits deposi-  
ted by the Veterans Administration  
either before, on, or after December 1,  
1959, in a personal funds of patients  
account for an incompetent veteran  
who was incompetent at the date of  
death. Where the veteran died after  
November 30, 1959:

(a) *Eligible persons.* Gratuitous  
benefits shall be paid to the living  
person first listed as follows:

(1) His or her spouse, as defined in  
§ 3.1000(d)(1);

(2) His or her children (in equal  
shares), as defined in § 3.57 but with-  
out regard to their age or marital  
status;

(3) His or her dependent parents (in  
equal shares) as defined in § 3.59 or  
the surviving parent, provided that  
the parent was dependent within the  
meaning of § 3.250 at the date of the  
veteran's death.

(4) In all other cases, only so much  
may be paid as may be necessary to re-  
imburse a person who bore the ex-  
pense of last sickness or burial. (See  
§ 3.1002.) (38 U.S.C. 3202(d))

(b) *Claim.* Application must be filed  
with the Veterans Administration  
within 5 years after the death of the  
veteran. If, however, any person other-  
wise entitled is under legal disability  
at the time of the veteran's death, the  
5-year period will run from the date of  
termination or removal of the legal  
disability.

(1) There is no time limit for the  
submission of evidence.

(2) Failure to file timely claim, or a  
waiver of rights, by a preferred de-  
pendent will not serve to vest title in a  
person in a lower class or a claimant  
for reimbursement; neither will such  
failure or waiver by a person or per-  
sons in a joint class serve to increase  
the amount payable to another or  
others in the class.

[27 FR 5539, June 12, 1962, as amended at  
28 FR 10487, Sept. 28, 1963; 39 FR 30349,  
Aug. 22, 1974]

Subpart B—Burial Benefits ★

AUTHORITY: 72 Stat. 1114, 1169, as amend-  
ed; 38 U.S.C. 210, 902-905.

§ 3.1600 Payment of burial expenses of de-  
ceased veterans.

For the purpose of payment of  
burial expenses the term "veteran" in-  
cludes a person who died during a  
period deemed to be active military,  
naval or air service under § 3.6(b)(6).  
The period of active service upon  
which the claim is based must have

been terminated by discharge or release from active service under conditions other than dishonorable.

(a) *Service-connected death burial allowance.* If a veteran dies as a result of a service-connected disability or disabilities, an amount not to exceed \$1,100 (or if entitlement is under § 3.8 (c) or (d), a rate in Philippine pesos equivalent to \$550) may be paid toward the veteran's funeral and burial expenses including the cost of transporting the body to the place of burial. Entitlement to this benefit is subject to the applicable further provisions of this section and §§ 3.1601 through 3.1610. Payment of the service-connected death burial allowance is in lieu of payment of any benefit authorized under paragraph (b), (c) or (f) of this section. (38 U.S.C. 907)

(b) *Nonservice-connected death burial allowance.* If a veteran's death is not service connected, an amount not to exceed \$200 (or if entitlement is under § 3.8 (c) or (d), a rate in Philippine pesos equivalent to \$150) may be paid toward the veteran's funeral and burial expenses including the cost of transporting the body to the place of burial. Entitlement is subject to the following conditions:

(1) At the time of death the veteran was in receipt of pension or compensation (or but for the receipt of military retirement pay would have been in receipt of compensation); or

(2) The veteran has an original or reopened claim for either benefit pending at the time of the veteran's death, and

(i) In the case of an original claim there is sufficient evidence of record on the date of the veteran's death to have supported an award of compensation or pension effective prior to the date of the veteran's death, or

(ii) In the case of a reopened claim, there is sufficient prima facie evidence of record on the date of the veteran's death to indicate that the deceased would have been entitled to compensation or pension prior to date of death. If the Veterans Administration determines that additional evidence is needed to confirm that the deceased would have been entitled prior to death, it shall be submitted within 1 year from date of request to the burial

allowance claimant for submission of the confirming evidence. If the confirming evidence is not received by the Veterans Administration within 1 year from date of request, the burial allowance claim shall be disallowed; and

(3) The applicable further provisions of this section and §§ 3.1601 through 3.1610. (38 U.S.C. 210(c), 902)

(c) *Death while properly hospitalized.* If a person dies from nonservice-connected causes while properly hospitalized by the Veterans Administration, there is payable an allowance not to exceed \$300 for the actual cost of the person's funeral and burial, and an additional amount for transportation of the body to the place of burial. (38 U.S.C. 903(a)). (If the hospitalized person's death is service connected, entitlement to burial benefits falls under paragraph (a) of this section instead of this paragraph.)

(d) *Determinations.* Where a claim for burial allowance would be or has been disallowed because the service department holds that the disability was not incurred in line of duty and evidence is submitted which permits a different finding, the decision of the service department is not binding and the Veterans Administration will determine line of duty. The burden of proof will rest upon the claimant.

(e) *Persons not included.* Except as provided in § 3.1605(c) burial allowance is not payable in the following cases:

(1) A discharged or rejected draftee or selectee.

(2) A member of the National Guard who reported to camp in answer to the President's call for World War I or World War II service, but who, when medically examined was not finally accepted for active military service.

(3) An alien who does not come within the purview of § 3.7(b).

(4) Philippine Scouts enlisted on or after October 6, 1945, under section 14, Pub. L. 190, 79th Congress.

(5) Temporary members of the Coast Guard Reserve.

(f) *Plot or interment allowance.* When a veteran dies from non-service-connected causes, \$150 (or where entitlement is based on § 3.8(c) or (d), a rate in Philippine pesos equivalent to \$75) may be paid as a plot or inter-

## ensions, Bonuses, and Veterans' Relief

allowance claimant for submission of the confirming evidence. If the confirming evidence is not received by the Veterans Administration within 1 year from date of request, the burial allowance claim shall be disallowed; and

(3) The applicable further provisions of this section and §§ 3.1601 through 3.1610. (38 U.S.C. 210(c), 902)

(c) *Death while properly hospitalized.* If a person dies from non-service-connected causes while properly hospitalized by the Veterans Administration, there is payable an allowance not to exceed \$300 for the actual cost of the person's funeral and burial, and an additional amount for transportation of the body to the place of burial. (38 U.S.C. 903(a)). (If the hospitalized person's death is service connected, entitlement to burial benefits falls under paragraph (a) of this section instead of this paragraph.)

(d) *Determinations.* Where a claim for burial allowance would be or has been disallowed because the service department holds that the disability was not incurred in line of duty and evidence is submitted which permits a different finding, the decision of the service department is not binding and the Veterans Administration will determine line of duty. The burden of proof will rest upon the claimant.

(e) *Persons not included.* Except as provided in § 3.1605(c) burial allowance is not payable in the following cases:

- 1) A discharged or rejected draftee selectee.
- 2) A member of the National Guard who reported to camp in answer to the president's call for World War I or World War II service, but who, when medically examined was not finally accepted for active military service.
- 3) An alien who does not come within the purview of § 3.7(b).
- 4) Philippine Scouts enlisted on or after October 6, 1945, under section 14, Act No. 190, 79th Congress.
- 5) Temporary members of the Coast Guard Reserve.

