

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

5726 HOUSE JUDICIARY

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Representative Dave Donley, Chair
House Labor and Commerce Committee

November 22, 1988
Page 2

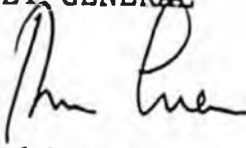
maining residency statutes which are of concern to you, perhaps
we could take a look at those on a case-by-case basis.

I hope this satisfactorily responds to your request.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:


Ronald W. Lorensen
Deputy Attorney General

RWL/lg
Encls.

June 30, 1983

The Honorable Bill Sheffield
Governor
State of Alaska
Pouch A
Juneau, AK 99811

Re: SCS CSHB 323(Jud) --
residency
Our file number 388-061-83

Dear Governor Sheffield:

At Emil Notti's request on your behalf, we have reviewed SCS CSHB 323(Jud). This bill is a general clean-up of most of the residency problems presently existing in the Alaska Statutes. Although the original sponsor was the House State Affairs Committee, this bill was also one of your priority bills.

The bill addresses two constitutional problems in the present statutes. The first problem occurs under the Privileges and Immunities Clause of the United States Constitution. Under that clause, a state may not withhold benefits or deny rights to nonresidents if the right or benefit denied is considered a "fundamental right." One fundamental right under the Privileges and Immunities Clause is the right to earn a living. Consequently, the occupational licensing statutes may not require resident status as a prerequisite for gaining an occupational license. This bill deletes all remaining residency requirements for a license to practice an occupation or profession.

The second constitutional problem arises from the equal protection clauses of the U.S. and Alaska Constitutions. The state may limit most of its programs and benefits to persons who are residents of the state: i.e., those who both are physically present in the state and intend to make Alaska their home. These persons are also termed "bona fide residents" or "domiciliaries". In granting those benefits, however, a state cannot distinguish between bona fide residents solely based on how long a person has been in the state. This creation of an "aristocracy" of long-term residents was struck down in Zobel v. Williams, ___ U.S. ___, 102 S. Ct. 2309 (1982).

The problem is in determining whether a person is a "bona fide resident". A state may set out a test for determining

whether a person is in fact a "bona fide resident". Martinez v. Bynum, ___ U.S. ___, 51 U.S.L.W. 4524, 4525-4526 (May 2, 1983). Whether a person is physically present in the state is usually easily determined. The more difficult problem is devising a test for determining whether a person has the subjective intent to remain in the state.

If the right denied is a fundamental right (like the right to vote), or the service or benefit provided by the state is one which concerns a "basic necessity of life" (such as emergency medical care or welfare benefits), then the test for subjective "intent to remain" must be more individualized or careful. On the other hand, most state programs do not need such precise tests, and may use more generalized standards as presumptions of an "intent to remain". The most common standard is using length of physical presence in the state as an indicator of whether a person intends to remain in the state indefinitely.

The problem with using a gross indicator like length of physical presence in the state is that it does not provide for individualized determinations of intent. Consequently, as the length of residence required is increased, more and more persons who actually do have the subjective intent to remain in the state will be denied the benefit because the lengthy residency test will presume that they do not have that intent. At some point, a lengthy residency test will sweep so many "bona fide" residents in the category of nonresidents that it will offend notions of equal protection. The equal protection claim is simply that those persons who actually do have the intent to remain, and are actually bona fide residents, are being denied rights or benefits granted to other bona fide residents because the length of residency required is irrationally long.

Although constitutionally permissible lengths of residence are not capable of being precisely determined, courts have, as a general matter, upheld residency requirements of up to one year as being constitutional in most instances. Starns v. Malkerson, 326 F.Supp. 234 (D.Men. 1970), aff'd men, 401 U.S. 985 (1971); Hawaii Boating Ass'n v. Water Transportation Facilities, 651 F.2d 661, 665 (9th Cir. 1981). Except for candidates for public office, there is little support in case law for use of length of residency beyond one year. Kuhn v. Vergiles, 558 F.Supp. 24 (D. Nevada 1982) (five year residency requirement for applicants for WICHE scholarship grant program held probably unconstitutional). This office has stated orally that the only instances in which it believes it can defend a length of residence test beyond one year are when the population to be tested is, as a class, extremely mobile and where the benefit

The Honorable Bill Sheffield
Governor

June 30, 1983
Page 3

granted is extremely generous. The only programs that we believe meet this test are the Alaska Student Loan Program, presently under challenge in Alaska District Court in the case of Andress v. Baxter, and commercial fishing loans. Both programs have populations that can be reasonably identified as being mobile and the state-subsidized loans are of relatively high value. In both instances we would argue that the presumption or inference that could be drawn by being physically present in one location for one year is not as strong in determining a subjective intent to remain.

This residency bill does not deal with the residency problems raised by the Pioneers' Homes, the longevity bonus program, or the claims of the plaintiff in the student loan case (Andress v. Baxter).

Section 1 of the bill amends AS 01.10 by adding a new section defining bona fide residency in Alaska. A person establishes residency in the state by being physically present in Alaska with the intent to remain in Alaska indefinitely and to make his or her home in the state. Under this section, a person must maintain a principle place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation.

Section 2 of the bill repeals and reenacts AS 08.04.110, relating to the personal requirements of certified public accountants. This section has been amended to delete the requirement that a person be a resident of the state in order to be an applicant for that profession.

Section 3 amends AS 08.04.260 to make that section consistent with the deletion of the residency requirement for an applicant for a certified public accountant certificate.

Section 4 amends AS 08.08.207(a) by removing the requirement that an individual be a resident of Alaska in order to be a law clerk.

Sections 5 and 6 of the bill deal with the category of a "resident" trainee embalmer by deleting the term "resident" to make it clear that a person need not be a bona fide resident of the state in order to be able to become licensed to be a trainee embalmer.

Section 7 of the bill amends AS 08.88.171 by deleting the requirement that a person must be a resident before receiving

a real estate broker's license, an associate broker's license, or a real estate salesman's license.

Section 8 of the bill amends AS 08.55.130 by deleting the one-year residency requirement for the annulment of a marriage. This makes the residency requirement for annulments consistent with the residency requirements for a divorce.

Section 9 of the bill amends AS 14.43.125(b)(2) by providing that applicants for student loans whose parents or guardians have been in the state for at least two years must also have been in the state for at least one year of the immediately preceding five years. This provision was added by the Senate Judiciary Committee to take care of a perceived problem under the present statute about guardians moving up to Alaska after separating from their spouses and children and thereupon qualifying the child for an Alaska student loan even though the child had never been in the state.

Section 10 amends AS 16.05.400(b) by changing the 30-year consecutive residency requirement to a one-year requirement for a hunting, fishing, or trapping license exemption for persons 60 years of age or older.

Section 11 of the bill amends AS 16.35.130 by deleting both the one-year residency requirement dealing with the non-payment of bounty on certain animals and the requirement that a person live in the game management unit in which the animal was taken.

Section 12 amends AS 18.56.101(1), dealing with the eligibility for the one percent veteran's interest rate, by deleting the requirement that a person have been a resident of the state for at least one year and other similar residency requirements. An attorney general's opinion had previously ruled that the residency requirements in this section were unconstitutional.

Section 13 of the bill amends AS 21.27.090(a)(2) dealing with the qualifications for insurance agent and broker's license, by deleting the one-year residence requirement and substituting simple residence (30 days). The substitution of simple residence is made here and in other sections by the operation of section 1 of the bill which sets forth the standards of residency that apply to all statutes that require that a person be a resident but do not define what a resident is. In addition, it should be noted that this particular section does not condition receipt of an agent's or broker's license on being

a resident; rather, it only provides for a fee differential between resident agents and nonresident agents. This different treatment is constitutional.

Section 14 of the bill amends AS 26.10.080(d)(1)(B) relating to veteran's burial allowances by reducing the residency requirement from five years to one year at the time of death for veterans who were not residents at the time of entry into the service.

Section 15 of the bill amends AS 26.15.130(a), dealing with the eligibility for veteran's loans, by deleting the five-year residency requirement and inserting a one-year residency requirement. To receive a loan under current law, a veteran who is not a bona fide resident of the state or territory of Alaska at the time of entry into the service is required to have been a resident of the state or territory for five years.

Section 16 of the bill amends AS 38.08.030(a)(2), dealing with applications for the homesite entry, by deleting the three-year residency requirement and the 20-year requirement and substituting a one-year requirement. Under current law, an individual must submit proof that he or she has been a resident of Alaska for three years immediately preceding the date of application, or that the person has been an Alaskan resident for a total of 20 years.

Section 17 of the bill amends AS 44.81.210(a)(20), dealing with limited entry permit loans (CFAB), by deleting the five-year residency requirement and substituting a two-year requirement. Under current law, a person must be a resident of Alaska for a continuous period of five years immediately preceding the date of application for the loan and must have had a crew member or commercial fishing license under AS 16.05.480 or a permit under AS 16.43.010 -- 380, for any one of the past five years. That person must also have actively participated in the fishery during that period.

Section 18 of the bill grants authority to the commission on postsecondary education to adopt the most stringent residency requirements allowable under the constitutions of the United States and Alaska if the current two-year residency requirement for scholarship loans is declared unconstitutional by a court of competent jurisdiction. This provision is necessary since sec. 1 of this bill would immediately substitute a 30-day residency requirement for student loans upon a declaration that the two-year residency requirement is unconstitutional.

The Honorable Bill Sheffield
Governor

June 30, 1983
Page 6

Section 19 of the bill repeals a number of provisions. First, the bill deletes the requirements that a person be a resident for purposes of obtaining a driver's license, AS 08.24.110(1); a guide license, AS 08.54.110(2); an assistant guide license, AS 08.54.140(2); a transporter license, AS 08.54.142(a)(1); an insurance solicitor's license, AS 21.27.220(1); and deletes the definition of "resident" in the chapter regulating guides, AS 08.54.240(3)(B). Second, this section repeals the state land discount program based on length of residency, AS 38.05.058, which was overturned in a recent decision of the Alaska Supreme Court and also repeals AS 14.43.130 which provided for a system of granting student loans based on accumulated points determined by length of residency. This section also repeals AS 38.08.040(b) which resolved ties between applicants for homesite entry permits based on who has the longest residency in the state. Finally, this section deletes a number of definitions of "resident," thus making the general provision of sec. 1 applicable to the requirements that a person be a resident of the state. The definitions affected are AS 18.55.470(4) (ASHA low-cost housing); AS 29.63.065(d)(1) (relating to senior citizens special assessment exemption); AS 39.25.155(g) (vocational substitution programs); and AS 43.26.095(b)(3) (industrial incentive tax credits).

Section 20 of the bill provides for an immediate effective date.

We see no constitutional or other legal problems with the bill.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:RMM:rm

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811


(907) 465-3892



October 20, 1988

M E M O R A N D U M

To: Grace Berg Schaible, Attorney General
State of Alaska - Department of Law

From: Representative Dave Donley, Chair 
House Labor and Commerce Committee

Re: Durational residency statutes

Attached is a copy of a 1982 memorandum from then Attorney General Wilson Condon outlining the various durational residency requirements under Alaska law along with an advisory opinion as to their probable constitutional standing.

I am writing to request that your Department issue a similar updated memorandum for use by this and other Legislative Committees that are routinely called upon to consider proposed legislation dealing with durational residency requirements.

Please contact me or Ginger Baim in my Anchorage office at 561-7629 if you have any questions or need additional information.

Enclosure

dd/gb

MEMORANDUM

State of Alaska

TO: To The File

DATE: December 3, 1982

FILE NO 366-357-83

TELEPHONE NO

FROM: Wilson L. Condon
Attorney General

SUBJECT: Durational
Residence in Alaska

The attached eight page table and accompanying appendix setting forth the durational residency requirements imposed by Alaska State law are organized into three main parts. They are as follows:

- I. Public Office Holding
- II. Licenses
- III. Public Rights and Benefits.

Because of the Alaska Supreme Court's recent ruling in the case of Noll v. Alaska Bar Association, ___ P.2d ___, Op. No. 2546 (August 13, 1982), we have also included all residence requirements, whether durational or not, which apply to eligibility for entrance into regulated occupations in Alaska.

