

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

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681

(h) The penalty and enforcement provisions of AS 43.23.035 apply to an individual who claims a permanent fund dividend on behalf of another.

(i) The permanent fund dividend application form shall be prepared to allow an applicant, other than a person exempt under AS 47.45.015(b), to elect to receive cash in lieu of a permanent fund dividend.

\* Sec. 5. AS 43.23.035 is amended to read:

Sec. 43.23.035. PENALTIES AND ENFORCEMENT. (a) In addition to any criminal penalties imposed by state law, if an individual is convicted of a crime in connection with a false statement made in a certification required under AS 43.23.015, and the conviction is not reversed, that individual forfeits all permanent fund dividends credited or paid, together with any additional credits to his annuity account and is not eligible for a future permanent fund dividend.

(b) If the commissioner determines that a cash [PERMANENT FUND] dividend should not have been claimed by or paid to an individual, the commissioner may use all collection procedures or remedies available for collection of taxes under this title to recover the payment of a permanent fund dividend that was improperly made. A notice of an improperly paid dividend must be sent to the individual within 10 years after the improper payment. If notice is not sent within the 10-year period, proceedings may not be commenced in court for recovery of the improper payment.

(c) If the commissioner determines that a permanent fund dividend should not have been credited to an individual's annuity account, the commissioner may after notice and opportunity for hearing, direct the commissioner of administration to debit the individual's annuity account for the amount wrongly credited. If the

credit is the fault of the individual, the debit must be made within 10 years. If the credit is the fault of the state, the debit must be made within three years.

\* Sec. 6. AS 43.23.055 is amended to read:

Sec. 43.23.055. DUTIES OF THE DEPARTMENT. The department shall

(1) annually [PAY PERMANENT FUND DIVIDENDS FROM THE DIVIDEND FUND] make payments to exempt individuals under AS 47.45.015(b) and those who elect cash under AS 43.23.005(d);

(2) adopt regulations under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for claiming a permanent fund dividend or for making election under AS 43.23.005(d); the department shall set the time limit for applications for permanent fund dividends so that the number of eligible applicants is determined by October 1 of the year for which the dividend is declared and permanent fund dividends for a year are paid before April 30 of the year following the year;

(3) adopt regulations under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for an individual upon emancipation or upon reaching majority to apply for permanent fund dividends not credited or received during minority because the parent, guardian, or other authorized representative did not apply on behalf of the individual; [AND]

(4) assist residents of the state, particularly in rural areas, who because of language, disability, or inaccessibility to public transportation need assistance to establish eligibility and to apply for permanent fund dividends; and

(5) provide the commissioner of administration with information necessary to maintain individual annuity account records and administer the annuity program.

\* Sec. 7. AS 43.23.065 is amended to read:

Sec. 43.23.065. EXEMPTION OF PERMANENT FUND DIVIDENDS. (a) Fifty percent of a cash payment received under AS 43.23.005(d) [THE ANNUAL PERMANENT FUND DIVIDEND PAYABLE TO AN INDIVIDUAL] is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual. An exemption is not available under this section for cash payments [PERMANENT FUND DIVIDENDS] taken to satisfy (1) child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 -- 47.23.220; (2) a debt owed by an eligible individual to an agency of the state, unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has not expired, or (3) court ordered restitution under AS 12.55.045 -- 12.55.051 or AS 12.55.100. A child support obligation under (1) of this section has priority over a debt owed to an agency of the state, and a permanent fund dividend may not be taken to satisfy a debt under (2) of this section until any portion of the dividend necessary to satisfy a child support obligation has been taken.

(b) When an individual owes a past due debt described in (a)(1) of this section, the department shall require that the individual take his or her permanent fund dividend in cash.

(c) The courts of this state may, as a condition of any civil judgment or restitution order under AS 12.55.045 -- 12.55.051 or AS 12.55.100, require the defendant to take his or her permanent fund dividend in cash.

\* Sec. 8. AS 43.23.075 is amended to read:

Sec. 43.23.075. ELIGIBILITY FOR PUBLIC ASSISTANCE. (a) In determining the eligibility of an individual under a public assistance program administered by the Department of Health and Social Services in which eligibility for assistance is based on financial need, the Department of Health and Social Services may not consider a permanent fund dividend as income or resources received by the recipient of public assistance or by a member of the recipient's household unless required to do so by federal law or regulation. The Department of Health and Social Services shall notify all recipients of public assistance of the effects of [RECEIVING] a permanent fund dividend credit or cash payment.

(b) An individual who is denied medical assistance under 42 U.S.C. 1396 -- 1396p (Social Security Act, Title XIX) solely because of the credit or receipt of a permanent fund dividend by the individual or by a member of the individual's household is eligible for state-funded medical assistance under the general relief assistance program (AS 47.25.120 -- 47.25.300). The individual is entitled to receive, for a period not to exceed four months, the same level of medical assistance as the individual would have received under 42 U.S.C. 1396 -- 1396p (Social Security Act, Title XIX) had there been no permanent fund dividend program.

(c) An individual who is denied assistance solely because permanent fund dividends credited to or received by the individual or by a member of the individual's household are counted as income or resources under federal law or regulation is eligible for cash assistance under the general relief assistance program (AS 47.25.120 -- 47.25.300). Notwithstanding the limit in AS 47.25.130, the individual is entitled to receive, for a period not to exceed four months, the same amount as the individual would have

received under other public assistance programs had there been no permanent fund dividend program.

\* Sec. 9. AS 37 is amended by adding a new chapter to read:

CHAPTER 16: ANNUITY PROGRAM

Sec. 37.16.010. ANNUITY INVESTMENT FUND. (a) The annuity investment fund is established as a separate fund in the state treasury. Notwithstanding the provisions of AS 37.13.145, an amount equal to the permanent fund dividends taken as annuity credits under AS 43.23 shall be annually transferred from the dividend fund to the annuity investment fund.

(b) The legislature may appropriate either general funds, or earnings upon the undistributed income account in the Alaska permanent fund, to the annuity investment fund. Any funds appropriated under this subsection shall be allocated to the individual annuity accounts of those who are eligible to receive a dividend for that year and do not elect cash under AS 43.23.005(d). The allocation shall be made in the following manner:

(1) A credit will be made to the account of each individual who is at least 18 years old:

(2) The credit for each person from the age of 18 through age 35 is the base amount. The size of the base amount is determined according to the amount of the appropriation;

(3) The credit for persons over the age of 35 is the base amount, increased for each year of age over 35 up to and including the age of 65. The incremental increase for each year of age is a percentage over the credit for the prior year of age. That percentage shall be established with due regard for historical and projected permanent fund returns on investment;

(4) If a person elects to receive a portion of his dividend in cash under AS 43.23.005(d), the allocation to which he is otherwise entitled will be proportionately reduced.

(c) Money in the annuity investment fund shall be invested by the commissioner of revenue in investments authorized under AS 39.35.110. The commissioner of administration shall credit individual annuity accounts with earnings at a rate equal to the rate of interest earned by the annuity investment fund.

(d) The legislature may annually appropriate to the Department of Administration an amount sufficient to pay monthly annuity payments for the subsequent fiscal year under AS 37.16.030 from the annuity investment fund. Funds appropriated under this subsection shall be transferred from the annuity investment fund to the Department of Administration in order to meet the current demands of the annuity program.

(e) The legislature may annually appropriate from the annuity investment fund an amount sufficient to administer the annuity program. Any costs of administration funded under this subsection shall be equitably allocated among all individual annuity accounts.

(f) Notwithstanding AS 39.35.110 or (c) of this section, the commissioner of revenue may invest all or part of the annuity investment fund in commercial insurance contracts.

Sec. 37.16.020. ANNUITY PROGRAM. (a) The annuity program is administered by the commissioner of administration. The commissioner of administration shall adopt regulations necessary to implement the annuity program.

(b) The commissioner of administration shall maintain records of individual annuity accounts and make annuity payments under AS 37.16.030.

Sec. 37.16.030. PAYMENT OF ANNUITIES. (a) An individual with one or more annuity credits may receive an annuity upon reaching the age of 65.

(b) An annuity under this section is a monthly payment during the life of the annuitant. The amount of the monthly payment shall be based upon the principal and accrued interest in the person's annuity account and shall be paid in the form of a straight life annuity. The size of the annuity may not vary on account of sex.

(c) An individual need not be a resident of the state to be eligible to receive an annuity payment from his or her account.

(d) An annuity share may not be assigned, sold, or otherwise transferred from one individual to another. The right to receive an annuity under this section terminates upon the death of the person who is eligible for the annuity and does not pass to that person's estate.

(e) If a person dies prior to age 65, his account shall be equitably distributed among the annuity accounts of all individuals of the same age.

(f) An individual does not receive a vested property right in an annuity payment until that payment is made. Notwithstanding the provisions of this section, the state is not obligated to provide annuity payments for annuity credits granted under AS 43.23.005.

\* Sec. 10. AS 43.23.095(6) is repealed and re-enacted to read:

(6) "permanent fund dividend" means a credit to an annuity account under AS 37.16, unless the individual is either exempt under AS 47.45.015(b) or elects cash under AS 47.23.005(d);

\* Sec. 11. AS 47.45.010(a) is amended to read:

(a) A person who is 65 years of age or over, who resides in the state for at least one year immediately preceding application for a

longevity bonus under this chapter may apply to the commissioner of administration for qualification to receive a monthly bonus [OF \$250].

\* Sec. 12. AS 47.45 is amended by adding a new section to read:

Sec. 47.45.015. AMOUNT OF BONUS. (a) Subject to (b) of this section, the monthly longevity bonus is equal to \$250, increased by three percent each year beginning in fiscal year 1987, minus the maximum possible annuity for a person 65 years of age under the annuity program (AS 43.23.110 -- 43.23.120), as determined by the commissioner of administration.

(b) A person who is 65 years of age or over prior to January 1, 1986 is exempt from the annuity program reduction established in (a) of this section.

\* Sec. 13. AS 47.45.070 is amended to read:

Sec. 47.45.070. UNQUALIFIED PERSONS. An unqualified person is one who

(1) does not meet the age or residence requirements as provided for under this chapter;

(2) meets the age and residence requirements of this chapter but either is confined in a state or federal mental health institution or facility and is certified by the state as unable to manage personal affairs, or resides in a nursing home as that term is defined in AS 08.70.180(5); however, if that person, at the time of commitment or commencement of residence, provided the principal support of a spouse, the commissioner of administration may determine to pay the confined person's bonus to the person's spouse until the spouse is qualified for a bonus;

(3) is otherwise qualified but confined in a penal or correctional institution or facility; upon completion of sentence or upon the conferral of a pardon, parole or probation, the person may

make application; confinement outside the state shall be considered as residence in the state if a person was convicted and sentenced from a court in Alaska; revocation of parole or probation shall be cause for immediate disqualification until release from confinement is again effected;

(4) voluntarily leaves the state and remains absent from the state for a continuous period of more than 180 days.

- \* Sec. 14. Section 11, ch. 38, SLA 1984 is amended to read:

Sec. 11. Sections 7 and 9 of this [THIS] Act [AND AS 47.45] are repealed June 30, 1985.

- \* Sec. 15. AS 43.23.045(c) is repealed.

\* Sec. 16. This Act applies only to permanent fund dividends for years beginning after December 31, 1985.

- \* Sec. 17. This Act takes effect January 1, 1986.

REPORT OF THE MINORITY MEMBERS OF THE GOVERNOR'S LONGEVITY  
BONUS TASK FORCE TO THE FOURTEENTH ALASKA STATE  
LEGISLATURE AND GOVERNOR BILL SHEFFIELD

February 1, 1985

TABLE OF CONTENTS

I. INTRODUCTION

II. DIFFERING PHILOSOPHIES

III. ANNUITY PROPOSAL

- A. Summary
- B. Front-loading
- C. 3% Escalator
- D. Participation
- E. Legality of the Proposal
- F. Conclusion

IV. STAIRSTEPPING PROPOSAL

- A. Summary
- B. Impact on Younger Alaskans
- C. Why Protection for 60 Year Olds Instead of 65 Year Olds
- D. Legality of the Proposal
- E. Conclusion

V. MEANS TEST PROPOSAL

- A. Summary
- B. Reasons for a Means Test Program
- C. Legality of the Proposal
- D. Conclusion

VI. STATUS QUO PROPOSAL

- A. Summary
- B. The Bonus as a Priority for State Funding
- C. Continuing the Status Quo in FY 86

VII. THE IMMEDIATE IMPACT ON PUBLIC ASSISTANCE ELIGIBILITY

- A. How to Protect the Bonus Income of Public Assistance Recipients
- B. Exclusion of Individuals in Nursing Homes from Eligibility for the Bonus

VIII. COST INFORMATION

- A. Long Term Costs
- B. Population Forecast
- C. Cost of the Annuity Proposal
- D. Cost of the Stairstepping Proposal
- E. Cost of the Means Test Proposal
- F. Cost of the Status Quo Proposal

## I. INTRODUCTION

The purpose of this report is to provide a broad view of the issues involved in resolving the future of the longevity bonus program. Each of the options discussed before the committee has both its merits and drawbacks. The minority members of the task force believe a more complete discussion of the various proposals is necessary so that policy makers can decide which of the options is the best one for the State.

The options covered in this report are the annuity proposal, the means test proposal, the stairstepping proposal, and maintaining the current program.

## II. PHILOSOPHICAL DIFFERENCES

Each of the options considered represents a significantly different philosophy about the future of the program.

The philosophy underlying the annuity proposal is that the current bonus program should be replaced with a retirement program for all of the state's citizens. The majority report states, "[t]he Committee believes that there is a need for future State participation in the building of retirement security ...". The annuity proposal presumes that individuals need encouragement from the State to prepare for their final years, even though a majority of Alaskans save for their retirement through private sector investments and employer retirement programs.

The annuity proposal also assumes that there is still a need to provide cash assistance to elders regardless of their length of residency. And finally, this proposal would require Alaskans to choose between the alleged short term benefits of the permanent fund dividend program and the supposed long term benefits of the annuity program.

In contrast, stairstepping emphasizes three facts: (1) the original program was always intended to end if the courts ever declared it to be unconstitutional; (2) there are a large number of older Alaskans who have counted the bonus into their retirement plans, despite its constitutional status; and (3) the State faces a declining revenue picture.

Stairstepping takes care of the needs of Alaska's elders at the expense of the needs of younger Alaskans. The proposal also assumes that younger individuals will provide for their own retirement security through the private sector or will be eligible for public assistance. Further, fiscal reality is faced by phasing out the program (and the general fund cost) entirely, not shifting the general fund cost to another funding source. And finally, stairstepping does not

take need into account because many Alaskan elders reject need as a criteria for receipt of a bonus.

The philosophy behind the means test proposal can be contrasted with both the annuity and stairstepping proposals. It assumes the longevity bonus program should continue, but provides a larger benefit to those who need it the most. In other words, even though we cannot afford to continue the current program at its present cost forever, poorer individuals need a larger bonus payment. Also, the means test proposal is crafted to mesh with federal entitlement programs so the State can provide more benefits for the poor overall with less State cash.

The last option, maintaining the current program, assumes that the bonus should continue in its present form because all Alaskans rely on it, regardless of whom it was originally intended to benefit. Also, it emphasizes the importance of the bonus and its priority for State funding in spite of declining revenues and competition with other statewide needs.

### III. ANNUITY PROPOSAL

Although the committee majority favors the annuity, there are certain aspects of the proposal that the majority report does not discuss.

#### A. Summary

The annuity proposal has three basic features: (1) Continuing the bonus program for all persons age 65 by 1986, and paying these persons a benefit level of \$250 per month, plus 3 percent cost of living increase, for life. (2) Phasing out the bonus program for every one under 65 in 1986, and paying these persons an ever reducing benefit level until sometime in the early part of the next Century. (3) Creating a State supplemental retirement program for those under 65 by 1986 who choose to invest their permanent fund dividends in it.

#### B. Front-loading

The annuity bill allows the Legislature to increase the monthly annuity amount by subsidizing or "front-loading" the account with annual appropriations.

The purpose of front-loading is to increase the amount of the monthly annuity check and to provide a tax shelter for those who invest their dividends in the program. Both of these aspects are considered necessary inducements to increase participation in the program.

Though the cost of front-loading depends on the number of people who participate in the program, the task force majority estimates that at least \$79 million will be required in the first three years, in addition to the funding necessary to continue the phase out bonus program. Since the revenue picture is a clear obstacle to getting this funding from the general fund, the majority proposes that front-loading dollars come from the permanent fund reserve account. We do not support use of the reserve account to pay for the annuity program, since the appropriate uses of the account are already spelled out in statute.

It is also likely that front-loading will be necessary far beyond 1989. Tax counsel has advised the committee that tax shelters will only be available in the years in which the program is front-loaded.

It also seems likely that once the subsidizing begins, it will be difficult to end. This appears especially true if short term front-loading increases the annuity checks of elder Alaskans more than those of younger Alaskans, as the majority report indicates.

It is also possible that the Legislature could decide not to front-load the program at all.

The amount of the bonus each year is tied to the maximum annuity of a 65 year old. Since the maximum annuity will be smaller if it is not subsidized, the general fund cost of the phase out bonus program would be more than the majority report indicates.

#### C. 3% Escalator

The bonus and the cost of the program itself are increased dramatically by a 3% annual escalator. If this is really intended to be an automatic cost of living increase, it should be tied to some acknowledged COLA indicator. In the past, the bonus amount has been increased for valid economic reasons, not automatically.

#### D. Participation

The more Alaskans that participate in the annuity program, the more likely it is to succeed. We are skeptical, however, about the ability of the program to achieve a high and continuous rate of participation.

According to the Governor's Office of Management and Budget, 40% of current bonus recipients have annual incomes of less than \$10,000. According to the IRS, only 2% of taxpayers within this income category buy

IRAs even though it is to their advantage to do so. The statistics on deferred compensation plans are similar. Generally, people without spare cash do not put off receiving income because they cannot afford to. Under this proposal, bonus checks will be reduced each year, yet individuals will have to give up their permanent fund dividends in order to make up the difference.

By grandfathering in current ALB recipients, the bill does protect the current income of today's elders who are at least 65. But what about everyone else? According to the Permanent Fund Corporation's recent report on the dividend program, about 18% of adult recipients making less than \$26,000 annually used their 1982 dividend to reduce debt and another 22% used it to help with regular expenses. Clearly, these individuals are using their dividends to meet basic needs.

