

HB

177

HOUSE COMMITTEE REPORT

(11)

Date referred: 4/27/87

FURTHER REFERRALS:

DATE: 4/29/87

The Finance Committee has considered HB 177

"An Act relating to workers' compensation law concerning the second injury fund; and providing for an effective date."

RECOMMENDS:

- replace with CS HB 177 (Jud) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

ADAMS Al Adams

POURCHOT Fred Pourchot

LARSON Ronald J. Larson

GOLL Greg Goll

SWACK-HAMMER Clay Swack-Hammer

BOYER Mark Boyer

FRANK Frank

WALLIS Ray Wallis

SIGNING OTHER RECOMMENDATIONS:

RIEGER Steve Rieger

BROWN Fair Brown - No Rec

DAVIS Mike Davis

Albert P. Adams
Chairman's signature

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: CS HB 177 (Jud.)
Publish Date: _____

REQUEST: _____

Revision Date: _____

Title: "An Act relating to ... the
second injury fund"

Sponsor: Governor

Requestor: House Labor and Commerce

Agency Affected: Labor

BRU: Workers' Compensation

Components: Workers' Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		(123.3)	(123.3)	(123.3)	(123.3)	(123.3)
FEDERAL FUNDS						
OTHER. *		123.3	123.3	123.3	123.3	123.3
TOTAL		0	0	0	0	0

POSITIONS: * = Second Injury Fund

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached

Prepared by: Jacquelyn McClintock, Director Phone: 465-2790

Division: Workers' Compensation Date: 3/17/87

Approved by Commissioner: Jim Samson Date: 3/17/87

Agency: Labor

Distribution (by preparer):

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

RECEIVED

MAR 19 1987

Continuation of Fiscal Note

HB 177

This legislation would allow the administrative expenses of operating the Second Injury Fund to be paid from the Fund itself rather than general funds. Thus, \$123.3 of Second Injury Fund dollars would be substituted for a like amount of general funds which are currently used to administer the Second Injury program.

The fund is supported by contributions from insurers and employers based on workers' compensation payments to injured workers and by certain penalties as provided by the Workers' Compensation Act.

The fund is used to reimburse insurers and employers who employ disabled workers under circumstances specified in the Workers' Compensation Act and for some rehabilitation costs. Adequate fund revenues are available to provide for administrative costs.

Approximate costs to administer the Second Injury Fund are as follows:

Personal Services		\$92.6
Management Analyst 75% of time	\$40.5	
Hearing Officer for approximately 12% of time	7.6	
Workers' Compensation Technician 100% of time	34.5	
Pro-rata share of clerical support	10.0	
Travel		2.7
Contractual		25.8
Communications	5.0	
Data Processing	16.6	
Printing	1.0	
Copier, postage machine, etc.	2.7	
Other (training, risk management)	.5	
Supplies		<u>2.2</u>
	Total	\$123.3

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 177 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION
5 A BILL
6 For an Act entitled: "An Act relating to the second injury fund; and
7 providing for an effective date."
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
9 * Section 1. AS 23.30.015(c) is repealed and reenacted to read:
10 (c) Payment of compensation into the second injury fund within
11 six months after the date of death operates as an assignment to the
12 employer, for a period of six months after payment, of all rights of
13 the deceased's representative to recover damages from the third per-
14 son. If payment is not made to the second injury fund within six
15 months after the death or if the employer does not file a lawsuit
16 against the third person within six months after making the payment to
17 the second injury fund, the employer shall be subrogated to the rights
18 of the deceased's representative in an action to recover damages
19 against a third party. Subrogation under this subsection is limited
20 to the amount paid by the employer into the second injury fund as a
21 result of the death.
22 * Sec. 2. AS 23.30.040(h) is amended to read:
23 (h) Administration expenses of the state under this section and
24 AS 23.30.205 must [SHALL] be paid from the second injury [GENERAL]
25 fund.
26 * Sec. 3. AS 23.30.015(c), as amended by sec. 1 of this Act, applies to
27 payments made as a result of deaths occurring on or after July 1, 1987.
28 * Sec. 4. This Act takes effect July 1, 1987.