*Plot or interment allowance.* When a veteran dies from non-service-connected causes, \$150 (or where entitlement is based on § 3.8(c) or (d), a sum in Philippine pesos equivalent to \$150) may be paid as a plot or inter-

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§ 3.1601

ment allowance. The plot or interment allowance is payable to the person or entity who incurred the expenses. (For payment to a State or political subdivision thereof, see § 3.1604(c).) Entitlement is subject to the following conditions:

(1) The deceased veteran is eligible for the burial allowance under paragraph (b) or (c) of this section; or

(2) The veteran either served during a period of war or was discharged from the active military, naval, or air service for a disability incurred or aggravated in line of duty (or at time of discharge has such a disability, shown by official service records, which in medical judgment would have justified a discharge for disability; the official service department record showing that the veteran was discharged or released from service for disability incurred in line of duty will be accepted for determining entitlement to the plot or interment allowance notwithstanding that the Veterans Administration has determined, in connection with a claim for monetary benefits, that the disability was not incurred in line of duty); and

(3) The veteran is not buried in a national cemetery or other cemetery under the jurisdiction of the United States; and

(4) The applicable further provisions of this section and §§ 3.1601 through 3.1610. (38 U.S.C. 903(b))

(g) *Transportation expenses for burial in national cemetery.* Where a veteran dies as the result of a service-connected disability, or at the time of death was in receipt of disability compensation (or but for the receipt of military retired pay or non-service-connected disability pension would have been entitled to disability compensation at time of death) there is payable, in addition to the burial allowance (either \$300 or \$1,100 if cause of death was service connected), an additional amount for payment of the cost of transporting the body to a national cemetery for burial. This amount may not exceed the cost of transporting the body from the veteran's place of death to the national cemetery nearest the veteran's last place of residence in which burial space is available. The amounts pay-

able under this paragraph are subject to the limitations set forth in §§ 3.1604 and 3.1606.

[26 FR 1620, Feb. 24, 1961, as amended at 44 FR 22721, Apr. 17, 1979; 47 FR 11012, Mar. 15, 1982]

**CROSS REFERENCES:** Definitions; veterans See § 3.1(d). Protection; burial allowance. See § 3.954.

### § 3.1601 Claims and evidence.

(a) *Claims.* Claims for reimbursement or direct payment of burial and funeral expenses, transportation of the body, and plot or interment allowance, must be received by the Veterans' Administration within 2 years after the permanent burial or cremation of the body. Where the burial allowance was not payable at the death of the veteran because of the nature of his (or her) discharge from service, but after his (or her) death the discharge has been corrected by competent authority so as to reflect a discharge under conditions other than dishonorable, claim may be filed within 2 years from date of correction of the discharge. (38 U.S.C. 904).

(1) Claims for burial allowance may be executed by:

(i) The funeral director, if entire bill or any balance is unpaid (if unpaid bill is under \$300 only amount of unpaid balance will be payable to the funeral director); or

(ii) The individual whose personal funds were used to pay burial, funeral, and transportation expenses; or

(iii) The executor or administrator of the estate of the veteran or the estate of the person who paid the expenses of the veteran's burial or provided such services. If no executor or administrator has been appointed then by some person acting for such estate who will make distribution of the burial allowance to the person or persons entitled under the laws governing the distribution of interstate estates in the State of the decedent's personal domicile.

(2) Claims for the plot or interment allowance (except for claims filed by a State or an agency or political subdivision thereof, under § 3.1604(d)) may be executed by:

(i) The funeral director, if he (or she) provided the plot or interment services, or advanced funds to pay for them, and if the entire bill for such or any balance thereof is unpaid (if unpaid balance is less than \$150 only the amount of the unpaid balance thereof will be payable to the funeral director); or

(ii) The person(s) whose personal funds were used to defray the cost of the plot or interment expenses; or

(iii) The person or entity from whom the plot was purchased or who provided interment services if the bill for such is unpaid in whole or in part. An unpaid bill for a plot will take precedence in payment of the plot or interment allowance over an unpaid bill for other interment expenses or a claim for reimbursement for such expenses. Any remaining balance of the \$150 allowance may then be applied to interment expenses; or

(iv) The executor or administrator of the estate of the veteran or the estate of the person who bore the expense of the plot or interment expenses. If no executor or administrator has been appointed, claim for the plot or interment allowance may be filed as provided in paragraph (a)(1)(iii) of this section for the burial allowance.

(3) For the purposes of the plot and interment allowance "plot" or "burial plot" means the final disposal site of the remains, whether it is a grave, mausoleum vault, columbarium niche, or other similar place. Interment expenses are those costs associated with the final disposition of the remains and are not confined to the acts done within the burial grounds but may include the removal of bodies for burial or interment.

(b) *Supporting evidence.* Evidence required to complete a claim for the burial allowance and the plot or interment allowance, when payable, (including a reopened claim filed within the 2-year period) must be submitted within 1 year from date of the Veterans Administration request for such evidence. In addition to the proper claim form the claimant other than a § 3.1604(d) claimant is required to submit:

(1) *Statement of account.* Preferably on funeral director's or cemetery

owner's billhead showing name of the deceased veteran, the plot or interment costs, and the nature and cost of services rendered, and unpaid balance.

(2) *Receipted bills.* Must show by whom payment was made and show receipt by a person acting for the funeral director or cemetery owner.

(3) *Proof of death.* In accordance with § 3.211.

(4) *Waivers from all other distributees.* Where expenses of a veteran's burial, funeral, plot, interment and transportation were paid from funds of the veteran's estate or some other deceased person's estate and the identity and right of all persons to share in that estate have been established, payment may be made to one heir upon unconditional written consent of all other heirs.

[38 FR 30106, Nov. 1, 1973, as amended at 41 FR 38771, Sept. 13, 1976; 44 FR 22722, Apr. 17, 1979; 44 FR 58710, Oct. 11, 1979]

#### § 3.1602 Special conditions governing payments.

(a) *Two or more persons expended funds.* If two or more persons have paid from their personal funds toward the burial, funeral, plot, interment and transportation expenses, the burial and plot or interment allowance will be divided among such persons in accordance with the proportionate share paid by each, unless waiver is executed in favor of one of such persons by the other person or persons involved. The person in whose favor payment is waived will not be allowed a sum greater than that which was paid by such person. (See § 3.1601(a)(3).)

(b) *Person who performed services.* A person who performed burial, funeral, and transportation services or furnished the burial plot will have priority over claims of persons whose personal funds were expended.

(c) *Partial payment.* Where partial payment of the expenses of the burial, funeral and transportation of the body are made from funds of the veteran's estate and the balance from the personal funds of another person, the claim of the other person has priority.

(d) *Escheat.* No payment of burial allowance or plot or interment allow-

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will be made where it would es-  
cheat.

42 FR 1621, Feb. 24, 1961, as amended at 38  
FR 30107, Nov. 1, 1973; 41 FR 38771, Sept.  
12, 1976)

§ 3.1603 Unclaimed bodies.

If the body of a deceased veteran is  
unclaimed, there being no relatives or  
friends to claim the body, the amount  
provided for burial and plot or inter-  
ment allowance will be available for  
the burial upon receipt of a claim ac-  
companied by a statement showing  
that efforts were made to locate rela-  
tives or friends. The question of es-  
tate of any part of such deceased vet-  
eran's estate is not a factor in such a  
claim. Burial allowance may be au-  
thorized for cost of disinterment and  
burial of unclaimed remains origi-  
nally accorded pauper burial but not  
for initial expenses of a burial in a po-  
pular's field. Burial in a prison cemetery  
is not considered a pauper burial.

43 FR 30107, Nov. 1, 1973)

→ § 3.1604 Payments from non-Veterans Ad-  
ministration sources.

(a) Contributions or payments by  
public or private organizations. When  
contributions or payments on the  
burial expenses have been made by a  
State, any agency or political subdivi-  
sion of the United States or of a State,  
or the employer of the deceased veter-  
an only the difference between the  
entire burial expenses and the amount  
paid thereon by any of these agencies  
or organizations, not to exceed \$300  
if death was service connect-  
ed will be authorized. Contributions  
or payments by any other public or  
private organization such as a lodge,  
union, fraternal or beneficial organiza-  
tion, society, burial association or in-  
surance company, will bar payment of  
the burial allowance if such allowance  
would revert to the funds of such or-  
ganization or would discharge such or-  
ganization's obligation without pay-  
ment.

(1) A contract or policy which pro-  
vides for payment at death of a speci-  
fied amount to a designated benefici-  
ary other than the person rendering  
burial and funeral services will not bar  
payment of the burial allowance to

the beneficiary even though the orga-  
nization issuing the contract or policy  
retains an option to make payment  
direct to the person rendering burial  
and funeral services.