The annuity proposal asks the Alaskans who can least afford it to make a very difficult choice -- either they take the cash now to meet basic needs or they skimp on basic needs and defer their dividend for a promise of a future payment. And they have to trust that the program will still be in existence, and that they will live to 65.

Even those Alaskans who can afford the program may be reluctant to participate. Consider the following fact:

1. The tax deferrable status is uncertain even with front-loading because the IRS has not yet ruled on it. If this program is not considered a shelter by the IRS, there are many other tax shelters available in the private sector.
2. There are no survivor benefits. No matter how long you defer your dividend, if you die, your account is split up amongst all the other accounts in your age category. None of your heirs, nor your estate, have a right to any part of the balance in the account.
3. An individual can never liquidate or transfer his annuity account if he decides to change investment strategy. In other words, the money goes in, you cannot take it out.
4. Even if you live to 65, there is still no assurance that you will get any or all of your annuity. Because there is no vested property right, the State could either end the program

at any time without owing you any money or could pay you less than you originally invested.

E. Legality of the Proposal

In general, this proposal appears to be constitutional-ly sound. It should be noted, however, that the grandfathering of current bonus recipients would create a protected class of persons. Any law that establishes such a classification is subject to an equal protection challenge. However, it seems unlikely that such a challenge would succeed, since the classification is a rational one that furthers a legitimate public purpose. Please refer to the discussion in section IV - E for further information.

F. Conclusion

The question for policy makers is whether this particular annuity proposal makes good economic sense on both a State and a personal level.

IV. STAIRSTEPPING PROPOSAL

A. Summary

The stairstepping proposal continues the current program for five years and then begins to phase out the program by increasing the age of eligibility by one year, each year beginning in July, 1991. In effect, any one who is 60 or older by July of 1985 would qualify for a \$250 monthly bonus from age 65 until death.

B. Impact on Younger Alaskans

The proponents of stairstepping do not dispute the fact that the proposal protects today's elders, but does not protect those who will turn 60 after July of 1985. In fact, its purpose is to ensure that those who have counted on the bonus for their retirement years receive it throughout the rest of their lives. Since we do face a gloomy revenue picture, backers of this proposal believe the only affordable method of protecting the bonus for current elders is to discontinue the program for everyone else.

This should not be interpreted as a lack of concern for the retirement years of individuals under age 60. Instead, it reflects a philosophy of truly "substituting private thrift for public largesse", the alleged theme of the annuity proposal. It reflects a belief that there are plenty of savings options

available in the private sector for those individuals who are in a position to defer cash until some future time. Further, it reflects the belief that the annual permanent fund dividend can be used for this purpose now and that establishing a State annuity program to encourage saving the dividend for retirement is unnecessary.

Finally, it is important to reiterate that the original bonus program was intended to self-destruct if it was ever declared unconstitutional. The stairstepping proposal accomplishes this task while minimizing the harm which would otherwise occur.

#### C. Why Protection for 60 Year Olds Instead of 65 Year Olds

The group of Alaskans who do count on the bonus extends beyond those who are currently eligible to those who are about to become eligible. In general, it is accurate to state that the older and poorer an individual is, the more that individual needs both the bonus and the dividend.

It is true that any age cut off is arbitrary. The reason that age 60 has been chosen, however, is that those who are within five years of retirement are most in need of the bonus. Also, five years appears to be adequate to allow Alaskans in their 50s to prepare for a retirement without the bonus. At the very least, it gives these Alaskans plenty of notice that they can no longer expect to receive a bonus.

It should be noted that if the method of stairstepping is changed, the bonus of more Alaskans will be protected. For example, instead of waiting five years and then stairstepping one year each year, stairstepping could begin immediately but occur every other year. This would allow a much larger group of Alaskans to receive a bonus, but receipt would begin at a more advanced age.

#### D. Legality of the Proposal

Stairstepping creates two classes of people: those who receive bonuses and those who do not. Any law that establishes classifications is subject to an equal protection challenge under both the Federal and State constitutions. A challenge will not succeed, however, if the classifications embodied in the law are rational, and further legitimate governmental purposes. They do not need to meet the test of furthering a compelling State interest, as other laws do.

The stairstepping approach would not affect any constitutional right beyond general equal protection. It would provide benefits to newcomers who met the one year age requirement, and thus would not thwart the right to travel.

Stairstepping embodies a balance between recognition that our elders need the bonus on the one hand, and a perception that the State cannot continue to fund an ever expanding program indefinitely. In a recent case, the Alaska Supreme Court reaffirmed that the recognition of "grandfather right" and "hardship" are legitimate goals of the limited entry law under equal protection analysis. Kalmakoff v. State, Op. No. 2900 (January 11, 1985). It appears that court would find it legitimate for the Legislature to "grandfather" those who are presently receiving the bonus or expecting to receive it in the near future, since those individuals would suffer the most hardship if the program were suddenly ended. Individuals younger than 60 at the date of enactment would have considerable notice that the program would not be available to them at retirement, and would have some wage-earning years to adjust their expectations. Also, the State's revenue expectations are certainly a legitimate element in deciding what program should be enacted.

In sum, it appears that stairstepping is constitutional and would withstand any legal challenge.

#### E. Conclusion

Stairstepping continues to be a valid method of dealing with the current longevity bonus crisis. Though not all Alaskans would benefit from it, it is a fair, rational approach to a problem that does not have any easy solutions.

### V. MEANS TEST PROPOSAL

#### A. Summary

Under the means test proposal, an individual age 65 or over may apply for a bonus of \$250 a month if his or her adjusted gross income was less than \$25,000 for the year prior to application. An individual who does not meet the income requirement, or who chooses not to apply for \$250, is eligible for a bonus of \$100 per month.

The \$25,000 income cap will allow 80% of Alaskan elders to continue to receive the \$250 monthly bonus. At the same time, the proposal would reduce payments to those elderly Alaskans for whom a monthly bonus is not a

financial incentive to remain in the State. These wealthier individuals will continue to be honored with a smaller monthly bonus that can be viewed as a psychological incentive to remain in Alaska.

#### B. Reasons for a Means Test Program

Many elder Alaskans have vehemently opposed creation of a "welfare" bonus program. These individuals feel that the bonus was originally intended to reward them for their contributions to Alaska and that it never was intended to be a form of public assistance. Indeed, some of these elders appear to prefer no future for the bonus program at all if that future is based on need.

Why then should the Legislature seriously consider a means test proposal? One important reason is the federal government's position on the impact of future bonus income on public assistance. Since federal officials insist that the \$250 bonus be counted when determining public assistance eligibility for some Alaskan elders, this proposal represents a direct method of cancelling the affect of the federal action. It would eliminate the loss of Federal Supplemental Security Income and Old Age Assistance for 750 Alaskans and non-nursing home medicaid benefits for 314 Alaskans.

Also, federal officials have indicated that they will be flexible in determining whether a program meets their definition of need. Though this proposal still allows 80% of current recipients to continue to get \$250 a month, federal officials believe it will fall within their definition.

The proponents of this proposal are not insensitive to the wishes of those elders who are opposed to any needs based program. Rather, they have attempted to craft a proposal that does alleviate the federal concern as well as the concern of these elders. Actually, this proposal would not implement a "welfare" program. It is only a needs based one in the sense that it does draw distinctions among elders based on income. But it is not a "welfare" program because it is not only for the very poor. All elders get a bonus and most elders get the same bonus; only the wealthiest 20% get less than the others.

Moreover, there are many elders who do not share the strong feelings about a potential "welfare" stigma. These individuals are not always the most vocal, but they are still important. This proposal emphasizes their importance and points out another method of dealing with the state's fiscal reality by giving a

larger bonus to those who need it the most.

### C. Legality of the Proposal

The largest legal question posed by this proposal is whether the one year residency requirement would be valid for the \$250 bonus since its receipt would be based on a person's income. The United States Supreme Court has held that a one year residency requirement infringes on the federally protected right to travel when used in a program which provides the "basic necessities of life." Thus, in Shapiro v. Thompson, 394 U.S. 618 (1969), the court struck down a one year residency requirement for welfare assistance.

But every government program does not provide for "basic necessities of life." For example, in Hawaii Boating Association v. Water Transportation Facilities, 651 F.2d 661 (9th Cir. 1981), the court found that a one year residency requirement for reduced rates for boat moorage did not impair the right to travel, since the benefit involved was not significant.

While the courts have ruled that some programs clearly fall within the "basic necessities" definition (such as welfare, hospitalization, and federal low rent housing) and some programs are clearly outside of that definition (such as moorage fees, practicing law without taking a bar exam, running for city council and COLAs in workers compensation benefits), there is no precise dividing line. A strong argument could be made that this proposal does not provide a "basic necessity" and that the one year requirement is valid.

First, the State has other programs such as old age assistance and medicaid which are available to new Alaskans to provide basic necessities.

Second, the income cap requirement is not typical of a test for welfare eligibility. A welfare program test looks at a person's total assets (i.e., value of their home, boats, cars, etc.), but this proposal only looks at a person's adjusted gross income. The income cap provisions are more properly viewed as a retirement supplement to all but the most wealthy, rather than as a program to fulfill basic needs.

Finally, the purpose of the one year requirement would be to determine, without too much administrative burden, which elders are bona-fide Alaskans as opposed to mere visitors. Like students, older Alaskans tend to travel for extended periods. So long as seniors are not denied basic necessities such as medical care and funds for food and shelter if they are destitute, we

believe the one year requirement would withstand a challenge. The two year residency requirement for student loans was recently upheld for similar reasons.

D. Conclusion

This proposal is valid because it addresses the federal support of the public assistance question and because it favors those Alaskans who need the bonus the most. As such, it should be the subject of serious legislative consideration, even though some seniors have reservations about it.

VI. STATUS QUO PROPOSAL

A. Summary

This proposal would continue the present program -- \$250 monthly bonus to all one year residents at least 65 years old -- indefinitely.

B. The Bonus as a Priority for State Funding

This proposal asserts that the bonus in its present form is a major priority and should be continued for all Alaskans despite the high cost. If our revenues were not dwindling at an everincreasing pace, we would look more favorably on this proposal. We fear, however, that other statewide needs such as roads, water and sewer, education, and health care will suffer if the bonus program continues in its present form. There are simply not enough oil dollars to meet all our needs. Many other State programs reward and assist elder Alaskans. We hope to continue funding these programs as well as a less expensive bonus program.

C. Continuing the Status Quo in FY 86

Although we are uncomfortable with the notion of continuing the program in its present form forever, we feel strongly that if the Legislature and the Governor cannot reach agreement on any other proposals during this session, the current bonus program should be extended for another year. We do not prefer this approach, but we do not want to end the program altogether if 120 days is not enough time to reach consensus on this important issue.

VII. The Immediate Impact on Public Assistance Eligibility

A. How to Protect the Bonus Income of Public Assistance Recipients

Federal and State law treat the longevity bonus payment

in a manner that results in a devastating form of "legal" discrimination for many senior citizens on public assistance. These laws require the senior citizen to apply for the longevity bonus. Then, these same laws reduce or eliminate the amount of public assistance payments, dollar for dollar. The senior citizens on public assistance, unlike the middle and high income seniors who receive the longevity bonus on top of all other income, realize no material gain in their income from receipt of the longevity bonus. Additionally, many of the seniors also lose their entitlement to public assistance medical benefits that the longevity bonus payment does not replace. The poorest of our seniors -- those who need the bonus the most -- are actually harmed by the Alaska longevity bonus.

This "catch 22" affects all seniors who fall into either of two categories:

1. Seniors who reached the age of 65 during 1984 through September 30, 1985, and who did not meet the unconstitutional residency requirements.
2. Seniors who reach the age of 65 after September 30, 1985, irrespective of their residency. This category would include all seniors who would have met the unconstitutional residency requirements.

The effect of this "catch 22" is that the federal government saves federal funds and Alaska's longevity bonus program becomes a cash benefit program for the middle and upper classes of seniors who need the money far less than the poor.

There are only two ways to extend the benefits of the longevity bonus program to our low income senior citizens:

1. create a means test longevity bonus program, or
2. create a "hold-harmless" provision in State public assistance statutes to ensure that the State makes up the difference in federal benefits lost and continues to pay State public assistance to individuals effected by the "catch 22."

The cost to the State would be:

HOLD-HARMLESS COSTS - FY86

	<u>Already Budgeted</u>	<u>Required Fiscal Note</u>
Federal (SSI) Payment	0	1,400,000
State (OAA) Payment	760,000	0
Non-nursing Home Medical	0	413,847
	<u>760,000</u>	<u>1,813,847</u>

If the Nursing Home Exclusion Amendment (see "B", page 13) is not adopted, then the hold-harmless fiscal note should be increased by \$514,982 for FY86.

STATUTE CHANGES

One Statute change would be needed to hold recipients harmless under all currently proposed longevity bonus programs:

Amend Article 4, AS 47.25.430f, to provide that

- (1) The Department must increase the amount of an individual's Adult Public Assistance payment by the amount of any reduction in assistance provided under Title XVI of the Social Security Act which occurs solely because of considering payments made under AS 47.45 as available income; and
- (2) Notwithstanding AS 47.25.435, in determining eligibility for Adult Public Assistance and the amount of Adult Public Assistance payment, the Department will not consider any payment made under AS 47.45 as income available to the applicant or recipient.

Note: Regardless of which longevity bonus proposal is enacted, the hold-harmless provisions above must have an effective date of July 1, 1985. If the means test proposal is enacted, these hold-harmless provisions should sunset on the effective date of the new act to protect funding level of adult public assistance programs.

B. Exclusion of Individuals in Nursing Homes from Eligibility for the Bonus

The bonus can preclude a poor elder from receiving Medicaid assistance while in a nursing home even though it does not offset the cost of care in the nursing home (approximately \$4000/month). Also, the federal government requires that the individual apply for the bonus to get Medicaid. While the State could hold

these individuals harmless at a cost of \$514,982 (General Fund), the Legislature could make nursing home residents ineligible for a bonus.

It should be emphasized that this suggestion is not intended to harm nursing home residents or to judge their worthiness for receipt of a bonus. Rather, it is intended to protect such elders from the exorbitant cost of nursing home care. Irrespective of personal income before entering a nursing home, 97% of Alaskans in nursing homes in the state eventually turn to Medicaid to pay their bills.

### VIII. COST INFORMATION

#### A. Long Term Costs

The following chart compares the cost of the four proposals in nominal dollars through fiscal year 2034. The chart shows that the general fund costs of both the annuity and stairstepping proposals eventually disappear whereas the means test and status quo proposals continue to need general funds. For the next 50 years, the total costs are as follows:

Annuity proposal	\$1.29 billion
Stairstepping proposal	\$1.13 billion
Means test proposal	\$3.20 billion
Status Quo	\$5.42 billion

The present value (the amount of funding necessary to endow the program today) of the cost of these proposals is:

Annuity proposal	\$620.02 million
Stairstepping proposal	\$496.88 million
Means test proposal	\$634.9 million
Status Quo proposal	\$879.78 million

#### B. Population Forecast

The cost chart is based on a forecast of Alaska's elderly population. This forecast may overstate the number of people who will actually participate in any of the proposed programs, at least in the near term. For example, the population forecast predicts 16,744 eligibles for FY 86, yet only 14,547 elders are currently receiving a bonus. Also, after 2010, the forecast assumes that the elder population remains constant, which does not account for death, migration, etc.

If the population projections do turn out to be too high, then the cost estimates are also too high.

-----MONTHLY PAYMENTS-----

-----POPULATIONS-----

-----ANNUAL COSTS-----  
(millions)

