

ALASKA LEGISLATURE COMMITTEE FILES 1983-1986 80/2

3926 SHEETS SB 119 - SB 128 802

SECTION IV: THE DEATH PENALTY: SHOULD IT BE ADOPTED?

INTRODUCTION

The second subject that the Prosecution Committee was asked to address is the proposed change in Alaska criminal law providing for capital punishment. This subject was raised in the last legislative session by Senate Bill 119 and by House Bill 163. In addition, there is a death penalty initiative drive sponsored by a group known as Alaskans for Justice. They hope to put the question directly to the voters on the 1986 ballot.

As one might expect, the information on this subject is voluminous. However, when all of the articles, editorials, studies, and statistics are distilled and separated from their excess verbiage, the arguments pro and con are always the same.

There is no single subject matter guaranteed to raise more emotional fervor than the concept of taking a convicted felon's life as punishment for his or her crimes. There is a universal tendency for those in favor of capital punishment to express concern for the safety of the community and the rights of the victims. The tendency of those opposed to capital punishment invariably is to focus on the plight of the criminal.

For the reasons discussed below, this committee, although divided, finds in favor of the community and the innocent victim and supports the death penalty as proposed. This endorsement is based upon the assumption that the statute in question can pass Constitutional muster. It also is assumed that all procedural safeguards will be afforded the accused and that the ultimate penalty will be reserved for crimes which represent the ultimate affront to human decency.

HISTORY

Historically, the use of capital punishment has been seen at some point in all societies since man walked the earth. The methods used and the justifications for employing the death sentence are as numerous and as varied as the human imagination can conceive.

In the United States, according to the U.S. Justice Department Statistics Bureau, between 1930 and 1972, 3,859 executions were carried out under civil authority. Of this total, about 3,829 were carried out by 42 states and the District of Columbia. The remainder took place under federal jurisdiction.

Then in 1972 a highly divided United States Supreme Court handed down its landmark decision in *Furman vs. Georgia*, 408 U.S. 238 (1972). That decision had the effect of invalidating the capital punishment statutes which existed in most states. In 1975, however, the Supreme Court approved death penalty legislation which had been enacted in Florida, Georgia, and Texas. By 1980 approximately 37 states had capital punishment laws in effect.

Anchorage Chamber of Commerce Crime Commission

(Eighteen provide for electrocution, ten for lethal gas, four for hanging, and four for lethal injection. Utah permits the condemned prisoner the choice of hanging or firing squad.) As of June 30, 1984, there had been about 20 executions pursuant to these statutes.

THE ALASKA PROPOSAL

Senate Bill 119 and House Bill 163 were introduced in the last legislative session which would make capital punishment a part of Alaska's criminal justice system. Both bills generally follow the form which has cleared Constitutional hurdles in other states. They are virtually identical in form with the exception of methodology.

Basically, under both bills, capital punishment would be available for mass murder, murder involving torture, contract murder, and murder of a law enforcement officer. The Senate bill specifies execution by firing squad or by lethal injection at the election of the Commissioner of Corrections. The House bill specifies hanging or lethal injection at the election of the prisoner.

The initiative drive proposed by Alaskans for Justice proposes the death penalty for situations where:

1. The defendant "manifested deliberate cruelty to another person involving rape, kidnapping or torture by mutilation."
2. The defendant killed two or more people other than his accomplices.
3. The defendant had a prior conviction for murder.
4. The defendant knowingly directed the offense at the President of the United States or the Governor of Alaska.
5. The defendant killed a law enforcement or correctional officer who was acting in the line of duty.
6. The defendant killed a child nine years old or younger during the commission of the offense.

The initiative proposes to give the condemned prisoner a choice between the firing squad or lethal injection.

Anchorage Chamber of Commerce Crime Commission

THE TRADITIONAL ARGUMENTS FOR AND AGAINST CAPITAL PUNISHMENT

Those in favor of the death penalty traditionally advance three arguments. They are:

1. Retribution of society, for itself and on behalf of the victim, for the crime committed by the accused.
2. Deterrence of other potential criminals by example.
3. Social reform as a part of advising members of society as to what is to be considered acceptable behavior.

Opponents of capital punishment argue the following:

1. The possibility of error in the criminal justice system may send an innocent party to his death.
2. The death penalty as administered in the past has resulted in racial discrimination.
3. The manner in which the death penalty is handled often appears to be arbitrary.
4. Imposition of the death penalty is a cruel and unusual act.
5. Most persons subjected to the death penalty are provided with unfair legal representation.
6. The death penalty is too extreme compared to the less restrictive alternative of life imprisonment.
7. The cost of execution ultimately is greater than life imprisonment.
8. There is no deterrent effect to capital punishment since it is carried out too infrequently and since "violence begets violence."

The rationale of the arguments on both sides is self evident. We should note that each of these concepts has been addressed in-depth by the nation's top jurists, and the death penalty continues to prevail with the appropriate legislation. The opposing arguments consistently have been found to have no logical or legal foundation. This is true so long as the requisite procedural safeguards protect the accused's rights before conviction. However, some of the opposing arguments justify being addressed here in a summary fashion.

First, it is unreasonable to argue that society has a right to retribution up to but not including the death penalty. If that right exists, then there must be some relationship between the defendant's conduct and the penalty created. There are some crimes which can only result in the death penalty if retribution is to be a viable concept at all.

Anchorage Chamber of Commerce Crime Commission

Second, in view of world history it is a fallacy to contend that capital punishment is cruel and unusual. This argument also fails to consider the cruel and unusual act which the defendant committed to justify consideration of execution in the first instance.

Third, in deference to those opposed, we could find no reliable statistics that there was a deterrent effect on other members of the criminal population by the use of capital punishment. However, capital punishment certainly deters the subject at hand from further violent conduct. The death penalty also relieves society from the threat of escape or parole and curtails the expense of maintaining the individual for the rest of his or her life. We note the historical fact that serious offenders have been released from incarceration for one procedural reason or another while presumably serving a life sentence.

Finally, the question of costs must be considered. Admittedly there are additional expenses leading up to execution. These would include the costs of courts and attorneys during trial, sentencing, appeal, retrial, and reappeal, etc. However, the statistics reflect that these expenses are going to exist when, as now, an individual is convicted of a serious felony and faces only a life sentence.

It must be noted that Alaska would incur certain start-up expenses for a capital punishment program. The fiscal note prepared by the Department of Corrections to support Senate Bill 119 suggests that construction of a 12-bed death row facility would cost approximately \$137,000 per bed for a total of \$1,644,000. Then there would be maintenance costs for the facility which are projected to hit the \$1 million mark by year 1989. While this sounds expensive, one must consider what would be done with the individual if he or she were sentenced to life. We cannot conclude that it is any less expensive to build facilities to house inmates for life without even considering the cost of their continued maintenance. At least, with a death row facility, there will be occasional vacancies as sentences are carried out.

POSITION TAKEN BY VARIOUS SECTORS OF THE COMMUNITY

The Prosecution Committee made an attempt to ascertain the position of various members of the community. We found the following:

1. The Executive Branch of the state government, specifically the Governor and his Cabinet, apparently have taken no formal position on the death penalty. However, informally the government is thought to be opposed to capital punishment. Thus, when queried, there was a party line taken by the Department of Public Safety and the Department of Law. Although the position was informal, we can only conclude that these branches of government are not in favor of adopting capital punishment.

Victor Krumm, District Attorney for the Third Judicial District, adopted that informal party line as a member of the Department of Law. Mr. Krumm did state that certain members of his own staff are so violently opposed to capital punishment on a philosophical basis that he would not be able to assign them a capital case if the statute were to be enacted. However, if there were a valid state statute calling for capital punishment, he assured us that it would be enforced.

Anchorage Chamber of Commerce Crime Commission

2. Since most members of the law enforcement community noted the political nature of this subject, there was great reluctance to comment on a formal basis. There also was a desire expressed by most members of the law enforcement community to maintain distance between their function and the ultimate disposition of the criminal. The president of the Alaska Association of Chiefs of Police and both the president for the local chapter and the state-wide Alaska Peace Officer's Association indicated that their organizations had taken no formal position. Each agreed to poll their members as soon as practical. Our investigation showed, almost without exception, however, that persons involved in law enforcement endorsed the death penalty on a personal basis.
3. According to a recent American Bar Association poll, 68 percent of the lawyers surveyed favored capital punishment. We could find no statistics which accurately reflected the position of the majority of Alaska lawyers.
4. Reliable and informative statistics on the position of the general public in Anchorage and in Alaska generally were not available.

JUSTIFICATION FOR RECOMMENDING THE DEATH PENALTY

FBI crime statistics show Alaska to be one of the most violent states in the country. While serious crime declined generally in the United States for the third straight year in 1984, Anchorage saw a 4.9 percent increase. We have more than our share of mass murders and mayhem. With the great influx in population, that type of conduct must be resisted or it will continue. While the execution of one murderer might not deter the next potential criminal, we need to let the violent element of society know that we will take them on, one at a time if necessary, to protect our lives and those of our families. As a result, the Prosecution Committee supports adoption of the death penalty in Alaska.



Official Business

Alaska State Legislature

Senate

Senator Paul Fischer

file

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Senator Bettye Fahrenkamp, Chairman
Senate Hess Committee

FROM: Senator Paul Fischer *P.F.*

DATE: February 13, 1986

SUBJECT: Senate Bill 119

I appreciate your agreeing to hear Senate Bill 119 within the next several weeks. I will not be submitting a new Capital Punishment bill as was previously planned.

It appears that I will be unable to be present for the HESS committee meeting on Tuesday, February 27, 1986. As such, I would appreciate it if the bill was not heard on this day. I'd like to suggest Tuesday, February 4, 1986. Please let me know if this is not acceptable.

Again thank you for your efforts. I realize your HESS committee will be taxed for time with the added confirmation hearings.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : Senate Bill 119
Title : "An Act Authorizing Capital Punishment"

Sponsor : Senator Paul Fischer
Requestor : Senator Paul Fischer
Date of Request : _____

FISCAL DETAIL

Agency Affected : Department of Corrections
BRU : Operations

Components : Spring Creek Correctional Center

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES			458.6	972.2	1030.6	1092.4
TRAVEL			3.6	6.3	6.7	7.8
CONTRACTUAL			4.2	8.9	9.4	10.0
SUPPLIES			3.6	7.5	8.1	8.6
EQUIPMENT			2.8	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	472.8	995.0	1054.8	1118.8

CAPITAL	-0-	2095.3	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	2095.3	472.8	995.0	1054.8	1118.8
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	2095.3	472.8	995.0	1054.8	1118.8

POSITIONS :

FULL-TIME	-0-	-0-	18	18	18	18
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: William W. Ladwig
Division: Administrative Services

Phone: 465-3376
Date: 12-11-85

Approved by Commissioner: [Signature]
Agency: Department of Corrections

Date: 12-11-85

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

ANALYSIS

A. Assumptions:

Enactment of Senate Bill No. 119 would change the State law to permit capital punishment for the crime of murder in the first degree. Current estimates indicate three convictions per year for this offense would involve executing the death penalty. Because of the lengthy appeal process in cases where the death penalty has been imposed, it is anticipated that a significant number of persons would have to be confined in a separate confinement area. The national average length of time between sentencing and execution of the death penalty is 6 to 7 years. Therefore, we are predicting the need for a maximum of 20 death row beds.