(2) The provisions of this paragraph  
do not apply to contributions or pay-  
ments on the burial and funeral ex-  
penses which are made for humanitar-  
ian reasons if the organization making  
the contribution or payment is under  
no legal obligation to do so.

(b) Payment by Federal agency. (1)  
Where a veteran dies while in employ-  
ment covered by the United States  
Employees' Compensation Act, as  
amended, or other similar laws specifi-  
cally providing for payment of the ex-  
penses of funeral, transportation, and  
interment out of Federal funds, burial  
allowance will not be authorized by  
the Veterans Administration.

(2) A provision in any Federal law or  
regulation permitting the application  
of funds due or accrued to the credit  
of the deceased toward the expenses  
of funeral, transportation and inter-  
ment (such as Social Security bene-  
fits), as distinguished from a provision  
specifically prescribing a definite al-  
lowance for such purpose, will not bar  
payment of the burial allowance. In  
such cases only the difference between  
the total burial expense and the  
amount paid thereon under such pro-  
vision, not to exceed \$300 will be au-  
thorized.

(3) Burial allowance is not payable  
for deaths in active service, or during  
the duty periods set forth in § 3.6, or  
for other deaths where the cost of  
burial and transportation is paid by  
the service department.

(c) Payment of plot or interment al-  
lowance by public or private organiza-  
tion except as provided for by para-  
graph (d) of this section. Where any  
part of the plot or interment expenses  
have been paid or assumed by a State,  
any agency or political subdivision of a  
State, or the employer of the deceased  
veteran, only the difference between  
the total amount of such expenses and  
the amount paid or assumed by any of  
these agencies or organizations, not to  
exceed \$150, will be authorized.

(d) Payment of the plot or interment  
allowance to a State or political subdivi-  
sion thereof—(1) Conditions war-

*rating payment.* All of the following conditions must be met:

(i) The plot or interment allowance is payable based on the service of the deceased veteran. See § 3.1600.

(ii) The deceased veteran is buried in a cemetery or a section thereof which is used solely for the interment of persons eligible for burial in a national cemetery.

(iii) The cemetery or the section thereof where the veteran is buried is owned by the State, or an agency or political subdivision of the State claiming the plot or interment allowance.

(iv) No charge is made by the State, or an agency or political subdivision of the State for the cost of the plot or interment.

(v) The veteran was buried on or after October 1, 1978.

(2) *Claims.* A claim for payment under this paragraph shall be executed by a State, or an agency or political subdivision of a State on a claim form prescribed by the Veterans Administration. Such claim must be received by the Veterans Administration within 2 years after the permanent burial or cremation of the body. Where the burial allowance was not payable at the death of the veteran because of the nature of the veteran's discharge from service, but after the veteran's death the veteran's discharge was corrected by competent authority so as to reflect a discharge under conditions other than dishonorable, claim may be filed within 2 years from the date of correction of the discharge.

(3) *Amount of the allowance.* A State or an agency or political subdivision of a State entitled to payment under this paragraph shall be paid the sum of \$150 as a plot or interment allowance without regard to the actual cost of the plot or interment.

(4) *Priority of payment.* A claim filed under this paragraph shall take precedence in payment of the plot or interment allowance over any claim filed for the plot or interment allowance under § 3.1601(a)(2). (38 U.S.C. 903(b).

[26 FR 1621, Feb. 24, 1961, as amended at 29 FR 9537, July 14, 1964; 38 FR 30107, Nov. 1, 1973; 44 FR 22722, Apr. 17, 1979; 44 FR 58710, Oct. 11, 1979]

§ 3.1605 Death while traveling under prior authorization or while hospitalized by the Veterans Administration.

An amount may be paid not to exceed the amount payable under § 3.1600 for the funeral, burial, plot, or interment expenses of a person who dies while in a hospital, domiciliary, or nursing home to which he or she was properly admitted under authority of the Veterans' Administration. In addition, the cost of transporting the body to the place of burial may be authorized. The amount payable under this section is subject to the limitations set forth in paragraph (b) of this section, and §§ 3.1604 and 3.1606.

(a) *Death enroute.* When a veteran while traveling under proper prior authorization and at Veterans' Administration expense to or from a specified place for the purpose of:

- (1) Examination; or
- (2) Treatment; or
- (3) Care

dies enroute, burial, funeral, plot, interment, and transportation expenses will be allowed as though death occurred while properly hospitalized by the Veterans' Administration. Hospitalization in the Philippines under 38 U.S.C. 631, 632, and 633 does not meet the requirements of this section.

(b) *Transportation.* Except for retired persons hospitalized under section 5 of Executive Order 10122 (15 FR 2173; 3 CFR 1950 Supp.) issued pursuant to Pub. L. 351, 81st Congress, and not as Veterans' Administration beneficiaries, the cost of transportation of the body to the place of burial in addition to the burial and plot or interment allowance will be provided by the Veterans' Administration where death occurs:

(1) Within a State or the Canal Zone (38 U.S.C. 101 (20)) while the veteran is hospitalized by the Veterans' Administration and the body is buried in a State or the Canal Zone; or

(2) While hospitalized within but burial is to be outside of a State or the Canal Zone, except that cost of transportation of the body will be authorized only from place of death to port of embarkation, or to border limits of United States where burial is in Canada or Mexico.

burial in a national cemetery (but not for persons or classes of persons named in (6), of this title.

Confederate Armies of the Civil War.

When requested, an appropriate person shall, when requested, an appropriate person to commemorate any veteran who has been identified or were buried in a national cemetery area or in a national cemetery area, the provisions of section 1003 of this title.

When requested, an appropriate person to commemorate any veteran who has been identified or were buried in a national cemetery area or in a national cemetery area, the provisions of section 1003 of this title.

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When requested, an appropriate person to commemorate any veteran who has been identified or were buried in a national cemetery area or in a national cemetery area, the provisions of section 1003 of this title.

Section 907 of this title) and sections 6 [enacting provisions set out as a note under section 1004 of this title] and 7 [repealing sections 271 to 276, 278 to 279d, 291 to 292, 286 to 290, and 296 of Title 24, Hospitals and Asylums, and enacting provisions set out as notes under sections 271 to 276 of Title 24] of this Act shall take effect September 1, 1973, or on such earlier

date as the President may prescribe and publish in the Federal Register."

**Legislative History.** For legislative history and purpose of Pub.L. 93-43, see 1973 U.S. Code Cong. and Adm. News, p. 1401. See, also, Pub.L. 95-476, 1978 U.S. Code Cong. and Adm. News, p. 3347; Pub.L. 95-479, 1978 U.S. Code Cong. and Adm. News, p. 3483.

#### Code of Federal Regulations

Headstones, etc., see 38 CFR 1.630 et seq.

### § 907. Death from service-connected disability

In any case in which a veteran dies as the result of a service-connected disability or disabilities, the Administrator, upon the request of the survivors of such veteran, shall pay the burial and funeral expenses incurred in connection with the death of the veteran in an amount not exceeding the greater of (1) \$1,100, or (2) the amount authorized to be paid under section 8134(a) of title 5 in the case of a Federal employee whose death occurs as the result of an injury sustained in the performance of duty. Funeral and burial benefits provided under this section shall be in lieu of any benefits authorized under sections 902 and 903(a)(1) and (b) of this title.

Added Pub.L. 93-43, § 5(a)(2), June 18, 1973, 87 Stat. 80, and amended Pub.L. 95-479, Title III, § 303(c), Oct. 18, 1978, 92 Stat. 1565.

#### Historical Note

**1978 Amendment.** Pub.L. 95-479 added "the greater of (1) \$1,100, or (2)" following "not exceeding".

**Effective Date of 1978 Amendment.** Amendment by Pub.L. 95-479 effective Oct. 1, 1978, see section 401 of Pub.L. 95-479, set out as a note under section 314 of this title.