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version : CSHB 177 (Jud)
Publish Date : _____

Revision Date: _____
Title : "An Act relating to ... the
second injury fund"

Agency Affected: Labor
BRU: Workers' Compensation
Workers' Compensation

Sponsor : Governor
Requestor : House Judiciary

Components : _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		(123.3)	(123.3)	(123.3)	(123.3)	(123.3)
FEDERAL FUNDS						
OTHER. *		123.3	123.3	123.3	123.3	123.3
TOTAL		0	0	0	0	0

POSITIONS: * = Second Injury Fund

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached

Prepared by: Jacquelyn McClintock, Director Phone: 465-2790
Division: Workers' Compensation Date: 04/28/87

Approved by Commissioner: Jim Sampson Date: 04/28/87
Agency: Labor

Distribution (by preparer):

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

RECEIVED
APR 29 1987

LEGISLATIVE FINANCE

151477
R/O 4/29/87

Continuation of Fiscal Note

CSHB 177 (Jud)

This legislation would allow the administrative expenses of operating the Second Injury Fund to be paid from the Fund itself rather than general funds. Thus, \$123.3 of Second Injury Fund dollars would be substituted for a like amount of general funds which are currently used to administer the Second Injury program.

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Approximate costs to administer the Second Injury Fund are as follows:

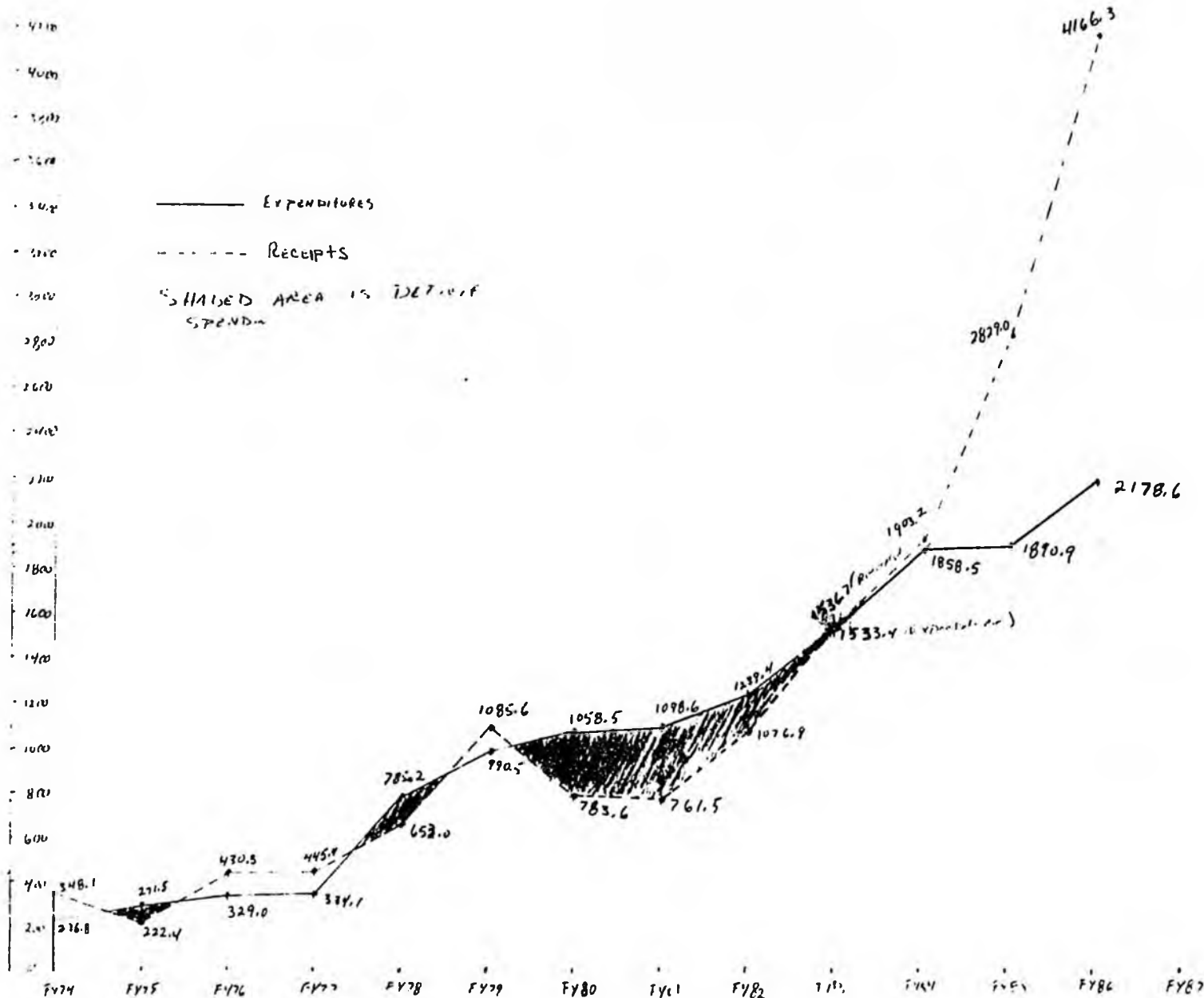
Personal Services		\$92.6
Management Analyst 75% of time	\$40.4	
Hearing Officer for approximately 15% of time	9.5	
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Pro-rata share of clerical support	8.2	
Travel		2.7
Contractual		25.8
Communications	5.0	
Data Processing	16.6	
Printing	1.0	
Copier, postage machine, etc.	2.7	
Other (training, risk management)	.5	
Supplies		<u>2.2</u>
	Total	\$123.3