WLC:vrb

DURATIONAL RESIDENCE IN ALASKA

After an exhaustive review we have come up with the attached eight page table and accompanying appendix setting forth the durational residence requirements imposed by Alaska State law. The table is organized into three main parts, I PUBLIC OFFICE HOLDING, II LICENSES, AND III PUBLIC RIGHTS AND BENEFITS. The five columns in the table speak for themselves. With respect to the column "Constitutional Problem" some explanation is required. If "No" appears under Constitutional Problem, it is the opinion of the Department of Law that the durational residence requirement is constitutionally sound. Where the word "Maybe" appears in that column, it is the opinion of the Department of Law that durational residence requirement is also constitutionally sound; however, we believe that it is possible someone might initiate litigation challenging the requirement. Where the term "Probably" appears in the Constitutional Problem column, we believe that it is more than a remote possibility a court might find this durational residence requirement unconstitutional. Where "Yes" appears in the Constitutional Problem column, we believe it is highly likely that a court would find the durational residence requirement unconstitutional.

Because of the Alaska Supreme Court's recent ruling in the case of Noll v. Alaska Bar Association, P.21, Op. No. 2546 (August 13, 1982), we have also included all residence requirements, whether durational or not, which apply to eligibility for entrance into regulated occupations in Alaska. After the Noll decision it would appear that any residence requirement for entrance into a regulated occupation in Alaska will be held unconstitutional except in the most unusual circumstances.

TITLE	QUALIFICATION, RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROVISION	APPLICABLE OR EXEMPT, IF APPLICABLE
A. General				
1. Governor	7 Years	Ala. Const. art. III, § 2	No	--
2. Lieutenant Governor	7 Years	Ala. Const. art. III, §§ 2 & 7	No	--
3. Board of Education Member	3 Years	AS 16.07.075	No	--
4. Legislator	3 Years	Ala. Const. art. II, § 2 AS 24.05.010	No	--
5. Supreme Court Justice	5 Years	AS 22.05.070	No	--
6. Court of Appeals Judge	5 Years	AS 22.07.040	No	--
7. Superior Court Judge	5 Years	AS 22.10.090	No	--
8. District Court Judge	5 Years	AS 22.15.160(a)	No	--
9. Magistrate	6 Months	AS 22.15.160(b)	No	--
10. Ordinance	3 Years	AS 24.55.030	No	--
11. Borough Mayor	Up to 3 Years	AS 29.23.130(b)	No	--
12. Borough Assembly	Up to 3 Years	AS 29.23.050	No	--
13. City Mayor	Up to 3 Years	AS 29.23.250(a)	No	--
14. City Council	Up to 3 Years	AS 29.23.200(b)	No	--
15. Municipal Charter Commission	3 Years	AS 29.13.010	No	--

TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR FEARED, IF APPLICABLE
B. <u>Boards and Commissions other than Occupational Licensing Boards.</u> There are 98 Boards and Commissions, other than Occupational Licensing Boards, which are a part of or affiliated with state government. There is a durational residence requirement for membership on seven of those boards and commissions. ^{**/}				
1. Burial Affairs Commission	5 Years	AS 44.19.102	Maybe ^{**/}	None
2. Board of Fisheries	1 Year	AS 16.05.271 AS 16.05.940	No	--
3. Board of Game	1 Year	AS 16.05.221 AS 16.05.940	No	--
4. Judicial Qualifications Commission	10 years practice in Alaska	Al. Const. art. IV, § 10 AS 22.30.010	Maybe ^{**/}	--
5. Municipal Bond Bank Authority	30 days (qualified voter)	AS 44.85.030	No	--
6. Personnel Board	30 days (qualified voter)	AS 39.25.060	No	--
7. Alaska Power Authority	30 days (qualified voter)	AS 44.83.020	No	--

^{**/} This list includes only boards and commissions which have express durational residency requirements. Many boards have ex officio members who must meet residency requirements for those offices or positions. These boards include:

- (1) Alcohol Beverage Control Board (certain licensees); (2) Capital Site Planning Commission (borough mayors);
- (3) Coastal Policy Council (mayors, assembly and council members); (4) Code Revision Commission (members of legislature);
- (5) Citizens Advisory Commission on Federal Management Areas in Alaska (governor and other public officers); (6) Commission on Conference of the Law of the Sea (members of legislature); (7) Rural Development Council (members of legislature); (8) Teacher's Retirement Board (resident who is receiving retirement benefits); (9) Tourism Advisory Board (members of legislature); and
- (10) Governor's Commission on the Administration of Justice (judicial officers, legislators and municipal officials)

^{**/} It is difficult to imagine someone complaining about any possible constitutional problems here.

TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE
<p>C. <u>Occupational Licensing Boards.</u> There are 23 Occupational Licensing Boards in Alaska. There is a durational residence requirement for membership on eight of those Boards. They are listed below. Of the other 15, eight have no residence requirement whatsoever and seven require simple residence.</p>				
1. Public Accounting Board	1 Year	AS 08.04.020	No	--
2. Board of Chiropractic Examiners	2 Years	AS 08.20.020	No	--
3. Board of Dental Examiners	5 Years	AS 08.36.010	Maybe ^{*/}	None
4. State Board of Registration for Architects, Engineers, and Land Surveyors	3 Years	AS 08.48.031	No	--
5. Guide Licensing and Control Board	10 Years	AS 08.54.010	Maybe ^{*/}	None
6. Board of Pharmacy	3 Years in-state practice although not a specific residence requirement	AS 08.80.010	No	--
7. Board of Examiners in Optometry	3 Years	AS 08.72.040	No	--
8. Board of Veterinary Examiners	5 Years in-state practice although not a specific residence requirement	AS 08.98.010	Maybe ^{*/}	None

^{*/} It is difficult to imagine someone complaining about any constitutional problem here, however.

II. LICENSES

TYPE	OCCUPATIONAL RESIDENCE REQUIREMENTS	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE
<p>A. <u>Occupational Licenses.</u> The State of Alaska requires occupational licenses in 28 separate occupational areas. Residence requirements are imposed for the receipt of these licenses in seven of these occupational areas. For reasons set forth in Appendix A, we believe any residence requirement, even of zero duration length, will in most cases be unconstitutional.</p>				
1. Public Accountant	1 Year (rebuttable)	AS 08.04.260 12 AAC 04.170	Yes	None
2. Attorney	Residence	Bar Rule 5(1)(a)	Yes	Declared unconstitutional in <i>Holl v. Alaska Bar Ass'n</i> 8/13/82
3. Collection Agencies	1 Year, but non-resident may receive license on same basis as resident, except fee for branch offices is higher	AS 08.24.110 AS 08.24.370	No	--
4. Bartenders	1 Year In-state apprenticeship	AS 08.42.110	Yes	None
5. Guides				
Master Guide	Residence plus limited 10 years	AS 08.54.100	Yes	None
Registered Guide	Resident	AS 08.54.110	Yes	None
Class A Assistant Guide	20 years experience in guide district in which he is to be employed although not necessarily	AS 08.54.120	Yes	None

TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR FEARED, IF APPLICABLE
<u>Occupational Licenses (Cont.)</u>				
6. Junk Dealer & Metal Scrapper	No resident requirement, but defines "resident" as present for one year.	AS 08.60.030	No	--
7. Real Estate Brokers and Salesmen	Resident	AS 08.88.171	Yes	None
8. Insurance Brokers, Agents and Solicitors				
Resident Insurance Salesmen or Broker (non residents can be licensed but may pay a higher fee)	1 year	AS 21.27.090 AS 21.06.250	No	-- --
Insurance Solicitor	1 year	AS 21.27.220	Yes	None
<u>B. Other Licenses</u>				
1. Alcoholic Beverage License	1 year	AS 04.11.390	Maybe	None
2. Resident Fish and Game License (resident license costs less than non-resident license)	12 consecutive months	AS 16.05.940	Maybe	None

III. PUBLIC RIGHTS AND BENEFITS

A. General

1. Voting	30 days	AS 15.05.510	No	--
2. Annulment of Marriage	1 Year	AS 09.55.130	Maybe	None

TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE
<u>General (Cont.)</u>				
3. Low-Cost Housing Preference	1 Year	AS 18.55.330 AS 18.55.470(4)	Probably	None
4. Vocational Substitution Program	1 Year	AS 39.25.155(g)	Probably	None
5. Industrial Incentive Tax Credits	Depends on 2 of 1-year residents	AS 43.26.095(b)(3)	Probably	Program is for all practical purposes no longer operating.
6. Bounties for Certain Animals	1 year reside in this plus "contin- ually maintained residence in the state . . ."	AS 16.35.130	Yes	The program is a dead letter because it has not been funded for several years.

B. Loan and Grant Programs. Approximately 41 loan programs are provided for under Alaska Statutes. 35 of these are currently active programs. Of these 35, seven have some sort of durational residency feature. The dominant programs are inactive because of lack of funding. The state has one grant program requiring a period of residency for eligibility.

1. Fisherman's Note and Mortgage Program	5 Years	AS 16.10.680(a)	Yes	AG opinion pending
2. Commercial Fishing Loan	5 Years	AS 16.10.310(n)	Yes	AG opinion pending
3. Limited Entry Permit Loans (CFAB)	5 Years	AS 44.81.220(a)(20)	Yes	Program inactive pending Court determin- ation of legality of Limited entry program in State v. Ostrosky.
4. Agriculture and Fishing Loan (CIAB)	1 Year	Board Policy	Maybe	None
5. Alaska Housing Finance Corp. One Percent Veterans' Housing Loan Rate Reduction	5 Years	AS 18.56.101	Yes	AG opinion 7/14/82 instructed agency not to enforce.

TIME	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE
<u>Loan and Grant Programs (Cont.)</u>				
7. Mining Business Loans	Residency and 5 Years Mining Experience in State.	AS 27.09.020	Maybe	None
8. Memorial Scholarship Loan Fund	No durational requirement to apply. 1/5 loan forgiven for each year employed in specialized field in Alaska.	AS 14.40.825(c)	No	---
9. Student Loan Program				
(a) eligibility to apply	2 Years	AS 14.40.765(b)	Probably	Issue pending in <u>Andress v. Baxter</u>
(b) 1/10 forgiven for each year of residency after education up to 50% of loan.	---	AS 14.40.763(1)	Maybe	May be covered by <u>Gilman v. Butlin</u> which is now pending in Alaska Supreme Court
(c) Point Preference System for loan applicants	1 Point; 2-5 Years 2 Points; 5-10 Years 3 Points; 10+ Years	AS 14.40.767	Yes	Point system has not previously been utilized as legislature has always funded all applicants.
10. Alaska Educational Incentive Grant	2 Years	Application form	Probably	Issue will be decided by result in <u>Andress v. Baxter</u>
<u>C. Land Disposal Programs</u>				
1. Land Disposal by Lottery	1 Year	AS 38.05.057(b)(7)	Maybe	Should be decided by <u>Gilman v. Butlin</u> .
2. Land Purchase Price Discount Program	5% per year discount for each year of residency up to 10 years	AS 38.05.058	Probably	Should be decided by <u>Gilman v. Butlin</u> .

TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING IF APPLICABLE
<u>Land Disposal Programs (Cont.)</u>				
3. Inesite Entry Program	3 years (or 20 years of earlier residency) to apply	AS 38.08.030(a)(2)	Yes	AG opinion pending
	Priority given longest resident	AS 38.08.040(b)		
4. Remote Parcel Leasing Program	1 Year	AS 38.08.077(1)(2)	Maybe	Should be decided by <i>Gilman v. Martin</i> .
<u>D. Special Old Age Programs</u>				
1. Longevity Bonus Program	25 years and presence in State at or before statehood.	AS 47.45.010(a)	Yes	Issue Pending in <i>Vest v. Schifer</i>
2. Pioneers' Home Program	15 years immediately before application or 30 years cumulative	AS 47.25.020(a) AS 47.25.035	Yes	None
3. Senior Citizen Special Assessment Exemption	12 months	AS 29.63.065(d)(1)	Maybe	None
4. Senior Citizen Exemption from Fishing License Requirement	30 years total residence	AS 16.05.400	Yes	None

Appendix A

The federal constitution's Privileges and Immunities Clause seeks to prevent discrimination against nonresidents, to further the concept of federalism, and to create a national economic unit. Shely v. Alaska Bar Ass'n, 620 P.2d 640, 642 (Alaska 1980) ("Shelev"). Although the Clause does not preclude some disparity of treatment between residents and nonresidents, it does protect activities which are "fundamental rights": i.e. "basic and essential activities, interference with which would frustrate the purposes of the formation of the Union." Baldwin v. Fish & Game Comm'n, 436 U.S. 371, 388 (1978).