**Effective Date.** Section effective Sept. 1, 1973, or such earlier date as the Presi-

dent may prescribe and publish in the Federal Register, see section 10(c) of Pub.L. 93-43, set out as a note under section 906 of this title.

**Legislative History.** For legislative history and purpose of Pub.L. 93-43, see 1973 U.S. Code Cong. and Adm. News, p. 1401. See, also, Pub.L. 95-479, 1978 U.S. Code Cong. and Adm. News, p. 3405.

#### Code of Federal Regulations

Service-connected death, see 38 CFR 3.303 et seq.

### § 908. Transportation of deceased veteran to a national cemetery

Where a veteran dies as the result of a service-connected disability, or is in receipt of (but for the receipt of retirement pay or pension under this title would have been entitled to) disability compen-

HB

323

STATE OF ALASKA  
FISCAL NOTE

Revision Date 6/14, 1983

I. REQUEST

Bill/Resolution No: SCSCSHB 323 (SA)  
Title: Residency and residency re-  
quirements  
Sponsor: State Affairs Committee  
Requestor: Senate Judiciary

II. FISCAL DETAIL

Agency Affected: Revenue  
Program Category Affected: Coll. & Mgmt.  
BRU, Program of Subprogram(s) Affected:  
Administration & Support

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	0	1.0	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	0	3.0	1.3	1.4	1.5	-
500 EQUIPMENT	0	2.0	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC.	-	-	-	-	-	-
TOTAL OPERATING	0	6.0	1.3	1.4	1.5	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	6.0	1.3	1.4	1.5	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-
Sport Fish Fund	0	(18.2)	(38.5)	(40.8)	(43.4)	-
Game Fund	0	(14.1)	(30.0)	(31.8)	(33.6)	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

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

IV. ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Cecilia A. Wagoner  
Division: Revenue - Fish and Game

Phone: 465-2376  
Date: 6/13/83

Approved by Commissioner: *Joseph J. ...*  
Department: Revenue

Date: 6/14/83

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#### IV. Analysis of SCSCSHB 323 (State Affairs)

Three thousand is needed to initially design and print applications and the permanent I.D. card and to order enough laminating jackets for the fiscal year. Each subsequent fiscal year we will have the cost of additional laminating jackets. The equipment cost is for three laminating machines; one for the Public Services Counter in Anchorage, one for Fairbanks, and one for Juneau. The travel expenditure is for the Records & Licensing Supervisor to go to Anchorage and Fairbanks and instruct the counter employees.

According to data received from the Department of Labor and the Committee for Older Alaskans, the percentage rate of senior citizens in our state is fairly stable from year to year.

Using FY 82 as the base, it is estimated that there will be a six percent increase in resident sales every year. It is also estimated that three percent of the resident sales are sold to residents sixty years or older.

We are recommending that this bill be amended to include an effective date of January 1, 1984, because license changes traditionally take place at the beginning of a calendar year. If implemented in the middle of the year, some licensees who could be eligible would have already purchased their license and it wouldn't be fair to them. Middle of the year implementation would also require special printing and mailing costs. Time is also needed to properly inform the public of the new law so that all who are eligible can apply.

Assuming that the bill goes into effect 1/1/84, there will be no effect in FY 83. There will be losses to both the Sport Fish and Game Funds in each subsequent fiscal year. FY 84 has a much smaller loss because only half of the fiscal year will be effected.

STATE OF ALASKA  
FISCAL NOTE

Revision Date June 13, 1983

I. REQUEST

Bill/Resolution No.: SCS CS HB323(SA)  
 Title: "Residency & Residency Requirements"  
 Sponsor: State Affairs Committee  
 Requestor: Senate State Affairs Committee

II. FISCAL DETAIL

Agency Affected: FISH AND GAME  
 Program Category Affected: Fisheries & Game  
 BRU, Program of Subprogram(s) Affected: Sport Fisheries and Game

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING						
CAPITAL						
REVENUE	-0-	(80.6)	(88.0)	(95.5)		

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

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

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

General Fund - in light of declining General Fund revenue, this may be very difficult.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Beverly Reaume *Beverly Reaume* Phone: 465-4120  
 Division: Administration Date: \_\_\_\_\_  
 Approved by Commissioner: Don W. Collinsworth *Don W. Collinsworth* Date: 6/13/83  
 Department: Fish and Game

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SCS CS HB 323 (SA)

The 1980 Census showed 19,640 Alaskans ages 60 and over. It also showed 32,260 Alaskans 55 and over. Assuming the age spread is even, 2524 Alaskans will reach age 60 each year between 1980 and 1985. Population estimates adding the Alaskans reaching 60 and an overall 5% population growth would be as follows:

FY 84	28,573
FY 85	31,223
FY 86	33,873

Using a conservative estimate, assume that 15% of the population fishes and 11% hunts, we would forego the following revenue:

	<u>Sport Fish</u> \$10 license	<u>Game</u> \$12 license
FY 84	42.9	37.7
FY 85	46.8	41.2
FY 86	50.8	44.7

# HOUSE JOURNAL SUPPLEMENT

May 14, 1983

No. 61

HB  
323

FISCAL NOTE

Revision Date May 2, 1983

(Page 1 of 2)

- |  |   |
|--|---|
| <p><b>I. REQUEST</b><br/>                 Bill/Resolution No.: <u>CS HB 323 (SA)</u><br/>                 Title: <u>"Residency &amp; Residency Requirements"</u><br/>                 Sponsor: <u>State Affairs Committee</u><br/>                 Requestor: <u>House Judiciary Committee</u></p> | <p><b>II. FISCAL DETAIL</b><br/>                 Agency Affected: <u>FISH &amp; GAME</u><br/>                 Program Category Affected: <u>Fisheries &amp; Game</u><br/>                 BRU, Program of Subprogram(s) Affected: <u>Sport Fisheries and Game</u></p> |
|--|---|

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 83	FY 86	FY 85	FY 86	FY 87	FY 88
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
<b>TOTAL OPERATING</b>						
<b>CAPITAL</b>						
<b>REVENUE</b>	-0-	(80.6)	(88.0)	(95.5)		

**FUNDING: (Thousands of Dollars)**

	FY 83	FY 86	FY 85	FY 86	FY 87	FY 88
<b>GENERAL FUND</b>						
FEDERAL FUNDS						
OTHER (Specify Source)						

**POSITIONS:**

	FY 83	FY 86	FY 85	FY 86	FY 87	FY 88
<b>FULL-TIME</b>						
<b>PART-TIME</b>						
<b>TEMPORARY</b>						

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

General Fund - in light of declining General Fund revenue, this may be very difficult.

**IV. ANALYSIS: Attach a separate page for any Analysis**

Prepared By: <u>Neverly Reams</u>	Phone: <u>465-4120</u>
Division: <u>Administration</u>	Date: <u>May 7, 1983</u>
Approved by Commissioner: <u>Don W. Collinsworth</u>	Date: <u>5-2-83</u>
Department: <u>FISH &amp; GAME</u>	

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3/0/83

CS HB 323(SA) (Page 2 of 2)

The 1980 Census showed 19,640 Alaskans ages 60 and over. It also showed 32,260 Alaskans aged 55 and over. Assuming the age spread is even, 2524 Alaskans will reach age 60 each year between 1980 and 1985. Population estimates adding the Alaskans reaching 60 and an overall 5% population growth would be as follows:

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FY 85	31,223
FY 86	33,873

Using a conservative estimate, assume that 15% of the population fishes and 11% hunts, we would forego the following revenues.

