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SECTIONAL ANALYSIS - PROPOSED CS FOR HB 490

Section 1. HB 490 authorizes payment of damages through a periodic payment plan (structured settlement) rather than a lump-sum payment in a personal injury action against the state or political subdivisions (local governments).

A "periodic payment plan" is defined as a plan in which one adjudged liable for damages for personal injury, or one responsible for payment under a compromise of a personal injury action, makes payment for future damages by structured periodic payments equal to the amount of damages awarded by judgment or compromise rather than by lump sum.

The intent of the legislation is to provide compensation sufficient to meet the needs of a plaintiff and his or her dependents for whatever period is necessary while eliminating the potential windfall from a lump-sum recovery. In addition, requiring structured settlements will also significantly reduce the cost of personal injury judgments awarded against the state and local governments.

Section 2. (a) adds 09.50.255 to require final judgments ordering that damages be paid in whole or in part by periodic payment plans rather than by lump-sum payments in suits for personal injury against the state or political subdivisions except when

- (1) the action seeks compensation for disability or death of an employee under the provisions of the workers compensation act, or
- (2) the award of damages is less than \$50,000.

In any instance in which the court requires that damages be paid only in part by periodic payments, the court must indicate, on the record, its reasons for doing so.

(b) specifies what shall be included in a judgment ordering payment of damages by a periodic payment plan.

(c) requires that the office of risk management obtain a periodic payment plan for a judgment against the state rendered in accordance with the provisions of this section. A local government may submit a judgment to the office of risk management to acquire a periodic payment plan.

AS 09.50.257 (a) directs the commissioner of administration to adopt regulations setting out the procedures and methods of source selection, award, contract formation, and all other requirements and qualifications for acquisition of periodic payment plans by the state. Specifies the intent of the regulations.

(b) states that source selection methods and contract procedures established by regulations adopted under this section are in lieu of and not in addition to any other law governing state procurement.

(c) defines "periodic payment plan" .

Section 3. Amends AS 09.50.270 to specify that when a judgment against the state is rendered the clerk of the court shall transmit a certified copy to the department of administration, which shall arrange for a periodic payment plan or approve payment of the judgment if it is less than \$50,000.

Section 4. States that AS 09.50.255 (section 2 of this Act) has the effect of amending Alaska Rule of Civil Procedure 58, by requiring the court to state its reasons for requiring period payment of only part of the damages and by requiring the court to include a specific item in its judgment.

Section 5. Establishes an effective date of January 1, 1987.

2/15/86

Ford
2/17/86✓

Original sponsor: Szymanski

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 490 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to judgments against the state;
7 amending Alaska Rule of Civil Procedure 58; and
8 providing for an effective date."

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

10 * Section 1. STATEMENT OF PURPOSE. It is the intent of the legislature
11 in enacting AS 09.50.255 to authorize the entry of judgments in personal
12 injury actions against the state or political subdivisions of the state
13 that provide for the payment of damages through periodic payments rather
14 than lump-sum payments. By authorizing periodic payment judgments, it is
15 the further intent of the legislature that the court will utilize these
16 judgments to provide compensation sufficient to meet the needs of an
17 injured plaintiff and those persons who are dependent on the plaintiff for
18 whatever period is necessary, while eliminating the potential windfall from
19 a lump-sum recovery that was intended to provide for the care of an injured
20 plaintiff over an extended period. It is also the intent of the legisla-
21 ture that by requiring damages to be structured in this manner, the state
22 will achieve both adequate and secure compensation to the plaintiff and
23 dependents of the plaintiff, as well as a significant reduction in the
24 amount of personal injury judgments awarded against the state.

25 * Sec. 2. AS 09.50 is amended by adding new sections to read:

26 Sec. 09.50.255. STRUCTURED JUDGMENTS. (a) Except for actions
27 seeking compensation for disability or death of an employee under
28 AS 23.30, in a suit for damages for personal injury against the state
29 or a political subdivision of the state, in which the fact finder

1 decides an award of damages equal to or exceeding \$50,000 is to be
2 made in favor of the plaintiff against the state or a political subdi-
3 vision of the state, the court shall render a final judgment ordering
4 that the damages be paid in whole or in part by periodic payments
5 rather than by lump sum payment. If the court requires that damages
6 be paid only in part by periodic payments, the court shall indicate on
7 the record its reasons for requiring periodic payment of only part of
8 the damages.

9 (b) A judgment ordering the payment of damages by periodic
10 payments shall specify the recipient of the payments, the dollar
11 amount of the payments, the interval between payments, and the number
12 of payments or the period of time over which payments shall be made.

13 (c) When a judgment rendered in accordance with the provisions
14 of this section has become final, the judgment shall be submitted by
15 the state to the office of risk management within the Department of
16 Administration to obtain a periodic payment plan. A political subdi-
17 vision of the state may submit a final judgment rendered in accordance
18 with the provisions of this section to the office of risk management
19 in the Department of Administration, to obtain a periodic payment
20 plan.

21 Sec. 09.050.257. PERIODIC PAYMENT PLANS. (a) The commissioner
22 of administration shall adopt regulations setting out the procedures
23 and methods of source selection, award, contract formation, and all
24 other requirements and qualifications for acquisition of periodic
25 payment plans by the state. The regulations shall be designed to

26 (1) obtain the lowest available payment price while achiev-
27 ing the highest security, stability, and dependability in the periodic
28 payment plan;

29 (2) establish qualifying criteria for acceptable plan

1 providers;

2 (3) allow for a state-contracted firm or company to acquire
3 a plan for the state from a provider in which the firm or company has
4 no proprietary interest.

5 (4) provide that all quotes for plans solicited by or
6 offered to the state shall be retained as a public record;

7 (5) allow the purchase of reinsurance to insure the payment
8 obligations of the periodic payment plan, provided that the plans
9 shall be acquired so as to avoid constructive receipt of the corpus of
10 the plan by the person entitled to benefits of the plan.

11 (b) Source selection methods and contract procedures established
12 by regulations adopted under this section are in lieu of and not in
13 addition to any other law governing state procurement.

14 (c) In this section, "periodic payment plan" means a plan in
15 which one adjudged liable for damages for personal injury, or one
16 responsible for payment under a compromise of a personal injury
17 action, makes payment for future damages by structured periodic pay-
18 ments equal to the amount of damages awarded by judgment or compromise
19 rather than by lump sum.

20 * Sec. 3. AS 09.50.270. is amended to read:

21 Sec. 09.50.270. PAYMENT OF JUDGMENT AGAINST THE STATE. An [NO]
22 attachment or execution may not [SHALL] issue against the state. When
23 a final judgment is rendered against the state in an action, the clerk
24 of the court shall immediately transmit a certified copy of the judg-
25 ment to the Department of Administration which shall either arrange
26 payment of the judgment by periodic payment plan under AS 09.50.257,
27 or approve payment of the judgment against the state if the amount of
28 the judgment is less than \$50,000. If an insufficient [A SUFFICIENT]
29 appropriation exists for payment, the department shall [OR] audit the

1 amount and transmit a copy to the legislature with the recommendation
2 that an appropriation be made for its payment.

3 * Sec. 4. AS 09.50.255, enacted in sec. 2 of this Act, has the effect
4 of amending Alaska Rule of Civil Procedure 58, by requiring the court to
5 state its reasons for requiring periodic payment of only part of the dam-
6 ages and by requiring the court to include a specific item in its judgment.

7 * Sec. 5. This Act takes effect January 1, 1987.
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James O. Smith
Signature of Camera Operator

9/5/89
Date