One such "fundamental right" is the right to engage in "common callings" and to pursue "ordinary livelihoods." Toomer v. Witsell, 334 U.S. 385, 403 (1948). This includes "professional occupations." Shelev, 620 P.2d at 643.

In order to discriminate against nonresidents when a fundamental right is involved, there must be: (1) some showing that nonresidents are "a peculiar source of the evil" which the residence requirement is meant to remedy; and (2) the discrimination against nonresidents must "bear a substantial relationship to the particular 'evil' they are said to present." Hicklin v. Orbeck, 437 U.S. 518, 526-527 (1978). For example, there cannot be less restrictive means to combat the problems attempted to be solved by the residency requirement. Shelev, 620 P.2d at 645.

A good example is the recent Alaska Supreme Court case Noll v. Alaska Bar Ass'n, ___ P.2d ___, Op. No. 2546 (August 13, 1982). In Noll, a nonresident challenged the constitutionality of Alaska Bar Rule 5(1)(a), which required that an applicant for admission to the state bar be domiciled in Alaska when he or she was actually admitted. The bar association argued that the residency requirement was needed:

- (1) to assure the competency of the members of the bar;
- (2) to assure familiarity with local practice and local issues;
- (3) to facilitate service of process and communication with other attorneys; and
- (4) to assure that members of the state bar are readily amenable to discipline and fee arbitration and are available for service of the committees that administer those procedures.

The Alaska Supreme Court rejected each and every reason offered. Although recognizing the legitimacy of those goals, the court either found these goals were not "substantial" enough to justify the discrimination, could be attained by other nondiscriminatory means, or were not furthered by the discrimination. As can be seen, this constitutional test is difficult to meet. Consequently, all residency requirements for occupational licensing are called into question.

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892



October 20, 1988

M E M O R A N D U M

To: Tam Cook, Director
Legislative Legal Services

From: Representative Dave Donley, Chair
House Labor and Commerce Committee **B**

Re: Durational residency statutes

Attached is a copy of a 1982 memorandum from then Attorney General Wilson Condon outlining the various durational residency requirements under Alaska law along with an advisory opinion as to their probable constitutional standing.

I am writing to request that you prepare a similar updated memorandum for use by this and other Legislative Committees that are routinely called upon to consider proposed legislation dealing with durational residency requirements.

In addition, I would like a legal opinion from you regarding the possible constitutional questions raised by attempting to mandate a two year residency requirement in order to be eligible for the Longevity Bonus and the Permanent Fund Dividend.

Please contact me or Ginger Baim in my Anchorage office at 561-7629 if you have any questions or need additional information.

Enclosure

dd/gb

STATE OF ALASKA
THE LEGISLATURE

INDUCHY STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

November 16, 1988

SUBJECT: Two year residency requirement for certain
state benefits (W.O. No. 16-0107)

TO: Representative Dave Donley

FROM: Tamara Brandt Cook ^{TBC}
Director
Division of Legal Services

You have asked me to elaborate on my memorandum dated October 11, 1988 as to the possible unconstitutionality of imposing a two year durational residency requirement before a person will be eligible to receive benefits under the longevity bonus program and the permanent fund dividend program.

It is clear that the state may limit its benefits programs to residents. To determine whether or not a person is in fact a resident, the state may require a person to have been a resident for a period of time. The length of time that the state may impose for the purposes of insuring that only residents qualify for the benefits conferred under a particular program varies depending upon the type of benefit at issue.

The United States Supreme Court has made it clear that a [REDACTED]
[REDACTED]
(Shapiro v. Thompson, 394 U.S. 618, 22 L.Ed.2d 600 (1969) involving state welfare benefits; Memorial Hospital v. Maricopa County, 415 U.S. 250, 39 L.Ed.2d 306 (1974) involving medical benefits.) Nor can the state impose a one year residency requirement if an [REDACTED] constitutional [REDACTED] state. (Dunn v. Blumstein, 405 U.S. 330, 31 L.Ed.2d 274 (1972) involving the right to vote.)

However, the federal standard [REDACTED] the "strict scrutiny" test for a durational residency requirement [REDACTED]

~~basic necessity of life~~ "basic necessity of life" or a "fundamental right" is /
Under the weaker "rational basis" test the U.S. Supreme Court has upheld a one year residency requirement as a condition of obtaining divorce (Sosna v. Iowa, 419 U.S. 393, 42 L.Ed.2d 532 (1975)) and as a condition of in-state tuition (Starns v. Malkerson, 326 F.Supp. 234 (D.C. Minn. 1970) aff'd, 401 U.S. 985, 28 L.Ed.2d 527 (1971)). It is far from certain, however, that, even in cases not involving a "basic necessity of life" or a fundamental right", the U.S. Supreme Court would uphold a two year residency requirement very readily.

The Alaska Supreme Court seems to have taken an even broader interpretation of the right to travel and a more critical view of durational residency requirements than the U.S. Supreme Court. For example, in State v. Adams, 522 P.2d 1125 (Alaska 1974), the court held that a one year residency requirement to obtain a divorce in a state court violates the state constitution. The court went so far as to say:

All durational residency requirements inherently infringe upon the fundamental constitutional right of interstate travel. Hence, all such requirements are prima facie invalid and will be countenanced only when they serve a compelling state interest. (Footnotes omitted. Adams, at 1131)

The standard for reviewing durational residency requirements in Alaska was altered somewhat after the Supreme Court adopted a new balancing test under the state equal protection requirements. (Isakson v. Rickey, 550 P.2d 359 (Alaska 1983)) Even under the new test, though, the court ~~requires the state to provide a high level of justification before it will sustain a durational residency requirement.~~ Under the new test the court struck down a borough ordinance requiring one year of residency in a borough before participating in the borough's land lottery. (Gilman v. Marin, 662 P.2d 120 (Alaska 1983)) The Alaska Supreme Court has upheld lengthy residency requirements for eligibility to run for the state legislature (Gilbert v. State, 526 P.2d 1131 (Alaska 1974)), for eligibility to perform jury duty (Hampton v. State, 569 P.2d 138 (Alaska 1977)), and for eligibility to run for municipal office (Castner v. City of Homer, 598 P.2d 953 (Alaska 1979)). However, the distinguishing factor in these cases is that they each involved a position having important policy making responsibilities.

Chief Justice Rabinowitz explained the balancing test that applies to residency requirements in Williams v. Zobel, 619 P.2d 448 (Alaska 1980) as follows:

In our view the uniform balancing approach adopted in Erickson is much more appropriate in this context than the two-tier analysis used in our prior cases. Further, we will no longer regard all durational residency requirements as automatically triggering strict scrutiny and requiring a showing that such a classification is absolutely necessary to promote a compelling state interest. Instead, we will [REDACTED] this right caused by the [REDACTED] (Footnote omitted, Zobel at 453)

The Attorney General concluded that the two year residency requirement for a student loan could not withstand constitutional scrutiny under either state or federal standards. (A.G. Opinion, May 5, 1981, J-66-727-81) That two year requirement was, in fact, upheld by the federal district court in an unreported case. (Andress v. Baxter, U.S. District Court for the District of Alaska No. A82-307 Civ, Sept. 8, (1983)) But, since there was no written opinion in that case, the reasoning behind it cannot be analyzed. And it is not clear whether the residency requirement would survive scrutiny by our Supreme Court even under the new, more relaxed state standard described in Zobel.

Because our court is using a balancing test and considering each situation involving a residency requirement on a case by case basis, [REDACTED] I continue to believe that it is unlikely that the court would view a durational residency requirement of that length with favor. [REDACTED] of that length is necessary to prevent fraud [REDACTED]

Dear Senior Alaskan,

As we prepare for the first legislative session of the Sixteenth Alaska Legislature, it's important to me to know what's on your mind.

I will continue to fight to represent your views on the *Senior Property Tax Exemption, Permanent Fund Dividends and the Longevity Bonus*. Programs serving Alaska seniors are of top priority to me.

Your opinions are important to me. It would be of great value to me if you could fill out the short survey below and return it. Your answers will help me better represent our district.

Unless I hear strong views to the contrary, I plan to introduce legislation next year requiring two years of Alaska residency for seniors to be eligible for the Longevity Bonus. As you know, the original program required continuous residency since statehood. That requirement was overturned by the Alaska Supreme Court. The state subsequently adopted a one-year residency requirement, although the courts have upheld residency requirements of up to two years in other cases.

If you have any questions or comments please don't hesitate to call me at my office (561-7629). I look forward to hearing from you.

Sent 600 12/88

Sincerely

Dave Donley

Received 108 1/89

Representative Dave Donley

Representative Dave Donley's 1989 Legislative Survey on Senior Issues

- I. Do you believe that the current one-year residency requirement for the Longevity Bonus should be raised to two years?
92% Yes 8% No
- II. During the Spring of 1988, the Legislature voted to replace the existing Longevity Bonus program with the Annuity plan which the voters chose in 1986. Under the Annuity Program, those who currently receive the bonus would continue to receive \$250/month payments from the state. Other Alaskans would have the choice of participating in the Annuity Program by depositing their Permanent Fund Dividend checks into an annuity account. Payments from annuity account would gradually replace the state General Fund contributions to the Longevity Bonus Program.
 - a) In light of the Governor's veto of the Annuity Program should we leave the program alone or continue to work on alternative proposals?
64% Leave the Program Alone 36% Work on Alternative Proposals
 - b) If you believe we should continue to work on alternative proposals, which of the following do you think we should pursue?
49% Annuity 40% Stair-Stepped Phase Out 11% Needs-Based
- III. In a desire to save money there has been discussion of whether or not to contract out to private management firms for the operation of the Pioneer Homes. Do you think the Pioneer Homes should continue to be operated by the State or private Management firms?
61% I Oppose Contracting Out 16% Favor Private Management 23% I'm Undecided
- IV. How do you think the State should prioritize it's funds for senior care programs? Would you place more emphasis on in-home care or centralized care (i.e. Pioneer Homes)?
59% I Favor In-Home Care 26% I Favor Centralized Care 15% I'm Undecided

Not paid for at government expense

FISCAL NOTE

REQUEST:

Revision Date: January 23, 1989
Title: * See below

Agency Affected: Administration
BRU: Longevity Bonus

Sponsor: Donley
Requestor: State Affairs Committee

Components: Administration, Grants

* An Act relating to durational residency requirements for certain state benefit programs; and providing for an effective date

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	(60.0)	(120.0)	(120.0)	(120.0)	(120.0)
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	(60.0)	(120.0)	(120.0)	(120.0)	(120.0)
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	(60.0)	(120.0)	(120.0)	(120.0)	(120.0)
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	(60.0)	(120.0)	(120.0)	(120.0)	(120.0)

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

See attached

Prepared By: James H. Chase
Division: Pioneers' Benefits

Phone: 465-4400

Date: _____

Approved by Commissioner: John M. Andrews
Agency: Department of Administration

Date: 1/25/89

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

CONTINUATION of FISCAL NOTE ANALYSIS

CSHB 34 (SA)
HOUSE 1/27/89

In order to project the fiscal impact of the passage of HB 34 some assumptions had to be made. These assumptions were:

- 1) That the number of applicants for the Longevity Bonus who have a minimum of one year of residence in the state will remain at the same ratio to the total number of applicants.

Rationale: This ratio has remained constant for the past two years.

- 2) That the ratio of applicants for the Longevity Bonus who have a minimum of one year of residence in the state to the total number of applicants will remain at one in five.