	<u>Sport Fish</u> \$10. license	<u>Game</u> \$12 license
FY 84	42.9	37.7
FY 85	46.8	41.2
FY 86	50.8	44.7

FISCAL NOTE

Revision Date 1983

I. REQUEST  
 Bill/Resolution No: HB 323 Page 1 of 2  
 Title: Residency & Residency Requirements  
 Sponsor: House State Affairs  
 Requestor: House State Affairs

II. FISCAL DETAIL  
 Agency Affected: Revenue  
 Program Category Affected: Coll. & Mgt.  
 BRU, Program of Subprogram(s) Affected: Administration & Support

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	1.0	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	3.0	1.3	1.4	1.5	-
500 EQUIPMENT	-	2.0	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC.	-	-	-	-	-	-
TOTAL OPERATING	-0-	6.0	1.3	1.4	1.5	-

CAPITAL	-	-	-	-	-	-
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REVENUE	-	-	-	-	-	-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	6.0	1.3	1.4	1.5	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-
Sport Fish Fund	-0-	(18.2)	(38.5)	(40.8)	(43.4)	-
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POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

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

IV. ANALYSIS: Attach a separate page for any Analysts.

Prepared By: Cecilia A. Wagener Phone: 465-2376  
 Division: Public Services Date: 4/13/83  
 Approved by Commissioner: Robert D. Heath Date: 4/14/83  
 Department: Revenue

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## IV. ANALYSIS (HB 323) Page 2 of 2

Three thousand is needed to initially design and print applications and the permanent I.D. card and to order enough laminating jackets for the fiscal year. Each subsequent fiscal year, we will have the cost of additional laminating jackets. The equipment cost is for three laminating machines; one for the Public Services Counter in Anchorage, one for Fairbanks, and one for Juneau. The travel expenditure is for the Records & Licensing Supervisor to go to Anchorage and Fairbanks and instruct the counter employees.

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We are recommending that this bill be amended to include an effective date of January 1, 1984, because license changes traditionally take place at the beginning of a calendar year. If implemented in the middle of the year, some licensees who could be eligible would have already purchased their license. Middle of the year implementation would also require special printing and mailing costs. Time is also needed to properly inform the public of the new law so that all who are eligible can apply.

Assuming that the bill goes into effect 1/1/84, there will be no effect in FY 83. There will be losses to both the Sport Fish and Game Funds in each subsequent fiscal year. FY 84 has a much smaller loss because only half of the fiscal year will be effected.

**GROSS & BURKE**

A PROFESSIONAL CORPORATION

424 NORTH FRANKLIN STREET

JUNEAU, ALASKA 99801

AVRUM M. GROSS  
SUSAN A. BURKE

907) 586-2777

March 22, 1983

MEMORANDUM

TO: Honorable Mitch Abood  
Chairman, House State Affairs Committee

FROM: Susan A. Burke *SAB*

RE: Residency Requirements

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

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

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

I. Residency Requirements for Eligibility to Hold Public Office

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

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

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

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

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

## II. Residency Requirements for Occupational Licensing

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

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

### III. Public Rights and Benefits

#### A. General

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

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

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

B. Loan and Grant Programs

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

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<sup>2/</sup> In State v. Adams, 522 P.2d 1125, 1131 (Alaska 1974), the Alaska Supreme Court stated:

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

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

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

---

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

<sup>4/</sup> Vlandis v. Kline, 412 U.S. 441 (1973) (university tuition); Sosna v. Iowa, 419 U.S. 393 (1975) (divorce).

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

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

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

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

year durational residency requirement under the student loan program. The state has argued that the two year requirement is reasonable in light of the transience of student populations, the generous loan amounts under the Alaska program and the fact that there is no requirement that the loan funds be used at an Alaska institution. The plaintiff in that case has conceded that a one year requirement would be reasonable. Assuming the Alaska Supreme Court continues in its present trend in durational residency cases, a one year durational residency requirement for the loan program would more than likely be upheld.<sup>5/</sup> A two year requirement might be upheld, but it carries a much higher risk of being struck down than would a one year requirement. The Committee may want to defer proposing any amendments to the two year residency requirement for student loans until the pending litigation is resolved. The Committee may also want to defer action on the other loan programs until after the Alaska Supreme Court renders its decision on the one year residency requirement for participation in the Kenai land disposal lottery (Gilman v. Martin). That decision may provide some indication as to how our court would rule on a one year residency requirement for state loans. . .

---

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

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

C. Land Disposal Programs

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

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

D. Special Old Age Programs

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

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

SAB:yw

5/26  
jin

THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST  
 Bill/Resolution No. CS HB 323 (Finance)  
 Title Relating to residency and residency requirements  
 Requested by House Finance Committee Date 5/25/83

II. FISCAL DETAIL  
 Agency Affected Revenue, Fish and Game  
 Program Category Affected \_\_\_\_\_  
 BRU, Program, Or Subprogram(s) Affected \_\_\_\_\_  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Due to the changes made in the House Finance CS, the fiscal notes originally requested by the Departments of Fish & Game and Revenue are no longer necessary. The CS grandfathers those seniors who currently enjoy the hunting, trapping and fishing license exemption, and then repeals the program. Thus, there is no fiscal impact.

IV. DATE 5/25/83 PREPARED BY Al Adams, Chair  
 AGENCY House Finance Committee  
 PHONE 465-3706  
 Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/82)

ADA

FISCAL NOTE

Revision Date 1983

I. REQUEST  
 Bill/Resolution No: HB 323 Page 1 of 21  
 Title: Residency & Residency Requirements  
 Sponsor: House State Affairs  
 Requestor: House State Affairs

FISCAL DETAIL  
 Agency Affected: Revenue  
 Program Category Affected: Coll. & Mgt. BRU, Program of Subprogram(s) Affected: Administration & Support

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
<b>OPERATING</b>						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	1.0	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	3.0	1.3	1.4	1.5	-
500 EQUIPMENT	-	2.0	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC.	-	-	-	-	-	-
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>6.0</b>	<b>1.3</b>	<b>1.4</b>	<b>1.5</b>	<b>-</b>

<b>CAPITAL</b>	-	-	-	-	-	-
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<b>REVENUE</b>	-	-	-	-	-	-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	6.0	1.3	1.4	1.5	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-
Sport Fish Fund	-0-	(19.2)	(38.5)	(40.8)	(43.4)	-
Game Fund	-	(14.1)	(30.0)	(31.8)	(33.6)	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

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

IV. ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Cecilia A. Wagener Phone: 465-2376  
 Division: Public Services Date: 4/13/83  
 Approved by Commissioner: Robert D. Heath Date: 4/14/83  
 Department: Revenue

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## IV. ANALYSIS (HB 323) Page 2 of 2

Three thousand is needed to initially design and print applications and the permanent I.D. card and to order enough laminating jackets for the fiscal year. Each subsequent fiscal year, we will have the cost of additional laminating jackets. The equipment cost is for three laminating machines; one for the Public Services Counter in Anchorage, one for Fairbanks, and one for Juneau. The travel expenditure is for the Records & Licensing Supervisor to go to Anchorage and Fairbanks and instruct the counter employees.

According to data received from the Department of Labor and the Committee for Older Alaskans, the percentage rate of senior citizens in our state is fairly stable from year to year.

Using FY 82 as the base, it is estimated that there will be a six percent increase in resident sales every year. It is also estimated that three percent of the resident sales are sold to residents sixty years or older.

We are recommending that this bill be amended to include an effective date of January 1, 1984, because license changes traditionally take place at the beginning of a calendar year. If implemented in the middle of the year, some licensees who could be eligible would have already purchased their license. Middle of the year implementation would also require special printing and mailing costs. Time is also needed to properly inform the public of the new law so that all who are eligible can apply.

Assuming that the bill goes into effect 1/1/84, there will be no effect in FY 83. There will be losses to both the Sport Fish and Game Funds in each subsequent fiscal year. FY 84 has a much smaller loss because only half of the fiscal year will be effected.