4000
3800
3600
3400
3200
3000
2800
2600
2400
2200
2000
1800
1600
1400
1200
1000
800
600
400
200
0

————— Expenditures

- - - - - Receipts

SHADED AREA IS DEFICIT
SPENDING

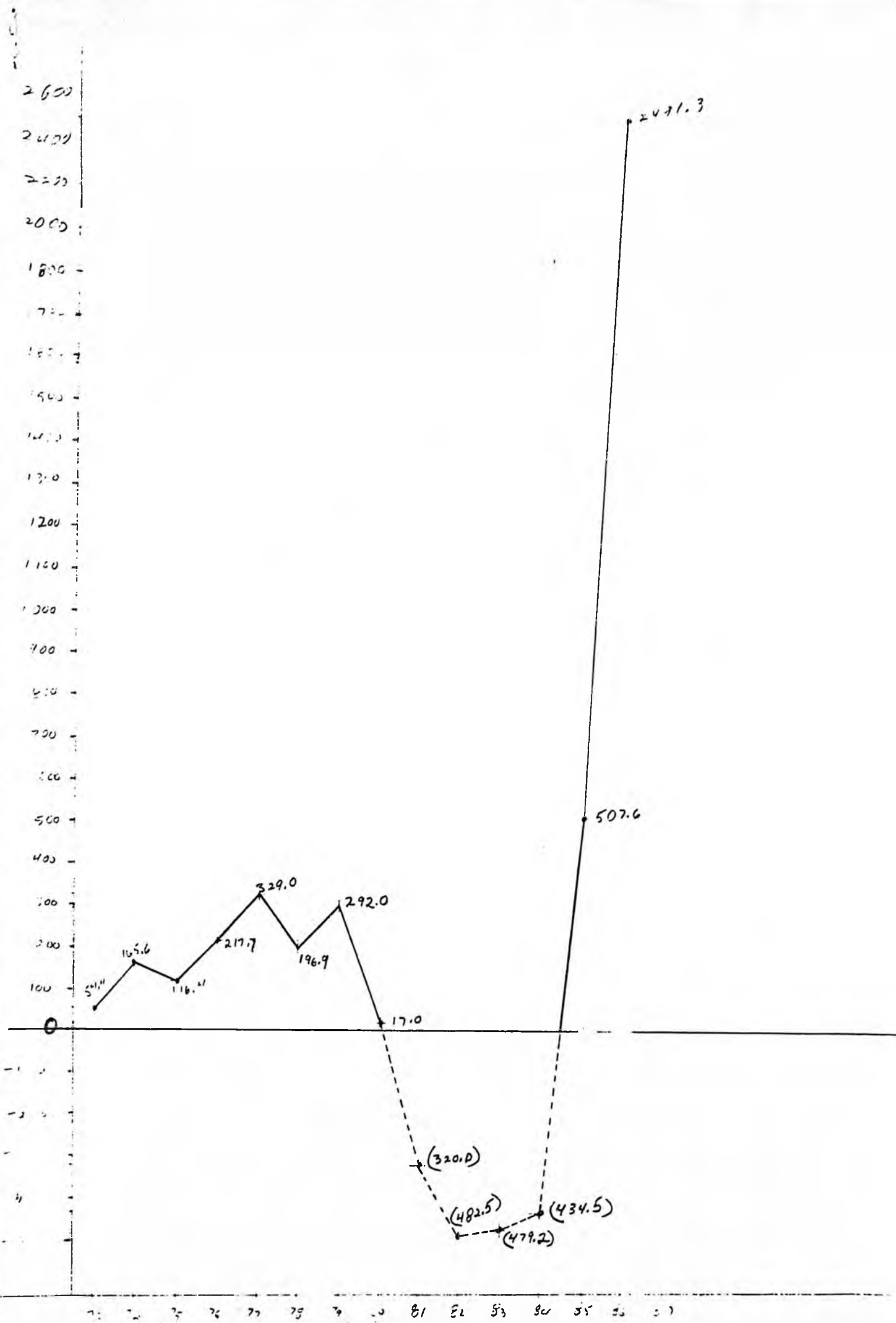


86 - 3091.4
85 - 1103.7
84 - 165.6
83 - 120.9
82 - 117.6
81 - 280.1



FY81 Surpl.
2600.0

SECOND INJURY FUND



Taylor's amend-
ment

Briefing Paper on Section 1 of
CS FOR HOUSE BILL NO. 177 (Judiciary)

Under the third-party provisions¹ of current Alaska workers' compensation law, there are distinctly different assignment rules for the beneficiaries of employees who die without statutory dependents and the beneficiaries of those who die with statutory dependents. AS 23.30.015(c) provides that when the employers of employees who die without statutory dependents make payment to the Second Injury Fund,² all rights to recover damages from third parties are assigned to the employers. This precludes a beneficiary not dependent on the deceased employee from suing a third party even though the employer/insurer has no intention of commencing a third-party action. An injured employee or the dependent beneficiary of a deceased employee, however, has one year from an award of compensation to file a lawsuit against a third party to recover damages before assignment passes on to the employer.

The ultimate goal of any third-party subrogation procedure is reimbursement of the payor of compensation, with any excess going to the employee or beneficiary, with both the employee/beneficiary and the employer/insurer afforded a fair opportunity to press a damage suit in case the other neglects to do so. This amendment would give beneficiaries of the deceased employee, although not

¹The workers' compensation remedy is exclusive of all other remedies by the employee or the employee's dependents against the employer and insurer for an injury or illness falling within the coverage of the Act. However, when a compensable injury or illness is the result of a third person's tortious conduct, most workers' compensation statutes contain provisions that preserve a right of action by both parties against the third party.