1. Capital expenditures required to provide specialized space not currently available in existing State correctional centers. Details follow in B-1.
2. The new space will be adjacent to an existing facility, but isolated. Existing authorized staff could not provide for the necessary security of inmates housed in the area designated for prisoners sentenced to execution.
3. Two additional fixed guard posts to be created and one post for roving patrol due to the high security and high risk nature of the unit. To man one post 24 hours per day, 7 days per week requires 5 Correctional Officers II plus 1 Supervisor Correctional Officer III for each post.
4. Inflation is estimated at 6% per year.
5. The unit will be available for occupancy January 1988.

B. Estimated Costs

1. Capital Expenditures
 - a. Functions and square footage allocations are derived from accepted space standards and are adjusted to an existing design for a 20-cell complex.
 - b. Assumes this structure will be an addition to an existing institution with all activity for prisoners sentenced for execution to be limited to this maximum security unit.

Analysis (continued)

- c. Assumes only the usual 6% equipment factor and does not include costs for whatever type of equipment would be appropriate for the specified method of execution.
- d. It is estimated that the cost will be \$305.08 per square foot, considering the fact that this unit must be more secure than other facilities under construction and the relatively small size of the building.

e. <u>Area Identification</u>	<u>Square Footage</u>	
Secure Control Room	120	
20 cells w/commodes @ 80 sq. ft. per cell	1600	
Day room/Dining area	300	
Shower Rooms (Male, Female)	140	
Counseling/Attorney Room	120	
Secure visiting room	90	
Sallyport	75	
Hot cart/storage	80	
Exercise area (inside)	80	
Execution chamber/anteroom	600	
Net Area	3,205	sq. ft.
	x 1.6	net to gross area factor
Gross Area	5,128	sq. ft.
	x \$305	
	\$ 1,564,040	bldg. cost 10/81
	22,767	secure outdoor rec. yard
	\$ 1,586,807	bldg. & yard
	476,042	30% admin/ overhead factor
	<hr/>	
Total Projected Cost	\$ <u>2,062,849</u>	

- 2. Salaries and related costs are detailed on "Request for New Positions" attached. It is estimated that Operating Costs would not begin until January of 1988 due to time needed for construction so funds are included for only six months of FY88.

Position Title Correctional Officer II			No. of Positions 15	Range/Step 13B	Barg. Unit GGU	Gov.	Approv.	Disapp.														
Time Status PFT	Staff Months 90	RP Number	Location Anchorage		Election District	Leg.																
Type of Expenditure			Justification																			
1	2	3	<p>This facility, even though attached to an existing institution, would require two additional fixed guard posts and one post for roving patrol due to the high security and high risk nature of the unit. To man one post 24 hours per day, 7 days per week will require 5 Correctional Officers II. Three added posts will require 15 CO II for one-half of FY88 as follows.</p> <table> <tr> <td>\$18,014</td> <td>for salaries</td> </tr> <tr> <td>7,095</td> <td>benefits</td> </tr> <tr> <td><u>25,109</u></td> <td></td> </tr> <tr> <td>200</td> <td>travel (staff training)</td> </tr> <tr> <td>200</td> <td>standard (\$400 each per year)</td> </tr> <tr> <td>150</td> <td>equipment</td> </tr> <tr> <td><u>\$25,659</u></td> <td></td> </tr> </table>						\$18,014	for salaries	7,095	benefits	<u>25,109</u>		200	travel (staff training)	200	standard (\$400 each per year)	150	equipment	<u>\$25,659</u>	
\$18,014	for salaries																					
7,095	benefits																					
<u>25,109</u>																						
200	travel (staff training)																					
200	standard (\$400 each per year)																					
150	equipment																					
<u>\$25,659</u>																						
Salary	270,210																					
Benefits	106,425																					
Premium Pay																						
Other																						
Total Personal Services		376,600																				
Travel		3,000																				
Contractual																						
Commodities		3,000																				
Equipment		2,300																				
Other																						
Total Cost		384,900																				
Receipt Code	Funding Source																					
	Federal Receipts	1002																				
	G. F. Match	1003																				
	General Funds	1004	384,900																			
	I-A Receipts	1005																				
	Program Receipts	1028																				
	CIP Receipts	1061																				
	Other																					
For B&M Use Only																						
Key Number _____																						

**Request For
New Position**

Agency Department of Corrections
 BRU Operations
 Component Hiland Mountain C.C.

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 Revised Date 12/2/85

FY 87

Position Title Correctional Officer III			No. of Positions 3	Range/Step 15A	Barg. Unit GGU	Gov.	Approv.	Disapp.
Time Status PFT	Staff Months 18	RP Number	Location Anchorage	Election District	Leg.			
Type of Expenditure			Justification					
		Amount	Three Supervisory Correctional Officer III will be required to fill the compliment for the three added posts in addition to the fifteen Correctional Officer II.					
1	2	3	One-half year costs for these positions are as follows:					
Salary	58,770		\$19,590 salary					
Benefits	23,271		7,757 benefits					
Premium Pay			27,347					
Other			200 travel (staff training)					
Total Personal Services		82,000	200 commodities @ standard \$400 each per year					
Travel		600	150 equipment					
Contractual			\$27,897					
Commodities		600						
Equipment		500						
Other								
Total Cost		83,700						
Receipt Code	Funding Source							
	Federal Receipts 1002							
	G. F. Match 1003							
	General Funds 1004		83,700					
	I-A Receipts 1005							
	Program Receipts 1028							
	CIP Receipts 1061							
	Other							
For B&M Use Only Key Number _____								

**Request For
New Position**

Agency Department of Corrections
 BRU Operations
 Component Hiland Mountain C.C.

FY 87

Page 5 of 5
 Revised Date 12/2/85

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 119
 Title: "An Act authorizing capital punishment..."
 Sponsor: Sen. P. Fischer
 Requestor: Sen. P. Fischer
 Date of Request: 2/6/85

FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Prosecution, OSPA

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING				138.2	173.0	181.7
100 PERSONAL SERVICES				35.0	36.8	38.6
200 TRAVEL				109.8	115.3	121.1
300 CONTRACTUAL				9.5	6.3	6.6
400 SUPPLIES				14.5		
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING				307.0	331.4	348.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND				307.0	331.4	348.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME				3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Please see attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: 2/21/85
 Approved by Commissioner: Norman C. Gorsuch Date: 2/21/85
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

7/1/84

This bill would authorize capital punishment, classify murder in the first degree as a capital felony, and establish sentencing procedures for capital felonies. The death sentence would not be imposed unless at least one of several specified aggravating factors was found to exist and it was not outweighed by mitigating factors. Capital felony trials would be bifurcated, or held in two parts. The first part would determine innocence or guilt; the second part would determine whether aggravating factors exist to justify the death sentence; whether mitigating factors exist to outweigh the aggravating factors; and whether the defendant should be sentenced to a term of imprisonment or to death.

The Department of Law estimates that three or four first degree murder convictions, with aggravating factors sufficient to justify a death sentence (and where a sentence of death is imposed) will occur each year. The department also estimates it will probably attempt to obtain the death penalty in one or two additional first degree murder cases, where it may not be successful. Although the bill provides for a straight forward appeals process to the Alaska Supreme Court, capital sentences will result in lengthy and complicated appellate litigation. This is because of the substantial appellate avenues that are available to defendants in capital cases in the federal

court system. That system includes original applications to the U.S. District Court, appeals from these proceedings to the U.S. Circuit Court of Appeals, and further appeals from both state and federal proceedings to the U.S. Supreme Court. Typically, appeals move both up and down through the federal system on remands for rehearings and additional fact finding. Consequently, it should be expected that years can pass before a capital sentence is carried out.

Based on these considerations, at least two full-time attorneys, together with support elements, will be required to handle sentencing trials, and the appeals that result from death sentences. The department also estimates that constitutional law experts will also be required to defend against challenges to the state's method of execution under the cruel and unusual punishment doctrine. Such challenges should be expected during the first one or two years after the provisions of this bill go into effect.

Fiscal note costs include witness travel and subsistence (\$20.0) that will be required by the provision for sentencing trials. The cost for U.S. Supreme Court and U.S. Circuit Court of Appeals brief printing (\$30.0), which is a new required expense, has also been included. The positions required by this bill will be located in the Office of Special Prosecutions and Appeals at Anchorage.

Cost Summary

<u>Object</u>	<u>Atty IV</u>	<u>Atty IV</u>	<u>Leg Sec I</u>	<u>Total</u>
<u>100</u> - Salaries & Benefits (10 months - first year)	56.5	56.5	25.2	138.2
<u>200</u> - Travel				
Witness travel and subsistence for sentencing trials	10.0	10.0		
Travel instate for sentencing trials and out-of-state trial to defend appeals in the U.S. Circuit Court of Appeals and the U.S. Supreme Court.	7.5	7.5		
	<u>17.5</u>	<u>17.5</u>	<u> </u>	35.0
<u>300</u>				
Communications, copy & document production	3.0	3.0	2.0	
U.S. Supreme Court and U.S. Court of Appeals brief printing	15.0	15.0		
Expert witness	30.0	30.0		
Office space leases	4.1	4.1	2.2	
WP Maintenance			1.4	
	<u>52.1</u>	<u>52.1</u>	<u>5.6</u>	109.8
<u>400</u> - Commodities				
Office consumables	1.0	1.0	1.0	
Law Library	1.0	1.0		
New Position Supplies	1.5	1.5	1.5	
	<u>3.5</u>	<u>3.5</u>	<u>2.5</u>	9.5
<u>500</u> - Equipment				
New Position Equipment	1.5	1.5	1.5	
Word Processor			10.0	
	<u>1.5</u>	<u>1.5</u>	<u>11.5</u>	14.5
TOTAL	131.1	131.1	44.8	307.0

Costs beyond FY 88 have been adjusted to increase annual period from 10 months to 12 months, eliminate single-time new position costs, and add a 5% inflation factor.

1.	POSITION TITLE ATTORNEY IV				RANGE/STEP 24A	BARG. UNIT PX	PAGE/LINE	GOV.	APPROV.	DISAP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEC.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE									
	1		2		3					
	PERSONAL SERVICES									
5.	Salary	4,464 X 10	44,640							
6.	Benefits	@ 15.61%	6,983							
7.	Supplemental Benefits	Max	2,680							
8.	Fixed Benefits	219.35 X 10	2,194							
9.	TOTAL PERSONAL SERVICES		01		56,497					
10.	Travel		02		17,500					
11.	Contractual		03		52,100					
12.	Commodities		04		3,500					
13.	Equipment		05		1,500					
14.	Other									
15.	TOTAL COST				131,097					
16.	RECEIPT CODE	FUNDING SOURCE								
17.		Federal Receipts 1002								
18.		G.F. Match 1003								
19.		General Funds 1004		131,097						
20.		I-A Receipts 1005								
21.		Program Receipts 1028								
		Other								

This is the first of two Attorney IV positions that will be required to handle capital punishment sentencing trials and to handle the appeals that arise from death sentences. Sentencing trials are expected to nearly double the time now required for murder trials. Substantial appeals work will also be required as defendants seek to have death sentences overturned in the federal court system. First degree murder trials require highly skilled prosecutors and that is why the department has requested the full working level prosecutor classification of Attorney IV.

FOR B&M USE ONLY
KEY NUMBER _____

REQUEST FOR
NEW POSITION

AGENCY DEPARTMENT OF LAW
PROGRAM DUE PROCESS
BRU PROSECUTION
COMPONENT OFFICE OF SPL. PROS. & APPLS.