Rationale: This is the ratio demonstrated in the last two years.

- 3) That the passage of HB 34 will impact only those applicants with less than two years of residence the year following its passage.

Rationale: Those applicant who would otherwise be qualified would have to wait another year for their applications to be accepted. Those who learn of the passage of HB 34 who do not have the one year of residence would apply two years after its passage and continue to do so in the following years.

- 4) That the average number of applicants for the Longevity Bonus who have a minimum of one year of residence in the state is 40 per month.

Rationale: Historical trend analysis result.

With these assumptions the following calculations were made. The number of applicants, 40, is multiplied by \$250 and that product multiplied by six for the second half of FY 90 or 12 for the FY 91 or six for the first half of FY 92. These products were the savings in the grant component. The savings in postage cost is reflected in the contractual component.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to durational
 residency requirements..."
 Sponsor: Repr. Donley
 Requestor: House State Affairs

Agency Affected: Department of Law
 BRU: Legal Services
 Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL			30.0	30.0		
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	30.0	30.0	-0-	-0-

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	30.0	30.0	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PT-TIME						
SEASONARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard L. Pegues, Director
 Division: Administrative Services

Phone: 465-2677
 Date: January 23, 1989

Approved by Commissioner: Richard L. Pegues (FOR)
Grace Berg Schaible, Atty. Gen.
 Agency: Department of Law

Date: January 23, 1989

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

CSHB 34 (SA)
HOUSE 1/27/8

Section 1 of this bill amends AS 43.23.005 (a)(2) to increase the residency requirement, for an individual to receive the state's annual permanent fund dividend, from six consecutive months' residence to 24 consecutive months' residence immediately preceding April 1 of the current dividend year.

Section 2 of the bill amends AS 47.45.010 (a) to increase the residency requirement, for an individual to receive the state's longevity bonus, from one year's residency to two year's residency immediately preceding an individual's application for the longevity bonus.

Historically, state laws containing lengthy durational requirements have come under legal attack in Alaska. The department anticipates that if the bill is enacted it will be challenged in the courts, on federal constitutional grounds. Fiscal note funds, in the amount of 30.0, are therefore being requested to pay for outside counsel to assist in the preparation of arguments, that will be needed by the department to defend the state. Although an opinion cannot be offered, it should be noted that if the bill becomes law and then is subsequently overturned by the courts, the state might be exposed to the payment of damages for any injuries or loss suffered by any classes of persons, as a result of the bill's enactment.

FISCAL NOTE

REQUEST

Revision Date: _____
Title: Durational residency require-
ments for state benefit programs
Sponsor: Donley, Boucher, Boyer, et al.
Requestor: _____

Agency Affected: Revenue
BRU: Permanent Fund Dividend Division
Components: Permanent Fund Dividend
Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: See Attached

Prepared By: Ervin Jones
Division: Permanent Fund Dividend Division
Approved by Commissioner: _____
Agency: Revenue

Phone: 455-2323
Date: Janu 19
Date: 1/27/89

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

Alaska Department of Revenue
Permanent Fund Dividend Division

No. 3
CSHB 34 (SA)
HOUSE 1/27/89

Section 1 modifies one of the four general eligibility requirements to receive a permanent fund dividend. Under the law enacted in 1982, an individual must have been "a state resident for a period of at least six consecutive months immediately preceding April 1 of the current dividend year." For example, in addition to the other requirements, to be eligible for the 1989 dividend, an individual must have been a state resident during the ELIGIBILITY PERIOD of October 1, 1988 through March 31, 1989. Section 1 extends the six month requirement to 24 months. In other words, the individual in the above example, in order to qualify for the 1990 dividend (see Section 3) must have been a state resident for the entire ELIGIBILITY PERIOD of April 1, 1988 through March 31, 1990.

Conservatively speaking, there are approximately 60,000 new dividend applicants each year. The first effect of Section 1 would be felt in 1990 when 60,000 new Alaskans who thought they would be eligible, find that they are not. The second and most difficult effect would be when approximately 60,000 individuals who did qualify for the 1989 dividend find that they are now not eligible for the 1990 dividend. (See attachment A)

It will take considerable effort on the Department's part, in conjunction with the state demographer, to predict the final effect of this bill. Some of the factors to be considered include:

- 1) the length of the period (current proposal - 24 months);
- 2) the number of eligible individuals who leave each year;
- 3) the number of new person's arriving each year;
- 4) the percentage of individuals moving to Alaska who leave after one year, eighteen months, etc.;
- 5) the seasonal distribution of new arrivals;
- 6) the relative birth rate of new arrivals versus individuals who have been in Alaska over two years; and
- 7) the reaction of military personnel to the new proposal, i.e. how do they respond to the new choice presented relative to overseas pay, overseas duty credit, etc.

The final effect on administrative costs of the Permanent Fund Dividend program would depend upon such factors as mentioned above. For the first two years, the additional costs would include informing, advising, and counseling the public answering their repeated questions as to "why was I a resident in 1989 and not in 1990," plus the costs of denying the applicants who would file anyway, and hearing their appeals, and the costs of assisting the

Alaska Department of Revenue
Permanent Fund Dividend Division

No. 3
CSHB 34 (SA)
HOUSE 1/27/89

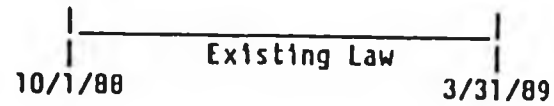
Department of Law in defending the new requirement. These cost increases might partially be offset by the document processing cost savings of reducing the number of applicants by approximately 60,000.

The Department's primary concern with the bill is a clear policy call -- the likelihood of a successful legal challenge to the extended ELIGIBILITY PERIOD on constitutional grounds, i.e. durational residency tests. This issue should be carefully weighed before jeopardizing the existing dividend program.

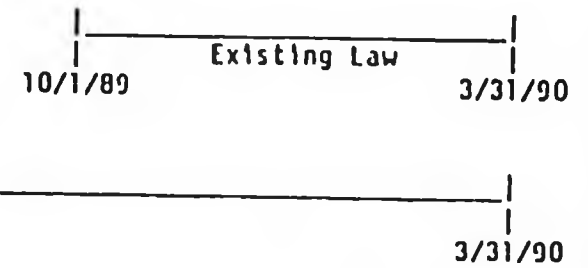
DIVIDEND
YEAR

COMPARISON OF ELIGIBILITY PERIODS

1989



1990



FISCAL NOTE

REQUEST:

Revision Date: February 8, 1989
Title: "An Act relating to durational residency requiremetns..."
Sponsor: House State Affairs
Requestor: House Judiciary

Agency Affected: Department of Law
BRU: Legal Services
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL				30.0	30.0	
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	30.0	30.0	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	30.0	30.0	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: February 8, 1989
Richard I. Pegues /FOR/
Approved by Commissioner: Grace Berg Schaible, Atty. Gen. Date: February 8, 1989
Agency: Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 34 (St. AFF.)

Section 1 of this bill amends AS 43.23.005(a)(2) to increase the residency requirement, for an individual to receive the state's annual permanent fund dividend, from six consecutive months' residence to 24 consecutive months' residence immediately preceding April 1 of the current dividend year.

Section 2 of the bill amends AS 47.45.010(a) to increase the residency requirement, for an individual to receive the state's longevity bonus, from one year's residency to two year's residency immediately preceding an individual's application for the longevity bonus.

Historically, state laws containing lengthy durational requirements have come under legal attack in Alaska. The department anticipates that if the bill is enacted it will be challenged in the courts, on federal constitutional grounds. Fiscal note funds, in the amount of 30.0, are therefore being requested to pay for outside counsel legal scholar costs, to assist in the preparation and review of arguments that will be needed by the department to defend the state.

In addition to these costs, the department also has a hidden cost whenever it has to divert existing staff resources from other work to defend against durational residency lawsuits. As an example, the longevity bonus lawsuit, Vest v. State, cost the department about \$70,000 in staff salaries and associated overhead expenses. Approximately ten weeks of attorney time was required to prepare for and defend the state at trial, on the constitutionality and retroactivity issues. Approximately eight weeks of attorney time was spent on the Alaska Supreme Court appeals, on the same issues. The average cost for the department's attorneys who handle this level of work, including normal office support costs, is \$96.00 per hour. The department also paid Professor Walter Dellinger \$8,200 to review and help prepare its briefs in the Vest trials. Professor Dellinger is a noted legal scholar and an expert on constitutional law. The department's outside legal expert costs in this matter would have been substantially greater had the case reached the U.S. Supreme Court. Because this particular dispute was settled on a request for a motion for summary judgement and did not require a trial on the facts, and because the dispute ended at the state supreme court level, the department's total costs were probably somewhat less than they would have been if the case had gone to the U.S. Supreme Court. Lastly, the costs, attorney fees, and interest that were awarded to the plaintiff by the court in Vest, and which were subsequently paid by the state, totalled \$149,383.88.

Although an opinion cannot be offered, it should also be noted that if the bill becomes law and then is subsequently overturned by the courts, the state might be exposed to the payment of damages for any injuries or loss suffered by any classes of persons, as a result of the bill's enactment.

FISCAL NOTE

REQUEST

Revision Date: _____
Title: Durational residency require-
ments for state benefit programs
Sponsor: State Affairs
Requestor: _____

Agency Affected: Revenue
BRU: Permanent Fund Dividend Division
Components: Permanent Fund Dividend
Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: See Attached.

Prepared By: Ervin Jones
Division: Permanent Fund Dividend Division
Approved by Commissioner: [Signature]
Agency: Revenue

Phone: 465-2323
Date: February 8, 1989
Date: 2/8/89

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

Alaska Department of Revenue
Permanent Fund Dividend Division
CS HB 34 (SA) Fiscal Note Analysis
February 8, 1989

Section 1 modifies one of the four general eligibility requirements to receive a permanent fund dividend. Under the law enacted in 1982, an individual must have been "a state resident for a period of at least six consecutive months immediately preceding April 1 of the current dividend year." For example, in addition to the other requirements, to be eligible for the 1991 dividend under current law, an individual must have been a state resident during the ELIGIBILITY PERIOD of October 1, 1990 through March 31, 1991. Section 1 extends the six month requirement to 24 months. In other words, the individual in the above example, in order to qualify for the 1991 dividend (see Section 3) must have been a state resident for the entire ELIGIBILITY PERIOD of April 1, 1989 through March 31, 1991 (see Attachment A).

Conservatively speaking, there are approximately 60,000 new dividend applicants each year. The first effect of Section 1 would be felt in 1991 when 60,000 new Alaskans who thought they would be eligible, find that they are not. The second and most difficult effect would be when approximately 60,000 individuals who did qualify for the 1990 dividend find that they are now not eligible for the 1991 dividend (see Attachment A).

It will take considerable effort on the Department's part, in conjunction with the state demographer, to predict the final effect of this bill. Some of the factors to be considered include:

- 1) the length of the period (current proposal - 24 months);
- 2) the number of eligible individuals who leave Alaska each year;
- 3) the number of new persons arriving each year;
- 4) the percentage of individuals moving to Alaska who leave after six months, one year, eighteen months, etc.;
- 5) the seasonal distribution of new arrivals;
- 6) the relative birth rate of new arrivals versus individuals who have been in Alaska over two years; and
- 7) the reaction of military personnel to the new proposal, i.e. how do they respond to the new choice presented relative to overseas pay, overseas duty credit, etc.

The final effect on administrative costs of the Permanent Fund Dividend program would depend upon such factors as mentioned above. For the first two years, the additional costs would include informing, advising, and counseling the public; answering repeated questions as to "why was I a resident in 1990 and not in 1991," plus the costs of denying the applicants who would file anyway and hearing their appeals; and the costs of assisting the Department

Alaska Department of Revenue
Permanent Fund Dividend Division
CS HB 34 (SA) Fiscal Note Analysis
February 8, 1989

of Law in defending the new requirement. These cost increases might be offset partially by the document processing cost savings of initially reducing the number of applicants by approximately 60,000.