# HOUSE JOURNAL SUPPLEMENT

May 14, 1983

No. 61

HB  
323

FISCAL NOTE

Revision Date May 2, 1983

(Page 1 of 2)

**I. REQUEST**

Bill/Resolution No.: CS HB 323 (SA)  
 Title: "Residency & Residency Requirements"  
 Sponsor: State Affairs Committee  
 Requestor: House Judiciary Committee

**II. FISCAL DETAIL**

Agency Affected: FISH & GAME  
 Program/Category Affected: Fisheries & Game  
 BRU, Program or Subprogram(s) Affected: Sport Fisheries and Game

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
<b>TOTAL OPERATING</b>						
<b>CAPITAL</b>						
<b>REVENUE</b>	-0-	(88.6)	(88.0)	(95.5)		

**FUNDOING: (Thousands of Dollars)**

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

**POSITIONS:**

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

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

General Fund - In light of declining General Fund revenue, this may be very difficult.

**IV. ANALYSIS: Attach a separate page for any Analysis**

Prepared By: Beverly Reame *Beverly Reame* Phone: 465-4120  
 Division: Administration Date: May 2, 1983  
 Approved by Commissioner: Don W. Collinsworth *Don W. Collinsworth* Date: 5-2-83  
 Department: FIS & GAME

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3/8/83

CS HB 323(SA) (Page 2 of 2)

The 1980 Census showed 19,640 Alaskans aged 60 and over. It also showed 32,260 Alaskans aged 55 and over. Assuming the age spread is even, 2524 Alaskans will reach age 60 each year between 1980 and 1985. Population estimates adding the Alaskans reaching 60 and an overall 5% population growth would be as follows:

FY 84	28,573
FY 85	31,223
FY 86	33,873

Using a conservative estimate, assume that 15% of the population fishes and 11% hunts, we would forego the following revenue.

	<u>Sport Fish</u> \$10. license	<u>Game</u> \$12. license
FY 84	42.9	37.7
FY 85	46.8	41.2
FY 86	50.8	44.7

HB 323

SENATE JOURNAL - PAGE 1177- 2 6/ 2/83

(CS FOR HOUSE BILL NO. 323 (FIN) am) by the Finance Committee, entitled:

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

was read the first time and referred to the State Affairs Committee and the Judiciary Committee.

HB 323

SENATE JOURNAL - PAGE 1278- 3 6/13/83

The State Affairs Committee considered (CS FOR HOUSE BILL NO.) (323 (FIN) am) (residency and residency requirements) and recommended it be replaced with

SENATE CS FOR CS FOR HOUSE BILL  
NO. 323 (SA)

with a majority do pass. The report was signed by Senator Vic Fischer, Chairman and concurred in by Senators Sturgulewski and Rodey.

CS FOR HOUSE BILL NO. 323 (FIN) am was referred to the Judiciary Committee.

HB 323

SENATE JOURNAL - PAGE 1335- 2 6/16/83

The Judiciary Committee considered (CS FOR HOUSE BILL NO. 323) ((FIN) am) (residency and residency requirements) and recommended it be replaced with

SENATE CS FOR CS FOR  
HOUSE BILL NO. 323 (JUD)

and do pass. The report was signed by Senator Ray, Chairman and concurred in by Senators Ziegler, Josephson, Petty, John and Eliason.

CS FOR HOUSE BILL NO. 323 (FIN) am was referred to the Rules Committee.

VIC:

RE: FLOOR BRIEFING ON HE 323

RESIDENCY



1. Changes between Senate State Affairs version and Senate Finance:

Senate Finance version eliminates sections:

Sec.9 - dealing with sport fishing, hunting or trapping licenses for residents 60 years or older.

Sec.15 - "submit proof acceptable to the commissioner that the applicant is a resident of the state at the time of application, and that the applicant has been a resident of the state for not less than one year immediately preceding the the date the application was submitted"

Sec.17 - relating to the two-year residency requirement for scholarship loans.

2. Otherwise I think your aware of whats up with this bill. Enclosed file contains each version of the bill, fiscal notes, analysis, and backup.

/gb  
6/19/83  
10 p.m.

PS: SENATE STATE AFFAIRS COMMITTEE REPORT SIGNED "DO PASS" BY RODEY, YOU, AND STURG. NO OTHER COMMITTEE MEMBERS SIGNATURES APPEAR ON THE COMMITTEE REPORT.

Offered: 5/14/83  
Referred: Finance

Original sponsor: State Affairs Committee

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE  
2 CS FOR HOUSE BILL NO. 323 (Judiciary)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 THIRTEENTH LEGISLATURE - FIRST SESSION  
5 A BILL

6 For an Act entitled: "An Act relating to residency and residency require-  
7 ments; and providing for an effective date."

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

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

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

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

15 (1) by maintaining a principal place of abode in the state  
16 for at least 30 days or for a longer period if a longer period is  
17 required by law or regulation; and

18 (2) by providing other proof of intent as may be required  
19 by law or regulation, that may include proof that the person is not  
20 claiming residency outside the state or obtaining benefits under a  
21 claim of residency outside the state.

22 (c) A person who establishes residency in the state remains a  
23 resident during an absence from the state unless during the absence  
24 the person establishes or claims residency in another state, territory  
25 or country, or performs other acts or is absent under circumstances  
26 that are inconsistent with the intent required under (a) of this  
27 section to remain a resident of this state.

28 \* Sec. 2. AS 08.04.110 is repealed and reenacted to read:

29 Sec. 08.04.110. PERSONAL REQUIREMENTS. An applicant for the

Use this version

① typo on p. 10

② policy re H&K licenses p. 6

③ add student loans section

1 certified public accountant certificate shall be at least 19 years of  
2 age and of good moral character.

3 \* Sec. 3. AS 08.04.260 is amended to read:

4 Sec. 08.04.260. TEMPORARY CERTIFICATE AS CERTIFIED PUBLIC  
5 ACCOUNTANT. If an applicant for a certificate as a certified public  
6 accountant meets all the requirements for a certificate and the appli-  
7 cant's application is pending or if an applicant meets all the require-  
8 ments for a certificate except [THE RESIDENCE REQUIREMENT, OR] the  
9 requirement that the applicant have a place of business in the state  
10 or be an employee regularly employed in this state, the board may  
11 issue a temporary certificate as a certified public accountant. The  
12 certificate is effective until the board notifies the applicant that  
13 the applicant's application has been granted or rejected. A temporary  
14 certificate is effective for a period not exceeding six months. No  
15 fee may be charged for the issuance of a temporary certificate.

16 \* Sec. 4. AS 08.08.207(a) is amended to read:

17 (a) Every person who desires subsequently to qualify as a gen-  
18 eral applicant for admission to the Alaska Bar without having been  
19 graduated from an approved law school shall register as a law clerk as  
20 provided by this section. The person [MUST BE A BONA FIDE RESIDENT OF  
21 THE STATE AND] shall present satisfactory proof that the person has  
22 been granted a bachelor's degree (other than bachelor of laws) by a  
23 college or university offering the degree on the basis of a four-year  
24 course of study and has successfully completed the first year of  
25 studies at a law school.

26 \* Sec. 5. AS 08.42.050(a)(4) is amended to read:

27 (4) have completed at least one year of apprenticeship as a  
28 [RESIDENT] trainee under a licensed embalmer.

29 \* Sec. 6. AS 08.42.110(4) is amended to read:

1           (4) "[RESIDENT] trainee" means a person who has met the  
2 qualifications set out in AS 08.42.050(a)(1) and (2) and is engaged  
3 in learning the practice of embalming under the direction and control  
4 of a person properly licensed to practice embalming, or a person who  
5 has met the qualifications set out in AS 08.42.050(b)(1) and (2) and  
6 is engaged in learning the practice of funeral directing under the  
7 direction and control of a person properly licensed to practice  
8 funeral directing.