Page 1 of 1
Revised Date _____

FY 86

1.	POSITION TITLE ATTORNEY IV				RANGE/STEP 24A	BARG. UNIT PX	PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT						
	1			2		3				
	PERSONAL SERVICES									
5.	Salary	4,464 X 10		44,640						
6.	Benefits	@ 15.61%		6,983						
7.	Supplemental Benefits	Max		2,680						
8.	Fixed Benefits	219.35 X 10		2,194						
9.	TOTAL PERSONAL SERVICES			01	56,497					
10.	Travel			02	17,500					
11.	Contractual			03	52,100					
12.	Commodities			04	3,500					
13.	Equipment			05	1,500					
14.	Other									
15.	TOTAL COST				131,097					
16.	RECEIPT CODE	FUNDING SOURCE								
17.		Federal Receipts 1002								
18.		G.F. Match 1003								
19.		General Funds 1004		131,097						
20.		I-A Receipts 1005								
21.		Program Receipts 1020								
		Other								
FOR O&M USE ONLY										
KEY NUMBER _____										

This is the second of two Attorney IV positions that will be required to handle capital punishment sentencing trials and to handle the appeals that arise from death sentences. Sentencing trials are expected to nearly double the time now required for murder trials. Substantial appeals work will also be required as defendants seek to have death sentences overturned in the federal court system. First degree murder trials require highly skilled prosecutors and that is why the department has requested the full working level prosecutor classification of Attorney IV.

REQUEST FOR
NEW POSITION

AGENCY DEPARTMENT OF LAW
PROGRAM DUE PROCESS
BRU PROSECUTION
COMPONENT OFFICE OF SPL. PROS. & APPLS.

Page 1 of 1
Revised Date _____

FY 86

1.	POSITION TITLE LEGAL SECRETARY I			RANGE/STEP 10B	DARG. UNIT G	PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.	
3.	CONTINUATION LEVEL			ADDITION	JUSTIFICATION				
4.	TYPE OF EXPENDITURE			AMOUNT	<p>This Legal Secretary position is needed to provide office services support for the two attorneys who will handle capital punishment trials and appeals that arise from death sentences. The work of the attorneys is expected to generate considerable legal documentation, in the form of motions and briefs at both the state and federal levels, requiring full-time secretarial support.</p>				
	1	2	3						
	PERSONAL SERVICES								
5.	Salary	1.893 X 10	18,930						
6.	Benefits	@ 15.61%	2,955						
7.	Supplemental Benefits	6.13%	1,160						
8.	Fixed Benefits	219.35 X 10	2,194						
9.	TOTAL PERSONAL SERVICES		01	25,239					
10.	Travel		02						
11.	Contractual		03	5,600					
12.	Commodities		04	3,500					
13.	Equipment		05	11,500					
14.	Other								
15.	TOTAL COST			45,839					
16.	RECEIPT CODE	FUNDING SOURCE							
17.		Federal Receipts	1002						
18.		G.F. Match	1003						
19.		General Funds	1004	45,839					
20.		I-A Receipts	1005						
21.		Program Receipts	1028						
		Other							

FOR BGM USE ONLY
KEY NUMBER _____

**REQUEST FOR
NEW POSITION**

AGENCY DEPARTMENT OF LAW
PROGRAM DUE PROCESS
BRU PROSECUTION
COMPONENT OFFICE OF SPL. PROS. & APPLS.

FY 86

Page 1 of 1
Revised Date _____

Introduced: 2/1/85
Referred: Health, Education &
Social Services, Judiciary
and Finance

BY PETTYJOHN, JENKINS, SHULTZ
TAYLOR, MARROU AND GRUENBERG

1 IN THE HOUSE

2 HOUSE BILL NO. 163

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act authorizing capital punishment, classifying
7 murder in the first degree as a capital felony, and
8 establishing sentencing procedures for capital felo-
9 nies."

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

11 * Section 1. AS 11.41.100(b) is amended to read:

12 (b) Murder in the first degree is a capital [AN UNCLASSIFIED]
13 felony and is punishable as provided in AS 12.55.125(a) [AS 12.55].

14 * Sec. 2. AS 12.55 is amended by adding a new section to read:

15 Sec. 12.55.115. REVIEW OF JUDGMENT AND SENTENCE OF DEATH. (a)
16 In every case in which the jury has returned a verdict or finding
17 imposing the death penalty, the defendant shall be considered to have
18 made an application for modification of the verdict or finding under
19 Criminal Rule 35. In ruling on the application, the judge shall
20 review the evidence, consider, take into account, and be guided by the
21 aggravating and mitigating circumstances referred to in AS 12.55.180 -
22 12.55.181, and shall make a determination as to whether the jury's
23 findings and verdicts that the aggravating circumstances outweigh the
24 mitigating circumstances are contrary to law or the evidence present-
25 ed. The judge shall set out the reasons for these findings.

26 (b) A judgment of conviction of a capital felony for which a
27 sentence of death is imposed is subject to automatic review by the
28 supreme court within 60 days after imposition of the sentence. This
29 time limit may be extended by the supreme court. A review under this

1 section has priority over all other cases and the case shall be heard
2 in accordance with rules adopted by the supreme court. The review
3 shall include a determination of whether

4 (1) the sentence was imposed under the influence of pas-
5 sion, prejudice, or other arbitrary factor;

6 (2) the evidence supports the finding of an aggravating
7 factor under AS 12.55.180; and

8 (3) the sentence is excessive or disproportionate to the
9 penalty imposed in similar cases, considering both the crime and the
10 defendant.

11 (c) If the supreme court upholds a judgment of conviction and
12 sentence of death, the court shall specify the time of execution and
13 the correctional facility in which the execution shall take place.

14 * Sec. 3. AS 12.55.125(a) is amended to read:

15 (a) A defendant convicted of a capital felony [MURDER IN THE
16 FIRST DEGREE] shall be sentenced to a definite term of imprisonment of
17 at least 20 years but not more than 99 years or shall be sentenced to
18 death.

19 * Sec. 4. AS 12.55 is amended by adding new sections to read:

20 Sec. 12.55.177. SENTENCING PROCEDURE FOR CAPITAL FELONY. (a)
21 When, after a trial by jury, a defendant is convicted of a capital
22 felony, the court shall conduct a separate sentencing proceeding
23 before the trial jury as soon as practicable. If a jury trial has
24 been waived, or if the defendant pled guilty, the sentencing proceed-
25 ing shall be held before a jury impaneled for the purpose.

26 (b) In the sentencing proceeding evidence may be presented as to
27 any aggravating or mitigating factor that the court considers to have
28 probative value regardless of the admissibility of the evidence under
29 the exclusionary rules of evidence, provided the defendant has an

1 opportunity to rebut hearsay statements. The state and the defendant
2 or the defendant's counsel shall be permitted to present oral argu-
3 ment. This subsection does not authorize the introduction of evidence
4 secured in violation of the Constitution of the State of Alaska or the
5 Constitution of the United States.

6 Sec. 12.55.179. SENTENCE FOR CAPITAL FELONY. (a) The jury,
7 after considering the evidence shall enter a sentence of death or a
8 term of imprisonment in accordance with AS 12.55.125(a). If the jury
9 enters a sentence of death, it shall make written findings of

10 (1) aggravating factors that exist to justify the sentence;
11 and

12 (2) mitigating factors considered by the jury.

13 (b) A judgment of conviction for which a sentence of death is
14 imposed is subject to automatic review under AS 12.55.115.

15 Sec. 12.55.180. AGGRAVATING FACTORS. The death sentence may not
16 be imposed unless at least one of the following aggravating factors is
17 found to exist and is not outweighed by mitigating factors:

18 (1) the defendant's conduct during the commission of the
19 offense manifested deliberate cruelty to another person in that it
20 involved torture or an aggravated battery;

21 (2) the defendant's conduct created a risk of imminent
22 physical injury to three or more persons, other than accomplices;

23 (3) the defendant has a prior conviction for a felony that
24 involved the use of violence to a person;

25 (4) the defendant committed the offense pursuant to an
26 agreement that the defendant either pay or be paid for the commission
27 of the offense, or for other pecuniary gain;

28 (5) the defendant was on release for another felony charge
29 or conviction having assault as a necessary element;

1 (6) the defendant knowingly directed the conduct constitut-
2 ing the offense at an active officer of the court or at an active or
3 former judicial officer, prosecuting attorney, law enforcement offi-
4 cer, correctional employee, or fireman during or because of the exer-
5 cise of official duties;

6 (7) the defendant was a member of an organized group of
7 five or more persons, and the offense was committed to further the
8 criminal objectives of the group.

9 Sec. 12.55.181. MITIGATING FACTORS. The death sentence may not
10 be imposed if mitigating factors are found to outweigh aggravating
11 factors. All mitigating factors shall be considered including the
12 following:

13 (1) the defendant committed the offense under some degree
14 of duress, coercion, threat, or compulsion insufficient to constitute
15 a defense, but which significantly affected the defendant's conduct;

16 (2) the conduct of a youthful defendant was substantially
17 influenced by another person more mature than the defendant;

18 (3) the defendant acted with serious provocation from the
19 victim;

20 (4) the defendant assisted authorities to detect or appre-
21 hend other persons who committed the offense with the defendant.

22 * Sec. 5. AS 22.07.020(a)(1) is amended to read:

23 (1) criminal prosecution, except prosecution for a capital
24 felony for which a death sentence is imposed;

25 * Sec. 6. AS 22.07.020(b) is amended to read:

26 (b) Except for appeals of a death sentence, the [THE] court of
27 appeals has jurisdiction to hear appeals of sentences of imprisonment
28 imposed by the superior court on the grounds that the sentence is
29 excessive or too lenient and, in the exercise of this jurisdiction,

1 may modify the sentence as provided by law and the state constitution.

2 * Sec. 7. AS 33.30 is amended by adding a new section to read:

3 Sec. 33.30.095. ADMINISTRATION OF THE DEATH PENALTY. (a) The
4 commissioner shall establish a procedure for the execution of a sen-
5 tence of death ordered by the state supreme court, at the time and
6 place legally appointed.

7 (b) The punishment of death shall be inflicted either by hanging
8 by the neck until death is pronounced by a licensed physician or, at
9 the election of the defendant, by continuous, intravenous administra-
10 tion of a lethal dose of sodium thiopental until death is pronounced
11 by a licensed physician.

12 (c) A death sentence shall be carried out within a state correc-
13 tional facility.

14

MAR 1 1986

3211 Providence Drive
Anchorage, Alaska 99508
(907) 786-1810

SCHOOL OF JUSTICE

March 5, 1986

The Honorable Bettye M. Fahrenkamp
Chair, Health, Education and Social Services
Alaska State Senate
Room 125, Capitol Building
Pouch V (MS 3100)
Juneau, AK 99811

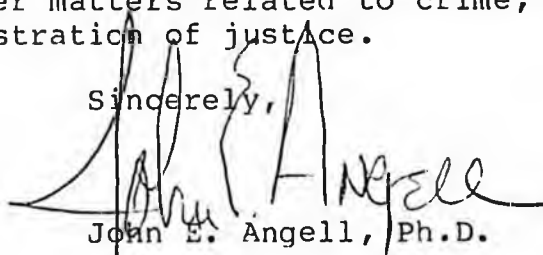
Dear Senator Fahrenkamp:

Commissioner Endell asked me to prepare and send to you the enclosed summary of arguments against instituting a death penalty.

I have also included a rather out-of-date brochure which contains information about our Justice Center operation that may be of interest to you.

Please feel free to contact me or any of the School of Justice faculty if we can provide additional information related to the death penalty or other matters related to crime, criminology, penology or the administration of justice.