FISCAL YEAR	--MEANS TEST BILL--		-----ANNUITY BILL-----			65 & OVER	65 POPULATIONS		ANNUAL COSTS				MEANS TEST BILL
	MEANS TEST ALB	UNIVERSAL ALB	ALB TO PERSONS 65 BEFORE 1986	MAXIMUM POSSIBLE ANNUITY	RESIDUAL ALB		BEFORE 1986	AFTER 1985	BEFORE 1992	ANNUITY BILL <sup>a</sup>	STAIRSTEP BILL <sup>a</sup>	CURRENT LAW	
1986	\$250.00	\$100.00	\$250.00	\$11.92	\$238.08	16,744	15,039	1,705	16,744	\$75.2	\$50.2	\$50.2	\$50.2
1987	\$250.00	\$100.00	\$257.50	\$24.06	\$232.64	17,768	14,349	3,419	17,768	\$80.4	\$53.3	\$53.3	\$46.7
1988	\$250.00	\$100.00	\$265.23	\$39.05	\$226.18	18,769	13,660	5,109	18,769	\$85.0	\$56.3	\$56.3	\$48.6
1989	\$250.00	\$100.00	\$273.18	\$46.90	\$226.24	19,828	12,974	6,854	19,828	\$61.1	\$59.5	\$59.5	\$50.6
1990	\$250.00	\$100.00	\$281.38	\$56.27	\$225.11	20,913	12,293	8,620	20,913	\$64.8	\$62.7	\$62.7	\$52.4
1991	\$250.00	\$100.00	\$289.82	\$67.21	\$222.61	21,908	11,616	10,292	21,908	\$67.9	\$65.7	\$65.7	\$54.0
1992	\$250.00	\$100.00	\$298.51	\$79.93	\$218.58	22,849	10,943	11,906	20,839	\$70.4	\$62.5	\$68.5	\$55.3
1993	\$250.00	\$100.00	\$307.47	\$94.67	\$212.80	23,861	10,273	13,588	19,890	\$72.6	\$59.7	\$71.6	\$56.6
1994	\$250.00	\$100.00	\$316.69	\$111.73	\$204.96	24,799	9,606	15,193	18,823	\$73.9	\$56.5	\$74.4	\$57.7
1995	\$250.00	\$100.00	\$326.19	\$131.53	\$194.66	25,891	8,945	16,946	17,940	\$74.6	\$53.8	\$77.7	\$59.0
1996	\$250.00	\$100.00	\$335.98	\$154.20	\$181.70	26,863	8,291	18,572	16,873	\$73.9	\$50.6	\$80.6	\$59.9
1997	\$250.00	\$100.00	\$346.06	\$180.13	\$165.93	27,692	7,644	20,048	15,819	\$71.7	\$47.5	\$83.1	\$60.5
1998	\$250.00	\$100.00	\$356.44	\$209.76	\$146.68	28,657	7,012	21,645	14,934	\$68.1	\$44.8	\$86.0	\$61.3
1999	\$250.00	\$100.00	\$367.13	\$243.52	\$123.61	29,556	6,396	23,160	13,969	\$62.5	\$41.9	\$88.7	\$61.8
2000	\$250.00	\$100.00	\$378.15	\$281.92	\$96.23	30,511	5,799	24,712	13,031	\$54.9	\$39.1	\$91.5	\$62.5
2001	\$250.00	\$100.00	\$389.49	\$325.34	\$64.15	31,459	5,225	26,234	12,098	\$44.6	\$36.3	\$94.4	\$63.2
2002	\$250.00	\$100.00	\$401.18	\$374.26	\$26.92	32,440	4,676	27,764	11,193	\$31.5	\$33.6	\$97.3	\$64.0
2003	\$250.00	\$100.00	\$413.21	\$429.25	-	33,448	4,156	10,306	10,306	\$20.6	\$30.9	\$100.3	\$64.7
2004	\$250.00	\$100.00	\$425.61	\$498.97	-	34,483	3,666	9,438	9,438	\$18.7	\$28.3	\$103.4	\$65.4
2005	\$250.00	\$100.00	\$438.38	\$560.18	-	35,721	3,210	8,639	8,639	\$16.9	\$25.9	\$107.2	\$66.7
2006	\$250.00	\$100.00	\$451.53	\$637.63	-	37,130	2,788	7,850	7,850	\$15.1	\$23.5	\$111.4	\$68.3
2007	\$250.00	\$100.00	\$465.07	\$721.15	-	38,489	2,402	7,043	7,043	\$13.4	\$21.1	\$115.5	\$69.7
2008	\$250.00	\$100.00	\$479.03	\$820.68	-	40,309	2,050	6,359	6,359	\$11.0	\$19.1	\$120.9	\$71.9
2009	\$250.00	\$100.00	\$493.40	\$928.22	-	42,194	1,778	5,640	5,640	\$10.5	\$16.9	\$126.6	\$74.0
2010	\$250.00	\$100.00	\$508.20	\$1,047.88	-	44,012	1,449	4,950	4,950	\$8.8	\$14.9	\$132.0	\$76.1
2011	\$250.00	\$100.00	\$523.44	-	-	45,000	1,213	4,243	4,243	\$7.6	\$12.7	\$135.0	\$76.7
2012	\$250.00	\$100.00	\$539.15	-	-	45,000	1,003	3,669	3,669	\$6.5	\$11.0	\$135.0	\$75.6
2013	\$250.00	\$100.00	\$555.32	-	-	45,000	819	3,161	3,161	\$5.5	\$9.5	\$135.0	\$74.5
2014	\$250.00	\$100.00	\$571.98	-	-	45,000	658	2,698	2,698	\$4.5	\$8.1	\$135.0	\$73.5
2015	\$250.00	\$100.00	\$589.14	-	-	45,000	521	2,340	2,340	\$3.7	\$7.0	\$135.0	\$72.4
2016	\$250.00	\$100.00	\$606.82	-	-	45,000	405	1,997	1,997	\$2.9	\$5.7	\$135.0	\$71.3
2017	\$250.00	\$100.00	\$625.02	-	-	45,000	309	1,596	1,596	\$2.3	\$4.8	\$135.0	\$71.0
2018	\$250.00	\$100.00	\$643.77	-	-	45,000	231	1,320	1,320	\$1.8	\$4.2	\$135.0	\$70.7
2019	\$250.00	\$100.00	\$663.08	continues	-	45,000	169	1,078	1,078	\$1.3	\$3.2	\$135.0	\$70.4
2020	\$250.00	\$100.00	\$682.98	to	-	45,000	114	866	866	\$0.9	\$2.6	\$135.0	\$70.1
2021	\$250.00	\$100.00	\$703.47	increase	-	45,000	76	686	686	\$0.6	\$2.1	\$135.0	\$69.9
2022	\$250.00	\$100.00	\$724.57	-	-	45,000	48	533	533	\$0.4	\$1.6	\$135.0	\$69.6
2023	\$250.00	\$100.00	\$746.31	-	-	45,000	31	407	407	\$0.3	\$1.2	\$135.0	\$69.3
2024	\$250.00	\$100.00	\$768.70	-	-	45,000	18	304	304	\$0.2	\$0.9	\$135.0	\$69.0
2025	\$250.00	\$100.00	\$791.76	-	-	45,000	10	222	222	\$0.1	\$0.7	\$135.0	\$68.7
2026	\$250.00	\$100.00	\$815.51	-	-	45,000	5	150	150	\$0.0	\$0.4	\$135.0	\$68.4
2027	\$250.00	\$100.00	\$839.97	-	-	45,000	3	100	100	\$0.0	\$0.3	\$135.0	\$68.1
2028	\$250.00	\$100.00	\$865.17	-	-	45,000	1	63	63	\$0.0	\$0.2	\$135.0	\$67.8
2029	\$250.00	\$100.00	-	-	-	45,000	-	41	41	\$0.0	\$0.1	\$135.0	\$67.5
2030	\$250.00	\$100.00	-	-	-	45,000	-	24	24	\$0.0	\$0.1	\$135.0	\$67.2
2031	\$250.00	\$100.00	-	-	-	45,000	-	13	13	\$0.0	\$0.0	\$135.0	\$67.0
2032	\$250.00	\$100.00	-	-	-	45,000	-	7	7	\$0.0	\$0.0	\$135.0	\$66.7
2033	\$250.00	\$100.00	-	-	-	45,000	-	4	4	\$0.0	\$0.0	\$135.0	\$66.4
2034	\$250.00	\$100.00	-	-	-	45,000	-	1	1	\$0.0	\$0.0	\$135.0	\$66.1

NOTES:

TOTAL COSTS, 1986-2034:	\$1,287.0	\$1,131.0	\$5,418.9	\$3,199.2
CONSTANT 1985 DOLLARS, 1986-2034:	\$764.38	\$625.01	\$1,391.12	\$945.9
PRESENT VALUE, 1986-2034:	\$620.02	\$496.88	\$879.78	\$634.9

\* Persons 65 before 1986 grandfathered (i.e., stairstepping starts in 1986). Annual costs include three years of "front loading" (\$25.2 in '86, \$26.5 in '87, and \$27.7 in '88).

\*\* Persons 65 before 1992 grandfathered (i.e., stairstepping starts in FY 1992).

Although we think it is important to point out this data limitation to policy makers, we do not suggest that another set of data be used. Rather, we wish to only point out the conservative nature of the projections.

C. Cost of the Annuity Proposal

This particular chart shows the cost of the annuity program if an average participation rate of 30% is achieved, if 100% of each PFD check is deferred if the Legislature chooses to subsidize the program for the first three years, and if the annuity investment achieves a 3% real rate of return. The actual cost of the annuity program depends on several variables not easily predicted, in addition to population. The value of the dividend each year, the amount of subsidy provided each year, the cost of administering the program, and the real rate of return on the money invested all affect the overall cost of the program.

For example, if front-loading is provided every year and all other assumptions remain the same, the additional 50 year cost would be \$1.95 billion. Every time a variable is changed, the cost estimate also changes.

D. Cost of the Stairstepping Proposal

The stairstepping cost is based on the Adams proposal. If stairstepping began immediately, but the age of eligibility was only increased every other year, the cost of the program would be \$1,641.6 billion.

E. Cost of the Means Test Proposal

It is important to point out that under this proposal, more elders get the higher bonus until FY 2000. At that time, the percentage switches, since the value of money erodes over time.

F. Cost of the Status Quo Proposal

The cost of extending the current program for one year only would be \$0.2 million.

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# 1986 Ballot Measure No.3

## Questions and Answers About Proposed Longevity Bonus Alternatives

September 1986

Division of Strategic Planning

**OMB**

STATE OF ALASKA  
BILL SHEFFIELD, GOVERNOR

**STAFF PAPERS AND REPORTS**

OFFICE OF MANAGEMENT AND BUDGET

QUESTIONS AND ANSWERS  
ABOUT PROPOSED  
LONGEVITY BONUS ALTERNATIVES

By Gregg Erickson

September 1986

Division of Strategic Planning  
Office of Management and Budget  
State of Alaska

## CONTENTS

Introduction. -----	page 1
Questions and Answers About Proposed Longevity Bonus Alternatives. -----	page 2
<i>Appendix A: General Fund Costs of Proposed Bonus Program Alternatives, Fiscal 1988-2005.</i> -----	page 14
<i>Appendix B: Ballot Measure No. 3, Advisory Vote On Longevity Bonus Annuity Program.</i> -----	page 15
<i>Appendix C: Chapter 99, Session Laws of Alaska, 1985, An Act Relating To A Longevity Bonus</i> -----	page 16

## Introduction

In November 1986 Alaska's voters will be asked to advise lawmakers on the future of the Alaska longevity bonus program. The voter's pamphlet prepared by the Division of Elections contains a description of the ballot measure, including *pro* and *con* statements. This report provides a more detailed analysis of the alternative proposals, and why the legislature decided to put the matter before the electorate.

Gordon S. Harrison  
Associate Director  
September 1986

## QUESTIONS AND ANSWERS ABOUT PROPOSED LONGEVITY BONUS ALTERNATIVES

### *What is the Alaska Longevity Bonus?*

The bonus program pays \$250 per month to almost every Alaskan resident who is 65 or older and who has lived in the state for the one year immediately preceding the date of application.

### *How long has the state been making these payments?*

The program was established in 1972, and the first checks were sent out in January of 1973. Initially, the monthly check was \$100, but increases were granted in 1976, 1978, 1980, and finally in 1981, when the present level of \$250 per month was established. Until 1984, eligibility was restricted to persons who were present in Alaska during territorial days, and who had 25 years continuous residency in Alaska. In 1984, however, the residency requirement was reduced to one year, opening the program to most elderly Alaskans.

### *Isn't it pretty unusual for a state to pay its residents money just because they happen to be above a certain age?*

Alaska is the only state where age alone entitles a person to a cash benefit, but it is quite common for non-cash benefits or various subsidies to be awarded solely on the basis of age. For example, persons 65-and-over are entitled to an additional federal income tax deduction, and many states allow property tax credits to the elderly.

### *What purpose was the bonus supposed to serve?*

It was to provide elderly, longtime Alaskans with "an incentive to continue uninterrupted residency in the state." In 1972, only 2.3 percent of all Alaskans were 65 years of age or older, compared with 10 percent for the nation as a whole. The 1972 legislature concluded that the high costs and rigors of Alaska life were forcing "pioneers...to live out their retirement years in areas far away from the land they loved and nurtured,...[thus] depriving future generations of Alaskans of the benefits of their wisdom and experience." The lawmakers went out of their way to emphasize that the payments were not to be considered as any "form, type or manner of public relief," but rather a reward for hardships suffered during territorial days and an incentive to remain in the state.

### *If the purpose of the bonus program was to keep oldtimers from leaving, why did the state open the program to newcomers in 1984?*

In April 1984, in the case of *Vest v. Alaska*, the Alaska Supreme Court ruled that the residency requirements of the bonus program violated the equal protection provisions of the Alaska and U.S. constitutions. Rodney Vest, the plaintiff, had

established residence in Alaska in April 1959. Under the original law, Vest would never have been eligible to receive the bonus because he arrived in the state three months after it ceased to be a territory. In 1982, at the age of 67, Vest argued that it was unfair and unconstitutional to deny him the payments just because he was a relative newcomer.

The court agreed, explaining that "[i]t is [the] supposition that living in territorial Alaska makes an individual entitled to special *legal* stature that is impermissible. The federal Constitution prohibits states from making such determinations. The basic predisposition to take care of one's own -- and no one else's -- is no longer a permissible goal for a state that has joined the federal union." The court did not order the state to pay Mr Vest the bonus. Instead, it struck down the entire program. With the final Supreme Court decision in the Vest case coming in early April of 1984, the legislature had to produce some sort of constitutional replacement for the bonus in the final two months of the session, or see the program expire altogether.

Even though it never directly benefited more than about two percent of the state's population, the residency-based bonus program had enjoyed broad political support. Sudden financial dislocations to the 10,000 elderly receiving the bonus in early 1984 would not have been desirable under any circumstances; legislators had no trouble agreeing that it was particularly undesirable in a year when 51 of the 60 legislative seats were up for election. Although a number of other approaches were proposed, legislators soon decided that it was better to extend the bonus to the 5,000 elderly not then receiving the entitlement, than to cut off, "cold turkey," the 10,000 who were. A bill was passed which re-established the bonus as a program for almost everyone over 65 with one year of Alaska residency. (To avoid loss of federally funded welfare benefits, the legislature later removed the eligibility of persons in nursing homes.)

The new law was to be temporary, and by its own terms was to be repealed in June of 1985, though the next legislature put that date off into the indefinite future. A special committee was established, chaired by former Governor Jay Hammond, to report in early 1985 on the feasibility of replacing the bonus "with an annuity program, a needs based program, or a longevity program." Establishment of the Hammond committee and the limited life assigned to the newly universalized bonus reflected the view that the fundamental changes in the bonus program forced by the courts and growing costs required a major rethinking of this part of the state's policy toward the elderly.

*How much additional cost resulted from opening the program to everyone 65-and-over?*

The program cost \$27.5 million in fiscal 1983, the last full fiscal year of the residency-based program; in the first full fiscal year of the universalized program (FY 85) the cost was \$43.1 million, a 57 percent increase. Costs of the universal program (which we still have) are currently growing at a rate of about 6 percent per year. Some evidence suggests that the availability of the bonus has caused a

slight increase in elderly migration to Alaska, mostly by individuals with adult children in the state. But even without this effect other demographic factors suggest that the number of 65-and-over Alaskans will get larger, even if the state as a whole loses population. Unless there are program changes, OMB estimates that the bonus's share of the state's general revenues will grow, due to the combination of declining spending elsewhere and an expanding elderly population, from about 1.8 percent in fiscal 1986 to the neighborhood of 4 percent in fiscal 1990. The prospect of this fiscal growth has forced politicians to search for alternatives to the current bonus program.

*What alternatives have been considered?*

More than a dozen proposals have been advanced, but in general there have been four different approaches.

1. Phase-out the bonus over a relatively extended period, either by gradually reducing the monthly benefit (say, by \$25 per year), or by progressively raising the eligibility age. The latter approach was sometimes described as "stairstepping," and in 1985 was generally the approach taken by the House of Representatives

2. Transform the bonus into a welfare program. Only those elderly able to demonstrate "need" in relation to some measure of wealth or income would receive payments.

3. Two plans were advanced that would require recipients to provide some sort of public service work to maintain eligibility for the bonus, but would otherwise leave the universal elderly benefit unchanged.

4. Gradually replace the publicly funded bonus payment (which would be phased-out over a period of years) with the proceeds of an individually purchased annuity. (An annuity is a contract which guarantees the holder regular payments under specified circumstances, for example monthly payments after the holder reaches a certain age.) Funds for purchase of the annuity contract would come from the individual's own permanent fund dividend. Those who chose to keep their dividend would receive no annuity payments and after the phase-out, no bonus payments either.

The Hammond committee recommended a type of annuity plan tied to the Permanent Fund dividend, although a minority on the committee favored either a more straightforward phase-out of the bonus or its transformation into a public assistance program with a "needs" test for eligibility. In 1985, legislators were able to agree on phasing-out the bonus as a universal entitlement for elderly Alaskans, but could not agree on how to accomplish that objective.

The House supported a relatively uncomplicated phase-out, accomplished by restricting eligibility to individuals who reach 65 before January 1, 1988. Costs would begin to decline in 1988 as mortality gradually reduces the size of the eligible population. The Senate favored a version of the Hammond committee's annuity plan. The Senate would also phase-out payments from general revenue, though not as quickly as the House proposal. Costs under the Senate plan would continue to increase until about 1994. Individuals who had opted to enroll in the annuity part of

the Senate plan (and had given up their dividends) could eventually receive annuity payments comparable to the old bonus payments.

After the two sides had been deadlocked for several weeks, they adopted both ideas into law, but made neither effective until the other is repealed. The idea was that one or the other plan would be repealed in 1987. To help the 1987 legislature decide, the advice of the voters will be solicited at the November 1986 election. Until the legislature acts again the current bonus program -- with its growing population of beneficiaries -- remains on the books.

*So in November voters will be choosing between the Senate's plan and the House's plan?*

Not exactly. The ballot measure will briefly describe both proposals, and note that both were adopted into law but that neither will take effect unless the legislature chooses one of them. Then it will ask "Should the legislature adopt the annuity option?" -- yes or no.

*But if a majority votes "no" on the Senate's annuity plan, won't the House plan be put into effect?*

Not necessarily. Although the legislature's actions imply that a "no" vote is a vote for the House plan, the members of the 1987 legislature may see it only as a vote against the Senate approach. Even an unambiguous "yes" vote does not insure that the legislature will act to put the annuity phase-out plan supported by the Senate into effect. This is only an advisory ballot; regardless of what voters may intend by voting "yes" or "no," legislators are legally free to disregard the results of the advisory ballot.

*Why didn't the legislature put both options directly before the voters, and have whichever plan the voters approved become law?*

It is not clear why the legislature decided to put the question to the voters as a "yes" or "no" on the Senate proposal rather than a choice between the alternatives on which the legislature deadlocked. We do know why the vote is advisory only: According to attorneys, allowing the voters to actually choose which proposal becomes law would be an unconstitutional and illegal delegation of legislative power.

*Who actually wrote the language of the ballot measure?*

The legislature included language for the ballot measure in the 1985 act. The language that will appear on the ballot is slightly different, having been revised for clarity by the lieutenant governor, the state's chief elections officer. The wording that will appear on the ballot is found in Appendix B. The original ballot language can be found on page 12 of the current longevity bonus law, reprinted here in Appendix D.

*How would the bonus be changed if the 1987 legislature adopts either of the two proposals?*

Let's start with the House proposal since it is simpler. If you were born before January 1, 1923, the bonus program will continue for you as if nothing had changed. If you were born on or after that date you will get nothing. Looking at it another way, if you turn 65 before 1988, you are grandfathered "in;" if your 65th birthday comes in 1988 or anytime after, you are "out."

Among the effects of the House plan is that everyone getting the bonus now will remain eligible in the future. Another effect of this arrangement is that the minimum age to qualify for the bonus will increase by one year each year. At the beginning of 1989, eligibility will be restricted to those 66 and older; at the beginning of 1990, the only persons eligible will be age 67 and older. By the year 2034 the eligibility age will have risen to 111. Somewhere around that time the last eligible individual in Alaska will have died, and the program will end.