At this point, the net effect in administrative costs appears to be zero. If this does not prove to be the case upon implementation, a supplemental appropriation would be sought.

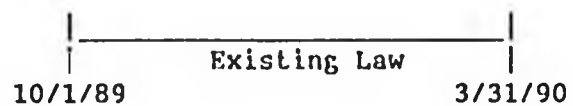
The Department's primary concern with the bill is a clear policy call -- the likelihood of a successful legal challenge to the extended ELIGIBILITY PERIOD on constitutional grounds, i.e. durational residency tests. This issue should be carefully weighed before jeopardizing the existing dividend program.

A handwritten signature in cursive script, appearing to read "H. Malone". The signature is written in dark ink and is positioned in the lower-left quadrant of the page.

DIVIDEND
YEAR

COMPARISON OF ELIGIBILITY PERIODS

1990



1991



FISCAL NOTE RECEIVED MAR 28 1989

REQUEST:

Revision Date: March 21, 1989
Title: "An Act establishing durational residency requirements..."
Sponsor: House Judiciary
Requestor: House Finance

Agency Affected: Department of Law
BRU: Legal Services
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL				30.0	30.0	
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	30.0	30.0	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	30.0	30.0	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard L. Pegues Director
Division: Administrative Services Division
Approved by Commissioner: Richard L. Pegues FOR
Agency: Department of Law

Phone: 465-3672
Date: March 21, 1989
Date: March 21, 1989

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 34 (Fin)

The committee substitute for HB 34 adds legislative findings, and it also provides for reduced durational residency requirements if a court finds that the bill's 24 month durational requirements are invalid. Specifically, Sections 3 and 6 appear to delegate the legislature's law making authority to the court, if a court finds either a two year or a one year residency requirement invalid. In the case of the Longevity Bonus Program, this delegation could conceivably result in a shorter durational residency requirement than currently exists. However, these changes do not alter the fact that state laws containing lengthy durational residency requirements come under legal attack in Alaska. Consequently, the fiscal impacts noted in the Department of Law's fiscal note of February 8, 1989, are still appropriate. The department's previous comments regarding that impact are repeated below.

Section 2 of this bill amends AS 43.23.005(a)(2) to increase the residency requirement, for an individual to receive the state's annual permanent fund dividend, from six consecutive months' residence to 24 consecutive months' residence immediately preceding April 1 of the current dividend year.

Section 5 of the bill amends AS 47.45.010(a) to increase the residency requirement, for an individual to receive the state's longevity bonus, from one year's residency to two year's residency immediately preceding an individual's application for the longevity bonus.

Historically, state laws containing lengthy durational requirements have come under legal attack in Alaska. The department anticipates that if the bill is enacted it will be challenged in the courts, on federal constitutional grounds. Fiscal note funds, in the amount of 30.0, are therefore being requested to pay for outside counsel legal scholar costs, to assist in the preparation and review of arguments that will be needed by the department to defend the state.

In addition to these costs, the department also has a hidden cost whenever it has to divert existing staff resources from other work to defend against durational residency lawsuits. As an example, the longevity bonus lawsuit, Vest v. State, cost the department about \$70,000 in staff salaries and associated overhead expenses. Approximately ten weeks of attorney time was required to prepare for and defend the state at trial, on the constitutionality and retroactivity issues. Approximately eight weeks of attorney time was spent on the Alaska Supreme Court appeals, on the same issues. The average cost for the department's attorneys who handle this level of work, including normal office support costs, is \$96.00 per hour. The department also paid Professor Walter Dellinger \$8,200 to review and help prepare its briefs in the Vest trials. Professor Dellinger is a noted legal scholar and an expert on constitutional law. The department's outside legal expert costs in this matter would have been substantially greater had the case reached the U.S. Supreme Court. Because this particular

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 34 (Fin)

dispute was settled on a request for a motion for summary judgement and did not require a trial on the facts, and because the dispute ended at the state supreme court level, the department's total costs were probably somewhat less than they would have been if the case had gone to the U.S. Supreme Court. Lastly, the costs, attorney fees, and interest that were awarded to the plaintiff by the court in Vest, and which were subsequently paid by the state, totalled \$149,383.88.

Although an opinion cannot be offered, it should also be noted that if the bill becomes law and then is subsequently overturned by the courts, the state might be exposed to the payment of damages for any injuries or loss suffered by any classes of persons, as a result of the bill's enactment.

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HB 34

Durational Residency Requirements

Received January 9, 1989
by Reps. Donley, Boucher, Boyer, Brown, Hudson,
Ulmer and Goll

Heard January 25, 1989

Committee Substitute adopted January 25, 1989

Passed Out of Committee January 25, 1989
6 Do Pass

TABLE OF CONTENTS

HB 34: Durational Residency Requirements

- Item 1:** HB 34 by Donley, Boucher, Boyer, Brown,
Hudson, Ulmer, and Goll

CSHB 34 (SA)
- Item 2:** Fiscal Notes and Analysis:
Department of Administration
Department of Law
Department of Revenue
- Item 3:** Memorandum from Rep. Donley to
House State Affairs Committee
January 24, 1989
- Item 4:** Committee Substitute for HB 34
Work Draft 6-0107E by Cook, January 24, 1989
- Item 5:** Memorandum from Keith Levy to
Senator Mitch Abood
February 7, 1989

HOUSE COMMITTEE REPORT

(5)

Date Referred: January 9, 1989

FURTHER REFERRALS: JUDICIARY
FINANCE

Date of Committee Action: _____

The STATE AFFAIRS Committee recommends that:

HOUSE BILL NO. 34 [DURATIONAL RESIDENCY REQUIREMENTS]

"An Act relating to durational residency requirements for certain state benefit programs; and providing for an effective date."

be replaced with CSHB34 (SA) the same title
 a new title

have attached amendment(s)

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
 zero fiscal note
 zero with analysis

APPROVES PREVIOUS:

fiscal note(s) published:

 zero fiscal notes(s) published:

SIGNING DO PASS:

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

W.A. Pender
David Douley
Wesley Hentley
Bill Spahr
Jim Burch
Eileen P. McLean

W.A. Pender
Chairman's signature

Item 2

FISCAL NOTE

REQUEST:

Revision Date: January 23, 1989 Agency Affected: Administration
 Title: * See below BRU: Longevity Bonus
 Sponsor: Donley Components: Administration, Grants
 Requestor: State Affairs Committee

* An Act relating to durational residency requirements for certain state benefit programs; and providing for an effective date

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	(60.0)	(120.0)	(120.0)	(120.0)	(120.0)
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	(60.0)	(120.0)	(120.0)	(120.0)	(120.0)
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	(60.0)	(120.0)	(120.0)	(120.0)	(120.0)
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	(60.0)	(120.0)	(120.0)	(120.0)	(120.0)

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

See attached

Prepared By: James H. Chase
 Division: Pioneers' Benefits
 Approved by Commissioner: John M. Andrews
 Agency: Department of Administration

Phone: 465-4400
 Date: _____
 Date: 1/25/89

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. House Bill (HB) 34

In order to project the fiscal impact of the passage of HB 34 some assumptions had to be made. These assumptions were:

- 1) That the number of applicants for the Longevity Bonus who have a minimum of one year of residence in the state will remain at the same ratio to the total number of applicants.

Rationale: This ratio has remained constant for the past two years.

- 2) That the ratio of applicants for the Longevity Bonus who have a minimum of one year of residence in the state to the total number of applicants will remain at one in five.

Rationale: This is the ratio demonstrated in the last two years.

- 3) That the passage of HB 34 will impact only those applicants with less than two years of residence the year following its passage.

Rationale: Those applicant who would otherwise be qualified would have to wait another year for their applications to be accepted. Those who learn of the passage of HB 34 who do not have the one year of residence would apply two years after its passage and continue to do so in the following years.

- 4) That the average number of applicants for the Longevity Bonus who have a minimum of one year of residence in the state is 40 per month.

Rationale: Historical trend analysis result.

With these assumptions the following calculations were made. The number of applicants, 40, is multiplied by \$250 and that product multiplied by six for the second half of FY 90 or 12 for the FY 91 or six for the first half of FY 92. These products were the savings in the grant component. The savings in postage cost is reflected in the contractual component

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to durational residency requirements..."
 Sponsor: Repr. Donley
 Requestor: House State Affairs

Agency Affected: Department of Law
 BRU: Legal Services

Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL			30.0	30.0		
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	30.0	30.0	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	30.0	30.0	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard L. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: January 23, 1989

Richard L. Pegues / FOR

Approved by Commissioner: Grace Berg Schaible, Atty. Gen. Date: January 23, 1989
 Agency: Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 34

Section 1 of this bill amends AS 43.23.005 (a)(2) to increase the residency requirement, for an individual to receive the state's annual permanent fund dividend, from six consecutive months' residence to 24 consecutive months' residence immediately preceding April 1 of the current dividend year.

Section 2 of the bill amends AS 47.45.010 (a) to increase the residency requirement, for an individual to receive the state's longevity bonus, from one year's residency to two year's residency immediately preceding an individual's application for the longevity bonus.

Historically, state laws containing lengthy durational requirements have come under legal attack in Alaska. The department anticipates that if the bill is enacted it will be challenged in the courts, on federal constitutional grounds. Fiscal note funds, in the amount of 30.0, are therefore being requested to pay for outside counsel to assist in the preparation of arguments, that will be needed by the department to defend the state. Although an opinion cannot be offered, it should be noted that if the bill becomes law and then is subsequently overturned by the courts, the state might be exposed to the payment of damages for any injuries or loss suffered by any classes of persons, as a result of the bill's enactment.

FISCAL NOTE

REQUEST

Revision Date: _____
Title: Durational residency require-
ments for state benefit programs
Sponsor: Donley, Boucher, Boyer, et al.
Requestor: _____

Agency Affected: Revenue
BRU: Permanent Fund Dividend Division
Components: Permanent Fund Dividend
Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: See Attached

Prepared By: Ervin Jones
Division: Permanent Fund Dividend Division
Approved by Commissioner: [Signature]
Agency: Revenue

Phone: 465-2323
Date: January 24, 1989
Date: 1/24/89

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

Alaska Department of Revenue
Permanent Fund Dividend Division
HB 34 Fiscal Note Analysis
January 24, 1989

Section 1 modifies one of the four general eligibility requirements to receive a permanent fund dividend. Under the law enacted in 1982, an individual must have been "a state resident for a period of at least six consecutive months immediately preceding April 1 of the current dividend year." For example, in addition to the other requirements, to be eligible for the 1989 dividend, an individual must have been a state resident during the ELIGIBILITY PERIOD of October 1, 1988 through March 31, 1989. Section 1 extends the six month requirement to 24 months. In other words, the individual in the above example, in order to qualify for the 1990 dividend (see Section 3) must have been a state resident for the entire ELIGIBILITY PERIOD of April 1, 1988 through March 31, 1990.

Conservatively speaking, there are approximately 60,000 new dividend applicants each year. The first effect of Section 1 would be felt in 1990 when 60,000 new Alaskans who thought they would be eligible, find that they are not. The second and most difficult effect would be when approximately 60,000 individuals who did qualify for the 1989 dividend find that they are now not eligible for the 1990 dividend. (See attachment A)

It will take considerable effort on the Department's part, in conjunction with the state demographer, to predict the final effect of this bill. Some of the factors to be considered include:

- 1) the length of the period (current proposal - 24 months);
- 2) the number of eligible individuals who leave each year;
- 3) the number of new person's arriving each year;
- 4) the percentage of individuals moving to Alaska who leave after one year, eighteen months, etc.;
- 5) the seasonal distribution of new arrivals;
- 6) the relative birth rate of new arrivals versus individuals who have been in Alaska over two years; and
- 7) the reaction of military personnel to the new proposal, i.e. how do they respond to the new choice presented relative to overseas pay, overseas duty credit, etc.

The final effect on administrative costs of the Permanent Fund Dividend program would depend upon such factors as mentioned above. For the first two years, the additional costs would include informing, advising, and counseling the public answering their repeated questions as to "why was I a resident in 1989 and not in 1990," plus the costs of denying the applicants who would file anyway, and hearing their appeals, and the costs of assisting the

Alaska Department of Revenue
Permanent Fund Dividend Division
HB 34 Fiscal Note Analysis
January 24, 1989

Department of Law in defending the new requirement. These cost increases might partially be offset by the document processing cost savings of reducing the number of applicants by approximately 60,000.