Sincerely,



John E. Angell, Ph.D.
Dean

JEA:pb
Enclosure

SUMMARY OF ARGUMENTS
AGAINST INSTITUTING
A DEATH PENALTY

Compiled
By

School of Justice
University of Alaska, Anchorage
Anchorage, Alaska 99508

February 1986

DEATH PENALTY
OPPOSITION ARGUMENTS

There is extensive literature related to the death penalty. Public opinion over a period of time on the issue seems to be somewhat volatile having fluctuated back and forth over the past fifty years between a majority opposed to use of the death penalty and a majority in favor of it. A 1981 national poll by ABC News - Washington Post (ABC News, 6-8-81) provides the following explanations which are given as a basis for their positions by the opponents and supporters of the use of capital punishment.

1. Why do you favor the death penalty?

- | | |
|--|-----|
| ° Revenge - eye for eye | 42% |
| ° It deters crime | 35% |
| ° Prison does not rehabilitate - murderer
may get out and do it again | 22% |
| ° Criminals get off too much | 9% |
| ° Other | 11% |
| ° Don't know | 4% |

2. Why don't you favor the death penalty?

- | | |
|---|-----|
| ° Taking another life won't solve anything | 38% |
| ° Moral-religious reasons | 33% |
| ° Legal system is not equitable | 11% |
| ° Life in prison with no parole is more effective | 10% |
| ° Death penalty not a deterrent to murders | 10% |
| ° People can be rehabilitated | 8% |
| ° Other | 25% |
| ° Don't know | 2% |

The arguments frequently used to oppose the death penalty include:

- ° Capital punishment is wasteful of public funds and resources. It requires a disproportionate expenditure of time and energy

by courts, prosecutors, defense attorneys, juries, court-rooms, correctional personnel and institutions. Special detention facilities are required for those facing a death penalty charge; unique security and surveillance methods require additional correctional staff; special facilities, equipment and correctional personnel are needed to perform executions.

Prisoners sentenced to death are encouraged to and facilitated in exhausting every imaginable avenue of relief and the state must foot both the appellant actions and the government's response. Procedural, substantive, and sentence appeals are made in state courts; habeas corpus petitions are filed in federal courts, multiple appeals are made for U. S. Supreme Court review, more post conviction requests for review are filed in state and federal courts, and various requests are made for sentence commutation. Such actions are far more extensive than for a person sentenced to life and those accused of murder are accorded especially conscientious, time consuming scrutiny by all involved. Consequently, based on research elsewhere, the costs per execution exceed the costs of maintaining a convicted person in an institution for life.

Since those facing execution automatically receive higher priority handling by prosecutors, courts and corrections, other work by these agencies is postponed. The prosecution of other laws will suffer and the civil matters in courts are delayed. Hence the death sentence unduly burdens the criminal justice system.

- Capital punishment may actually stimulate intentional murder because it provides incentives for (1) deranged publicity seekers such as John Hinkley or terrorists who seek wide public attention, (2) suicidally-inclined persons who will commit murder in an effort to obtain state assistance with self-destruction, and (3) happenstance murderers who will be tempted to eliminate police officers and witnesses who can bring about their arrests and subsequent convictions and executions.
- Imprisonment for life is as effective as the death penalty in deterring capital crimes. The theory that the death penalty is more effective is founded on wish, not fact. The country's best researchers have failed to find substantive evidence of a deterrence advantage for capital punishment. The one researcher, an economist, who has claimed to have found evidence of a minor deterrent resulting from capital punishment, has been discredited by major flaws in his research design and statistical methods. One possible reason the death penalty is not an effective deterrent may lie with the necessary procedural safeguards and inherent discrepancies in conviction and sentencing processes. Under the American system of justice, death sentences cannot be consistently and promptly employed. It is not uncommon for two accomplices in a capital offense to receive different sentences if they are tried separately. In Texas recently a

murderer who actually committed the homicide received a life sentence while his accomplice who personally killed no one was executed. Consequently, only a small proportion of all murderers is sentenced to death and even fewer executed.

- Most homicides are the result of impulsive acts committed by people who either cannot or do not care about the consequences to themselves. In fact, research supports a conclusion that the same circumstances which precede the commission of suicide also surround many homicides. Those who actually plan homicides expect to, and usually do, escape detection. It is difficult to imagine how people in either of these groups will be deterred any more by threat of death than by threat of life in prison.
- Juries are often more reluctant to arrive at a guilty verdict in a case involving the death penalty than in a case in which the maximum penalty is life in prison.
- Despite its safeguards the criminal justice system regularly makes mistakes. On occasion, such as with Johnny Ross, the Louisiana 16-year-old who was awaiting execution in the early 1980s when a private investigator found his blood type did not match that of the murderer, some innocent people who are sentenced to death are released before execution; however, frequently they are not. One study has purported to document 75 instances in America since the turn of the century when innocent people have been executed.
- The death penalty tends to be an instrument of totalitarian, despotic governments rather than democratic societies. The trend among the most respected countries in the free world has been toward the abolition of capital punishment. Some claim that imposition of the death penalty is inconsistent with the fundamental values of American democracy, and the state should not arrogate unto itself the power to ceremoniously, with premeditation, kill a citizen in the names of all other citizens.
- Capital punishment is an unnecessary penalty. It is a barbaric relic of more primitive days when slavery, branding and mutilation were commonplace. It receives its greatest support from the uneducated. Alternative, less cruel penalties which effectively satisfy the legitimate goals and needs of the society are available in place of the death penalty.
- The worst and most dangerous criminals are rarely the ones executed. The death penalty is applied discriminately at best and randomly at worst. It is imposed almost exclusively on racial minorities, the poor and the uneducated. Those who receive it normally have had long histories of being abused children, having mental disorders, and having been socially rejected and economically deprived. The socially connected and economically well-heeled are almost never awarded a death penalty. Despite the frequently discussed instances of

planned mob murders, no members of organized crime have been executed and none are on death row. No one has ever been charged or prosecuted for the planned murder of Neil MacKay's former spouse. If Alaska had the death penalty and if Mr. MacKay were responsible for the death of his former brother-in-law as charged, the probability of his receiving the death penalty is very low because he is not likely to be convicted. In fact, few of those who have been responsible for killings in Alaska would be subject to the death penalty because they cannot be identified and charged or because of barriers such as the mental state of the offender.

- ° The death penalty denies due process in that it forever deprives the executed person of the benefits of new evidence or a new law that might affect a conviction. It is impossible, given the arbitrariness of the criminal justice processes and the criminal procedure where death is a possible penalty, to repair moral and constitutional defects in death penalty laws by shifting between mandatory and discretionary sentences and unfettered and guided judicial discretion. Some accused will still be deprived of their lives as a result of denial of equal protection of the law and unequal provision of due process.
- ° Executions by government give citizens the unmistakable message that human life is not sacred and that violence is legitimate when it is thought justified by pragmatic concerns. The beer parties and cheering crowds organized to celebrate at the time of executions in Texas, Florida and other states where executions have occurred in recent years document the consequence of this message. Some people are not only accepting the legitimacy of the intentional taking of human life, killing, they consider executions to be occasions for enjoyable merrymaking.
- ° Attention focused on the death penalty detracts from a concern with the causes of interpersonal violence and reduces the efforts of society to control it. Enactment of a death penalty gives the populace and legislators a sense of security in the belief that the problems of violent crime have been effectively addressed. This false security diverts attention away from efforts to identify the fundamental causes of crime and to prevent violent crime. Society will consequently suffer the burdens of violence longer.
- ° The social value of those who have been convicted of murder is lost. For example, the Bird Man of Alcatraz was a convicted Alaskan. If he had been executed rather than sentenced to life his contributions to ornithology would not have been made.

In addition to the preceding, the existence of the death penalty does not result in a reduction in fear of crime among citizens in jurisdictions where it is a legal punishment. In fact, it appears citizen fear of crime is heightened in areas

where executions occur with some regularity. Consequently, one can anticipate that once a death penalty is enacted, public anxiety about violent crime will increase and there will be greater public pressure to widen the range of criminal deviancy for which the punishment will be the death penalty. Such a pattern can be found throughout history.



Official Business

Alaska State Legislature

Senate

SENATOR PAUL FISCHER

Pouch V
State Capitol
Juneau, Alaska 99811

To: Senator Bettye Fahrenkamp, Chairman
Health and Social Services

From: Senator Paul Fischer *PF*

Date: March 14, 1986

Subject: Senate Bill 119, capital punishment

I would like to have Senate Bill 119 scheduled for one of the following dates:

Tuesday, March 25, 1986

Thursday, March 27, 1986

Tuesday, April 1, 1986

Thursday, April 3, 1986

I have informed interested members of the public of your agreement to hear the legislation. I need to have a commitment on one of these dates so I can get the word out.

Also, I would like to suggest a teleconferenced hearing. If this meets your approval, please let me know as early as possible. I will be satisfied with either a simple hearing or a teleconferenced hearing.

Please let me know which date you choose.

Thank you.

*Betty - I have an idea for a CV which
might meet your approval.
Paul*



RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

10/31/89
Date

S B

1 2 0

Senate Health, Education and Social Services Committee

Legislation Checklist

Bill number: SB 128
Sponsor: Halford
Date referred to committee: 2/1/75
Synopsis completed:
Fiscal note:
Further referrals:

CONTACTS:

✓ 4522 abood - State Affairs / waive
Rm 423 Katharine, Elaine

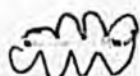
✓ Sen Halford, Maureen 4958
✓ Rod Betit, H⁴ SS 3355
✓ Norma Lang 3030
✓ John Taber^{H⁴ SS} 3347

~~Debra 4989 (C+RA) - Yvonne~~
✓ Paula, Bill Ray 4922

Debra Neidermeyer, Koponen will testify

Wally Kutley, Pioneers of AK

Debra Vogt, AG



PP-1013 minority

REPORT
TO THE FOURTEENTH LEGISLATURE - FIRST SESSION
AND
TO GOVERNOR BILL SHEFFIELD
FROM
THE STATE SPECIAL COMMITTEE ON THE
ALASKA LONGEVITY BONUS PROGRAM



February 1, 1985

REPORT TO THE FOURTEENTH LEGISLATURE - FIRST SESSION
AND TO GOVERNOR BILL SHEFFIELD FROM THE STATE SPECIAL
COMMITTEE ON THE ALASKA LONGEVITY BONUS PROGRAM

together with

DISSENTING VIEWS AND ADDITIONAL COMMENTS

February 1, 1985

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Introduction.

In June, 1984, the Alaska Longevity Bonus Program (AS 47.45) was declared unconstitutional because it required recipients to have resided in Alaska both prior to statehood and for 25 consecutive years. The Thirteenth Legislature, 2nd Sess., repealed these lengthy residency requirements, thus opening the program to new participants. Ch. 38, SLA 1984. However, the amended law, by its own terms, is to be repealed effective June 30, 1985. Id., Sec. 11.

The legislation also established the State Special Committee on the Alaska Longevity Bonus Program to "determine the feasibility of replacing the longevity bonus program, as amended by this Act, with an annuity program, a needs-based program, or other longevity program." Id., Sec. 7. This is the committee's report.

Recommendation: Annuity Approach.

The committee has developed a proposal which would phase out the existing longevity bonus program and replace it with individual annuity accounts funded primarily by the permanent fund dividends of participants. 1/ The proposal has been

1/ Three different annuity approaches were initially considered by the committee: (1) SB 465, introduced in the 1984 legislature by several senators; (2) an amended version of HB 700, also introduced in that legislature; and (3) a draft bill prepared by Senator Bill Ray (D., Juneau). The Ray bill became the vehicle for the Committee's proposal. All three proposals involved

introduced in this legislature as SB 56. Under the committee bill, Alaskans who choose to participate in the program will receive monthly benefits, after reaching age 65, of at least the \$250 which is currently provided by the bonus program, inflated by three percent annually.