9 \* Sec. 7. AS 08.88.171 is amended to read:

10           Sec. 08.88.171. ENTITLEMENT TO LICENSE. (a) A person is enti-  
11 tled to a real estate broker license [IF THE PERSON IS A RESIDENT OF  
12 THE STATE,] if the person passes the real estate brokers examination,  
13 if the person applies for a license within six months after the person  
14 has taken the real estate brokers examination, if the person has had  
15 at least 24 months of active and continuous experience as a licensed  
16 real estate salesman, if the person is not under indictment for, or  
17 seven years have elapsed since the person has completed a sentence  
18 imposed upon conviction of, forgery, theft, extortion, conspiracy to  
19 defraud creditors, or any other felony involving moral turpitude, and  
20 if the person is an owner of a real estate business or employed as a  
21 real estate broker by a corporation or a partnership, and if that  
22 corporation or partnership does not have an existing licensed broker.  
23 Unless the broker fails to pay the biennial renewal fee or unless the  
24 broker's license is suspended or revoked under AS 08.88.071(a)(3), the  
25 real estate broker's license continues in effect so long as the broker  
26 is an owner of a real estate business, or the broker is employed as a  
27 real estate broker by a corporation or a partnership. If the broker  
28 stops being an owner of a real estate business, or stops being em-  
29 ployed as a real estate broker by a corporation or partnership, the

1 broker's license is suspended from the time the broker stops until

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

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

9 (b) A person is entitled to an associate real estate broker  
10 license [IF THE PERSON IS A RESIDENT OF THE STATE,] if the person  
11 passes the real estate brokers examination, if the person applies for  
12 a license within six months after the person has taken the examina-  
13 tion, if the person has had at least 24 months of active and continu-  
14 ous experience as a licensed real estate salesman, if the person is  
15 not under indictment for, or five years have elapsed since the person  
16 has completed a sentence imposed upon conviction of, forgery, theft,  
17 extortion, conspiracy to defraud creditors, or any other felony in-  
18 volving moral turpitude, and if the person is employed by a licensed  
19 real estate broker as an associate real estate broker. Unless the  
20 associate broker fails to pay the biennial renewal fee or unless the  
21 associate broker's license is suspended or revoked under AS 08.88.-  
22 071(a)(3), the associate real estate broker's license continues in  
23 effect so long as the associate broker is employed by a licensed real  
24 estate broker as an associate broker. If the associate broker stops  
25 being employed by a licensed real estate broker, the associate brok-  
26 er's license is suspended from the time the associate broker stops  
27 until

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

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

5           (c) A person is entitled to a real estate salesman license [IF  
6 THE PERSON IS A RESIDENT OF THE STATE,] if the person passes the real  
7 estate salesman examination, if the person applies for a license  
8 within six months after the person has taken the examination, if the  
9 person is at least 19 years old, if the person is not under indictment  
10 for forgery, theft, extortion, conspiracy to defraud creditors, or any  
11 other felony involving moral turpitude, or, if convicted of such an  
12 offense, the person has completed the sentence imposed upon conviction,  
13 and if the person is employed by a real estate broker. Unless  
14 the salesman fails to pay the biennial renewal fee or unless the real  
15 estate salesman's license is suspended or revoked under AS 08.88.-  
16 071(a)(3), a real estate salesman's license continues in effect so  
17 long as the salesman is employed as a salesman by a licensed real  
18 estate broker. If the salesman stops being employed as a real estate  
19 salesman, the real estate salesman's license is suspended from the  
20 time the salesman stops until the salesman [HE] again is employed as a  
21 salesman by a licensed real estate broker.

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

25 \* Sec. 8. AS 09.55.130 is amended to read:

26           Sec. 09.55.130. RESIDENCE REQUIREMENTS FOR ACTION TO DECLARE  
27 MARRIAGE VOID. When a marriage has been solemnized [IN THE STATE] and  
28 the plaintiff is a resident of the state, an action to declare the  
29 marriage void may be brought at any time. [IF THE MARRIAGE HAS NOT

1 BEEN SOLEMNIZED IN THE STATE, THE ACTION MAY BE MAINTAINED ONLY WHEN  
2 THE PLAINTIFF HAS BEEN A RESIDENT FOR AT LEAST ONE YEAR BEFORE THE  
3 COMMENCEMENT OF AN ACTION.]

4 \* Sec. 9. AS 16.05.400(b) is amended to read:

5 (b) A sport fishing, hunting or trapping license is not required  
6 of a resident who is 60 years of age or more and has been a resident  
7 for one year [30 CONSECUTIVE YEARS] or more. The commissioner of  
8 revenue shall issue a permanent identification card without charge to  
9 persons who qualify by age and residence and who complete the forms  
10 required by the commissioner for implementation of this subsection. A  
11 person who is issued a permanent identification card under this sub-  
12 section shall have it in [HIS] possession while sport fishing, hunting  
13 or trapping.

14 \* Sec. 10. AS 16.35.130 is amended to read:

15 Sec. 16.35.130. BOUNTY NOT TO BE PAID. No bounty may be paid  
16 under AS 16.35.050 - 16.35.120 to a person who does not maintain [FOR  
17 THE IMMEDIATELY PRECEDING YEAR HAS NOT MAINTAINED] a permanent place  
18 of abode inside the game management unit or part of the game manage-  
19 ment unit in which the animal was taken and a bounty is paid, or to a  
20 person who does not maintain [HAS NOT CONTINUALLY MAINTAINED HIS]  
21 legal residence in the state, or to a salaried employee of a federal  
22 or state agency which is engaged in fish or game protection, manage-  
23 ment, research activity, or to any person whose bounty claim results  
24 from a trophy hunt as publicly declared by the Department of Fish and  
25 Game.

26 \* Sec. 11. AS 18.56.101 is amended to read:

27 Sec. 18.56.101. ELIGIBILITY FOR VETERANS' INTEREST RATES. The  
28 following persons are eligible veterans for the purposes of AS 18.56.-  
29 098(g) and (h):

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

5           [(A) WHO AT THE TIME OF INDUCTION INTO THE SERVICE WAS  
6 A RESIDENT OF THE TERRITORY OR STATE, WHO HAD BEEN A RESIDENT FOR  
7 NOT LESS THAN ONE YEAR IMMEDIATELY BEFORE HIS INDUCTION, AND WHO  
8 RETURNED TO THE TERRITORY OR STATE WITHIN ONE YEAR AFTER DIS-  
9 CHARGE AS A RESIDENT WITH THE INTENTION OF REMAINING IN THE  
10 TERRITORY OR STATE; OR

11           (B) WHO, NOT BEING A BONA FIDE RESIDENT OF THE TERRI-  
12 TORY OR STATE AT THE TIME OF ENTRY INTO THE SERVICE, HAS BEEN A  
13 RESIDENT OF THE TERRITORY OR STATE FOR AT LEAST ONE YEAR AT THE  
14 TIME OF THE LOAN APPLICATION AND HAS BEEN A RESIDENT TO THE  
15 TERRITORY OR STATE FOR AT LEAST FIVE YEARS; AND

16           (C)] whose discharge was under honorable conditions;

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

19           [(A) THE MEMBER OR VETERAN WAS A RESIDENT OF THE TERRI-  
20 TORY OR STATE FOR ONE YEAR BEFORE INDUCTION INTO THE SERVICE;

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

23           [(C)] the veteran's [HIS] discharge was under honorable  
24 conditions;

25           (3) a person who has served for not less than five years in  
26 the Alaska Army National Guard, the Alaska Air National Guard, [OR]  
27 the Alaska Naval Militia, or [WHO HAS SERVED IN] a reserve unit of the  
28 United States armed forces [IN ALASKA] if the reserve unit required,  
29 as a minimum, one weekend each month of duty and 15 consecutive days

1 of active duty training each year [FOR NOT LESS THAN FIVE YEARS] and  
2 whose discharge was under honorable conditions.