*What about a person born before 1923 who just arrived in Alaska? Do newcomers get the bonus too?*

Yes, after they have lived in Alaska for the required one year. A person arriving in Alaska in 1990 at age 70, for example, would be eligible sometime in 1991, after he or she had established residency by living here for one year.

*How about an eligible person who leaves Alaska and then returns?*

Before receiving each month's check, recipients certify with a postcard that they are physically present in Alaska. Bonus recipients who plan to be absent from the state for more than 30 days are required to notify the state so that payments can be stopped. Payments immediately resume when the person returns if the total time voluntarily spent out of state during the preceding 12 months was less than 90 days. If the total voluntary absence is greater than 90 days the individual is treated like any other newcomer, and must wait a full year to again qualify.

Until 1985, the limit on voluntary absences was 180 days. Analysts have long noted a seasonal cycle in bonus payments with peaks occurring in late summer and troughs in late winter which were believed to reflect increased travel outside the state during the colder months. After shortening the length of a permitted absence, several hundred otherwise eligible recipients dropped out of the program, suggesting that some elderly Alaskans may be willing to forgo the financial benefits of the bonus in favor of maintaining the practice of prolonged winter trips out-of-state.

*Would this 90 day limit also apply under the Senate plan?*

Yes. With respect to people born before 1923 (e.g., people who reach 65 before 1988) the two proposals and the current law are identical -- those people are grandfathered and for them it will be as if the law were never changed. People born after 1937 (e.g. people now younger than 49) would also be treated identically under either the House or Senate proposal -- they will never get a bonus.

*The differences between the Senate and House plans must be particularly important for people born between 1923 and 1937, since the choice doesn't seem to matter for anybody else.*

The only individuals with a direct personal stake in the choice between the two alternatives for phasing-out the bonus are people born between 1923 and 1937, i.e., people who are now between age 49 and age 63. Under the House plan they will never receive a bonus. Under the Senate plan they would receive a bonus after they turn 65, but the amount of the bonus check would be reduced each year in step with the increasing maximum possible annuity payment obtainable under the Senate annuity proposal.

In a general sense, of course, everyone has a stake in the choice of plan, as citizens in a more or less just society and as taxpayers whose money is redistributed to the elderly by means of the bonus program.

*What is "the maximum possible annuity payment" under the Senate plan, and how does it relate to the bonus that the Senate plan would give to persons who become 65 in 1988 or later?*

The Senate plan would create an optional annuity purchase program funded with permanent fund dividends. If you chose the maximum level of participation in the program (which would be available only to those born in 1923 or later) you would receive no dividend. Instead, the state would use your money to establish an annuity account on your behalf. Interest earned on your investment would accrue to the account, and on reaching age 65 the money in the account would be used to purchase an annuity, probably from a large insurance company, with you as the beneficiary. For the rest of your life you would get a fixed monthly annuity check. The amount of the declining bonus received by persons with birth dates in 1923 or later is determined by amount of the maximum possible monthly straight life annuity payment for a person giving up all possible permanent fund dividends, subtracted from \$250. The idea was that the combined bonus and annuity of those who made the maximum contributions would never fall below \$250 per month.

For example, a person turning 65 in 1988 (i.e., born in 1923) would have had the opportunity to give up only one dividend, of about \$600. The maximum straight life annuity that could be purchased with \$600 for a person age 65 would be about \$5 per month, so the bonus in 1988 for persons turning 65 in that year would be about \$245 per month.

A person turning 65 in the year 2000 (i.e., someone now age 51) could have contributed a maximum of 13 full permanent fund dividends. OMB estimates that the maximum annuity obtainable from this investment in 2000 will be about \$164 per month. Thus the bonus received in 2000 by everyone between the ages of 65 and 77 would be \$86 (\$250 minus \$164). This bonus would be received regardless of whether or not the individual had participated in the proposed annuity program. As shown in the table below, sometime around 2003, the maximum annuity will exceed \$250 per month. Thereafter no bonuses will be paid to persons born in 1923 or

later. The table is necessarily based on guesswork concerning future permanent fund dividends, annuity investment earnings, and the implementation of the annuity mechanism in the Senate bill. The exact amounts will not be known until a few months before they are paid.

Table 1.  
SENATE ANNUITY PLAN  
Estimated Monthly Bonus Payments For Persons  
Reaching Age 65 in 1988 or Later (Born in 1923 or Later)

<u>Fiscal Year</u>	<u>Maximum Monthly Annuity</u>	<u>Monthly Bonus</u>
1988	\$5	\$245
1989	\$12	\$238
1990	\$29	\$231
1991	\$27	\$223
1992	\$36	\$214
1993	\$46	\$204
1994	\$57	\$193
1995	\$70	\$180
1996	\$85	\$165
1997	\$101	\$149
1998	\$120	\$130
1999	\$141	\$109
2000	\$164	\$86
2001	\$190	\$60
2002	\$219	\$31
2003 and after	further growth	\$-0-

Remember, persons who reach 65 before 1988 are not affected by the declining bonus. They continue to get the full \$250 per month under either the House or Senate proposals.

*Who will be responsible for managing my annuity account investment?*

The state Commissioner of Revenue.

*Suppose I put my dividend into the annuity. Can I get my money out if I have a sudden financial emergency?*

No. Once invested in the state sponsored annuity your money will not be available to you until you become 65, and then only as monthly annuity payments.

*Do I lose my annuity if I leave the state?*

No. If you invested in the annuity program and are 65 or over, you are entitled to your monthly annuity check, regardless of where you reside. The checks won't necessarily start coming by themselves, however; you will probably have to apply for them.

*What if I should die? Will my survivors get anything?*

Persons contributing to the annuity will be able to choose a survivor benefits option, but doing so will reduce the monthly annuity amount that you will receive. The declining bonus amounts shown in Table 1 are calculated using the "maximum possible straight life annuity," which is obtained by foregoing all dividends and not choosing the survivors option. The annuity investments of those who die before age 65, without having chosen the survivor option will be divided equitably among the accounts of those who survive.

*Assuming the Senate plan is adopted, can I avoid paying income taxes on my permanent fund dividend by giving it to the state to put in my annuity account?*

No. Regardless of whether you take the dividend in cash or have it put in your annuity account, you still will be required to report it as taxable income on your federal income tax return.

*What about the interest earned by my annuity account or the monthly annuity payments? Would taxes be due on either of these?*

Under the current federal income tax law, the interest earned on your annuity account is not taxable as it accrues. Any tax liability on the interest accruals is avoided through wording in the statute that denies any legal obligation to pay anything to you. When you do receive your annuity payments, however, you will have to pay taxes on the part of each annuity payment that is paid from the interest earnings on your contributions.

*Are you saying that the state is not legally bound to pay me back any of the permanent fund dividend money I might deposit in my annuity account?*

That is correct. The law says that notwithstanding anything else, the state "is not obligated to provide annuity payments for annuity credits...." (AS 43.23.130 .) Without this language you would be required to pay taxes each year on the interest accruing to your account. According to the attorney general's office, the state's deferred compensation plan for its own employees operates under similar language.

*How would the proposed revisions to the federal tax code affect the Senate's annuity plan?*

The effects of the new tax bill on the annuity program are not yet clear.

*Could I take my permanent fund dividend to an insurance company right now, and use it to buy an annuity much like the one that the state would be offering under the Senate plan?*

Yes, many such plans are available from insurance companies, banks, and other institutions.

*Will the state annuity proposed under the Senate plan be more attractive than plans now available from insurance companies and others?*

Alaskans will choose or not choose to give up their dividend based on the details of the annuity program available from the state, the earnings rate that they expect to receive from the state, and how well the program is marketed. None of these details are known, but there are reasons to anticipate that few people will opt for the annuity.

*Why might the annuity plan not be popular?*

A dividend recipient must first decide that he or she wishes to devote the proceeds of the dividend to obtaining additional retirement security. National economic data indicates that Americans devote less than 10 percent of incremental income to savings as a whole. Retirement saving, such as the proposed annuity plan, is a smaller subcategory. Demographic and economic factors suggest that the marginal savings rate in Alaska is lower, although surveyed recipients of the 1982 and 1983 dividends reported that they devoted from 18 to 20 percent of those dividends to savings generally. In any event, the percentage of their dividend that most Alaskans would wish to save is likely to be less than the minimum 25 percent annuity contribution allowed under the Senate proposal.

But if a dividend recipient should wish to devote as much as 25 percent of the dividend to retirement savings, will he or she prefer the state's annuity plan over the alternatives? Insurance industry sources, though naturally disposed to favor their own annuity products, are confident that few will choose the state plan over their own offerings, in part due to the inaccessibility of the individual's investment under the Senate plan. "When I sell annuities to people, the one thing everyone asks about is the ability to get their money out in an emergency," noted one agent. "I just don't think anyone will be very interested in a plan that doesn't have that escape hatch, even if it did offer a better earnings rate."

These factors might be overcome by aggressive marketing or relative ease in obtaining the state sponsored annuity. If the Senate annuity plan is adopted, however, a section along the following lines will have to be added to the permanent fund dividend application.

SECTION 11.

(CHECK ONLY ONE BOX.)

- A. I wish to receive 100 percent of my dividend as cash in a check from the state  
 *If you checked box A you have completed your dividend application. Be sure it is properly signed and witnessed and received by the Department of Revenue or postmarked before June 30, 1987.*
- B. I wish to have all or part of my dividend used to create an annuity account which will be maintained for me by the state.  
 *If you checked box B, you must use the boxes in Section 12 on the next page to choose the options you prefer.*

SECTION 12.

A. How much of your dividend should go to you as cash and how much to your annuity account  
(CHECK ONLY ONE BOX).

- 100 percent to my annuity account.
- 75 percent to my annuity account, 25 percent to me as cash in a check from the state.
- 50 percent to my annuity account, 50 percent to me as cash in a check from the state.
- 25 percent to my annuity account, 75 percent to me as cash in a check from the state.

B. Indicate below whether or not you wish to choose the survivor's option. Remember, you may not change your choice once an annuity credit is issued to your account.

(CHECK ONLY ONE BOX).

- I do not want the survivor's option. I understand that my survivors will receive nothing from my annuity should I die before reaching age 65.
- I want the survivor's option. I understand that my annuity payments on reaching age 65 will be reduced as a result of this choice.

Experts will no doubt word the application differently. Even so, the natural inclination of most applicants will be to choose the cash and skip the rest.

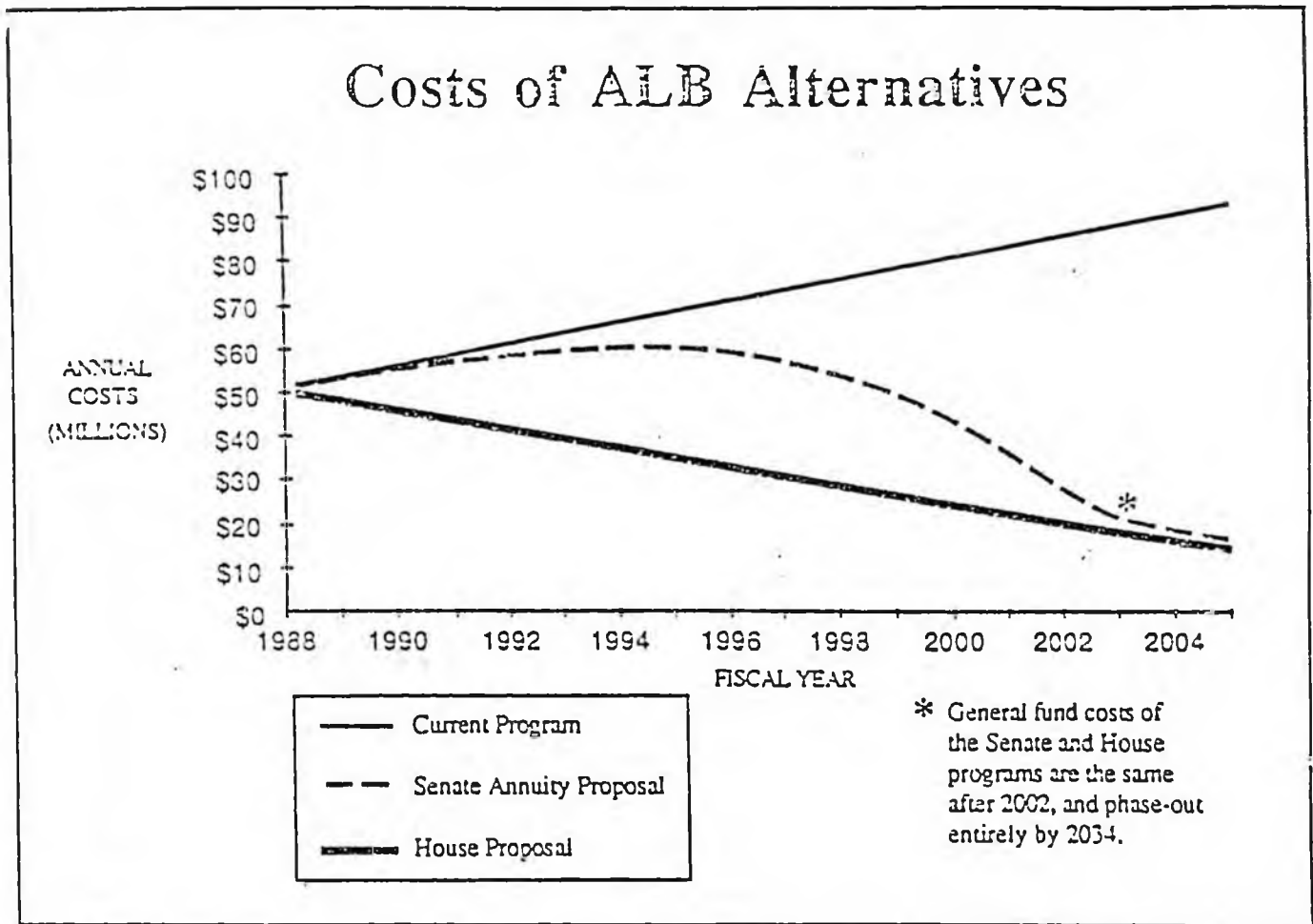
*Will a shortage of annuity participants create any problems?*

The administrative costs of the annuity program are to be deducted from the annuity investment fund. These deductions will likely be a proportionately greater burden if relatively few Alaskans choose to participate in the annuity program.

*What about the cost to the taxpayers? The Senate plan is better for folks who are now 49 to 63, but doesn't that also mean it is going to cost more?*

Yes, because it pays bonuses to those younger individuals the Senate annuity plan will cost more than the House approach, especially during the 1990s. For example, ON<sup>R</sup> estimates that in 1995 the cost of the House program will be \$34.6 million, compared with \$59.2 million for the Senate bill in that year. After about 2002, the declining bonuses which the Senate program will pay to these younger individuals will have been eliminated by the increasing maximum annuity, so the costs of both programs will be the same after that year. The total costs through the year 2002 are \$521 million for the House plan, \$774 million for the Senate plan, and \$1,026 million for the current law. Under either the House or Senate program all costs will end by 2034. Here is a chart showing the annual estimated costs of the House and Senate alternatives and the costs of the current law if it is left unchanged. The annual costs are also shown in the Table in Appendix A.

Chart 1



*What happens if the permanent fund dividends are eliminated sometime in the future?*

Under the Senate proposal, permanent fund dividends play a critical role in the phase-out of bonus payments. Indeed, if the dividends were eliminated in 1987, the result -- under the Senate proposal -- would be an indefinite continuation of the bonus. In the Senate plan the declining dividend going to those born in 1923 or later is determined by subtracting the maximum possible monthly annuity from \$250. But what if the maximum possible annuity is zero, as it would be if the dividend program were eliminated in 1987? In that case the bonus of those born in 1923 and later would never decline below \$250 per month, and no phase-out would occur. Costs of the Senate program would then be the same as costs of continuing the current program.

Elimination of the dividends in later years would mean that the maximum possible monthly annuity would grow much more slowly than anticipated, and the bonuses received by those born in 1923 or later would decline more slowly than shown in Table 1. As a result, the costs of the Senate plan would be greater than the amounts shown in Chart 1 and Appendix A, though still less than the costs of continuing the current program.

*Assuming the Senate plan were adopted, doesn't the tie between the dividend and the annuity lock the state into the dividend program in the future?*

That argument has been made. As a legal matter, the legislature would remain perfectly free to eliminate either the dividend, the bonus program, or both at any time it chose. As a practical matter, the connection between the two programs under the Senate proposal may make the dividend politically more difficult to eliminate. Some see that as a good result, others the opposite.

## APPENDIX A

### General Fund Costs of Proposed Bonus Program Alternatives

-----millions of dollars-----

<u>Fiscal Year</u>	<u>Costs of House Proposal</u>	<u>Costs of Senate Annuity Proposal</u>	<u>Costs of Current Law</u>
1988	49.3	49.9	49.9
1989	47.7	52.4	52.7
1990	45.5	54.8	55.6
1991	43.3	56.6	58.2
1992	41.1	57.9	60.7
1993	38.9	58.9	63.4
1994	36.7	59.2	65.9
1995	34.6	59.2	68.8
1996	32.5	58.2	71.4
1997	30.3	56.1	73.6
1998	28.2	53.2	76.1
1999	26.1	49.1	78.5
2000	24.1	43.7	81.1
2001	22.1	36.8	83.6
2002	20.2	28.2	86.2
2003	18.3	18.3	88.9
2004	16.5	16.5	91.6
2005	14.8*	14.8*	94.9†

\*Annual general fund costs continue declining, and reach zero by about 2034.

†Annual general fund costs likely to continue increasing.

## APPENDIX B

### Ballot Language For Advisory Vote on Longevity Bonus Annuity Program

The Fourteenth Alaska State Legislature considered two alternatives to the present longevity bonus program. Both were adopted into law, but neither will take effect unless the legislature chooses one of them. The legislature has asked for an advisory vote of the public on the annuity option which is described below.

The annuity option provides that every individual who reaches age 65 by January 1, 1988, including those already receiving the bonus, would receive a longevity bonus payment of \$250 per month. In addition, a person under age 65 on January 1, 1988, could participate in an optional annuity program by depositing all or part of his or her permanent fund dividends in an account held by the state. Upon reaching age 65, a person would receive a monthly payment in an amount determined by how much was contributed to the account. The annuity payments would be supplemented with declining longevity bonus payments paid for with general funds until the annuity accounts were large enough to provide monthly payments of \$250 a month.