The program is available to those who reach age 65 after 1985. Under the bill, Alaska's existing elderly will receive their current \$250 bonus, inflated by three percent annually, without having to forego their permanent fund dividends.

The committee bill provides that each year every Alaskan (except those who are 65 or older before 1986) will receive his or her permanent fund dividend in the form of a credit to an annuity account, unless the individual affirmatively elects to receive cash. 2/ Section 2 of the bill envisions that the

foregoing a permanent fund dividend in return for some type of future annuity benefit.

SB 465 would have paid \$16.50 per month to each elderly Alaskan for every permanent fund dividend foregone -- to a limit of \$250 per month.

HB 700 would have given each Alaskan one annuity share for each foregone dividend. Each year, one third of the money available for permanent fund dividends would then be divided by the number of annuity shares held by those over the age of 65. Each elderly Alaskan would receive a portion of that annuity fund commensurate with the number of shares held.

The committee was advised by legal counsel that HB 700 and SB 465 created greater constitutional risks than did the Ray proposal; the committee therefore focused on the concept embodied in Senator Ray's bill.

2/ This aspect of the committee proposal reflects a change from

legislature may, at least in the early years, "front-load" the program by appropriating additional funds into the annuity account, which will be attributed to individual accounts on a prescribed formula. Under that formula, state contributions are greatest for those approaching retirement age, and decline for younger Alaskans. Beginning at age 65, a participant receives an annuity based on his contributions and any front-loading -- plus earnings accumulated on those amounts. 3/

Even with front-loading, it will be years before annuity payments are sufficient to replace the longevity bonus. The ALB program is thus retained at a level which, for those turning 65 after 1985, will be reduced annually. 4/ Under the bill, a "target amount" for the ALB is established (Section 8), which is \$250 per month (in FY 1986) inflated by 3% each year. That target amount is then reduced by the maximum possible annuity which would be available to a 65-year old who has participated in

earlier annuity bills, which required an election to forego cash payment. Because, in the future, the annuity program will be the only state source of non-need-based retirement assistance, the committee believes that each Alaskan should be required to come to grips with the long-term consequences of a decision to take the dividend in cash.

3/ Under the committee bill a participant who dies before age 65 will forfeit his accumulated annuity credits (see the discussion of survivor options at 17, post); the amounts forfeited will be reallocated to surviving participants and thus will increase their annuities.

4/ The longevity bonus itself is, of course, available to all elderly Alaskans whether or not they have also established annuity accounts.

the program in each year since the program's inception. For example, if the inflated ALB "target" for a particular year is \$280, and a person turning 65 who received an annuity credit in each year of the program would be entitled to an annuity of \$100 per month, the ALB payment for all recipients would be \$180. That \$180 will not vary according to the actual participation histories of individual ALB recipients.

Over the years, individual annuity accounts will become greater, and each year the longevity bonus payable to new recipients becomes correspondingly smaller. By the year 2003, the committee projects that the maximum possible annuity will be sufficient to bring an end to the general-funded ALB program, except for those relatively few who were 65 or older before 1986, and are still receiving ALB payments in that year. This is best illustrated by the following chart:

/////

/////

/////

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Maximum Possible Annuity 5/ ALB (for all new recipients)

1986	4.37	\$245.63
1990	32.50	248.88
1995	106.27	219.92
2000	255.70	122.45
2005	533.39	-0-

Other Options Considered

The committee invited its members, and others, to suggest alternatives other than an annuity program. Only one was advanced -- a "means test" program under which elderly Alaskans earning less than \$25,000 per year would receive a payment of \$250 per month. Those earning more than \$25,000 would receive a payment of \$100 per month. To qualify for the \$250 bonus, the applicant would be required to submit his or her tax return to the Department of Administration.

This program is intended as a permanent replacement for the ALB. However, the program envisions that the size of the payments, and the \$25,000 income limit, remain constant over the years. In terms of real income, the effect is as follows:

5/ Annuity projections are without "front-loading."

	<u>Maximum Income Eligibility for Bonus (year)</u>	<u>Amount of Bonus</u>	<u>Size of Alternate Bonus</u>
1986	\$25,000	\$250	\$100
2000	\$10,569	\$104	\$41.60
2010	\$ 5,902 <u>6/</u>	\$ 59	\$23.60

It is estimated that, initially, 80% of Alaska's elderly will be eligible for the \$250 bonus. Because that maximum income requirement drops each year in terms of real income, so too does the percentage of eligible elderly. Thus, less than half of Alaska's elderly will be eligible for the bonus in the year 2000, and only 30% will be eligible in the year 2010.

The committee rejected this means test proposal for the following reasons:

1. Any welfare program is contrary to the intent of the ALB program and is vigorously opposed by Alaska's elderly. The Longevity Bonus Program now says to Alaska's elderly that they are a precious human resource, and that it is in the state's interest to provide them with the wherewithall to remain in Alaska after retirement. The means test payment, on the other hand, carries with it quite different, and less favorable connotations.

6/ This is below Alaska's \$7032/year poverty level.

2. Of those who are potentially eligible for the \$250 means test payment, many may not apply because of its welfare connotations. This is strongly suggested by available statistics. Currently, nearly 6,700 ALB recipients -- or 40% of all recipients -- have incomes below the current eligibility limit for existing Old Age Assistance and Medicaid benefits. These benefits are substantial -- averaging \$2,640 per year for OAA and an additional \$2,500 per year for Medicaid. Yet, of the income-eligible, only 2,526 -- or roughly 38% -- have in fact applied for OAA and Medicaid. Certainly, some of the remaining income-eligible have not applied because they have more assets than current law allows. Nonetheless, these statistics manifest an aversion to need-based assistance which has deterred many of Alaska's apparently eligible elderly from applying for substantial benefits.

3. Thus, while 20% of Alaska's elderly will be ineligible for the \$250 bonus, an additional percentage of existing ALB recipients will lose their current benefits because of their unwillingness to participate in a welfare program. For these reasons, this means test proposal fails a threshold test which should be a cornerstone of any longevity bonus legislation. Any ALB alternative, the committee believes, should provide those who have received the ALB over the years with the same benefits as under current law.

4. The proposal hurts both existing and new ALB recipients in another way. Because the real value of both the benefits and

the income ceiling will decrease over the years, fewer elderly will find themselves eligible, and those who are eligible will receive smaller benefits. By the year 2000, for example, less than half of Alaska's elderly will be eligible for a benefit with a real value of \$104 per month, while the majority will receive a token payment with a real value of \$41.60.

5. The proposal is substantially more expensive than the committee bill. Even though: (1) the committee bill protects existing elderly, while this means test proposal does not; and (2) the committee bill inflates the ALB annually, while the means test proposal does not, enactment of this means test proposal would cost nearly \$2 billion more than the committee bill over the next 50 years. Moreover, that cost would be born when the state could least afford it -- after the turn of the century, when oil revenues are projected to rapidly decline. It is important to the committee to develop an ALB alternative which phases out general fund obligations after the year 2000. As part 12 of this report discusses, while post-1999 costs under the committee bill are projected to be \$285 million, 21st century costs under the means test proposal would be roughly \$2.28 billion.

6. The committee has several concerns regarding the \$100 payment for which all elderly would be eligible. First, the committee does not know what that payment is intended to accomplish. It is doubtful that \$100 per month is a sufficient sum to allow any elderly to remain in the state who would

otherwise be financially required to leave. The payment may thus at once be too small to accomplish any social goal, and yet large enough to constitute a substantial drain on the state treasury.

Additionally, many elderly may view the \$100 payment as tokenism. If that is not the case now, it will certainly become so in the future when the real value of that payment shrinks to \$41 (2000) and \$23 (2010).

Finally, since the \$100 and \$250 payments are fundamentally different in purpose, the committee believes that they should be administered under separate programs. The \$100 payment is apparently intended as a residual ALB. On the other hand, the \$250 payment is a form of welfare. This payment, the committee believes, should be administered by the Department of Health and Social Services under the state's welfare laws. Otherwise, the state will, in essence, be creating two welfare bureaucracies -- one for Old Age Assistance, and one for the mis-named "longevity bonus."

7. Fewer people will meet the \$25,000 eligibility requirement as the years go by. Thus, by the year 2010, only 30% of Alaska's elderly will be eligible for this means test payment. Why, it might fairly be asked, are 80% of today's elderly in "critical" need of the higher payment, while only 30% will require the payment in years hence? For one who is currently denied the larger payment, or who may be denied it in the future solely because of inflation, this precise question will invariably be asked, and may be asked in the courts.

8. Finally, in requiring one year's residency in order to receive the \$250 means test payment, the proposal raises a substantial constitutional issue. The current ALB's one-year durational residency requirement is constitutional because the bonus is not dependent upon "need." Under both the federal and Alaska constitutions, if a program provides "the basic necessities of life," a 30-day residency requirement is the maximum constitutionally permissible. Memorial Hospital v. Maricopa County, 415 U.S. 250, 259 (1974); Shapiro v. Thompson, 394 U.S. 618 (1969). Generally, benefits which are accorded on the basis of the recipient's income tend to be viewed by the courts as involving "basic necessities." For example, in Jeffrey v. Colorado State Department of Social Services, 599 P.2d 874 (Col. 1979), the Colorado Supreme Court struck down the lengthy durational residency requirement of that state's old age pension program, and held that the program provided basic necessities of life. The state argued, unsuccessfully, that its program was more akin to an income supplement, rather than a form of welfare. The court, however, ruled that because the size of the pension was a function of the applicant's other income, a 30-day residency requirement was required:

[The state attempt[s] to avoid the strict scrutiny - compelling state interest test mandated by Shapiro by characterizing the old age pension program as an 'annuity.' However, unlike true annuity or pension programs which are unaffected by a recipient's other income, the old age pension benefit is directly and proportionately reduced by the amount of other income. Thus, the characterization of the old age pension program as an "annuity" puts form over substance and

disregards the nature of the program, which is to fulfill basic needs and not to supplement separate income.

599 P.2d at 879. Emphasis added.

The means test proposal has been defended because of its high income limits. This does make the program different from that involved in Jeffrey, and the committee agrees that this defense could be made in good faith. To the committee, however, that is not enough. Early in the committee's deliberations, the committee agreed to develop a proposal which would avoid serious new constitutional issues and the threat of continued litigation. While any legislation which treats some people differently than others may result in litigation, the means test proposal raises a serious and substantial residency discrimination issue, and therefore does not meet the committee's goal. 7/

For these reasons, the committee does not believe that the means test proposal is a viable alternative to the existing ALB program.

The committee was also aware of the "stair-stepping approach," under which the ALB program is slowly phased out through an annual increase in the eligibility age. Under legislation which passed the House of Representatives during the

7/ Additionally, it should be noted that the issue will become more serious in future years. This is because while the income level is high at the outset, it shrinks dramatically, and in real value falls below the state's existing poverty level in the year 2008.

previous legislature, the eligibility age would begin to rise above 65 in 1991. Although no "stairstepping" proposal was ever advanced by anyone for formal committee review or action, the committee is aware of some continued interest in developing this concept outside of this committee's deliberations. The proposal thus warrants some comment.

First, the term "stairstepping" is a misnomer, since it connotes a gradual phasing out of the ALB program. In truth, the stairstepping approach causes the most abrupt program termination of any option considered, and also results in the most severe discrimination between groups of Alaskans. Under the stairstepping approach, if a person was born on or before June 30, 1925, the state would pay him or her \$250 per month for life. For persons born on July 1, 1925 and thereafter, the state would pay nothing. And, it is irrelevant whether that person is now an Alaskan. A current non-resident who is now 62 would receive \$250/month when he or she moved to Alaska, while a current 59-year old Alaskan would receive nothing. There is thus nothing gradual, or "stairstepped," about this process.