3 \* Sec. 12. AS 21.27.090(a)(2) is amended to read:

4 (2) if for a resident agent's or broker's license: be a  
5 bona fide resident [FOR A PERIOD OF NOT LESS THAN ONE YEAR OF CON-  
6 TINUOUS RESIDENCY, IMMEDIATELY] before issuance of license, and ac-  
7 tually residing in Alaska; or if a corporation, be other than an  
8 insurer and maintain a permanently established place of business in this  
9 state, except as provided in AS 21.27.270;

10 \* Sec. 13. AS 26.10.080(d)(1)(B) is amended to read:

11 (d) In this section "veteran" means

12 (1) a person who is serving or has served in a branch of  
13 the armed services of the United States.

14 (B) who, not being a bona fide resident of the terri-  
15 tory or state at the time of entry into the service, had been a  
16 resident of the territory or state for at least one year at the  
17 time of death [AND HAD BEEN A RESIDENT OF THE TERRITORY OR STATE  
18 FOR AT LEAST FIVE YEARS]; and

19 \* Sec. 14. AS 26.15.130(a) is amended to read:

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

21 (1) persons who served in the armed forces of the United  
22 States for 90 days or more, or whose service was for less than 90 days  
23 because of injury or disability incurred in the line of duty, between  
24 April 6, 1917, and November 11, 1918, and beginning September 16,  
25 1940, to November 7, 1975, or in a combat zone during any period of  
26 armed conflict, who were separated from the armed forces with a dis-  
27 charge other than dishonorable, and

28 (A) who, at the time of induction into the service,  
29 were residents of the territory or state, who had been residents

*Christie  
Finnell  
SFD  
6/25/75*

1 for not less than one year immediately before their induction,  
2 and who returned to the territory or state after discharge as  
3 residents with the intention of remaining in the territory or  
4 state; or

5 (B) who, not being bona fide residents of the terri-  
6 tory or state before their entry into the service, have been  
7 residents of the territory or state for one [FIVE] or more years;

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

11 (A) the member or veteran was a resident of the terri-  
12 tory or state for one year before induction into the service; and

13 (B) the member or veteran [HE] served in the armed  
14 forces for at least 90 days between September 16, 1940, and July  
15 25, 1947, but no benefits for loans accrue to dependents of an  
16 enlistee or re-enlistee for time served after November 1, 1945,  
17 regardless of whether the enlistment or reenlistment was before  
18 or after November 1, 1945; and

19 (C) the member or veteran [HE] died before the offi-  
20 cial date of the termination of that war; and

21 (D) the member's or veteran's [HIS] discharge was not  
22 dishonorable;

23 (3) persons who have served in the Alaska Army National  
24 Guard or the Alaska Air National Guard or the Alaska Naval Militia for  
25 not less than six years and who have not received a discharge other  
26 than honorable.

27 \* Sec. 15. AS 38.08.030(a)(2) is amended to read:

28 (2) submit proof acceptable to the commissioner that the  
29 applicant [HE] is a resident of the state at the time of application,

1 and that the applicant [HE] has been a resident of the state for not  
2 less than one year [THREE YEARS] immediately preceding the date the  
3 [HIS] application was submitted [, OR THAT HE HAS BEEN A RESIDENT FOR  
4 20 YEARS CUMULATIVELY];

5 \* Sec. 16. AS 44.81.210(a)(20) is amended to read:

6 (20) make loans to individual commercial fishermen for  
7 limited entry permits; a loan under this paragraph may be made only to  
8 an individual commercial fisherman who has been a state resident for a  
9 continuous period of two [FIVE] years immediately preceding the date  
10 of application for the loan and who has had a crewmember or commercial  
11 fishing license under AS 16.05.480 or a permit under AS 16.43 for the  
12 year immediately preceding the date of application and any other two  
13 [ANY ONE] of the past five years, and who has actively participated in  
14 the fishery during that period; loans made under this paragraph are  
15 subject to the provisions of AS 44.81.230;

16 \* Sec. 17. The following laws are repealed: <sup>driver's license</sup> AS 08.24.110(1); ~~AS 08.~~  
17 ~~54.110(1)~~ <sup>guide license</sup> AS 08.54.110(2), <sup>asst guide</sup> AS 08.54.140(2), <sup>transporter license</sup> AS 08.54.142(a)(1), <sup>rel. residency</sup> AS 08.54.240(3)(B);  
18 <sup>student loans</sup> AS 14.43.130; <sup>ASHA housing</sup> AS 18.55.470(4); <sup>insurance solicitor license</sup> AS 21.27.220(1); AS 29.63.065(d)(1); <sup>land discount</sup> AS 38.-  
19 <sup>homesite permits</sup> AS 38.08.040(b); AS 39.25.155(g); <sup>industrial incentive tax credits</sup> AS 43.26.095(b)(3).

20 \* Sec. 18. This Act takes effect immediately in accordance with AS 01.-  
21 10.070(c).

*vocational substitution  
in state employment*

*municipal service area of  
special assessment exemption*

# ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



June 9, 1983  
3:00 p.m.

Butrovich Room

## Members Present

Senator Vic Fischer, Chair  
Senator Bill Ray, Vice Chair  
Senator Pat Rodey  
Senator Arliss Sturgulewski

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## Agenda

HB 209 Classification of Personnel

HB 323 Residency

HB 413 Capital Area Historic Properties Advisory Commission

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HB 209 Classification of Personnel

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Terry Cramer, Executive Director, Blue Ribbon Commission on State Personnel, testified against the portion of the bill which would put correctional superintendents into the partially exempt service.

Mary Halloran, Department of Natural Resources, testified in favor of Sec. 1 of the bill. She said that the Department cannot maintain a financially viable summer youth employment program unless the participants are placed in the partially exempt service.

Kevin Bruce, Special Assistant to the Governor, testified in favor of the provision which Ms. Cramer opposed.

Bill Huston, Superintendent of the Juneau Correctional Center, testified against the provision supported by Mr. Bruce. He felt that under a properly managed corrections system those who fail to perform in their jobs can be fired notwithstanding the fact that they are classified personnel.

Cherie Shelly, A.P.E.A., testified that the organization supports Mr. Huston's position.

Senator Ray moved and asked unanimous consent that lines 15 and 16 of the bill be deleted. There was no objection. He then moved and asked unanimous consent that the bill pass from committee with individual recommendations. There was no objection.

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HB 323      Residency

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Senator Fischer presented a proposed committee substitute.

Robert Maynard, Department of Law, testified for the committee substitute. He said it corrects constitutional problems with a variety of residency statutes. He explained the current state of the law on residency.

Senator Ray moved and asked unanimous consent to amend the committee substitute to raise the age for obtaining a free hunting and fishing license from 60 years old to age 65. There was no objection.

Senator Rodey moved and asked unanimous consent to adopt the committee substitute and pass it from committee with individual recommendations. There was no objection.

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HB 413      Capital Area Historic Properties Advisory Commission

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Mike Scott, Aide to Senator Ferguson, testified for the bill. He said that it formalizes an informal group which is studying the preservation of the Capitol Building and the Governor's Mansion.

Senator Rodey moved and asked unanimous consent that the bill pass from committee with a do pass recommendation. There was no objection.

The meeting was adjourned at 4:15 p.m.

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AVRUM M. GROSS  
SUSAN A. BURKE

(907) 586-2777

March 22, 1983

MEMORANDUM

TO: Honorable Mitch Abood  
Chairman, House State Affairs Committee

FROM: Susan A. Burke *SAB*

RE: Residency Requirements

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

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

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

I. Residency Requirements for Eligibility to Hold Public Office

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

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

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

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

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

## II. Residency Requirements for Occupational Licensing

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

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

### III. Public Rights and Benefits

#### A. General

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

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

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

B. Loan and Grant Programs

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

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<sup>2/</sup> In State v. Adams, 522 P.2d 1125, 1131 (Alaska 1974), the Alaska Supreme Court stated:

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

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

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

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

<sup>4/</sup> Vlandis v. Kline, 412 U.S. 441 (1973) (university tuition); Sosna v. Iowa, 419 U.S. 393 (1975) (divorce).

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

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

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

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

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

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

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

#### C. Land Disposal Programs

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

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

D. Special Old Age Programs

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