The second option provides that every individual who is 65 years old by January 1, 1988, including those already receiving the bonus, will receive a longevity bonus payment of \$250 per month, but that anybody younger than age 65 by January 1, 1988, would not be eligible for benefits.

Should the legislature adopt the annuity option?

YES ( )      NO ( )



Official Business

# Alaska State Legislature

## House

P.O. BOX V  
State Capitol  
Juneau, Alaska 99811

### M E M O R A N D U M

TO: All Members,  
House of Representatives

FROM: Representative Fran Ulmer

DATE: May 13, 1987

RE: Longevity Bonus Proposals

Attached are selected figures comparing the annual and cumulative costs of each Longevity Bonus Proposal offered this session. This memorandum should replace a similar one handed out on May 12, 1987.

Please note I have posed a number of questions that should be considered in evaluating these proposals. In addition, a House Research report is attached which shows the effects of changing the distribution of earnings (40/30/30 and 50/50 Real Income Split) on the Senate's annuity/bonus reduction proposal (CSSB 56).

## ANNUAL AND CUMULATIVE COSTS

## LONGEVITY BONUS PROPOSALS

<u>PROPOSAL</u>	<u>1988</u> (annual)	<u>2005</u> (annual)	<u>2005</u> (cum)
Current Program.....	49.9	94.9	1,301.1
Sund Proposal: Income Based With No Cutoff Date.....	43.8	59.6	889.5
Annuity Proposal CSSB 56.....	51.2	14.8	817.0
Reiger Proposal 1/1/88 cutoff CSHB 151 (Fin).....	49.3	14.8	570.2
Ulmer Proposal Bonus Reduction With Needs-based Program.....	44.9	0	408.7
\$25,000 Income Limit.....	43.1	9.2	402.9
\$20,000 Income Limit.....	41.8	8.0	370.3
Governor's Proposal HB 151.....	34.5	7.4	324.3
Bonus Reduction For All Seniors.....	44.9	0	257.3

Current Program: All persons 65 years of age or older receive \$250 per month for the remainder of their lives.

Sund Proposal: Income Based With No Cutoff Date: All persons 65 years and over would be eligible to receive a monthly Bonus of \$250 if their income is \$20,000 or less. Persons with incomes greater than \$20,000 and less than \$25,500 would be eligible for a reduced monthly Bonus, and persons with incomes greater than \$25,500 would be ineligible.

Annuity Proposal: CSSB 56:

- Grandfather Group: individuals who turn 65 by January 1, 1988 will receive \$250 until their death.
- The Reduced Bonus Group: if you turn 65 after January 1, 1988 and before 2003 you qualify for this group. The senior that turns 65 receives a reduced Bonus based on earnings from an annuity account. The Bonus is reduced each year by the maximum straight-life annuity payment that would be due a 65 year-old who had invested all PFDs after Dec. 1987 in an annuity account. For example, the keystone senior is the person that turns 65 after January 1, 1988 - that person would have set aside one PFD. That person would be entitled to \$8 dollars from the annuity account each month plus a Bonus of \$242 each month which amounts to a combined total of \$250 per month. Next year, that person sets aside another PFD and now earnings from the annuity account equals \$9 per month. \$17 (\$8 + \$9) is now subtracted from \$250 - the Bonus is \$233, and so on until the Bonus reaches zero in 2003.

Individuals who do not deposit PFDs or other money in the annuity account would receive a reduced Bonus each month based on the above reductions.

- No Bonus Group: after 2003, if you did not deposit money in an annuity account (or even if you did) you would not receive a Bonus.

Reiger Proposal: 1/1/88 Cutoff: CSHB 151 (Fin): All persons 65 years of age or older by January 1, 1988 receives \$250 per month for the remainder of their lives.

Ulmer Proposal: Bonus Reduction With Needs-Based Program: All persons 65 years or older with incomes of \$20,000 or less would receive a Bonus of \$225. Persons with incomes greater than \$20,000 would receive a monthly Bonus of \$225 in FY 88; in subsequent years, the Bonus amount would be reduced by \$25 each year until it reaches zero by FY 97. Once the Bonus amount reaches zero, both programs end.

\$25,000 Income Limit: \$25,000 income limit;\$250 Bonus. Persons must turn 65 years prior to January 1,1988 to be eligible for the Bonus. Persons with incomes of \$20,000 or less would receive a monthly Bonus of \$250; persons with incomes greater than \$20,000 but less than \$25,000 would receive a reduced monthly Bonus varying between \$25 and \$225; persons with incomes greater than \$25,000 would be ineligible.

\$20,000 Income Limit: \$20,000 income limit;\$250 Bonus. Persons must turn 65 years prior to January 1,1988 to be eligible. Persons with incomes of \$20,000 or less would receive a monthly Bonus of \$250; persons with incomes greater than \$20,000 would be ineligible.

Governor's Proposal:HB 151: House Bill 151 would provide a Bonus only to individual who turn 65 prior to January 1, 1988 and who have an adjusted gross income of less than \$25,500. The Bonus amount would vary from \$200 to \$17 per month depending upon the recipient's income.

Bonus Reduction: All persons 65 years or over would be eligible to receive the Bonus. The Bonus amount would start at \$225 per month in FY 88 and be reduced \$25 each year until reaching zero in FY 97. (This proposal has also been referred to as Phase-out).

## ISSUES

1. What should be (if any) the cutoff date for receipt of the Bonus?
2. Should receipt of the Bonus be based on age or date one turns 65?
3. The Annuity option (CSSB 56) is based on current projections of PFDs in terms of reducing the Bonus and ending the program. What if the legislature opts for a different distribution split of the earnings (e.g. 40/30/30 or 50/50 Real Income)? If the legislature agrees on a different split of earnings, then the annuity may have to be amended to include an actual schedule of Bonus payments.
4. The annuity option (CSSB 56) is based on a 30 percent forecast. What happens under a mean forecast?
5. Will a voluntary annuity program be used; will it benefit lower income seniors? The major problems with the Senate proposal are:
  - The poor and needy cannot be expected to defer.
  - Those uncertain that they will stay in the State will take PFD and chance losing the ALB.
6. Individuals opting for the annuity program (CSSB 56) can only withdraw funds from their annuity account if the commissioner gives permission. Should the annuity account be more flexible?



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

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May 12, 1987

MEMORANDUM

TO: Representative Fran Ulmer

ATTN: Dennis Burns

FROM: Karen Oakley--  
Legislative Analyst

RE: Projected Costs of the Longevity Bonus Program Under Senate Bill 56  
Research Request 87-303

You asked us to project the costs of the Alaska Longevity Bonus (ALB) Program if modified by the Committee Substitute for Senate Bill 56 offered by the Senate Judiciary Committee [CSSB 56 (Jud)] and dated April 1, 1987 (Attachment A). Committee Substitute for Senate Bill 56 would set a schedule for reducing the amount of the monthly bonus paid to all persons turning 65 years of age after January 1, 1988; the bill would also establish an optional program wherein all persons eligible for a Permanent Fund Dividend (PFD) could elect to set aside each PFD in an annuity account. The relationship between the ALB program and the annuity program is this: the schedule for reducing the bonus amount will be determined by the maximum possible straight life annuity payment under the annuity program. Committee Substitute for Senate Bill 56 (Jud) defines how this maximum possible straight life annuity payment is to be calculated.

Under earlier versions of SB 56, the bonus amount was defined as:

. . . \$250, minus the maximum possible straight life annuity for a person 65 years of age under the annuity program . . .

Committee Substitute for Senate Bill 56 (Jud) now explains that:

. . . The maximum possible straight life annuity equals the amount a person would receive if that person became 65 on January 2, 1988, and contributed 100 percent of all permanent fund dividends or the cash equivalency to the annuity program for every year after December 31, 1987. However, for the purposes of this section the maximum possible straight life annuity may not exceed the amount that a person turning 65 in the current year would receive if that person had contributed 100 percent of all permanent fund dividends or the cash equivalency to the annuity program for every year after December 31, 1987.

Thus, to determine what the bonus amount will be in any year, CSSB 56 (Jud) requires that two maximum possible annuity payments be calculated and compared:

Case A: the payment due a person turning 65 years of age in the current year that has contributed all PFDs received after January 1, 1987 to an annuity account; and

Case B: the payment due a person who turned 65 years of age on January 2, 1988 and who contributed each PFD received after January 1, 1987 to an annuity account.

Committee Substitute for Senate Bill 56 (Jud) specifies that in determining the bonus amount, the maximum possible annuity payment will be the lesser of the amounts paid under the two cases.

In Case B, the individual has an annuity account for each PFD, and the annuity payment received by this individual is the sum of the annuity payments derived from each such account. In calculating the total annuity payment made to this individual, we have assumed that the PFD is deposited into an annuity account in October of each year, accrues interest at a rate of 9 percent through the end of the fiscal year, and that monthly annuity payments begin on July 1. The life expectancy value used to calculate the annuity payment due the individual who turned 65 on January 2, 1988 changes each year.

In Table 1, the maximum possible annuity payments under Case A and Case B are compared based on March 19, 1987 projections of future PFDs by the Permanent Fund Divided Corporation. Only in the first year that annuity payments are made--FY 90--does the amount due the person who turned 65 on January 2, 1988 exceed the amount due the person turning 65 in the current year, and the difference is only a few cents. Because the annuity payments possible under Case B are lower than under Case A, the bonus amount in any year will be greater under Case B, and it will take longer for the bonus program to end. If the bonus amount is calculated using the annuity payable to the person turning 65 in the current year, the bonus program would end in about 2002 because in that year, the annuity amount is projected to exceed \$250. Using the bonus reduction schedule dictated by Case B, the bonus program would not end until about 2004.

In Table 2, the annual and cumulative costs of the ALB program under CSSB 56 (Jud) are compared to the costs of the current program and various other proposals to modify the program. Figure 1 depicts the annual costs of CSSB 56 (Jud), the current program, and CSHB 151 (Fin), which modifies the current program by requiring all recipients to turn 65 years prior to January 1, 1988; Figure 2 depicts the cumulative costs.

Representative Ulmer  
May 12, 1987  
Page 3

Because the bonus amount is predicated on annuity accounts built from PFDs, projections of the costs of the ALB program under CSSB 56 (Jud) are necessarily sensitive to the projections of future PFDs amounts. Various proposals to change the proportion of Permanent Fund earnings available for dividends have been considered by the legislature this year. To provide an indication of how changes in the PFD amounts will affect the ALB program under CSSB 56 (Jud), we have projected the costs of the ALB program using PFD projections under two scenarios:

**40%-30%-30%:** 40 percent of the earnings go to dividends, 30 percent to inflation proofing, and 30 percent to reserves; and,

**50%-50%:** 50 percent of the earnings go to dividends and 50 percent to the General Fund after full inflation proofing.

(See House Research Memorandum 87-174 for further information on these scenarios.)

Figure 3 compares the annual costs of CSSB 56 (Jud) using these differing PFD projections to the costs of the current program and the program under CSHB 151 (Fin). Figure 4 compares the cumulative costs. The effect of both the 40-30-30 and 50-50 proposals is to reduce the PFD amount in comparison to the current program. Because the PFD amounts determine the maximum possible annuity payments which in turn dictate the bonus amount, the longevity bonus program would cost more and take longer to end if dividends are reduced.

The link between the PFD program and the ALB program established by CSSB 56 is forged solely to provide a formula for reducing the bonus amount--ALB recipients are not required to set aside their PFDs in an annuity. The fact that the two programs are linked adds considerable uncertainty to the bonus program as modified by CSSB 56. One option for accomplishing what CSSB 56 does--but without the uncertainties caused by the link with the PFD program--would be to simply replace the relevant phase-out language in the bill with a schedule for reducing the bonus amount.

I hope you find this information useful. If you need any additional information, please let me know.

Attachments

TABLE 1

Amount of the Monthly Annuity Payments Possible from  
Investment of Permanent Fund Dividends in Annuity Accounts

No Change in the Permanent Fund Dividend Program

Fiscal Year	Dividend Received	CASE A			CASE B			
		Annuity Balance at Interest Rate of 9.0%	Monthly Annuity Payment	Monthly Longevity Bonus Amount	Balance of prior year's annuity account on July 1	Payment from prior year's account	Combined Monthly Annuity Payment	Monthly Longevity Bonus Amount
1989	\$794.00	\$847.60			\$847.60			
1990	855.00	1,836.59	\$8.37	241.63	912.71	8.53	8.53	241.47
1991	914.00	2,977.58	18.13	231.87	975.70	9.37	17.91	232.09
1992	913.00	4,220.19	29.40	220.60	974.63	10.24	28.14	221.86
1993	923.00	5,585.31	41.67	208.33	985.30	10.46	38.60	211.40
1994	991.00	7,145.88	55.14	194.86	1057.89	10.83	49.44	200.56
1995	1,071.00	8,932.30	70.55	179.45	1143.29	11.93	61.37	188.63
1996	1,154.00	10,968.10	88.19	161.81	1231.90	13.26	74.64	175.36
1997	1,244.00	13,283.20	108.29	141.71	1327.97	14.71	89.35	160.65
1998	1,340.00	15,909.14	131.14	118.86	1430.45	16.35	105.69	144.31
1999	1,442.00	18,880.30	157.07	92.93	1539.34	18.20	123.89	126.11
2000	1,550.00	22,234.15	186.40	63.60	1654.63	20.27	144.17	105.83
2001	1,653.00	25,999.80	219.52	30.48	1764.58	22.61	166.77	83.23
2002	1,759.00	30,217.51	256.70	0.00	1877.73	25.07	191.84	58.16
2003	1,870.00	34,933.32	298.34	0.00	1996.23	27.77	219.61	30.39
2004	1,986.00	40,197.37	344.90	0.00	2120.06	30.75	250.37	0.00
2005	2,107.00	46,064.35	396.87	0.00	2249.22	33.97	284.34	0.00

Estimates of monthly annuity payments based on Alaska Permanent Fund Dividend Corporation projections of dividend payment (February 28, 1987 Financial Statement) and an interest rate of 9 percent.

Life expectancy values were provided by the Alaska Department of Labor, Demographic Report No. 1, December 1986.

Prepared by the House Research Agency, May 1987 (87-303A; 370330-10).

TABLE 2  
Comparison of Annual and Cumulative Costs between the Current Longevity Bonus Program and Various Proposals

Fiscal Year	Current Program	January 1, 1988 Cutoff Reiger Proposal	HB 151 Governor's Proposal	HB 151 Modifications		Bonus Reduction	Bonus Reduction With Needs	Needs Based No Age Cutoff	CSSB 56 (Jud) Bonus Reduction/ Annuity
				\$25,000 Income Limit	\$20,000 Income Limit				
				Annual Cost	Annual Cost				
1988	\$49.9	49.3	\$34.5	\$43.1	\$41.8	\$44.9	\$44.9	\$43.8	\$49.9
1989	52.7	47.7	28.8	35.8	33.4	42.1	45.8	39.8	52.7
1990	55.6	45.5	27.1	33.7	31.9	38.9	46.7	41.3	55.2
1991	58.2	43.3	25.4	31.6	29.4	34.9	46.8	42.8	57.1
1992	60.7	41.1	24.0	29.8	27.5	30.4	46.9	44.3	58.5
1993	63.4	38.9	22.3	27.6	25.3	25.4	46.0	45.4	59.6
1994	65.9	36.7	20.9	25.9	23.9	19.8	45.5	46.8	60.1
1995	68.8	34.6	19.2	23.9	21.8	13.8	44.1	47.9	60.4
1996	71.4	32.5	17.7	21.9	19.8	7.1	42.0	48.6	59.8
1997	73.6	30.3	16.4	20.3	18.5	0	0.0	49.7	58.1
1998	76.1	28.2	15.1	18.8	16.9	0	0.0	51.1	55.9
1999	78.5	26.1	13.7	17.0	15.2	0	0.0	51.6	52.6
2000	81.1	24.1	12.6	15.7	14.0	0	0.0	53.2	48.2
2001	83.6	22.1	11.3	14.0	12.4	0	0.0	53.7	42.6
2002	86.2	20.2	10.3	12.8	11.3	0	0.0	55.3	33.2
2003	88.9	18.3	9.2	11.4	10.1	0	0.0	56.2	24.4
2004	91.6	16.5	8.4	10.4	9.1	0	0.0	58.4	16.5
2005	94.9	14.8	7.4	9.2	8.0	0	0.0	59.6	14.8
<b>CUMULATIVE</b>									
<b>TOTAL</b>	<b>\$1,301.1</b>	<b>\$570.2</b>	<b>\$324.3</b>	<b>\$402.9</b>	<b>\$370.3</b>	<b>\$257.3</b>	<b>\$408.7</b>	<b>\$889.5</b>	<b>\$859.5</b>

Prepared by the House Research Agency, May 1987 (87-3038; E00330-10).