The Department's primary concern with the bill is a clear policy call -- the likelihood of a successful legal challenge to the extended ELIGIBILITY PERIOD on constitutional grounds, i.e. durational residency tests. This issue should be carefully weighed before jeopardizing the existing dividend program.

DIVIDEND
YEAR

COMPARISON OF ELIGIBILITY PERIODS

1989



1990



Item 3

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN • SPENARD
SEAT A
HEATHER MEADOWS • NORTHWOOD • SPENARD • THOMPSON • TURNAGAIN • UPPER MIDTOWN • WINDEMERE

3111 "C" STREET, SUITE 450
ANCHORAGE, ALASKA 99503
(907) 561-7629




CHAIRMAN
LABOR AND COMMERCE COMMITTEE

MEMBER
STATE AFFAIRS COMMITTEE
HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE
HOUSING AND BANKING SUBCOMMITTEE
FINANCE BUDGET SUBCOMMITTEE
DEPT. OF COMMERCE AND
ECONOMIC DEVELOPMENT

January 24, 1989

MEMORANDUM

To: Members, House State Affairs Committee
From: Representative Dave Donley 
Re: HB 34 - Durational residency requirements for
Longevity Bonus and Permanent Fund Dividends

HB 34, a measure establishing a two year residency requirement to be eligible for a Permanent Fund dividend and for the Alaska Longevity Bonus, is before the House State Affairs Committee.

The current durational residency requirement for the Longevity Bonus is one year and for the Permanent Fund Dividend, six months of continuous residency prior to April 1 of the current dividend year. HB 34 retains that April 1 determination date and increases the residency period to 24 months. A January 1, 1990 effective date is included so that the new residency requirement would coincide with the calendar year to facilitate the administration of the permanent fund dividend program.

There is a proposed amendment to HB 34 in your files. The amendment inserts additional language under the Longevity Bonus program to make it consistent with the new residency requirement. This language was inadvertently left out of the original bill. Should the Committee decide to incorporate this amendment into a CS, I ask that you also consider changing the effective date to January 1, 1991. Such a change would "grandfather" in anyone about to become eligible for the bonus.

The residency requirement under the original Longevity Bonus program required continuous residency since statehood. The Alaska Supreme Court struck down the program in the Vest decision, in part because of the lengthy residency requirement, although they did not elaborate on what length of residency they would find acceptable. The state subsequently adopted the one year requirement.

Originally, the Permanent Fund dividends were disbursed according to the number of years a particular Alaskan had maintained residency in the state. The U.S. Supreme Court struck down the program in the Zobei decision, because the residency requirement was arbitrary and unfair and violated both the privileges and immunities and equal protection clause of the Constitution. Again, they

did not elaborate on what residency requirement would meet a constitutional challenge.

Traditionally the courts have applied two "tests" when considering residency requirements. The first, "strict scrutiny", is applied when a particular program provides the basic necessities of life (medical care, welfare benefits etc.) or when an important constitutional right is at stake, such as the right to vote. In these cases, even a one year residency requirement would not be upheld.

The second standard, applied when dealing with laws that do not affect a basic necessity or a fundamental right, is called "rational basis". Under the "rational basis" standard, the courts weigh the nature and extent of the residency required against the state's purpose in enacting the statute and the fairness and substantially of the relationship between the purpose and the requirement. In other words, what are the reasons for requiring two years of residency and does the requirement satisfy the purposes for which it was adopted?

In addition, the courts recognize that for the purpose of determining residency the state can require both actual residency and intent to become or remain a resident. However, the state must be careful to not impose standards that result in bone fide residents being treated differently under the law, such as under the original permanent fund dividend program.

It is clear that neither of the programs affected by HB 34 involve a fundamental right or a basic necessity of life. Therefore, the "rational basis" standard would apply. Both the Longevity Bonus and the Permanent Fund Dividend are unique programs uniquely created to benefit Alaska's residents. The Longevity Bonus is designed to enable life-long Alaskans to spend their retirement years in the state they helped build. The Permanent Fund Dividend is designed to create a direct link between the residents of Alaska and the Fund they created through a constitutional amendment.

Therefore, the state has clear and compelling reasons to assure that benefits from these programs accrue to bone fide residents of the state. The pertinent question is whether the state has compelling reasons to require two years of residency in these cases and whether the requirement is reasonable to establish that a person is a bone fide resident of the state. I believe we do and I believe it can be successfully defended in court.

In a federal District Court decision that upheld the two year residency requirement for the Alaska Student Loan Program, the judge took into consideration certain unique circumstances about the program that justified a longer durational residency requirement. Among them were: the student loan program was the most generous in the nation, students as a class are a mobile population, and there was evidence of "loan-shopping" by students which may encourage applicants to fraudulently claim residency status. Therefore, the court reasoned, the state had cause to apply a strict standard to assure that applicants were, in fact, bone fide residents.

Both the Longevity Bonus and the Permanent Fund dividend program are generous benefits that are unique to Alaska. There is certainly evidence that "benefit shopping" occurs in that citizens move to Alaska to take advantage of the

Longevity Bonus as well as the dividend, as opposed to other states without these benefits or with similar programs that are not so generous. Finally, the population group affected by HB 34 is, by definition, transient. Therefore, I believe the state has sufficient grounds to adopt a two year residency requirement and at least an even chance of arguing our case successfully in court under the "rational basis" standard.

Item 4
6-0107E
Cook
1/24/89

Original sponsors: Donley, Boucher,
Boyer, et al.

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 34 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to durational residency requirements
7 for certain state benefit programs; and providing for
8 an effective date."

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

10 * Section 1. AS 43.23.005(a) is amended to read:

11 (a) An individual is eligible to receive one permanent fund
12 dividend each year in an amount to be determined under AS 43.23.025 if
13 the individual applies to the department, and if

14 (1) on the date of application the individual is a state
15 resident;

16 (2) the individual was a state resident for a period of at
17 least 24 [SIX] consecutive months immediately preceding April 1 of the
18 current dividend year; and

19 (3) the individual has been physically present in the state
20 at some time during the period beginning July 1 two years before the
21 date of application and ending on the date of application.

22 * Sec. 2. AS 43.23.015(b) is amended to read:

23 (b) The department shall prescribe and furnish an application
24 form for claiming a permanent fund dividend. The application must
25 contain a statement of eligibility and a certification of residency in
26 substantially the following form:

27 I certify that

28 () I am a state resident on the date of this application, I have
29 been a state resident for at least 24 [SIX] months immediately

1 preceding April 1 of the current dividend year, and I have been phys-
2 ically present in the State of Alaska at some time during the period
3 beginning July 1 two years before the date of application and ending
4 on the date of this application; or

5 () (name), the individual on whose behalf I am applying, is a
6 state resident on the date of this application, has been a state
7 resident for at least 24 [SIX] months immediately preceding April 1 of
8 the current dividend year, and has been physically present in the
9 State of Alaska at some time during the period beginning July 1 two
10 years before the date of application and ending on the date of this
11 application.

12 I understand that a false claim of eligibility to obtain a perma-
13 nent fund dividend for myself or for another is a criminal offense,
14 that if convicted I will forfeit future dividends, and that I must
15 repay all dividends that have been paid to me. I understand that if I
16 wilfully misrepresent, exercise gross negligence, or recklessly disre-
17 gard a material fact regarding my eligibility for a permanent fund
18 dividend I will forfeit the dividend, be subject to a civil fine of up
19 to \$5,000, and lose my eligibility for the next five dividends. I
20 understand that these penalties are in addition to any criminal pen-
21 alties imposed.

22 _____
23 (signature of individual,
24 parent, guardian, or other
25 authorized representative)

26 * Sec. 3. AS 47.45.010(a) is amended to read:

27 (a) A person who is 65 years of age or over, who resides in the
28 state for at least two years [ONE YEAR] immediately preceding applica-
29 tion for a longevity bonus under this chapter may apply to the

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commissioner of administration for qualification to receive a monthly
bonus of \$250.

* Sec. 4. This Act takes effect January 1, 1990.

Item 5



Alaska State Legislature

House of Representatives
COMMITTEE ON STATE AFFAIRS

TO: House State Affairs Committee Members

FROM: Representative H.A. "Red" *Scupper*, Chair
House State Affairs Committee


DATE: January 24, 1989

RE: HB 34 - Durational Residency Requirements

I would like to bring to your attention a memorandum from Keith Levy to Senator Mitch Abood dated February 7, 1987 which discusses durational residency requirements and case law regarding residency requirements.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY



POUCHY STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM

February 7, 1987

SUBJECT: Durational residency requirement for
 longevity bonus (SB 56 and SB 57)

TO: Senator Mitch Abood, Chair
 Senate State Affairs Committee

FROM: Keith B. Levy ^{KBL}
 Legislative Counsel

You have asked whether making the Alaska longevity bonus a "needs based" program with an income cap for eligibility of \$20,000 or \$25,000 would require reducing the residency requirement for the program from one year to 30 days. While it is difficult to predict with certainty the maximum durational residence requirement that is constitutionally permitted under any particular set of facts, it is true that making the longevity bonus "needs based" would open the current one year requirement up to serious attack.

A one year durational residency requirement presents potential constitutional problems in any state legislation. In the case of a program which provides the "basic necessities of life," however, the invalidity of such a durational residence requirement is almost certain. Thus, a one year residence requirement for the longevity bonus program, even in its current form, is open to constitutional challenge. Making the program "needs based" would make a successful challenge more likely if the court views the program as providing the basic necessities of life.

In Shapiro v. Thompson, 394 U.S. 618, 22 L.Ed.2d 600 (1969), the United States Supreme Court struck down various state provisions requiring indigents to be state residents for one year before being eligible for state welfare benefits. The court observed that in each case there was no question that the indigents were state residents, but they were being denied welfare benefits solely because they had not been residents for the one year period. The court concluded

that, while the state may require that welfare recipients be state residents, the one year requirement penalized the constitutional right to travel:

. . . any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional. - (Emphasis in original.) Shapiro, 22 L.Ed.2d, at 615.

The court rejected various arguments of the states involved, including the argument that the one year waiting period served to prevent fraudulent receipt of benefits. The court pointed out that fraud can be prevented and residency established without the extensive waiting period. Shapiro, 22 L.Ed.2d, at 616 - 617.

In a footnote, the Shapiro court did state that its ruling was limited to the facts of the case:

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

Shapiro, 22 L.Ed.2d, n. 21, at 617.

The holding in Shapiro was extended to apply to medical benefits in Memorial Hospital v. Maricopa County, 415 U.S. 250, 39 L.Ed.2d 306 (1974):

Whatever the ultimate parameters of the Shapiro penalty analysis, it is at least clear that medical care is as much "a basic necessity of life" to an indigent as welfare assistance. And governmental privileges or benefits necessary to basic sustenance have often been viewed as being of greater constitutional significance than less essential forms of governmental entitlements. (Footnotes omitted. Memorial Hospital, 39 L.Ed.2d, at 315.)

The court acknowledged that a one year residence requirement may sometimes be justified, as in the case of charging lower tuition to one year residents attending a state university:

While we fully recognize the value of higher education, we cannot equate its attainment with food, clothing and shelter. Shapiro involved the immediate and pressing need for preservation of life and health of persons unable to live without public assistance, and their dependent children. Thus, the residence requirement in Shapiro could cause great suffering and even loss of life. The durational residence requirements for attendance at publicly financed institutions of higher learning do not involve similar risks. (Memorial Hospital, 30 L.Ed.2d, n. 15, at 316.)

[Accordingly, the court left open the possibility that a one year residence requirement could be upheld in certain instances, but not where the benefit involved is one of the basic necessities of life.