The stairstepping approach would be more expensive than the committee bill, 8/ and much of this added expense would be born after the turn of the century when the state can least afford it. See Section 12. Yet, despite its high cost, stairstepping would

8/ Assuming, of course, that the two had similar provisions dealing with the erosion of the real value of the bonus.

benefit fewer Alaskans. For example, some have assumed that participation in the annuity program is necessary in order for future elderly to benefit from the committee bill. This is not true. Under stairstepping, a person turning 65 in 1991 would receive no ALB whatsoever, while that same person would receive a 1991 ALB of \$222.61 under the committee bill, even if that person had never participated in the annuity program. Thus, for similar total costs, and substantially lower 21st century costs, the committee bill extends the benefits of the ALB program to many more Alaskans.

Most fundamentally, the committee believes that there is a need for future state participation in the building of retirement security that is not recognized in the stairstepping approach standing alone. Apart from the ALB, the principal form of non-need based assistance is, of course, Social Security. Yet Alaska's elderly receive the same Social Security payments as those who reside where the cost of living is much lower. Moreover, Alaska has a uniquely high percentage of elderly who are ineligible for Social Security because of a lack of wage-earning history. Thus, in one area of the state -- Northwest Alaska -- 66% of the region's elderly reported the ALB as their principal source of income.

As oil revenues decline, and economic activity in the state becomes more uncertain, it is entirely possible that the state's future elderly will find themselves in a more precarious position

than today. And, at that point, the state -- for these same economic reasons -- may be unable to help.

One obvious impact of abolishing the ALB program through "stair-stepping" is an increased Old Age Assistance case load. Certainly, when those near the poverty line are denied \$250 per month, they will simply turn to the welfare system, and the state will realize no net saving. Moreover, and as discussed previously, many ALB recipients who are apparently eligible for OAA and Medicaid have in fact not applied for these benefits. Over the years, the ALB program has been defended on the ground that it has enabled many Alaskan elderly to remain off the welfare rolls. Statistics bear this out, indicating that many of those ALB recipients who are eligible for OAA and Medicaid have been able to remain off these programs because of the bonus.

For these reasons, stair-stepping by itself is also not being recommended to the legislature.

On the other hand, the principal advantage of "stair-stepping" is the protection which it affords those who are currently on the ALB program, and who have come to rely on both the Longevity Bonus and the permanent fund dividend to sustain themselves. The committee concluded that forcing Alaska's existing elderly to forego their Permanent Fund Dividend in order to assure continued receipt of the "target" Longevity Bonus might work a hardship on these older Alaskans. As a result, the committee decided to include in the bill a so-called "grandfathering" provision which allows those reaching age 65

before 1986 to take their Permanent Fund Dividend in cash and still receive a full Longevity Bonus for the remainder of their lives. The committee legislation, then, is intended to blend the most salutary aspects of both an annuity approach and "stair-stepping."

The virtue of an annuity approach is that it enables the state and each individual Alaskan to set aside funds now for those perhaps more difficult years ahead. It is a program designed to substitute private thrift for public largesse. The committee also believes that the permanent fund dividend is an appropriate source of funds for the annuity program. The purpose of the annuity program is much like the purpose of the permanent fund itself. Moreover, one purpose of the dividend program -- to give each Alaskan a stake in the management of the permanent fund -- will be enhanced if Alaskans' retirement security is at least in part dependent on wise stewardship of that fund.

Major Features.

1. Front-loading. The committee envisions that the legislature may add additional sums to individual annuity accounts. Under "front-loading," a person will receive an annuity account credit greater -- and perhaps substantially greater -- than the amount of cash he or she could have received. It is the committee's hope that the legislature will consider front-loading for each of the program's first three years.

The committee initially analyzed the annuity concept without front-loading. Even without front-loading, annuity payments eventually replace longevity bonus payments from the general fund. Nonetheless, the committee feared that because annuity payments were low in the early years, those Alaskans who are now near retirement age would not participate in the program. Moreover, general fund contributions did not begin to see significant reductions for about 10 years.

Front-loading provides a substantial incentive to individuals to forego immediate cash in favor of retirement security. While it costs more in the initial years, that cost is incurred in years in which oil revenues are expected to remain high. Moreover, general fund contributions to the ALB program taper off rapidly. In other words, because front-loading causes the maximum possible annuity payment to increase, residual longevity bonus payments decrease more rapidly. Thus, dollars invested in early years through front-loading result in a decrease in general fund obligations in later years.

Under the committee bill, substantial front-loading now would actually result in a net savings over the life of the ALB program -- at least in nominal dollars. Thus, if \$79 million were appropriated for front-loading over the next three years, that investment would result in a return of \$82 million in reduced ALB payments over the next 25 years. In constant 1986 dollars, the ultimate cost of investing \$79 million now is \$30 million.

Additionally, front-loading serves other important purposes which the committee believes warrant the cost in constant dollars:

(1) The committee bill will work only if Alaskans participate. If they do not, Alaska's future elderly may still place demands on the general fund; and

(2) A premium may fairly be placed on the current availability of funds. If \$1.00 of general funds front-loaded now returns 75¢ (in constant dollars) years hence, the fact that the general fund has that \$1.00 now, but may not have the 75¢ later, is of some relevance.

Whether front-loading extends beyond the three-year period envisioned by the committee depends on the availability of funds, actual participation rates, and the projected rate of return on subsequent front-loading investments. If front-loading has succeeded in creating substantial participation, continuation would seem unnecessary, since those Alaskans already in the annuity program would be unlikely to drop out. On the other hand, if participation is low, the legislature may wish to consider inducements other than front-loading.

The committee settled on a front-loading concept weighted in favor of older Alaskans. Several other options were also considered. The first was a per-capita contribution made to each Alaskan who chose an annuity credit. Under this option, the annuity accounts of those near retirement age did not increase enough to substantially increase the "maximum possible annuity."

Thus, it did not significantly reduce long-term general fund obligations. Nor did it satisfy the goal of providing the greatest incentives to those who may need them most.

To better accomplish this goal, the committee next considered a straight \$10 incremental increase in front-loading based on age: that is, participants would receive \$10 for each year that they were older than age 17 -- up to age 65. 9/ This option produced a better result in terms of reduced general fund obligations, but it still did not increase annuity payments fast enough to be a significant incentive -- to older Alaskans in particular -- to participate in the program.

Finally, projections were run on the option embodied in the bill: persons 18-34 years old would receive a base amount of front-loading in addition to the dividend -- for example, \$50. Those over 34 would receive a percentage increase (for example, 10%) for each year of age over 34, up to age 65. Under this option, front-loading increases on a curve rather than a straight line -- increasing dramatically as an individual approaches age 65. Thus, a \$50 base with 10% per year increases results in a 34 year old receiving \$50, a 50 year old \$211, and a 64 year old approximately \$800.

The incentive to join the program, then, increases dramatically as retirement age approaches. It is this aspect

9/ Thus, an 18 year old would receive \$10, a 38 year old \$210, and a 65 year old \$480.

which is most appealing to the committee, for the following reasons:

First, older Alaskans are most in need of incentives to participate. Because initial annuity payments are small, many may be tempted to take a cash payment which is larger than the annual annuity which it will yield. Then, years later, that person will suffer materially reduced benefits because of that short-sighted decision. On the other hand, younger Alaskans need not participate in the program every year in order to build a sizeable annuity. Based upon projections available to the committee, a 47 year old (in 1986) would be required to participate every year in order to achieve the target annuity when he reaches 65 in the year 2004 -- the year the ALB program disappears. Recognizing that financial circumstances may require a cash election in some years, and that some individuals may be ineligible for a dividend in some years, the committee concluded that additional incentives are appropriate beginning at age 35 in order to help ensure that the maximum possible number of Alaskans will achieve the target annuity.

Second, while older Alaskans will receive more at the outset, the front-loading given younger Alaskans will be invested for a longer period of time. To the extent that the percentage differential is commensurate with account earnings, the eventual return to both old and young will be quite similar.

Finally, this option actually costs less in front-loading dollars than the straight line approach -- even though the now-elderly receive larger amounts.

Two additional points regarding front-loading warrant note. First, and as discussed earlier, under the committee bill those who reach age 65 before 1986 do not participate in the annuity program because they are guaranteed a full longevity bonus for life. As a result, in 1985, there will be no front-loading for any individual over the age of 64. In future years, the incremental increase in front-loading will end at age 65, and those over age 65 will receive the same amount of front-loading as a 65-year-old.

Second, the committee bill envisions that the source of front-loading funds may be the earnings of the undistributed income account of the Alaska permanent fund. In past years, permanent fund earnings have exceeded the amount necessary to pay dividends and inflation-proof the fund itself. The resulting surplus comprises the undistributed income account, which has a current balance of \$557 million. That account itself yields annual earnings which are greater than that necessary to provide front-loading, and which are available for appropriation.

The committee concluded that these earnings are an appropriate source of funds for front-loading for one obvious reason: as with the basic structure of the annuity program itself, this aspect of the bill will devote current permanent fund earnings in a manner which will substantially decrease

general fund obligations in later and perhaps leaner years. Once again, however, only earnings are involved. It must be stressed that nothing in the committee bill in any way impairs the integrity of the permanent fund itself.

2. The 3% Escalator.

Since the beginning of the ALB program in 1972, the original \$100 payment has been periodically increased to its current \$250 limit. While that increase seems large, it has, in fact, roughly kept pace with inflation. If the ALB is retained, the committee believes that it is unreasonable to assume that no increase in the ALB will ever be made. The persistent erosion in the real value of the ALB would at some point become so severe that relief would be necessary. For example, assuming a 6% inflation rate, a \$250 ALB now will be worth only \$104 in 15 years.

There are two ways of dealing with the gradual erosion of the value of the ALB. The first is to leave the problem to future legislatures. The second is the approach taken in the committee bill, which provides a modest 3% annual adjustment intended not to precisely keep pace with inflation, but rather to provide certainty in the amount of the payment.

3. Administrative Costs of the Program. The committee bill provides that the legislature may appropriate funds from the annuity account to pay the administrative costs of the annuity

program. 10/ Thus, the costs of the program will be borne by the annuity participants, whether the funds are privately placed or not.

The bill states that administrative costs will be "equitably allocated" among annuity accounts; it is the committee's intent that an equitable allocation will take into account such factors as numbers of participants, age, and relative account balances.

4. Choice of Benefits. Most annuity programs offer participants a choice of options, such as joint and survivor benefits. The primary reason for survivor benefits in employment annuity programs is that among married couples there is often only one wage earner. Survivor benefits are thus available to insure that the dependent spouse is not left without income. Since the annuity program is available to both spouses, just as is the present longevity bonus program, the committee opted for simplicity and did not include a choice of benefits. 11/

5. Setting the Amount of the Longevity Bonus Payment. Section 8 of the bill provides that the longevity bonus payment -- for those who have not reached 65 before 1986 -- is determined by deducting from that payment the maximum possible annuity

10/ If the states chooses to place the funds with private carriers, any costs shifted to the carrier under the contract would also be paid from the annuity accounts.

11/ A death benefit for those who die prior to reaching age 65 has been included in the Senate State Affairs Committee substitute for SB 56.

available to a person who turns 65 in the year in question. The bill uses the annuity available to a 65-year-old because that annuity is the smallest available (among those who have received the maximum possible credits). A 75-year-old with the identical contribution of a 65-year-old will receive a larger annuity because his life expectancy is shorter, and his capital will be returned faster. Thus, some Alaskans will receive more than the target amount during the early years of the program, and no elderly Alaskans (with full participation) will receive less.