²AS 23.30.040(c): If an employee suffers a compensable injury that results in death and the employee is not survived by a widow, widower, child, or dependent relative eligible to receive death benefits under AS 23.30.215, the employer or insurance carrier shall pay \$10,000 to the Second Injury Fund.

necessarily dependent as defined under AS 23.30.265, equal standing to file a lawsuit for wrongful death against the third party if the employer fails to make payment to the Fund within six months after death or does not file a lawsuit against the third party within six months after making payment to the Second Injury Fund. Further, subrogation under this amendment would be limited to the amount the employer pays into the Second Injury Fund for non-dependent death cases, which is currently \$10,000.

In Croxton v. Puget Sound Tug and Barge, AWCB No. 860311 at 4 (November 25, 1986) the Alaska Workers' Compensation Board took particular notice of the distinctly different assignment rule for the beneficiaries of employees who die without statutory dependents stating "(A)s much as we would like to find a way in this case to undo the assignment and thereby permit Applicant to pursue his third-party suit unhindered, we are powerless to do so."

The assignment or subrogation rule for non-dependent beneficiaries of deceased employees is in need of change to make it consistent with the rights afforded dependent beneficiaries to recover damages from a third party.

Example

While in the course of employment two employees - one with statutory dependents the other without - are killed in an airplane accident, the cause of which is linked to a defective piece of equipment.

The beneficiaries of any passengers on the plane, of course, have a direct right of action to recover damages from the manufacturer of the defective piece of equipment.

The beneficiaries of the employee with statutory dependents have the right to file a third-party action against the manufacturer, with any compensation paid by the employer to the beneficiaries reimbursed to the employer out of the third-party award.