It is difficult to say whether the Alaska Supreme Court would view an income cap of \$20,000 or \$25,000 as making the longevity bonus a benefit involving the "basic necessities of life" within the meaning of the Shapiro and Memorial Hospital cases. It can certainly be argued that any income cap would make the program a "welfare" benefit so that the court would view it as providing basic necessities. And the lower the income cap gets, the more likely the court will reach this conclusion. Thus, a \$20,000 income cap is more subject to challenge than a \$25,000 cap.

Section 1(b), ch. 38, SLA 1984, states:

The longevity bonus program is not a form of welfare and is not a substitute for or supplement to public assistance. Other programs are available to provide the basic necessities of life. The longevity bonus program is intended to encourage elderly Alaskans to spend their retirement years in the comfort of their homes.

This language is obviously intended to protect against a challenge under Shapiro and Memorial Hospital. However, setting an income cap on eligibility for the bonus would seem to repudiate that language by making the bonus available only to those Alaskans who need it.

In Dunn v. Blumstein, 405 U.S. 330, 31 L.Ed.2d 274 (1972), the United States Supreme Court struck down a one year residence requirement for the right to vote as penalizing that important constitutional right. In a similar case, the Alaska Supreme Court struck down a 75 day residence requirement for voting in state elections. State v. Van Dort, 502 P.2d 453, 454 (Alaska 1972). In each case, however, the court did find that a 30 day residence requirement would serve the compelling state interest in preventing voter fraud and voting by nonresidents.

In subsequent cases, the Alaska Supreme Court seems to have taken an even broader interpretation of the right to travel and a more critical view of durational residence requirements than the United States Supreme Court. For example, in State v. Adams, 522 P.2d 1125 (Alaska 1974), the court held that a one year residence requirement to obtain a divorce in a state court violates the state constitution. This is in contrast to the United States Supreme Court opinion in Sosna v. Iowa, 419 U.S. 393, 42 L.Ed. 2d 532 (1976), in which the court upheld Iowa's one year residence requirement for seeking a divorce in the state, under the federal constitution. The court in Adams went so far as to say:

All durational residency requirements inherently infringe upon the fundamental constitutional right of interstate travel. Hence, all such requirements are prima facie invalid and will be countenanced only when they serve a compelling state interest. (Footnotes omitted. Adams, at 1131.)

In State v. Uvlie, 516 P.2d 142 (Alaska 1973), the court struck down a one year residence requirement for public employment, saying the state had failed to advance a compelling justification for the requirement.

The standard for reviewing durational residence requirements in Alaska was altered somewhat after the Alaska Supreme Court adopted a new test under which state equal protection challenges are considered:

The classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. (Isakson v. Richey, 550 P.2d 359 (Alaska 1976).)

Even under the new standard, however, the court requires the state to provide a high level of justification before it will sustain a durational residence requirement. Applying this new standard, the court struck down a borough ordinance requiring one year of residence in the borough to participate in the borough's land lottery. Gilman v. Martin, 662 P.2d 120 (Alaska 1983).

The significance of the Adams, Wiley, and Gillman cases is that the court struck down the one year residence requirements even though they did not involve "basic necessities of life." Thus, it appears that the Alaska Supreme Court goes much further than the United States Supreme Court in durational residence challenges. Accordingly, even if the longevity bonus is not viewed as providing the basic necessities of life, the one year residence requirement could be overturned by the court. The Alaska Supreme Court has upheld durational residence requirements for eligibility to run for the state legislature (Gilbert v. State, 526 P.2d 1131 (Alaska 1974)); for eligibility to perform jury duty (Hampton v. State, 569 P.2d 138 (Alaska 1977)); and for eligibility to run for a municipal office (Castner v. City of Homer, 598 P.2d 953 (Alaska 1979)). However, the distinguishing factor in each of these cases is that the residence requirement was for a position involving important policy making responsibilities.

The longevity bonus in any form seems to be more akin to the cases in which the durational residence requirements were struck down than the cases in which they were upheld. It is simply a state benefit, not a policy making position. The kinds of justifications the state could put forth for the one year requirement -- protection of fiscal integrity of the program and preventing people from moving to the state solely to obtain the benefit -- have been rejected by both the Alaska Supreme Court and United States Supreme Court. However, setting an income cap for eligibility for the program will certainly add to the arguments against the one year requirement, since such a change is likely to make the program more of a "basic necessity of life" rather than a mere supplement to income.

In Jeffrey v. Colorado State Department of Social Services, 599 P.2d 874 (Colorado 1979), the Colorado Supreme Court struck down a state old-age pension plan which contained a durational residence requirement. The court rejected the argument that the pension was merely an income supplement

Senator Abood
February 7, 1987
Page 6

because, under state law, the pension benefit was reduced in proportion to the amount of an individual's other income. This provision made it clear to the court that the pension was intended to meet the basic necessities of life, not to supplement other income. Similarly, setting an income cap on eligibility for the longevity bonus would add to the arguments that the program provides basic needs and the one year durational residence requirement is unconstitutional.

In conclusion, it is possible that the Alaska Supreme Court would find the one year residence requirement for the longevity bonus unconstitutional even in the program's present form. However, setting an income cap for eligibility for the program will certainly add to the likelihood that the residence requirement would be struck down if challenged. The strength of such a challenge will depend, in part, on the details of how the "needs based" program would operate. The lower the level of income at which an individual becomes eligible, the greater the likelihood that the court will view the program as providing the basic necessities of life, thus increasing the chance that the one year requirement will be struck down.

If I may be of further assistance, please advise.

KBL:mkr
m8/105

LONG ARM

8-01072c
Cook

#3

JW

A M E N D M E N T

OFFERED IN THE HOUSE

BY DONLEY

TO: CSHB 34 (State Affairs)

Page 1, after line 21:

Insert a new bill section to read:

"* Sec. 2. AS 43.23.005 is amended by adding a new subsection to read:

(e) If a court finds the durational residency requirement under (a)(2) of this section is invalid, the residency requirement is ~~the longest duration permitted by law~~ ^{12 months}. The department shall change the statement of eligibility under AS 43.23,015(b) as necessary to conform to this subsection."

2) 43.23.005 A+2 +
Dept will pay grade 10, 11, 12

Renumber the following bill sections accordingly.

Page 3, line 2:

Insert a new bill section to read:

"* Sec. 5. AS 47.45.010 is amended by adding a new subsection to read:

(d) If a court finds the durational residency requirement under (a) of this section is invalid, the residency requirement is ~~the longest duration permitted by law~~ ^{12 months}."

12 months

Renumber the following bill section accordingly

Physical Summary
AMENDMENT #2

OFFERED IN THE HOUSE

BY DONLEY

TO: CSHB 34 (State Affairs)

Page 1, after line 9:

Insert the following new bill section to read:

" Section 1. FINDINGS. (a) The legislature finds with respect to the permanent fund dividend program that

(1) Alaska has one of the highest percentages of transients compared to permanent residents in the nation;

(2) a significant portion of Alaska's population comes to the state to work in temporary jobs or on short-term projects;

(3) because of the large number of transients it is very difficult for the state to determine whether a person is actually a resident with the intent to remain in the state;

(4) the permanent fund dividend program is unique to the state and provides generous benefits;

(5) the generous nature of this benefit program creates an inducement for people to claim residency inaccurately;

(6) a two-year residency requirement is the most reasonable way to determine bona fide residency for the purposes of eligibility for this benefit program;

(7) the two-year residency requirement will not discourage migration to the state or otherwise interfere with interstate travel;

(8) this program does not involve a basic right under the state or federal constitutions or a basic necessity of life;

(9) a two-year residency requirement will more appropriately document actual domicile and the intent to remain a resident; and

(10) the interest of the state in determining bona fide residence for purposes of this program is at least equal to the interest recognized in *Andress v. Baxter*, U.S. District Court for the District of Alaska, No. A82-307 Civ., September 8, 1983.

(b) The legislature finds with respect to the longevity bonus program that

(1) Alaska has one of the highest percentages of transients compared to permanent residents in the nation;

(2) because of the large number of transients it is very difficult for the state to determine whether a person is actually a resident with the intent to remain in the state;

(3) seniors, because they are generally retired, have a greater opportunity to travel and are more likely to be transient than people with permanent employment;

(4) because seniors are less likely to be employed, their residency status is more difficult to determine;

(5) the longevity bonus program is unique to the state and provides generous benefits;

(6) the generous nature of this benefit program creates an inducement for people to claim residency inaccurately;

(7) a two-year residency requirement is the most reasonable way to determine bona fide residency for the purposes of eligibility for this benefit program;

(8) the two-year residency requirement will not discourage

migration to the state or otherwise interfere with interstate travel;

(9) this program does not involve a basic right under the state or federal constitutions or a basic necessity of life;

(10) a two-year residency requirement will more appropriately document actual domicile and the intent to remain a resident; and

(11) the interest of the state in determining bona fide residence for purposes of this program is at least equal to the interest recognized in *Andress v. Baxter*, U.S. District Court for the District of Alaska, No. A82-307 Civ., September 8, 1983."

Page 1, line 10:

Delete "Section"

Insert "Sec."

Renumber the following bill sections accordingly.

HOUSE COMMITTEE REPORT

1/27

(5)

Date Referred: January 9, 1989

FURTHER REFERRALS: JUDICIARY
FINANCE

Date of Committee Action: _____

The STATE AFFAIRS Committee recommends that:

AB 34

HOUSE BILL NO. 34 [DURATIONAL RESIDENCY REQUIREMENTS]
"An Act relating to durational residency requirements for certain state benefit programs; and providing for an effective date."

be replaced with CSHB34 (SA) the same title
 a new title

have attached amendment(s)

- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- 2 fiscal impact - *admin - Law*
- zero fiscal note
- 1 zero with analysis *Rev*

APPROVES PREVIOUS:

- fiscal note(s) published: _____
- zero fiscal notes(s) published: _____

SIGNING DO PASS:

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

W.A. Boucher Boucher _____

David Donley Donley _____

Wesley Hanley Hanley _____

Bill Spohnholz Spohnholz _____

Jim Zawacki Zawacki _____

Eileen P. MacLean MacLean _____

W.A. Boucher
Chairman's signature

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 27, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: 3/7/89

The JUDICIARY Committee recommends that:

HOUSE BILL NO. 34 [DURATIONAL RESIDENCY REQUIREMENTS]
"An Act relating to durational residency requirements for certain state benefit programs; and providing for an effective date."

[] be replaced with CSHB 34 (JUD) [] the same title
[] a new title

[] have attached amendment(s)

- [] 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
- [] zero fiscal note
- [] zero with analysis

APPROVES PREVIOUS:

- [] fiscal note(s) published: DFD 1/27;
- DOA/DOA/DOA/DOA/DOA 1/27; DOA/DOA/DOA/DOA/DOA
- [] zero fiscal notes(s) published: 1/27

SIGNING DO PASS:

Mike Hulse
Mike Hulse
John Ebbes
Peter Jones

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

Mike Hulse
Cliff Davidson (No Rec)
Terry Masten

Mike Hulse
 Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: January 23, 1989
Title: * See below

Agency Affected: Administration
BRU: Longevity Bonus

Sponsor: Donley
Requestor: State Affairs Committee

Components: Administration, Grants

* An Act relating to durational residency requirements for certain state benefit programs; and providing for an effective date

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	(60.0)	(120.0)	(120.0)	(120.0)	(120.0)
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	(60.0)	(120.0)	(120.0)	(120.0)	(120.0)
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	(60.0)	(120.0)	(120.0)	(120.0)	(120.0)
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	(60.0)	(120.0)	(120.0)	(120.0)	(120.0)

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

See attached

Prepared By: James H. Chase
Division: Pioneers' Benefits

Phone: 465-4400
Date: _____

Approved by Commissioner: James F. For
Agency: Department of Administration

Date: 1/25/89

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

CONTINUATION of FISCAL NOTE ANALYSIS

CSHB 34 (SA)
HOUSE 1/27/89

In order to project the fiscal impact of the passage of HB 34 some assumptions had to be made. These assumptions were:

- 1) That the number of applicants for the Longevity Bonus who have a minimum of one year of residence in the state will remain at the same ratio to the total number of applicants.

Rationale: This ratio has remained constant for the past two years.