# **CORRECTION**

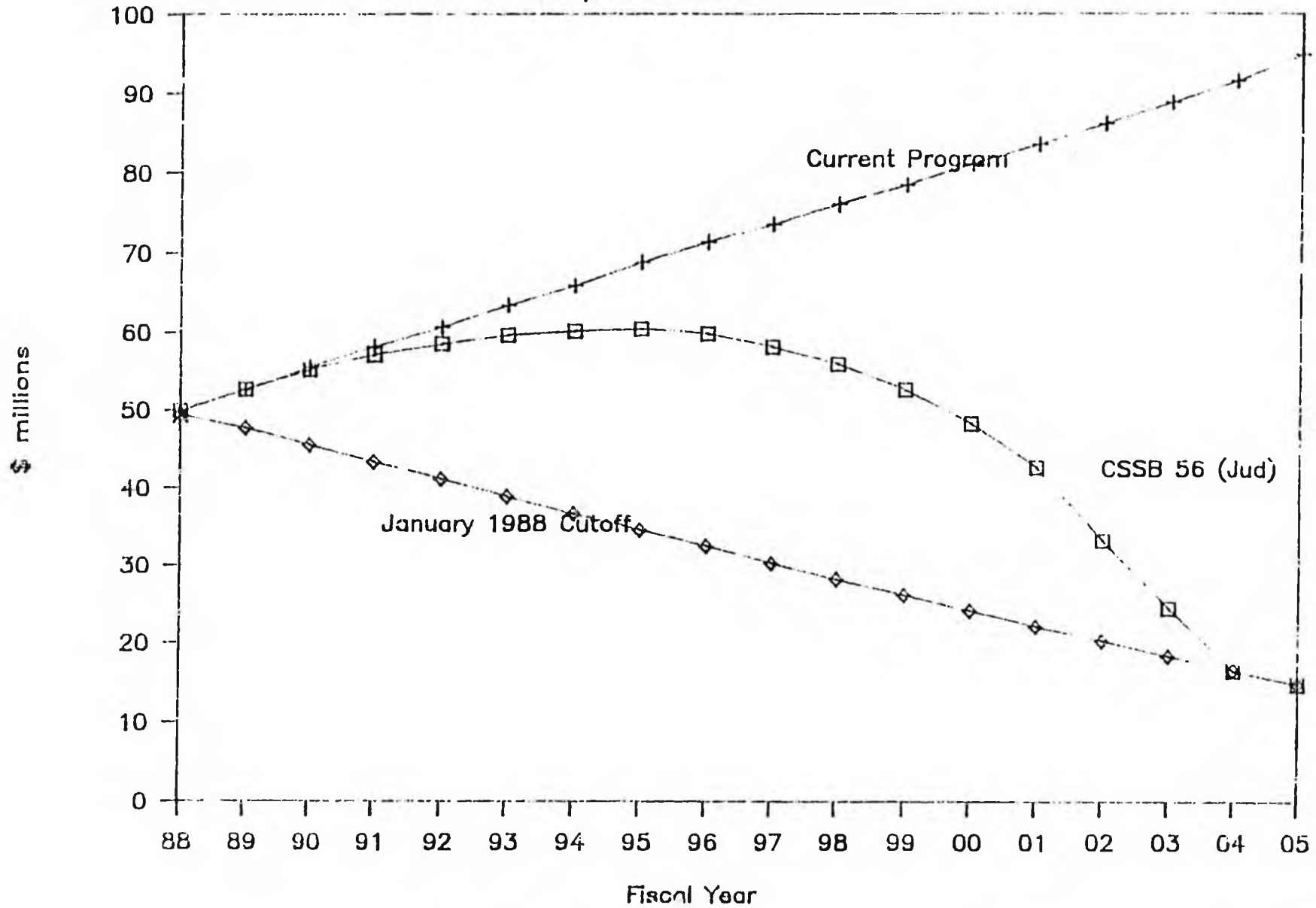
**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

TABLE 2  
Comparison of Annual and Cumulative Costs between the Current Longevity Bonus Program and Various Proposals

Fiscal Year	Current Program Annual Cost	January 1, 1988 Cutoff Reiger Proposal Annual Cost	HB 151 Governor's Proposal Annual Cost	HB 151 Modifications		Bonus Reduction Annual Cost	Bonus Reduction With Needs Annual Cost	Needs Based No Age Cutoff Annual Cost	CSSB 56 (Jud) Bonus Reduction/Annuity Annual Cost
				\$25,000 Income Limit Annual Cost	\$20,000 Income Limit Annual Cost				
1988	\$49.9	49.3	\$34.5	\$43.1	\$41.8	\$44.9	\$44.9	\$43.8	\$49.9
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1990	55.6	45.5	27.1	33.7	31.9	38.9	46.7	41.3	55.2
1991	58.2	43.3	25.4	31.6	29.4	34.9	46.8	42.8	57.1
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1999	78.5	26.1	13.7	17.0	15.2	0	0.0	51.6	52.6
2000	81.1	24.1	12.6	15.7	14.0	0	0.0	53.2	48.2
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2005	94.9	14.8	7.4	9.2	8.0	0	0.0	59.6	14.8
<b>CUMULATIVE TOTAL</b>	<b>\$1,301.1</b>	<b>\$570.2</b>	<b>\$324.3</b>	<b>\$402.9</b>	<b>\$370.3</b>	<b>\$257.3</b>	<b>\$408.7</b>	<b>\$889.5</b>	<b>\$859.5</b>

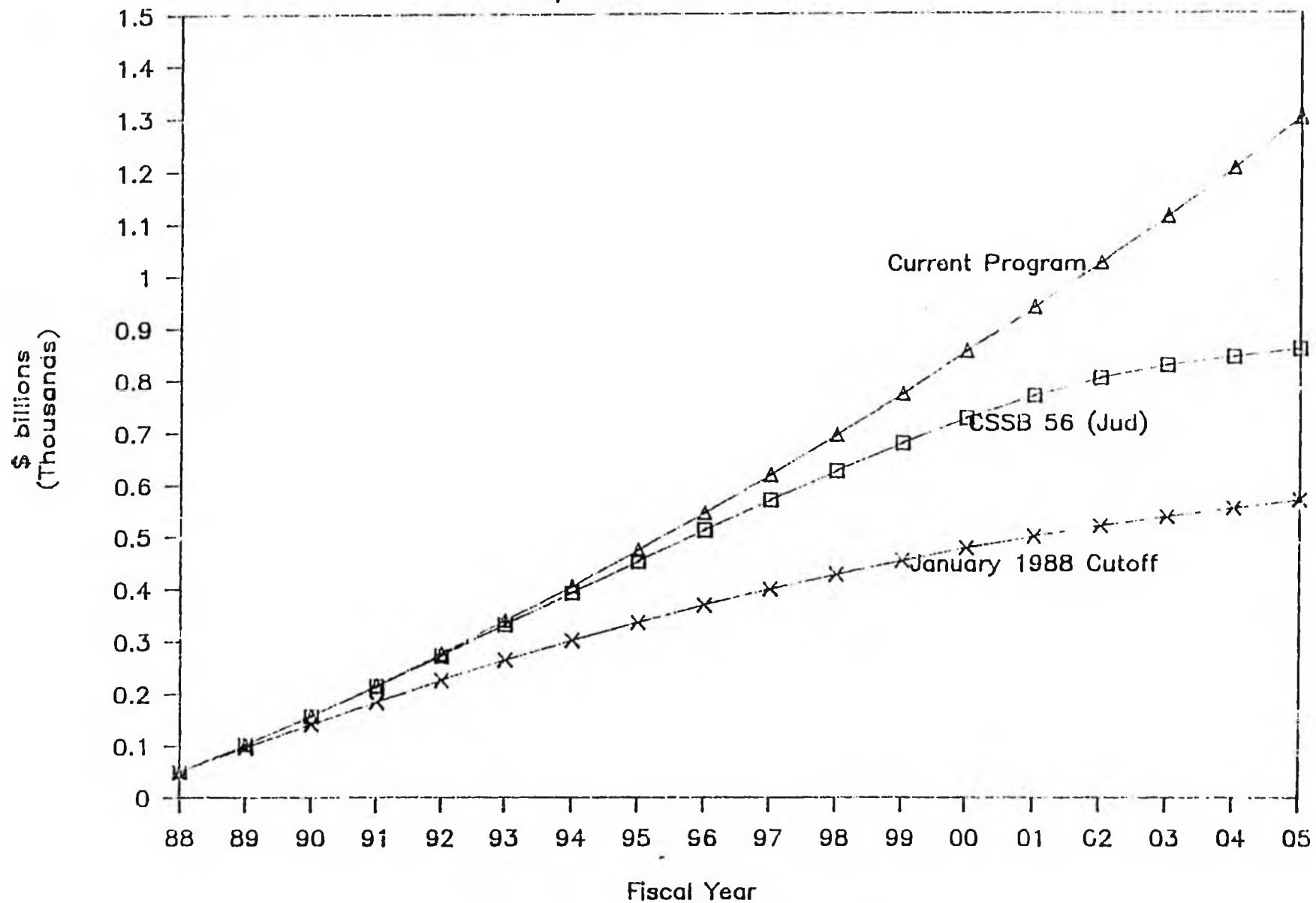
Prepared by the House Research Agency, May 1987 (87-303B; 860330-10).

Figure 1  
**ALASKA LONGEVITY BONUS**  
 Comparison of Annual Costs



Prepared by the House Research Agency, May 1987.

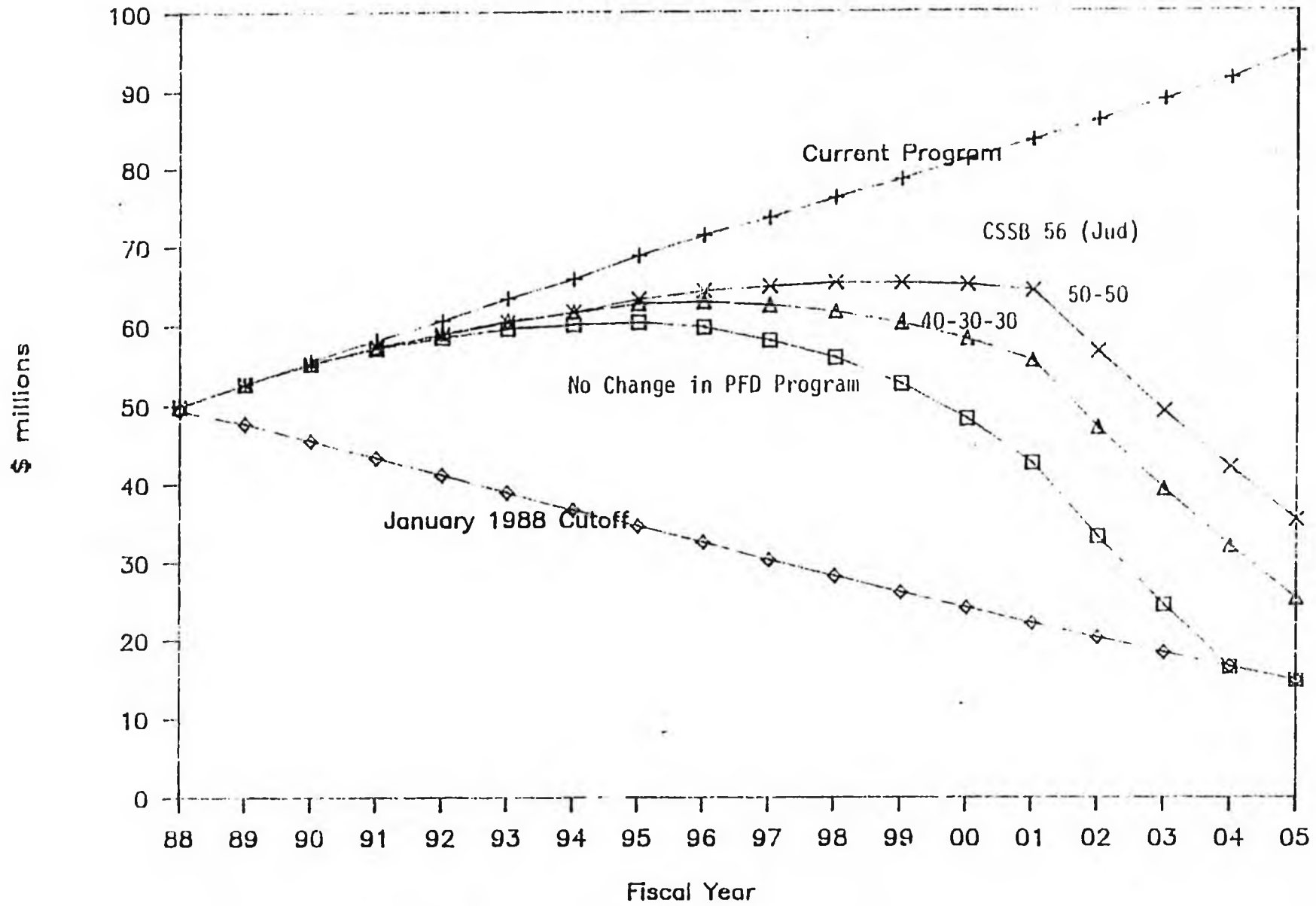
Figure 2  
**ALASKA LONGEVITY BONUS**  
 Comparison of Cumulative Costs



Prepared by the House Research Agency, May 1987.

Figure 3  
ALASKA LONGEVITY BONUS

Comparison of Annual Costs

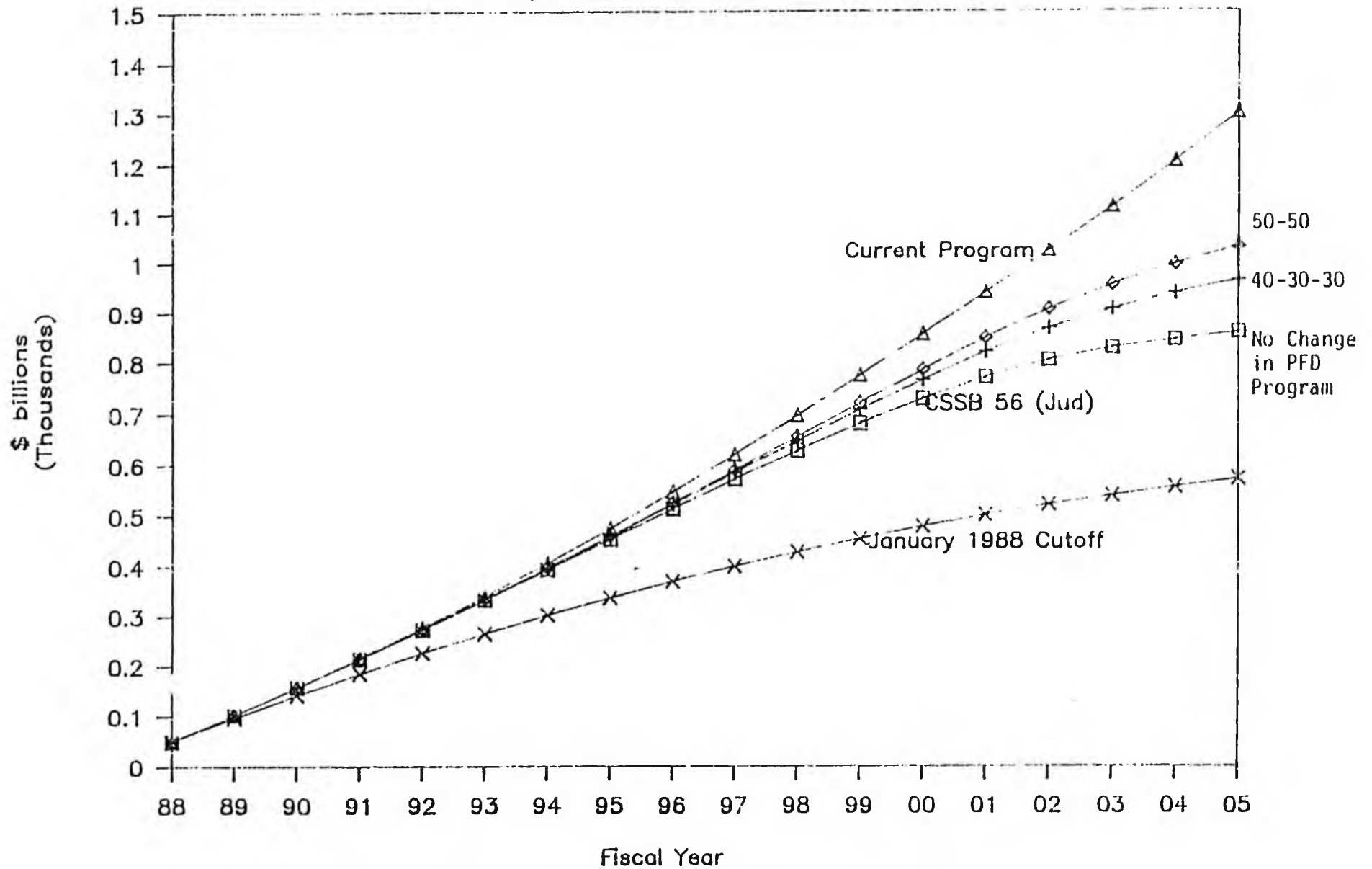


Prepared by the House Research Agency, May 1987.

Figure 4

# ALASKA LONGEVITY BONUS

Comparison of Cumulative Costs



Prepared by the House Research Agency, May 1987.

Original sponsors: Kerttula, Halford  
and Fischer

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 56 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act amending and making effective an annuity  
7 program and amendments to the longevity bonus program  
8 and the permanent fund dividend program provided for  
9 in secs. 2 - 18, ch. 99, SLA 1985; and providing for  
10 an effective date."

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

12 \* Section 1. AS 43.23.110(a) is amended to read:

13 (a) The annuity investment fund is established as a separate  
14 fund in the state treasury. The annuity investment fund consists of  
15 money transferred from the dividend fund, cash contributions under  
16 AS 43.23.125, and income earned by the annuity investment fund.  
17 Notwithstanding AS 37.13.145, an amount equal to the permanent fund  
18 dividends taken as annuity credits under this chapter shall be annual-  
19 ly transferred from the dividend fund to the annuity investment fund.

20 \* Sec. 2. AS 43.23 is amended by adding a new section to read:

21 Sec. 43.23.125. CASH CONTRIBUTIONS. An individual who is eligi-  
22 ble to receive the permanent fund dividend as an annuity credit under  
23 AS 43.23.005(d) but does not elect to do so or who elects to receive  
24 only a portion of the permanent fund dividend as an annuity credit may  
25 make a cash contribution to that individual's annuity account. The  
26 total amount credited and contributed to an annuity account in a year  
27 may not exceed the amount of the permanent fund dividend for that  
28 year.

29 \* Sec. 3. AS 43.23.130(a) is amended to read:

1 (a) An individual with one or more annuity credits o cash  
2 contributions under AS 43.23.125 may receive an annuity upon reaching  
3 the age of 65.

4 \* Sec. 4. AS 43.23.130(e) is amended to read:

5 (e) If a person elects to credit a permanent fund dividend or  
6 make a cash contribution to an annuity account in a particular year,  
7 that person may make an irrevocable choice regarding death benefits  
8 with respect to that credit or contribution. If a person dies before  
9 age 65 and that person has selected death benefits in at least one  
10 year, a lump sum payment shall, subject to appropriation, be paid to  
11 the surviving spouse by right of survivorship unless a different  
12 beneficiary was designated. When no spouse survives and no benefi-  
13 ciary is designated, the lump sum shall be paid to the decedent's  
14 estate. The lump sum payment includes all dividends credited to the  
15 person's annuity account in years in which death benefits were select-  
16 ed and interest on those dividends. Dividends credited and cash  
17 contributed to a person's annuity account in years for which death  
18 benefits were not selected and interest on those dividends and contri-  
19 butions shall, if the person dies before age 65, be distributed equi-  
20 tably among the annuity accounts of all individuals for which death  
21 benefits were not selected.