The beneficiaries of the employee with no statutory dependents have no right to file a third-party action against the manufacturer because they are precluded from doing so by the employer's payment to the Second Injury Fund and the immediate assignment of rights under AS 23.30.015(c).

Alaska State Legislature

REPRESENTATIVE
PAT POURCHOT

HOUSE FINANCE COMMITTEE
COMMITTEE ON OIL AND GAS



ANCHORAGE
P.O. BOX 104836
ANCHORAGE, AK 99510
(W) (907) 276-6818
(H) (907) 338-2425

JUNEAU
POUCH V
STATE CAPITOL
JUNEAU, AK 99811
(907) 465-3712

House of Representatives

MEMORANDUM

DATE: April 2, 1987

TO: Representative Sund, Chair
House Judiciary Committee

FROM: Representative Pat Pourchot, Chair *Pat*
House Finance Subcommittee - Department of Labor

SUBJECT: HB 177, Second Injury Fund

HB 177, an Act relating to the workers' compensation law concerning the second injury fund, has recently been referred to the House Judiciary Committee. It addresses an issue with which the House Finance Subcommittee on the Department of Labor has been dealing. We see this bill as a much needed piece of legislation to address operating budget shortfalls.

As you may know, the second injury fund is an integral part of the Workers' Compensation Act. It serves to encourage the employment of physically impaired persons by reimbursing employers for additional compensation that may be due when a second injury combines with a prior impairment to cause greater disability. The fund is supported by contributions from employers and insurers. It is responsible for both the statewide administration of the workers' compensation rehabilitation program and employer reimbursement of benefits paid to workers for subsequent injury claims.

HB 177 would return the fund to its pre-1981 method of paying administrative expenses from the fund itself, rather than from the general fund. The funding formula enacted in 1981 has improved the financial condition of the fund. In the Department's determination, the fund is now in a position to pay for its own administration without jeopardizing the payment of benefits for which the fund was created.

Passage of HB 177 will result in a general fund savings of \$123,300. I would encourage you to pursue passage of the bill by scheduling a hearing on it at your earliest convenience.

Thank you for your consideration.

We are opposed to H.B. 177 because its administrative expenses are paid out of S.I.F. It would drastically reduce the amount of money available for care of injured workers.

Sitka Central Labor Council

Vice-President - Glen Harriman

by George Nicholas

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 9, 1987

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

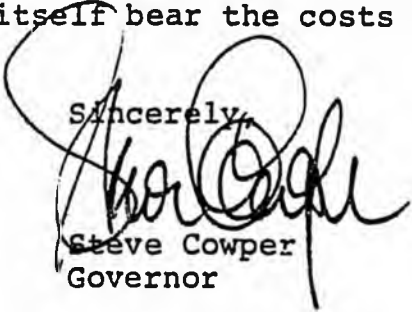
Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the workers' compensation law regarding the second injury fund.

The bill provides that expenses incurred in the administration of the second injury fund be paid from the fund itself instead of from the general fund of the state. This approach returns to the pre-1981 method of paying fund expenses. The financial condition of the fund has improved considerably in the past two years because of the funding formula enacted in 1981. The second injury fund is now in a position to pay for its own administration without jeopardizing the integrity of the fund and without jeopardizing the payment of the benefits for which the fund was created. Since the money in the fund is held in trust (i.e., it is not "state money"), the statute may specify this use of it without violating the dedicated-fund prohibition of art. IX, sec. 7 of the Alaska Constitution. Expenditures from the second injury fund will be authorized by annual appropriation.

Given the financial integrity of the fund, I think it is proper and prudent that the fund itself bear the costs of its administration.

Sincerely,


Steve Cowper
Governor

Original sponsor: Rules/Governor

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4 FIFTEENTH LEGISLATURE - FIRST SESSION

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18 of the deceased's representative in an action to recover damages
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26 * Sec. 3. AS 23.30.015(c), as amended by sec. 1 of this Act, applies to
27 payments made as a result of deaths occurring on or after July 1, 1987.

28 * Sec. 4. This Act takes effect July 1, 1987.

Introduced: 3/11/87
Referred: Labor & Commerce,
Judiciary and Finance

wo0157h

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 177

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

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