- 2) That the ratio of applicants for the Longevity Bonus who have a minimum of one year of residence in the state to the total number of applicants will remain at one in five.

Rationale: This is the ratio demonstrated in the last two years.

- 3) That the passage of HB 34 will impact only those applicants with less than two years of residence the year following its passage.

Rationale: Those applicant who would otherwise be qualified would have to wait another year for their applications to be accepted. Those who learn of the passage of HB 34 who do not have the one year of residence would apply two years after its passage and continue to do so in the following years.

- 4) That the average number of applicants for the Longevity Bonus who have a minimum of one year of residence in the state is 40 per month.

Rationale: Historical trend analysis result.

With these assumptions the following calculations were made. The number of applicants, 40, is multiplied by \$250 and that product multiplied by six for the second half of FY 90 or 12 for the FY 91 or six for the first half of FY 92. These products were the savings in the grant component. The savings in postage cost is reflected in the contractual component.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSHB 34 (SA)
PUBLISH DATE: HOUSE 1/27/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to durational
residency requirements..."
Sponsor: Repr. Donley
Requestor: House State Affairs

Agency Affected: Department of Law
BRU: Legal Services
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL			30.0	30.0		
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	30.0	30.0	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	30.0	30.0	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard L. Pegues, Director
Division: Administrative Services

Phone: 465-3672
Date: January 23, 1989

Approved by Commissioner: Richard L. Pegues /FOR/
Grace Berg Schaible, Atty. Gen.
Agency: Department of Law

Date: January 23, 1989

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

CSHB 34 (SA)
HOUSE 1/27/8

Section 1 of this bill amends AS 43.23.005 (a)(2) to increase the residency requirement, for an individual to receive the state's annual permanent fund dividend, from six consecutive months' residence to 24 consecutive months' residence immediately preceding April 1 of the current dividend year.

Section 2 of the bill amends AS 47.45.010 (a) to increase the residency requirement, for an individual to receive the state's longevity bonus, from one year's residency to two year's residency immediately preceding an individual's application for the longevity bonus.

Historically, state laws containing lengthy durational requirements have come under legal attack in Alaska. The department anticipates that if the bill is enacted it will be challenged in the courts, on federal constitutional grounds. Fiscal note funds, in the amount of 30.0, are therefore being requested to pay for outside counsel to assist in the preparation of arguments, that will be needed by the department to defend the state. Although an opinion cannot be offered, it should be noted that if the bill becomes law and then is subsequently overturned by the courts, the state might be exposed to the payment of damages for any injuries or loss suffered by any classes of persons, as a result of the bill's enactment.

FISCAL NOTE

REQUEST

Revision Date: _____
Title: Durational residency require-
ments for state benefit programs
Sponsor: Donley, Boucher, Boyer, et al.
Requestor: _____

Agency Affected: Revenue
BRU: Permanent Fund Dividend Division
Components: Permanent Fund Dividend
Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: See Attached

Prepared By: Ervin Jones
Division: Permanent Fund Dividend Division

Phone: 465-2323
Date: January 24, 1989

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 1/29/89

Distribution (by preparer):

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

Alaska Department of Revenue
Permanent Fund Dividend Division

Section 1 modifies one of the four general eligibility requirements to receive a permanent fund dividend. Under the law enacted in 1982, an individual must have been "a state resident for a period of at least six consecutive months immediately preceding April 1 of the current dividend year." For example, in addition to the other requirements, to be eligible for the 1989 dividend, an individual must have been a state resident during the ELIGIBILITY PERIOD of October 1, 1988 through March 31, 1989. Section 1 extends the six month requirement to 24 months. In other words, the individual in the above example, in order to qualify for the 1990 dividend (see Section 3) must have been a state resident for the entire ELIGIBILITY PERIOD of April 1, 1988 through March 31, 1990.

Conservatively speaking, there are approximately 60,000 new dividend applicants each year. The first effect of Section 1 would be felt in 1990 when 60,000 new Alaskans who thought they would be eligible, find that they are not. The second and most difficult effect would be when approximately 60,000 individuals who did qualify for the 1989 dividend find that they are now not eligible for the 1990 dividend. (See attachment A)

It will take considerable effort on the Department's part, in conjunction with the state demographer, to predict the final effect of this bill. Some of the factors to be considered include:

- 1) the length of the period (current proposal - 24 months);
- 2) the number of eligible individuals who leave each year;
- 3) the number of new person's arriving each year;
- 4) the percentage of individuals moving to Alaska who leave after one year, eighteen months, etc.;
- 5) the seasonal distribution of new arrivals;
- 6) the relative birth rate of new arrivals versus individuals who have been in Alaska over two years; and
- 7) the reaction of military personnel to the new proposal, i.e. how do they respond to the new choice presented relative to overseas pay, overseas duty credit, etc.

The final effect on administrative costs of the Permanent Fund Dividend program would depend upon such factors as mentioned above. For the first two years, the additional costs would include informing, advising, and counseling the public answering their repeated questions as to "why was I a resident in 1989 and not in 1990," plus the costs of denying the applicants who would file anyway, and hearing their appeals, and the costs of assisting the

Alaska Department of Revenue
Permanent Fund Dividend Division

Department of Law in defending the new requirement. These cost increases might partially be offset by the document processing cost savings of reducing the number of applicants by approximately 60,000.

The Department's primary concern with the bill is a clear policy call -- the likelihood of a successful legal challenge to the extended ELIGIBILITY PERIOD on constitutional grounds, i.e. durational residency tests. This issue should be carefully weighed before jeopardizing the existing dividend program.

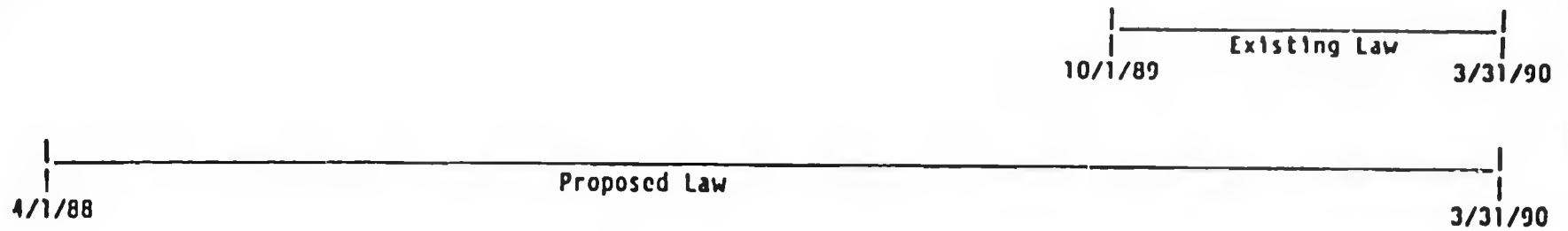
DIVIDEND
YEAR

COMPARISON OF ELIGIBILITY PERIODS

1989



1990



1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 34 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing durational residency require-
7 ments, not to exceed two years, for receipt of the
8 permanent fund dividend and receipt of benefits under
9 the longevity bonus program; and providing for an
10 effective date."

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

12 * Section 1. FINDINGS. (a) The legislature finds with respect to the
13 permanent fund dividend program that

14 (1) compared with other states, Alaska has one of the highest
15 ratios of transients to permanent state residents;

16 (2) a significant number of people from other states come to
17 Alaska to work in temporary or seasonal jobs or on short-term projects;

18 (3) because of the large number of transients it is very diffi-
19 cult for the state to determine whether a person is actually a resident
20 with the intent to remain in the state;

21 (4) the permanent fund dividend program is unique to the state
22 and provides generous benefits;

23 (5) the generous nature of this benefit program creates an
24 inducement for people to claim residency inaccurately;

25 (6) a two-year residency requirement is a reasonable way to
26 determine bona fide residency for the purposes of eligibility for this
27 benefit program;

28 (7) a two-year residency requirement will not discourage mi-
29 gration to the state or otherwise interfere with interstate travel;

1 (8) this program does not involve a basic right under the state
2 or federal constitutions or a basic necessity of life;

3 (9) a two-year residency requirement will more accurately indi-
4 cate actual domicile and the intent to remain a resident than the require-
5 ment under current law; and

6 (10) the interest of the state in determining bona fide residence
7 for purposes of this program is at least equal to the interest recognized
8 in *Andress v. Baxter*, U.S. District Court for the District of Alaska, No.
9 A82-307 Civ., September 8, 1983.

10 (b) The legislature finds with respect to the longevity bonus program
11 that

12 (1) the longevity bonus is immediately payable to an applicant
13 upon acceptance into the program;

14 (2) acceptance into the program is primarily based on a state-
15 ment from the applicant that the applicant is a resident for the purposes
16 of eligibility for this benefit program and that the applicant intends to
17 remain a resident of the state;

18 (3) a two-year residency requirement will more accurately indi-
19 cate actual domicile and the intent to remain a resident than the require-
20 ment under current law;

21 (4) the longevity bonus program is unique to the state and
22 provides generous benefits;

23 (5) the generous nature of this benefit program creates an
inducement for people to claim residency inaccurately;

24 (6) a two-year residency requirement is a reasonable way to
determine bona fide residency for the purposes of eligibility for this
benefit program;

25 (7) the two-year residency requirement will not discourage
migration to the state or otherwise interfere with interstate travel;

1 (8) this program does not involve a basic right under the state
2 or federal constitutions or a basic necessity of life; and

3 (9) the interest of the state in determining bona fide residence
4 for purposes of this program is at least equal to the interest recognized
5 in *Andress v. Baxter*, U.S. District Court for the District of Alaska, No.
6 A82-307 Civ., September 8, 1983.

7 * Sec. 2. AS 43.23.005(a) is amended to read:

8 (a) An individual is eligible to receive one permanent fund
9 dividend each year in an amount to be determined under AS 43.23.025 if
10 the individual applies to the department, and if

11 (1) on the date of application the individual is a state
12 resident;

13 (2) the individual was a state resident for a period of at
14 least 24 [SIX] consecutive months immediately preceding April 1 of the
15 current dividend year; and

16 (3) the individual has been physically present in the state
17 at some time during the period beginning July 1 two years before the
18 date of application and ending on the date of application.

19 * Sec. 3. AS 43.23.005 is amended by adding a new subsection to read:

20 (e) If a court finds the durational residency requirement under
21 (a)(2) of this section is invalid and no appeal is pending, the resi-
22 dency requirement is one year. If a court finds the one year resi-
23 dency requirement is invalid and no appeal is pending, the residency
requirement is the longest duration permitted by law. The department
shall change the statement of eligibility under AS 43.23.015(b) as
necessary to conform to this subsection.

* Sec. 4. AS 43.23.015(b) is amended to read:

(b) The department shall prescribe and furnish an application
form for claiming a permanent fund dividend. The application must

1 contain a statement of eligibility and a certification of residency in
2 substantially the following form:

3 I certify that

4 () I am a state resident on the date of this application, I have
5 been a state resident for at least 24 [SIX] months immediately preced-
6 ing April 1 of the current dividend year, and I have been physically
7 present in the State of Alaska at some time during the period begin-
8 ning July 1 two years before the date of application and ending on the
9 date of this application; or

10 () (name), the individual on whose behalf I am applying, is a
11 state resident on the date of this application, has been a state
12 resident for at least 24 [SIX] months immediately preceding April 1 of
13 the current dividend year, and has been physically present in the
14 State of Alaska at some time during the period beginning July 1 two
15 years before the date of application and ending on the date of this
16 application.

17 I understand that a false claim of eligibility to obtain a perma-
18 nent fund dividend for myself or for another is a criminal offense,
19 that if convicted I will forfeit future dividends, and that I must
20 repay all dividends that have been paid to me. I understand that if I
21 wilfully misrepresent, exercise gross negligence, or recklessly disre-
22 gard a material fact regarding my eligibility for a permanent fund
23 dividend I will forfeit the dividend, be subject to a civil fine of up
24 to \$5,000, and lose my eligibility for the next five dividends. I
25 understand that these penalties are in addition to any criminal pen-
26 alties imposed.

(signature of individual,
parent, guardian, or other