6. Residency Questions. The bill has no residency requirements for receipt of annuity payments. Permanent fund dividends are, of course, only available to Alaska residents -- so that an individual must be an Alaskan to contribute to an annuity account. 12/

7. Federal Income Tax Considerations. Currently, both the permanent fund dividend, and the ALB, are taxable as ordinary income under the Internal Revenue Code. The committee engaged tax counsel to determine whether the result would be any different under the committee bill. Specifically, the committee asked whether a person will be taxable on the cash he could have received as a dividend even though, under the new program, he is only credited with the right to receive a future annuity from the state. Counsel advised the committee that, because the annuity

12/ The longevity bonus program will still require that an individual be a one-year resident to receive a bonus.

program is unique, there is no legal precedent which provides a definite answer.

Based on analogous federal tax authorities, tax counsel believes that a crucial factor in determining whether or not an Alaskan receiving an annuity credit will avoid current federal income taxation is the amount with which the legislature "front-loads" the annuity credit in the year the credit is granted. If the legislature provides a substantial front-load to the annuity credit for a particular year, an Alaskan receiving a credit that year should not be subject to tax until annuity payments are actually made on retirement. However, if the legislature provides little or no front-loading in a particular year, there would be a substantial risk that those receiving annuity credits would be taxable immediately on the amount of cash they could have elected in lieu of the credit.

Tax counsel also advised the committee that available precedent does not provide firm guidance on the minimum front-load necessary to support deferred tax treatment of annuity credits. There is an example in the IRS regulations which suggest that a front-load of 25% or more of the annuity credit would be sufficient; however, tax counsel believes that a lesser amount may suffice. Because of this uncertainty, tax counsel suggests that if the committee proposal is enacted, it would be in the state's best interest to obtain an advance ruling from the Internal Revenue Service on the question.

The uncertainty surrounding the tax status of annuity credits, and the substantial risk of taxability when front-loading ends, did not weigh heavily in the committee's recommendation. This is because, at worst, Alaskans would be required to pay taxes on the amount of the dividend just as they do now. Moreover, the committee saw its job as finding an alternative to the ALB program which met the basic goals expressed in this report. It was not charged with simply finding a tax shelter.

Finally, apart from the potential taxability of a permanent fund dividend credited to an annuity account, two favorable tax aspects of the committee proposal should be mentioned:

1. All interest income credited to individual annuity accounts would, under current IRS regulations, be taxable only as it is paid out after reaching age 65; and

2. Front-loading credits would not be currently taxable.

8. Annuity Credits Are Not a Vested Right. The committee bill provides that an individual does not receive a vested or property right to an annuity payment until that payment is made. Funds must be appropriated annually by the legislature from the annuity account to make annuity payments. Although the clear legislative intent of the bill is to provide annuity payments to those who have participated in the program, the committee bill neither binds future legislatures nor creates a dedicated fund. Thus, the legislature may legally appropriate annuity funds for any public purpose. An individual's right to an annuity payment

prior to dispersal is an unfunded, unsecured promise of the state. Thus, a future annuitant is in no better legal position than any unsecured creditor of the state.

As a result, the bill is silent with regard to the garnishment of annuity credits. Prior to annuity payments, there is nothing to garnish or attach, nor anything that can properly be regarded as "income" or an "asset."

9. Protection of Alaska's Existing Elderly. As noted previously, persons who reach the age of 65 before 1986 will not be required to forego their permanent fund dividend in order to receive a \$250 per month Longevity Bonus, inflated 3% annually. The committee decided to integrate this aspect of "stair-stepping" because it concluded that many retired Alaskans have come to rely upon both the ALB and the permanent fund dividend, and -- since they are now retired -- would be unable to make adequate arrangements to mitigate the impact of an abrupt denial (or reduction) in either payment.

Under last session's House bill, those who had reached the age of 60 before 1986 would have received a full ALB for life, although the amount of that bonus would not be increased in future years. The committee considered and rejected the option of extending this protection to 60-year-olds for three reasons:

1. Assuming a retirement age of 65, those under that age will have 1-5 years to make necessary arrangements to accommodate either the loss of a cash dividend, or incremental reductions in the ALB payment. Current retirees, on the other hand, have

little or no ability to alter their financial condition. Thus, while any age group might be said to have some "expectancy" to both an ALB and a cash dividend, that "expectancy" is more immediate, and more critical, for existing retirees;

2. Exempting 60-year-olds from the ALB reduction of the committee bill would not simply postpone the inevitable financial disparity between two groups of Alaskans -- it would aggravate it. Under the House bill, the first reduction in payments would occur in 1991. Because of the growth in the "maximum possible annuity" by that time, the initial difference in monthly ALB payments between an exempt recipient, and a non-exempt recipient who did not forego his dividend, would be \$67.21 per month. Conversely, under the committee bill, differential payments will begin in 1986, and will initially be \$11.92 per month. The committee felt that if some smaller differential were felt immediately, the need to begin participation in the program now would be more apparent to non-exempt recipients. In other words, immediate "stair-stepping" may well encourage higher annuity participation, which in turn will reduce the actual differential treatment between exempt and non-exempt recipients; and

3. The ALB program cannot go on forever. Indeed, it has been a goal of the committee to develop a proposal which phases out general fund obligations near the turn of the century -- when oil revenues are predicted to dramatically decline. If the bill were to protect existing 60-year-olds, the committee projects that the state would still be making general fund ALB payments of

\$74.9 million in the year 2000, and general fund obligations would not end until the year 2029. Moreover, extending the bill's protection to 60-year-olds would cost an additional \$330 million over the life of the program. In drawing the necessary dividing line between those who can continue to receive the full benefits of existing law, and those who cannot, economic feasibility plays an appropriate role. For the reasons above-stated, the committee believes that the line is best drawn at age 65.

10. Possible Participation Rates. The committee attempted to estimate likely participation rates for the legislation's annuity program. Currently, participation rates in certain voluntary employee retirement plans exceed 50%. There are, however, differences between those plans, and the annuity program established by the committee's bill. Under most employee plans, contributed funds can be withdrawn upon termination, or in case of substantial hardship. Under the committee bill, however, no benefits can accrue until retirement. Additionally, high participation rates in employee plans are, in large part, a function of intensive educational efforts which cannot be duplicated on a statewide basis -- particularly in Alaska. Finally, participation rates for employee plans may be irrelevant in predicting participation by the jobless and very poor.

On the other hand, with front loading, matching contributions which participants receive may be, at least for older Alaskans, substantially more than typical matching payments

by employers. Additionally, under any employee plan, an employee must dedicate a portion of his or her regular monthly salary -- each dollar of which may already have been budgeted for regular family needs. The permanent fund dividend, on the other hand, is an irregular source of income which (for some Alaskans) is not a component of the regular family budget, and hence more readily disposable.

Given these differences, and the unique nature of the annuity program established by this bill, the committee does not believe that any meaningful projection, or even range of projections, can be provided.

If participation rates are very high, by the year 2003 state Old Age Assistance payments may be substantially decreased. Indeed, it is conceivable that a successful annuity program could virtually eliminate the need for old age welfare payments. For example, by the year 2010, every elderly Alaskan who has fully participated in the program will be receiving a monthly annuity of \$1,047.88.

On the other hand, if participation is very low, the state may experience increased old age assistance obligations as the residual longevity bonus phases out.

The only way to guard against future increases in OAA clientele is either to maintain the existing ALB program -- an option which the committee believes is cost-prohibitive -- or convert the ALB itself into a form of welfare. Other options studied (including stairstepping) would not simply threaten, but

inevitably lead to higher OAA obligations. The committee bill, on the other hand, offers Alaska's future elderly at least the opportunity to ultimately avoid the need for OAA assistance -- an opportunity which at least some Alaskans will accept. In other words, even with modest levels of participation, the result would be better than under "stair-stepping."

11. Impact Upon Eligibility For Old Age Assistance and Medicaid.

If an elderly Alaskan earns \$586 or less per month, he or she is eligible to receive federal Supplemental Security Income and/or state Old Age Assistance. There are currently some 2,450 elderly receiving this assistance, and the average benefit is \$240 per month.

Elderly who are eligible for OAA are also eligible for Medicaid. Medicaid benefits are accessed by almost half of the OAA recipients, and the average non-nursing home benefit is \$2,500 per year.

If an elderly Alaskan earns less than \$900 per month, he or she is eligible for nursing home benefits under Medicaid. These benefits are substantial -- averaging \$135 per day, or \$50,000 per year for each individual.

Until 1984, and by virtue of a specific exclusion in federal law, ALB payments did not count as "income" in determining eligibility for SSI or Medicaid. See 42 U.S.C. §1982a(b)(2)(B). However, when the ALB program was changed in

1984, Congress also amended the exclusion to protect only those who:

1. are 65 years of age on or before September 30, 1985; and
2. have 25 years of continuous residency in Alaska by that date.

This change in federal law has had the following effect on the SSI, OAA and Medicaid eligibility in Alaska:

1. Some 750 current recipients of OAA will experience a loss or reduction in benefits because they are now eligible to receive the ALB, but fall outside the amended federal exclusion. These individuals have not, however, suffered a net loss in cash benefits, since ALB payments have merely replaced previous OAA/SSI payments. While these individuals are the subject of discrimination, since they cannot retain both their ALB and their previous OAA/SSI benefits (as can long-time Alaskans), that discrimination is solely the product of federal law. If the state undertook to cure this discrimination by replacing lost federal SSI benefits, \$1.4 million would be required for FY 1986.

2. Some 314 of the 750 affected OAA/SSI recipients will also lose non-nursing home Medicaid coverage -- a benefit which averages \$2,500 per year. This is a substantial loss which is not compensated for by the ALB program. The amount of lost federal Medicaid benefits to these 314 individuals is only \$413,847 for FY 1986. The state could therefore compensate for these lost federal benefits at relatively small cost.

3. The most substantial impact of the recent federal law change is upon nursing home patients. 36 elderly Alaskans who are currently in nursing homes may lose their Medicaid nursing home coverage as a result of this change. To pay these individuals' nursing home costs entirely through state funds would require a \$720,000 additional appropriation in FY 1986.

The committee bill neither alleviates nor aggravates the problems associated with OAA/SSI benefit reductions, or reductions in non-nursing home Medicaid payments. Unless the legislature were to adopt a needs-based ALB program, virtually any option which the legislature might chose would leave the affected elderly in the same position as under current law. 13/

The committee proposal would, however, probably benefit existing nursing home residents. Under the bill, persons residing in a nursing home are ineligible to receive the ALB. This exclusion, the committee believes, is consistent with and furthers the intent of the ALB program. Its effect is to benefit existing nursing home residents who will lose access to the \$250 a month ALB, but at the same time will retain their eligibility for \$50,000 per year nursing home payments.

13/ Under current federal law, payments which are predicated on need are not counted as "income" for federal assistance purposes. Thus, the means test proposal discussed earlier may avoid the problems discussed in this section -- assuming that federal officials were willing to treat a \$25,000 income limit as truly differentiating the "needy" from the "non-needy."

12. Costs of Various ALB Alternatives. The committee has estimated the costs of various alternatives. Although population figures (and hence program costs) in future years are difficult to predict, several of the alternatives studied -- including the stair-stepping approach and the means test proposal -- envision general fund expenditures well into the next century. The committee felt that it was particularly important to at least estimate costs beyond the year 2000 for two reasons.

First, it has been a goal of the committee to develop a program which phases out general obligations after the turn of the century -- when oil revenues are projected to dramatically decline. Estimating post-2000 expenditures is thus particularly important.