22 Sec. 5. AS 43.23 is amended by adding a new section to read:

23 Sec. 43.23.130 EMERGENCY WITHDRAWALS. An individual may make a  
24 withdrawal from that individual's annuity account before reaching the  
25 age of 65 if the individual establishes to the satisfaction of the  
26 commissioner that the withdrawal is necessary to meet an unforeseeable  
27 emergency. The amount withdrawn may not exceed the total amount in  
28 the individual's annuity account or the amount actually necessary to  
29 meet the emergency, whichever is less. The commissioner shall define

1 the term "unforeseeable emergency" by regulation. An individual may  
2 only make one withdrawal under this section and may pay it back with  
3 interest under terms established by the commissioner.

4 Sec. 6. AS 47.45.015(a) is amended to read:

5 (a) Except as provided in (b) of this section, the monthly  
6 longevity bonus is equal to \$250, minus the maximum possible straight  
7 life annuity [FOR A PERSON 65 YEARS OF AGE] under the annuity program  
8 (AS 43.23.110 - 43.23.130), as determined by the commissioner of  
9 administration. The maximum possible straight life annuity equals the  
10 amount a person would receive if that person became 65 on January 2,  
11 1988, and contributed 100 percent of all permanent fund dividends or  
12 the cash equivalency to the annuity program for every year after  
13 December 31, 1987. However, for purposes of this section the maximum  
14 possible straight life annuity may not exceed the amount that a person  
15 turning 65 in the current year would receive if that person had  
16 contributed 100 percent of all permanent fund dividends or the cash  
17 equivalency to the annuity program for every year after December 31,  
18 1987.

19 Sec. 7. Section 1, ch. 99, SLA 1985, is repealed.

20 Sec. 8. Chapter 99, SLA 1985, and secs. 1 - 6 of this Act apply only  
21 to permanent fund dividends for years beginning after December 31, 1987.  
22 Notwithstanding the amendments to AS 43.23 made by ch. 99, SLA 1985, and  
23 this Act, permanent fund dividends for 1987 and prior years shall be made  
24 under the law as it existed before the effective date of this Act.

25 Sec. 9. This Act takes effect immediately under AS 11.10.071.

## SECTIONAL ANALYSIS OF HJR 44

Proposing an amendment to the Constitution  
of the State of Alaska relating to open meetings.

SECTION 1 amends Article 1, Declaration of Rights, of the Constitution of the State of Alaska, by adding a new Section 23:

The deliberations of each house of the Legislature, and its committees and subcommittees, shall be open to the public, unless the legislative body is meeting in executive session to consider matters authorized by law.

If a matter is appropriate to a particular legislative body, private and substantive deliberation on the matter by a quorum of that body is prohibited.

Caucuses of the legislature may meet in private to consider matters of procedure, organization or strategy.

SECTION 2 Expresses legislative intent and summarizes provisions in the existing open meetings law.

Subsection (f) provides that the Legislative Affairs Agency will consider the statement of legislative intent expressed in (a) through (e) when preparing its neutral summary for the election pamphlet.

SECTION 3 Provides that the amendment will be placed before the voters at the next general election.

Prepared by:  
Rep. Kay Brown  
January 29, 1988

By Brown, Ellis, Frank, Davis, Cotten,  
Navarre, Pourchot, Boyer, Koponen,  
Boucher, Davidson, and Menard

**HJR 44: Proposing an amendment  
to the Constitution of the State of Alaska  
relating to open meetings**

HJR 44 proposes to amend the State Constitution by:

- mandating legislative adherence to the Open Meetings Act
- providing for court enforcement in the instance of a violation
- requiring that legislative deliberations be open unless the body is meeting in executive session to consider matters authorized by law
- prohibiting a quorum of a legislative body (committee, subcommittee, etc.) from engaging in private and substantive deliberation on a matter appropriate to that body
- allowing legislative caucuses to meet in private to consider matters of procedure, organization or strategy

HJR 44 includes intent language making it clear that this amendment is not intended to prevent the free flow of ideas among legislators or their participation in public forums, community meetings, or social events.

The proposed language is the work of a number of individuals who began meeting together shortly after the Supreme Court issued its ruling last September.

Prepared by:  
Rep. Kay Brown  
January 29, 1988

# Opinion

**T**he question of the public conduct of the public's business is one of the questions before the Alaska Legislature in its new session. A resolution proposed by Sen. Arliss Sturgulewski and Rep. Kay Brown would put before the state's voters a constitutional amendment to require that all legislative meetings be public except certain exemptions.

The proposal grows out of last year's lawsuit against the Legislature by the League of Women Voters and The Daily News. It transpired that the Legislature never argued about breaking the rules. However, the court ruled that it had no jurisdiction or constitutional basis for requiring the Legislature to follow its own rules.

By  
the  
rules

That decision essentially told the Legislature it could do whatever it pleases, and the public be damned. The proposal by Sturgulewski and Brown, two among a minority of legislators who have actually resisted the Legislature's general secretive inclinations, is an attempt to make the Legislature live by its rules. That's all.

The proposed amendment would leave legislators the same exemptions as the Legislature provided when it adopted the state's Open Meetings Act. It would also allow party caucuses to meet privately "to consider matters of procedure, organization, or strategy."

That's plenty of leeway for any responsible legislator. The public should call on its legislators to support the Sturgulewski-Brown proposal.

Elements of the Alaska Legislature have gone out of their way in recent years to make important budget decisions in secret - in ad hoc sessions, in caucuses, in, well, who knows?

If legislators balk at the Sturgulewski-Brown proposal, they invite a question: Have you stopped doing the public's business in secret? It's a fair question, and it requires the admission they cannot avoid.

# **CORRECTION**

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TO ASSURE LEGIBILITY**

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# MY TURN

*Open Meetings: The need for a constitutional amendment.*

By KAY BROWN and  
ARLISS STURGULEWSKI

When the Alaska Supreme Court issued its opinion on the open meetings lawsuit brought against the Alaska Legislature by the League of Women Voters and two Alaska newspapers, the ruling brought to light a crucial flaw in our state Constitution. The court ruled that it had no jurisdiction in the open meetings dispute and accordingly could not force the legislature to comply with the state Open Meetings Act.

It is now clear that this flaw can only be corrected by an amendment to the state Constitution which expressly protects the public's right to openness in the legislative process.

**No Dispute over Violations:** In the League v. the Alaska Legislature case there was no argument over the charge that the legislature held secret budget meetings during the 1986 session in violation of the Open Meetings Act. Nor was there any argument that these meetings violated the legislature's own Uniform Rule 22, which also requires open meetings of legislative bodies.

Neither of these claims was contested by the lawyers defending the legislature. As noted by the court: "The facts of this case are not in dispute. ... The Legislators do not deny that these meetings occurred, or that they conducted the business and

made the decisions that the League alleges." So, if everyone agrees that the meetings were in violation of the Open Meetings Act and Rule 22, what happened?

**Courts Powerless to Enforce Law:** The Supreme Court based its ruling on interpretations of the state Constitution. Although no one disputed that open meeting violations had occurred, the court ruled that it lacked authority to force the legislature to obey the open meetings law it has enacted. Further, because the Alaska Constitution currently does not expressly provide for open meetings, and because the Constitution gives the legislature the authority to establish its own rules, the Supreme Court determined it could not enforce the Open Meetings Act.

The court did not find the legislature innocent of violating open meeting requirements. Rather, the court decision stated that "because the Constitution commits to the legislature the authority to provide for its own rules of procedure ... we regard the question of whether the legislators have violated the Open Meetings Act or Uniform Rule 22 to be nonjudicial." The court concluded it is not the function of the judicial system to require the legislature to follow its own rules.

The court also addressed the assertion that the public has an "im-

plied" constitutional right of access to the conduct of legislative business. Although it is noteworthy that Supreme Court Justice Compton dissented, and argued forcefully that the court did have jurisdiction in the case, the majority of justices disagreed.

**The Need for an Amendment:** The crucial issue in the open meetings lawsuit concerned the right of the press and the public to know and understand the deliberations of their elected representatives. The need for access to legislative deliberations has never been more critical than at present. Decisions made in Juneau are of vital interest to all Alaskans as the state comes to terms with declining oil revenues.

In response to the Supreme Court's decision, one legislative leader characterized the ruling as giving legislators "a blank check." In essence, the Alaska Supreme Court found that the legislature's conduct is above the law that requires other state and local officials to conduct the public's business in the open. A constitutional amendment requiring open meetings of the legislature is the only way to remedy this deficiency.

**Proposed Constitutional Amendment:** Before the Supreme Court ruling, it had been our belief that the public was entitled to open legislative meetings; we now know that a constitutional amendment is needed. With that goal in mind, we have introduced an identical Joint Resolution in both the House and the Senate that would amend the Alaska Constitution and specifically provide for open meetings by the legislature.

The proposed amendment language is the work product of a number of individuals who began meeting shortly after the Supreme Court issued its ruling, including representatives of the League of Women Voters and several news organizations. In trying to draft suitable language with the help of this ad hoc group, we knew that it was essential to develop both realistic and workable standards. Such standards must fundamentally ensure openness by the legislature but also not prevent the free exchange of ideas among legislators which is essential to a legislator's ability to represent his or her constitu-

ents. At the same time, we felt that the legislature, as the state's only bicameral legislative body, elected along partisan lines, must have the flexibility to exercise that partisanship.

With these standards in mind, our proposed amendment requires that legislative deliberations be open unless, as presently provided by the Open Meetings Act, the body is meeting in a properly convened executive session to consider matters expressly authorized by law. The amendment also states that if a matter is appropriate to a particular body (which includes committees and subcommittees), then "private and substantive deliberation of the matter by a quorum of the legislative body" is prohibited. The proposed amendment also recognizes the unique role of legislative caucuses and specifically allows caucuses to meet in private, but only to consider "matters of procedure, organization, or strategy."

We recognize, of course, that our amendment draws a firm line of distinction between a discussion that would be prohibited as "private and substantive" and a discussion that would be permissible as a matter of caucus "strategy." In the final analysis, however, it is our feeling that it will be incumbent upon all legislators to police themselves as a group and for individual members to insist when appropriate, as we have, that the public's right to know must be protected and that the public's substantive business be conducted openly.

Finally, we believe that the proposed amendment provides both a realistic and workable set of standards by which the legislature can conduct legislative business in an open manner while still providing legislators an opportunity to participate in confidential partisan activities. Without a constitutional amendment to provide for the public's right of access, the legislature will continue to be free to meet at will behind closed doors in clear violation of the Open Meetings Act, but beyond the reach of the courts.

\*\*\*\*\*  
Rep. Kay Brown and Sen. Arliss Sturgulewski both represent Anchorage in the Alaska Legislature.

S B

6 1

HOUSE STATE AFFAIRS COMMITTEE

NEXT COMMITTEE: RULES

BILL: SB 61

CURRENT VERSION:

SCHEDULED: MAY 2, 1988

SPONSOR: SZYMANSKI

PHONE NO: 4978

CONTACT FILE: \_\_\_\_\_

BILL SUBJECT: RELATING TO RIGHTS OF INJURED STATE EMPLOYEES

SPONSOR BACKUP: IN FILES

AFFECTED AGENCIES:

<u>DEPARTMENT</u>	<u>CONTACT/PHONE</u>	<u>COMMENT</u>
ADMIN	PUSHPENDER DHILLON/2200	
LABOR	EILEEN PLATE/2700	

FISCAL NOTES

<u>AGENCY</u>	<u>REQUESTED</u>	<u>DATED</u>	<u>FY 88 AMT</u>	<u>FY 89 AMT</u>
ADMIN		3/23/88	-0-	-0-
LABOR		3/23/88	-0-	-0-

ACTION

<u>DATE</u>	<u>COMMENT</u>
5/2/88	PASSED FROM HOUSE STATE AFFAIRS

# HOUSE COMMITTEE REPORT

(7)

Date referred: 4/27/88

FURTHER REFERRALS:

DATE: May 2, 1988

The State Affairs Committee has considered SB 61

"An Act relating to rights of injured state employees."

**RECOMMENDS:**

- replace with \_\_\_\_\_  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(s):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published 3/23/88
- zero with analysis

**SIGNING DO PASS:**

*[Handwritten signatures]*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Clay Davidson  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SIGNING OTHER RECOMMENDATIONS:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*[Handwritten signature]*  
\_\_\_\_\_  
Chairman's signature



Official Business

# Alaska State Legislature

## House

HOUSE STATE AFFAIRS COMMITTEE

Pouch V  
State Capitol  
Juneau, Alaska 99811

SENATE BILL 61

FILE CONTLNTS

1. AN ACT RELATING TO RIGHTS OF INJURED STATE EMPLOYEES.
2. MEMORANDUM FROM SENATOR SZYMANSKI TO REPRESENTATIVE ULMER, DATED APRIL 21, 1988
3. SECTIONAL ANALYSIS PREPARED BY SENATOR SZYMANSKI
4. MEMORANDUM FROM SENATOR SZYMANSKI TO SENATOR FISCHER, DATED FEBRUARY 9, 1987: SCHEDULING FOR HEARING
5. MEMORANDUM FROM SENATOR SZYMANSKI TO SENATOR FISCHER, DATED FEBRUARY 9, 1987: OVERVIEW OF SENATE BILL 61
6. POSITION PAPER: DEPARTMENT OF LABOR
7. POSITION PAPER: DEPARTMENT OF ADMINISTRATION
8. MEMORANDUM FROM SHARMAN HALEY TO REPRESENTATIVE SZYMANSKI, DATED OCTOBER 11, 1984
9. HOUSE COMMITTEE REPORT, LABOR AND COMMERCE

### FISCAL NOTES

- A. DEPARTMENT OF ADMINISTRATION, CENTRALIZED ADMINISTRATIVE SERVICES: -0-
- B. DEPARTMENT OF LABOR, WORKERS' COMPENSATION: -0-



# Alaska State Legislature

Senator Mike Szymanski



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## M E M O R A N D U M

To: Representative Fran Ulmer, Chair  
House State Affairs Committee

From: *Mike Szymanski*  
Senator Mike Szymanski

Date: April 21, 1988

Subject: Scheduling of SB 61 for hearing

I am the sponsor SB 61, "An Act relating to rehire of injured state employees." This bill is scheduled for a hearing in House Labor and Commerce Committee next week Tuesday, April 26, at 1:30 pm.

Because this bill is of paramount importance to state workers, because of the lateness of the session, because I anticipate it will pass through House Labor and Commerce Committee on Tuesday, and because I understand you normally make up your weekly hearing schedule on Mondays or Tuesdays, I would like to request that you consider scheduling SB 61 in the House State Affairs Committee for sometime during the week of May 2 - May 6; or even earlier if possible.

This bill has been in the legislative hopper now for 5 years, and has always received unanimous support in the House, only to die in the Senate. This year, we have finally managed to get it through the Senate, and I would hate to see it die in the House at the last minute.

As you can see from the attached back-up, this bill has support from all the affected branches of state government, from APEA, and from the Senate, which passed it on an 18-0-2-0 vote. Any efforts on your part to speed the hearing and passage of this bill would be greatly appreciated.

3



# Alaska State Legislature

Senator Mike Szymanski

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## SECTIONAL ANALYSIS -- SB 61

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SECTION 1. Adds a new section to AS 23.40 to state that terms contrary to the provision of this legislation may not be negotiated. (Added at the request of the Division of Personnel, Department of Administration).

### SECTION 2.

#### Subsection 39.25.157

Requires the Division of Personnel, in consultation with the appropriate department or agency, to develop and maintain a detailed position description for each position within the classified service.

Also disallows the imposition of general physical ability requirements on a job class unless each position within the class requires the use of the physical ability.

#### Subsection 39.25.158

(a) Within 30 days after a physician's release to return to full or or modified work, an injured employee must request to return to work for the state in order to be eligible for reemployment rights.

(b) Once an employee requests to return to work, the employee will be certified as able to return under (c), (d), or (f) of this section by the Division of worker's compensation or the Director of Vocational Rehabilitation. Certification may be delayed until the employee is retrained under (f).

(c) Requires that a state agency offer an injured employee the employee's former position within 30 days, if the employee is certified able to perform the tasks assigned to the position and the position still exists. If another employee is employed in the position, the agency shall create a vacancy under AS 39.25.150(13).

(d) If an employee is not eligible for reemployment under (c), the agency is required to make efforts of reasonable accommodation (some examples of which are specified and defined in accordance with federal language) to the physical & mental limitations of the employee if they are no longer able to perform all of the tasks assigned to them.

(e) If the employee is not eligible under (c) or (d), and the agency has a vacant and comparable position, then the agency must offer that position to the employee. If the employee is no longer capable of filling that comparable position, then the employee is entitled to a similar and vacant position in another agency, if he is capable of performing the work.

(f) If the employee cannot be reemployed in a comparable position by an agency, then the employee may either i) request reemployment at a lower wage, or ii) accept retraining under AS 23.30.041. After retraining, the employee may request reemployment in his new field of training with the original agency, and if no positions are available, at a comparable position with another agency.

(g) Establishes guidelines for refusal by an agency to reemploy or continue the employment of a former employee, including undue hardship.

(h) Lists the factors the agency may take into consideration in determining undue hardship.

(i) Requires that an injured employee requesting and eligible for reemployment with an agency who is able to perform the essential functions of the position be the only person certified for that position (except employees in layoff status for that job class).

(j) Prevents collective bargaining agreements from negating any of the provisions of this bill;

(k) Definitions section.

### SECTION 3

Prevents this Act from altering in any way collective bargaining agreements already in existence on the effective date of the Act.



# Alaska State Legislature

Senator Mike Szymanski  
M E M O R A N D U M

Senator Paul Fischer, Chair  
Senate HESS Committee

From: Senator Mike Szymanski, Sponsor  
Senate Bill 61

Date: February 9, 1987

Subject: Scheduling of Hearing for SB 61

9

While in Session:  
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I would like to formally request that a hearing be scheduled for a bill of mine which is in your Committee as the Committee of first referral; that is, Senate Bill 61, "An Act Relating to Rights of Injured State Workers."