Second, some options envision higher immediate investment in return for lower long term obligations. Others involve smaller near-term expenditures -- an attribute which is paid for in the years to come. A fair comparison, then, can only be made by looking at total expenditures over the life of each alternative.

Chart 1 indicates the costs of making continued ALB payments under four alternatives. This chart assumes that -- whatever program is chosen -- an escalation in the ALB payment will be made as the years go by. As the chart indicates, the cost of continuing the current, expanded ALB program is prohibitive. The second option, the "Annuity Program," reflects the committee bill without grandfathering Alaska's existing elderly. Under this

option, in order to receive the target amount, existing elderly would be required to forego their permanent fund dividends.

The third option -- the "Annuity Program w/1986 Stairstep" -- reflects the ALB costs of the committee bill itself. The "Stairstep" approach refers to last session's legislation, which would begin stair-stepping in FY 1991. Finally, projections on the means test proposal which assume escalation have not been run.

Assuming that the legislature provides a 3% per annum increase in the ALB payment, the ALB costs of the options considered are as follows:

Chart 1

ALB COSTS THROUGH 2034
WITH 3% ESCALATOR (in millions)

	<u>Nominal \$</u>	<u>Constant \$</u>	<u>Present Value</u> ^{14/}
Current Law	13,087	2,501	1,393
Annuity Program	964	605	496
Annuity Program w/1986 Stairstep	1,290	735	584
Stairstep	1,455	745	577
Means Test	N/A	N/A	N/A

14/ The term "Nominal \$" is self-explanatory. The term "Constant \$" refers to costs expressed in 1986 dollars -- assuming 6% annual inflation. The term "Present Value" refers to the amount of money which, if invested now, would endow the various options through the duration of each.

Conversely, if the legislature held the amount of the ALB constant over the years instead of providing a regulator escalator, the ALB costs of the option would be:

Chart 2

ALB COSTS THROUGH FY 2034
WITHOUT ESCALATION (in millions)

	<u>Nominal \$</u>	<u>Constant \$</u>	<u>Present Value</u>
Current Law	5,419	1,391	880
Annuity Program	619	432	369
Annuity Program w/1986 Stairstep	864	539	444
Stairstep	1,040	586	470
Means Test	3,199	945.9	634.9

In addition to the general fund costs of (1) continuing the current ALB for existing recipients, and (2) providing a gradually reduced ALB for new recipients, the committee bill envisions that individual annuity accounts will be "front loaded" with funds drawn from the earnings of the undistributed income account of the Alaska permanent fund.

Estimating the costs of "front loading" is a three step process. First, the committee assumed that the legislature would provide sufficient front loading to allow those 35 and younger to receive a \$50 base supplement, and those over 35 to receive a supplement which is increased 10% for each year of age up to 65. Second, the committee assumed that participation rates would be very low in younger Alaskans, and extremely high for those older Alaskans receiving the greatest front-loading. The cost of "front load payments" under those assumptions -- with and without

the grandfathering of existing recipients are reflected in Chart 3.

Finally, the effect of front loading is to more rapidly reduce the "target" ALB, and hence reduce general fund obligations. Thus, the net cost of any front loading must be offset by "ALB savings," which are also reflected in Chart 3:

Chart 3

EFFECT OF 3-YEAR FRONT LOADING
(in millions)

	<u>Nominal \$</u>	<u>Constant \$</u>	<u>Present Value</u>
<u>Annuity Program (3% Esc.)</u>			
Front-Load Payments	113	101	96
(ALB Savings)	<u>(126)</u>	<u>(69)</u>	<u>(31)</u>
Net Cost (Savings)	(13)	32	65
<u>Annuity Program (No Esc.)</u>			
Front-Load Payments	113	101	96
(ALB Savings)	<u>(91)</u>	<u>(57)</u>	<u>(46)</u>
Net Cost (Savings)	22	44	50
<u>Annuity & 1986 Stairstep (3% Esc.)</u>			
Front-Load Payments	79	71	67
(ALB Savings)	<u>(82)</u>	<u>(41)</u>	<u>(31)</u>
Net Cost (Savings)	(3)	30	36
<u>Annuity & 1986 Stairstep (No Esc.)</u>			
Front-Load Payments	79	71	56
(ALB Savings)	<u>(56)</u>	<u>(30)</u>	<u>(23)</u>
Net Cost Savings	23	41	44

The net costs (or savings) of front loading for any particular program can then be added (or subtracted) from the appropriate column of Charts 1-2. From that exercise, it is

apparent that front loading does not materially affect the cost ranking of any of the options considered.

Finally, under stair-stepping, those who do not reach age 65 by FY 1990 will receive no longevity bonus. Of those who are denied the bonus in the future, a portion will apply for state Old Age Assistance. As noted previously, a number of current ALB recipients are apparently eligible for OAA and Medicaid but have not applied because of the bonus. There is thus a segment of Alaska's elderly who are now eligible for OAA and Medicaid, and who might apply for benefits under those programs if the ALB were denied.

It is difficult to predict the number of elderly who would actually turn to state welfare assistance if and when the ALB program were terminated. Currently, one out of every 2.65 income-eligible ALB recipients actually applies for OAA. Under the "moderate low" scenario of Chart 4, one half of those elderly would apply for OAA. Under the "moderate high" scenario, two-thirds of the eligible elderly would apply for assistance once the bonus program were terminated. Cumulative costs, 15/ in increased OAA and Medicaid benefits, through the year 2010 under these two scenarios are as follows:

15/ The cost estimates in Chart 4 should be viewed as substantially equivalent to constant 1986 dollar estimates. Although they are technically nominal dollars, they assume no increase in OAA or Medicaid benefits as the years go by. If one assumes that OAA and Medicaid benefits keep close pace with inflation, these estimates would then better reflect constant

Chart 4

INCREASED OAA/MEDICAID COSTS THROUGH 2010
(in millions)

Moderate Low

81.3

Moderate High

150.2

It is possible that increased OAA costs would also result from the committee bill. Although, under the bill, the ALB is gradually phased out, rather than abruptly terminated, those new elderly who have not participated in the annuity program may eventually find themselves in need of welfare assistance. The degree of that problem, of course, is a function of participation rates -- which are difficult to determine. However, because -- under the committee bill -- the ALB is phased out, rather than abruptly terminated, 16/ and because a portion of Alaska's population will participate in the annuity program, the committee believes that -- even with low participation rates -- the impact of the bill on old age assistance programs is likely to be less severe than under the stairstepping approach.

Finally, the committee looked at the cost of various options after 1999. As noted previously, it has been a goal of the

dollar costs.

15/ Thus under stairstepping, a person turning 65 in 1991 would receive no ALB whatsoever. On the other hand, under the committee bill, a person turning 65 in 1991, and who has not participated in the annuity program, will still receive a longevity bonus of \$222.61 per month.

committee to develop a longevity bonus program in which general fund obligations would be minimized as oil revenues declined. Chart 5 indicates the cost of stairstepping, the means test proposal and the annuity program with and without stairstepping, which would be incurred in the 21st century:

Chart 5

COSTS INCURRED AFTER YEAR 1999
(in millions: Nominal \$)

<u>3% Escalation</u>	
Annuity Program	69.9
Annuity Program	
w/1986 Stairstep	285.3
Stairstep	588.3
Means Test	N/A
<u>No Escalation</u>	
Annuity Program	0
Annuity Program	
w/1986 Stairstep	128.4
Stairstep	291
Means Test	2,486.2

The Benefit Concept's Proposal

The committee investigated an approach proposed by Benefit Concepts, Inc. and Kidder Peabody & Co., Inc. The proposal is essentially an investment program for endowing the longevity bonus program. That is, a substantial investment (approximately \$350 million) would be made in the initial years of the program, and the return from that investment is estimated to be sufficient

to make the declining longevity bonus payments required under the committee's annuity approach. 17/

Benefit Concepts proposes that the state invest in single premium whole life insurance policies (SPL's) taken out on Alaska's elderly. The state would be the owner and beneficiary of the policies. Benefit Concepts' projections indicate that this type of investment would be superior to other options which they believe would be appropriate for such an investment plan, such as guaranteed investment contracts (GIC's), corporate bonds or government securities.

The Benefit Concepts proposal was analyzed by the actuarial firm of Johnson & Higgins at the committee's request. That firm concluded that (1) the costs of the program may be understated when compared with data used by OMB (see footnote); (2) should the state consider "endowing" the ALB program, it should not limit its choices to the low risk alternatives considered by

17/ Subject to available funds, the state could "endow" any program by investing enough cash to produce the revenue to pay the costs of the program. Indeed, the concept of "endowment" is implicit in the "present value" calculations made by the Office of Management and Budget for the longevity bonus alternatives analyzed. Two points deserve attention. First, in order to avoid dedicated fund problems, the income from any such investment would be deposited in the general fund, and subject to annual appropriation to pay program costs. Second, the assumptions used by Benefits Concepts in making their cost estimates differ in two important respects from the assumptions used by OMB. Benefit Concepts used different population projections, and assumed a different interest environment. Both these differences understate the cost of their proposal when compared with programs using OMB estimates. The committee, therefore, cautions against direct cost comparisons.

Benefit Concepts, but should also examine other investment options; and (3) the primary advantage of the SPL approach over other low risk investments is the substantial tax advantage available to some insurance companies in providing this type of policy. These tax advantages are under scrutiny by the federal Treasury Department, and could well be eliminated through revisions to the Internal Revenue Code in the near future. It would be likely that an insurance company would insist on passing any tax changes through to the policy holder, thus removing the advantage of this type of investment.

The committee is unable to make a firm recommendation regarding this proposal to the legislature but believes that the concept may warrant further consideration by the state's financial experts.

The Alaska Pioneers' Home

On July 30, 1984, Governor Sheffield requested the committee to consider expanding its inquiry to include Alaska's Pioneers' Home Program. Because of time constraints, and the fact that the committee developed an alternative to the ALB program which has no application to the Pioneers' Home, the committee was unable to consider alternatives to this program in any depth.

The committee, however, shares Governor Sheffield's concerns over the program. Under AS 47.25.030, an individual must have resided in Alaska for 15 consecutive years, or 30 total years, in

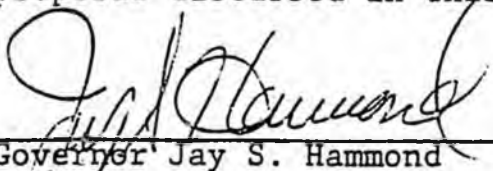
order to be eligible for admission to the homes. Plainly, that requirement raises substantial constitutional questions.

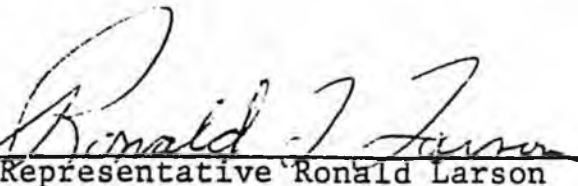
To date, no one has filed suit over the Pioneers' Home eligibility requirements. It is this committee's recommendation that the legislature develop and consider alternatives to the existing residency requirements during this session. The pressure and tension created by the Vest litigation has made it more difficult, over the past 2½ years, to develop a sound replacement for the ALB program. That experience need not, and should not be repeated for the Pioneers' Homes.

One alternative for replacing the current residency requirements warrants note. The legislature may wish to develop a point system that would determine eligibility for Pioneers' Home admission based upon the hardship that would be suffered if the applicant were forced to seek housing out of state. Location of home, family and friends would all be relevant to assessing that hardship; yet hard and fast residency rules would be avoided.

Conclusion

The undersigned members of the committee respectfully recommend that the legislature consider and enact the annuity proposal discussed in this report.


Governor Jay S. Hammond


Representative Ronald Larson