Passage of the bill would protect State employees who have been injured on the job in service to the state, by allowing them special consideration for return to their job once they have recovered from their injuries. It would also benefit the state (and could conceivably result in a negative fiscal note if research on it could be done in a cost-effective manner); because it would help to keep workers in the work force who bring depth of training and experience back to the job, so it is not lost.

The bill clearly spells out the rights and obligations for both the employer and employee, to ensure that particular cases are dealt with consistently.

During the 14th legislature, I submitted this bill in the House as HB 318. As you can see from the attached, this bill passed the House on a 38-0-1-1, and made it all the way through the Senate to Senate Rules, where it died in the logjam of bills in the final hours of last year's session.

The bill received the support of the Department of Labor and the Administration; and much work was done at the Committee level to take their requests and concerns, as well as the requests and concerns of many other groups, into account. As a result, SB 61 this year picks up the language of last year's bill and so the Department of Administration has come in with a zero fiscal note (see attached) and a position paper that is supportive.

I have a great deal of back-up information in my personal files from last year on this bill. If you need any more back-up, please feel free to contact my offices. Attached for your reference are:

- 1) Zero Fiscal Note from Dept. of Administration
- 2) Position paper of support from the DOA
- 3) A Sectional Analysis of the Bill
- 4) An Overview Letter to Senate HESS members on the bill
- 5) A House Research Agency paper on the subject
- 6) Last year's bill history on HB 318



# Alaska State Legislature

Senator Mike Szymanski  
M E M O R A N D U M

Senate HESS Committee Members

From: Senator Mike Szymanski  
Date: February 9, 1987  
Subject: Overview of Senate Bill 61, " An Act relating to the Rights of Injured State Workers."

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During the past two years, it became clear to me in discussions with professionals in the field of vocational rehabilitation that the current state procedures for reemployment of injured state workers are grossly inadequate. In fact, some have even suggested that the state is the worst offender in this area. In most organizations, injuries received in the line of duty call for support and rewards from the organization, not punishment.

Senate Bill 61, which I introduced last year as HB 318, incorporates recommendations from several state agencies and professional organizations who specialize in vocational rehabilitation. The objective of the legislation is three-fold:

1) The legislation would require detailed position descriptions to be kept for every state job. Such descriptions, by spelling out the responsibilities and physical requirements of each position, would greatly aid in the reemployment of injured state workers. Although an injured employee may not be able to perform all of the tasks required of a job class, in many cases the employee could perform the essential duties of a particular position within the class. With detailed position descriptions the placement of partially disabled employees would be easier.

2) The bill would establish procedures for granting injured state workers employment preference. Under this legislation, an injured state employee returning to the work force would be given preference for employment in open positions for which the employee is qualified. Such preference would enable injured workers to resume full or modified employment much sooner, thus saving the state thousands of dollars in disability benefits.

3) The legislation would establish clear guidelines for refusing to rehire or continue the employment of a former employee if the employment would impose an undue hardship on the operation of an agency. The onus would be on the agency to prove that the employee could not reasonably perform the essential duties of the position. No longer could an injured employee be refused work without justification, as has happened on occasion.

In contrast to most legislation, SB 61 would not only not require a state financial investment, but would result in substantial savings to the state in lessened disability payments and in training time and expense saved by continuing to utilize experienced workers. Just as importantly, the human dignity and self-respect which is thus preserved is immeasurable.

Bill No. Senate Bill 61

Date April 23, 1966

Title "An Act relating to rights of injured state employees."

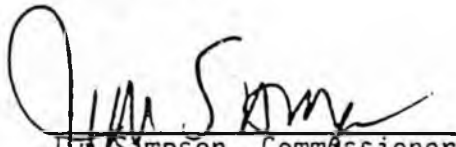
Contact: Jacque McClintock  
465-2790

The Department of Labor supports this legislation which provides rehire rights for injured state employees.

Under the provisions of this bill, the state is required to reemploy an injured state employee in the former job position if the employee is medically able to perform the duties of the position or, if not medically able, to rehire the employee in a modified or comparable position. This bill applies to all state employees who have sustained an occupational injury or illness and who wish to return to work for the state.

This bill will afford return to work protection for injured state employees, and should, overall, reduce the state's costs of workers' compensation by returning injured and disabled employees to suitable gainful employment.

APPROVED:

  
Jim Sampson, Commissioner  
Department of Labor

POSITION PAPER  
SB 61

This bill deals with the return to work of those State employees who have been injured on the job and were terminated from their positions after that injury.

Passage of the bill will benefit the State in terms of the depth of training and experience the worker who was injured on the job will bring back to the workforce.

The bill makes the obligations of both the employer and the employee clear and it has built in safeguards which ensure that a State's expert in the field will determine the employee's readiness to return to work. This will ensure that the matter is dealt with in a consistent manner.

There is no fiscal impact on the Division of Personnel. Any extra work that may be involved can be absorbed into normal workflow.

The Division of Personnel supports the intent of this legislation.

---

*Diana DeSimone*  
Diana DeSimone, Director  
Division of Personnel

1/27/87  
Date

*Garrey Peska*  
Commissioner Garrey Peska  
Department of Administration

1/27/87  
Date



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY



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Juneau, Alaska 99811  
(907) 465-3991

RECEIVED OCT 17 1984

October 11, 1984

MEMORANDUM

TO: Representative Mike Szymanski

FROM: Sharman Haley  
Legislative Analyst

RE: Priority Rehire For Disabled State Employees  
Research Request 35-025

You have asked about instituting a policy of preferential rehire for State employees who are forced to leave their jobs due to work-related disabilities. Short summaries of rehire policies in Washington, Oregon, and Idaho as well as the U.S. Postal Service and the Municipality of Anchorage are provided below. A discussion of policy alternatives for amending Alaska law along similar lines follows.

WASHINGTON

An employee of the State of Washington who becomes disabled cannot be terminated for at least sixty days. Supervisors have broad discretion to extend leave without pay to the injured employee and fill the position temporarily until the employee is able to resume his or her duties. If the injured employee is out longer than sixty days and is terminated from his or her position, the employee is eligible to be placed on the Reduction In Force (RIF) list for that job class when he or she is ready to return to work. Persons on the RIF list have the right of first hire when vacancies in that job class appear.

If the disabled employee is not able to resume the duties of his or her former job class and seeks reemployment in an alternate job class, the employee must go through the normal application and testing procedures to be certified to the register for the alternate job class. Once certified, the disabled employee is entitled to hiring preference over applicants on the open competitive register. If the alternate job class constitutes a promotion, the disabled employee has second hire priority after those on the RIF list. If the alternate job class is a demotion or lateral transfer, reemployment preference over open competitive candidates is at the discretion of the hiring authority.

Representative Szymanski  
October 12, 1984  
Page Two

Under Washington law, a person whose disability keeps them out of work for more than 120 days is referred to a vocational rehabilitation counselor for evaluation and vocational rehabilitation planning. A person who is permanently disabled may qualify for the state's equal employment opportunity program for the handicapped. Washington State civil service rules allow handicapped persons to test for any job class for which they meet the minimum qualifications, whether or not that register is open for recruitment. State agencies have the option of using the list of qualified handicapped workers, in preference to the regular register when filling vacancies.

Incentive for state agencies (or any employer) to hire workers with occupational injuries is provided by the Preferred Worker Program, which excludes the worker from the computation of workers' compensation premiums for a period of three years. The benefits due the worker in the event of an injury during the three-year period are covered by the state's Second Injury Fund.

#### OREGON

Of the states contacted, Oregon has the strongest laws for rehiring injured employees. Oregon civil rights law provides that an injured employee has the right to reinstatement on demand in his or her former position, or in any other job, if a position is available and the worker able to perform the duties of the job. In the state system, responsibility for rehiring the injured employee falls on each agency. Oregon statutes also require "reasonable accommodation" for the special needs of handicapped workers. In the state personnel system, this may include some restructuring of the job.

#### IDAHO

Idaho personnel rules provide that when an employee is absent due to injury or illness, the job is held open for the employee and may not be declared vacant for at least six months. If the worker has not returned to work within six months and is terminated, for an additional 12 months the worker is eligible to be placed on the lay-off register for that agency if the doctor has cleared the employee for return to work. If the employee is not able to resume the same job duties, the agency has some discretion to modify work for the employee, but there is no program or policy to further accommodate workers who must change job classes.

Representative Szymanski  
October 11, 1984  
Page Three

#### U.S. POSTAL SERVICE

The U.S. Postal Service goes beyond the requirements of federal law to return injured employees to work. Under federal law, an injured federal employee who is able to return to work within one year has the right to return to the same or an equivalent position in the same agency. If it takes longer than a year to return to work, the employee has the right to priority placement in the same or equivalent position in that or another federal agency. The returning federal employee is credited with wage step increases and other benefits based on length of service for the entire time he or she was out on disability compensation.

A partially or temporarily disabled postal employee is on leave status until the doctor certifies that the employee is able to return to work. The worker is either returned to his or her former job, with some modification of duties if needed, or transferred to an alternate job. In planning a placement, the post office considers the risk of reinjury and the potential compensation costs as well as the skills and abilities of the worker. Only if this assessment indicates that the worker will not be returned to federal service is the employee terminated.

The responsibility for finding or creating a job falls on the local postmaster. To encourage the placement of partially disabled workers, the salary of a partially disabled employee is not paid out of the operating unit's budget, nor are the hours worked by a partially disabled worker counted in computing the operating unit's productivity rating. Thus the operating units are able to show a higher productivity, for which they are rewarded, by utilizing partially disabled workers.

#### ANCHORAGE

The Municipality of Anchorage has implemented a modified work program for municipal employees injured on the job. The stated purposes of the program are to minimize long-term costs to the municipality and to return the employee to good health and productive employment at the earliest opportunity.

Under the modified work program, an injured worker who is able to resume partial duties will be placed in modified work for up to three months while the worker is in transition back to full duties. If rehabilitation requires a complete change in employment, participation in the modified work program may exceed three months. The worker is paid his or her full regular salary during the period of modified work. If the worker's permanent job placement is at a lower salary than his or her old job, two-thirds of the difference is paid to the employee through the city's workers compensation account. Workers whose disability precludes them from placement in a permanent position receive a worker's compensation settlement.

Representative Szymanski  
October 11, 1984  
Page Four

While providing modified work is the responsibility of each municipal agency, a job placement coordinator for the municipality as a whole oversees the development of modified jobs and placements. According to Harry Sjoberg, Risk Manager for the municipality, the city's experience with the program has shown significant reductions in compensation claims and changes in the attitudes of supervisors and injured employees alike. Prior to institution of the modified work program, the prevailing pattern was that supervisors were not inclined to rehire an employee at anything less than 100 percent productivity. Employee morale suffered from prolonged periods off work. Mr. Sjoberg said that now less work time is lost, supervisors show more concern for the circumstances of their injured employees, and rehabilitation is quicker.

#### ALASKA

Under the Alaska personnel rules, leave without pay due to a disability is at the discretion of the supervisor, but in any case may not exceed the employees length of service or 24 months, whichever is shorter. The supervisor may cancel leave without pay upon notice to the absent employee. If the employee does not report for duty on the specified date, he or she may be terminated immediately.

A disabled classified employee terminated "in good standing" has rehire rights for two years from the date of termination. This means that they will be placed on the transfers and rehires list for that job class, which agencies may use in preference to the regular register when seeking applicants to fill vacancies. A few departments such as Health and Social Services have internal policies requiring agency heads to use the transfer and rehire list first, but most departments leave this to the discretion of the supervisor.

Injured State workers who are unable to resume the duties of their former job have few advantages in seeking other State jobs. They must go through the same process as anyone else of finding job classes for which they qualify, waiting for an open recruitment period for that class, taking applicable tests, getting on the job register, and successfully competing with other applicants. If the worker is fortunate enough to still be on leave and thus retain permanent employee status, he or she may be eligible for noncompetitive appointment at the discretion of the hiring authority.

State law provides that workers absent from work more than 90 days due to an on-the-job injury have a right to vocational rehabilitation evaluation. This includes an assessment of skills and abilities, aid in planning for training and rehabilitation, and job placement assistance.

Representative Szymanski  
October 11, 1984  
Page Five

If the worker qualifies as severely handicapped and is a client of the Division of Vocational Rehabilitation, the worker may be referred to a State job and hired noncompetitively if the hiring authority chooses.

State workers whose occupational injuries disable them from resuming their former job duties qualify for a disability pension under the Public Employees Retirement System. The pension is terminated in one year, however, unless the recipient submits evidence that he or she meets the qualifications for federal Social Security disability income (SSI). Federal standards for SSI are stringent; the worker must be unable to hold any gainful employment, not merely his or her former job.

Policy alternatives to facilitate reemployment of injured State workers in Alaska, patterned after some of the preferential rehire programs in other jurisdictions, are listed below:

#### POLICY OPTIONS

1. Employees could be guaranteed the right to disability leave.
2. Injured workers returning to work could be placed on the lay-off list, which assures them priority placement within their former job class.
3. Injured workers unable to resume the duties of their former job class could be allowed to test for any other job class for which they meet the minimum qualifications, whether or not recruitment is open.
4. Hiring preference in alternate job classes for which the worker qualifies could be granted by making the worker eligible for the lay-off, promotion, or transfer and rehire lists. Eligibility for the lay-off list would guarantee the worker first priority placement, while the promotion and the transfer and rehire lists would give the worker preference only at the option of the hiring authority.
5. A modified work program could provide injured workers job duties tailored to their capabilities during a period of transition back to full duties or to a new job.
6. State agencies could be given incentives to rehire disabled State workers, such as omitting the disabled worker from the calculation of their worker's compensation assessment.
7. State employees injured in the course of their employment could be guaranteed State jobs when doctors certify that the employees

Representative Szymanski  
October 11, 1984  
Page Six

are able to return to work. The employee would be reemployed in their original job class if they were able to perform the duties, in an alternate job class for which they qualify, ... an alternate job class for which they may be retrained, or in a modified job tailored to their individual capabilities.

8. The injured worker could also be extended the right to receive pay no less than the pay he or she received prior to injury, regardless of the final job placement.

These policy changes could be effected by amending AS 39.25.150 to direct the Department of Administration to provide for these policies in the personnel rules. Alternatively, reemployment could be mandated for all employers in the state under the workers' compensation or civil rights laws. Copies of the Oregon law and the Postal Service policy manual, both of which are regarded by vocational rehabilitation professionals as model policies, are attached.

Because the State is a self-insurer and is liable for workers' compensation benefits as well as for the disability pension payments, it may be in the State's financial interests as well as the interests of the injured worker to implement a preferential rehire policy and return the worker to a job as quickly as possible. Approximately 1,200 injured State employees file worker's compensation claims per year, of which about 200 to 250 include a claim for wage loss due to being out of work more than three days. Compensation is also paid for loss of earning capacity if the injured worker's prospective employment pays less than his or her former job. Compensation for wage loss is generally calculated at two-thirds of the lost wages, but because workers' compensation is tax exempt, the take home compensation is worth more than two-thirds of net wages lost.

\* \* \* \* \*

I am still expecting some additional information from other states to come in the mail. If upon reviewing the material I find that it provides any significant information on this issue that I have not adequately covered here, I will forward it on to you with a supplemental memo. Meanwhile, I hope that this memorandum provides you with the information that you need.

If you have any further questions please call me.

SH

**659.410 Discrimination against workers applying for workers' compensation benefits prohibited.** It is an unlawful employment practice for an employer to discriminate against a workman with respect to hire or tenure or any term or condition of employment because the workman has applied for benefits or invoked or utilized the procedures provided for in ORS 656.001 to 656.794 and 656.802 to 656.824, or of 659.400 to 659.435 or has given testimony under the provisions of such sections. [1973 c.660 §4]

**659.415 Reinstatement of worker receiving compensable injuries; certificate of physician evidencing ability to work; effect of collective bargaining agreement.** (1) A worker who has sustained a compensable injury shall be reinstated by the worker's employer to the worker's former position of employment upon demand for such reinstatement, provided that the position is available and the worker is not disabled from performing the duties of such position. If the former position is not available, the worker shall be reinstated in any other position which is available and suitable. A certificate by a duly licensed physician that the physician approves the worker's return to the worker's regular employment shall be prima facie evidence that the worker is able to perform such duties.

(2) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between the employer and a representative of the employer's employes.

(3) Any violation of this section is an unlawful employment practice. [1973 c.660 §5; 1979 c.813 §3; 1981 c.874 §14]

**659.420 Employment of injured worker in other available and suitable work; certificate of physician; effect of collective bargaining agreement.** (1) A worker who has sustained a compensable injury and is disabled from performing the duties of the worker's former regular employment shall, upon demand, be reemployed by the worker's employer at employment which is available and suitable.

(2) A certificate of the worker's attending physician that the worker is able to perform described types of work shall be prima facie evidence of such ability.

(3) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between

the employer and a representative of the employer's employes.

(4) Any violation of this section is an unlawful employment practice. [1973 c.660 §6; 1979 c.813 §4]

**659.425 Discrimination against mentally or physically impaired persons in employment or public accommodation prohibited; mental disorder treatment not evidence of inability to work or manage property.** (1) For the purpose of ORS 659.400 to 659.435, it is an unlawful employment practice for any employer to refuse to hire, employ or promote, to bar or discharge from employment or to discriminate in compensation or in terms, conditions or privileges of employment because:

(a) An individual has a physical or mental impairment which, with reasonable accommodation by the employer, does not prevent the performance of the work involved;

(b) An individual has a record of a physical or mental impairment; or

(c) An individual is regarded as having a physical or mental impairment.

(2) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise discriminate against, any individual because that individual is a handicapped person, or to classify or refer for employment any individual because that individual is a handicapped person.

(3) It is an unlawful employment practice for a labor organization, because an individual is a handicapped person, to exclude or to expel from its membership such individual or to discriminate in any way against such individual.

(4) It is an unlawful practice for any place of public accommodation, resort or amusement as defined in ORS 30.675, or any person acting on behalf of such place, to make any distinction, discrimination or restriction because a customer or patron is a handicapped person.

(5) Receipt or alleged receipt of treatment for a mental disorder shall not constitute evidence of a person's inability to perform the duties of a particular job or position, or of a person's inability to acquire, rent or maintain property. [1973 c.660 §7; 1979 c.640 §3]

**659.430 Discrimination against handicapped persons in real property transactions prohibited; advertising discriminatory preference prohibited; assisting discriminatory practices prohibited.** (1) No person because the purchaser, lessee or renter is a handicapped person shall: