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STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD.	4-23-87	1:30 p.m.
H. JUD.	4-16-87	1:30 p.m.

HOUSE COMMITTEE REPORT

(7)

Date referred: 4/1/87

FURTHER REFERRALS: Finance

DATE: 4-23-87

The Judiciary 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 (Jod) 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:

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signatures: Thomas Barnes, John L. Taylor, McWhorter]

[Handwritten signature: Sam Carter] No Rec

[Handwritten signature]

 Chairman's signature

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

A BILL

6

For an Act entitled: "An Act relating to the workers' compensation law

7

concerning the second injury fund; and providing for

8

an effective date."

9

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

10

* Section 1. AS 23.30.040(h) is amended to read:

11

(h) Administration expenses of the state under this section and

12

AS 23.30.205 must [SHALL] be paid from the second injury [GENERAL]

13

fund.

14

* Sec. 2. This Act takes effect July 1, 1987.

~~\$~~ 123,000

HOUSE AMENDMENT #1

TO: HB 177

BY: COLLINS

Page 1 Line 25

ADD:
AFTER "FUND" ADMINISTRATIVE EXPENSES
SHALL NOT EXCEED 5 PER CENT OF
THE TOTAL AMOUNT OF THE FUND.

Adopted

Submit original amendment to the Chief Clerk.
It will then be numbered and duplicated.

A M E N D M E N T

Offered in the HOUSE

By Taylor

TO: HB 177

|
==

Page 1, after line 9:

Insert a new bill section to read:

** Section 1. AS 23.30.015(c) is repealed and reenacted to read:

(c) Payment of compensation into the Second Injury Fund within six months after the date of death operates as an assignment to the employer for a period of six months after payment of all rights of the deceased's representative to recover damages from the third person. If payment is not made to the Second Injury Fund within six months after the death or if the employer does not file a lawsuit against the third person within six months after making the payment to the Second Injury Fund, the Employer is thereafter subrogated to the rights of the deceased's representative in an action to recover damages against a third party. Subrogation under this subsection is limited to the amount paid by the employer into the Second Injury Fund as a result of the death.

Page 1, line 10:

Delete "Section 1."

Insert "sec. 2."

Page 1, after line 13:

Insert a new bill section to read:

"* Sec. 3. AS 23.30.015(c), as amended by sec. 1 of this Act, applies to payments made as a result of deaths occurring on or after July 1, 1987.

Renumber remaining bill section accordingly.

Alaska State Legislature

REPRESENTATIVE
PAT POURCHOT

HOUSE FINANCE COMMITTEE
COMMITTEE ON OIL AND GAS



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STATE CAPITOL
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House of Representatives

MEMORANDUM

DATE: April 2, 1987

TO: Representative Sund, Chair
House Judiciary Committee

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

SUBJECT: HB 177, Second Injury Fund

Pat

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.

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

Bill Version: HB 177
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)

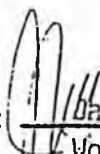
GENERAL FUND		(123.3)	(123.3)	(123.3)	(123.3)	(123.3)
FEDERAL FUNDS						
OTHER. *		123.3	123.3	123.3	123.3	123.3
TOTAL		0	0	0	0	0

POSITIONS: * = Second Injury Fund

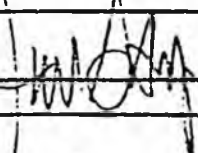
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached

Prepared by:  Evelyn McClintock, Director
Division: Workers' Compensation

Phone: 465-2790
Date: 3/17/87

Approved by Commissioner:  Jim Samson
Agency: Labor

Date: 3/17/87

Distribution (by preparer):

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

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	15.5	
Printing	1.0	
Copier, postage machine, etc.	2.7	
Other (training, risk management)	.5	
Supplies		<u>2.2</u>
	Total	\$123.3

Effect of amendments. — The 1985 amendment in subsection (a) in the first sentence substituted "consists" for "shall consist" and "two southcentral panels" for "a south-central panel," deleted "nine members, including" preceding "a south-

ern panel," and inserted "each" preceding "sitting for the third judicial district"; in the second sentence substituted "must" for "shall"; and in combining the former last two sentences substituted "and" for "All panel members."

Sec. 23.30.012. Agreements in regard to claims.

NOTES TO DECISIONS

Cited in *McShea v. State*, Sup. Ct. Op. No. 2846 (File No. S-69), 685 P.2d 1242 (1984).

Sec. 23.30.015. Compensation where third persons are liable.

(a) If on account of disability or death for which compensation is payable under this chapter the person entitled to the compensation believes that a third person other than the employer or a fellow employee is liable for damages, the person need not elect whether to receive compensation or to recover damages from the third person.

(b) Acceptance of compensation under an award in a compensation order filed by the board operates as an assignment to the employer of all rights of the person entitled to compensation and the personal representative of a deceased employee to recover damages from the third person unless the person or representative entitled to compensation commences an action against the third person within one year after an award.

(c) Payment of compensation into the second-injury fund as a result of death operates as an assignment to the employer of all rights of the representative of the deceased to recover damages from the third person.

(d) An employer under an assignment may either institute proceedings for the recovery of damages or may compromise with a third person, either without or after instituting an action.

(e) An amount recovered by the employer under an assignment, whether by action or compromise, shall be distributed as follows:

(1) The employer shall retain an amount equal to

(A) the expenses incurred by the employer in respect to the action or compromise, including a reasonable attorney fee determined by the board;

(B) the cost of all benefits actually furnished by the employer under this chapter;

(C) all amounts paid as compensation and second-injury fund payments;

MY NAME IS FRANK THOMAS-MEARS AND I AM TESTIFYING ON HOUSE BILL 177 ON BEHALF OF THE WORKERS' COMPENSATION COMMITTEE OF ALASKA.

I WOULD LIKE TO THANK THE JUDICIARY COMMITTEE FOR ALLOWING OUR TESTIMONY TODAY, AND FOR YOUR EXTRA EFFORT IN SETTING UP A TELE-CONFERENCE LINK.

THE ALASKA SECOND INJURY FUND WAS CREATED TO ENCOURAGE EMPLOYERS TO HIRE HANDICAPPED AND DISABLED WORKER, AND TO REHIRE OR RETAIN THE PREVIOUSLY INJURED WORKER. THE FUND WILL PAY DISABILITY COMPENSATION TO AN INJURED WORKER AFTER THE EMPLOYER AND ITS INSURER HAVE PAID FOR THE FIRST TWENTY FOUR MONTHS OF THE WORKERS' DISABILITY BENEFITS. THE FUND DOES NOT PROVIDE FOR MEDICAL OR OTHER COSTS.

THE SECOND INJURY FUND IS FUNDED BY EMPLOYER CONTRIBUTIONS, BASED UPON A SLIDING SCALE FORMULA DEPENDENT UPON THE FUND BALANCE. CONTRIBUTIONS ARE BASED ON A PERCENTAGE OF ALL BENEFITS PAID TO ANY INJURED WORKER - EXCLUDING MEDICAL - RANGING AS HIGH AS 6% OF EVERY BENEFIT DOLLAR.

CURRENTLY, THE FUND CONTAINS APPROXIMATELY \$4,000,000. IT RESIDES SEPARATELY FROM THE GENERAL FUND.

IT IS ALSO IMPORTANT TO NOTE THAT NO BENEFITS ARE PAID FROM THE SECOND INJURY FUND TO AN INJURED WORKER. THE SECOND INJURY FUND REIMBURSES THE EMPLOYER OF ITS INSURER FOR DISABILITY PAYMENTS MADE TO AN INJURED WORKER AFTER THE FIRST FORTY EIGHT MONTHS.

MANY INEQUITIES EXIST.

1) THE HEAVIEST USERS OF THE SECOND INJURY FUND ARE NOT ITS MAJOR CONTRIBUTORS. THESE HEAVY USERS ARE GENERALLY YEAR-AROUND, PERMANENT EMPLOYERS SUCH AS THE STATE, MUNICIPALITIES AND LARGE PRIVATE SECTOR EMPLOYERS.

THE HEAVIEST CONTRIBUTORS ARE THE SEASONAL EMPLOYERS, SUCH AS CONTRACTORS, FISH PROCESSING PLANTS, MINING AND TIMBER OPERATIONS.

BECAUSE ELIGIBILITY FOR SECOND INJURY FUND BENEFITS REQUIRE AN EMPLOYER TO COMPLY WITH STRINGENT FILE DOCUMENTATION REQUIREMENTS, IT IS GENERALLY THE PERMANENT EMPLOYERS WITH LOW EMPLOYEE TURNOVER WHO CAN PROPERLY AND CONSISTENTLY DOCUMENT THEIR FILES.

2) FEW EMPLOYERS ARE AWARE THE SECOND INJURY FUND EXISTS - EVEN THOUGH THEY ARE PAYING FOR IT, LET ALONE WHAT IS DOCUMENTATION ON THEIR PART IS NECESSARY TO ACCESS THE FUND.

3) SINCE THE SECOND INJURY FUND DOES NOT PROVIDE MONETARY BENEFIT TO THE EMPLOYER FOR THE FIRST TWENTY FOUR MONTHS FOLLOWING AN INJURY, THERE IS LITTLE INDUCEMENT FOR THE EMPLOYER TO HIRE A DISABLED, HANDICAPPED OR PRE-INJURED WORKER.

4) ONCE AN INJURED WORKER QUALIFIES FOR SECOND INJURY FUND DISABILITY PAYMENTS, ANY EXPENSE INCURRED BY THE EMPLOYER OR ITS INSURER TO RETURN THE WORKER TO GAINFUL EMPLOYMENT ARE BORN SOLELY BY THE EMPLOYER OR ITS INSURER. THE SECOND INJURY FUND DOES NOT PROVIDE FOR SUCH EXPENSE AND FEW IF ANY EMPLOYERS OR INSURERS ARE WILLING TO SPEND FURTHER TIME OR MONEY. SINCE THERE IS NO INDUCEMENT OF THE INJURED WORKER TO RETURN TO WORK, MOST OF THE

Testimony

INJURED WORKERS BEING PAID SECOND INJURY FUND DISABILITY BENEFITS BECOME PERMANENT AND TOTAL DISABILITY CASES - AD INFINITUM - REGARDLESS OF HOW MINOR THEIR DISABILITY MAY BE.

5) THE WORKERS' COMPENSATION BOARD, WHO ADMINISTERS THE SECOND INJURY FUND FOR THE COMMISSIONER OF LABOR MUST ON ONE HAND BE AN ADJUDICATOR OF LAW IN ARBITRATING DISPUTES BETWEEN MANAGEMENT AND THE INJURED WORKER, AND MUST ON THE OTHER HAND REPRESENT THE INTERESTS OF MANAGEMENT IN PARCELING OUT MONEY FROM THE SECOND INJURY FUND. IT IS A POSITION WE ARE SURE THEY FIND UNCOMFORTABLE AT BEST.

Good point

6) THE FUND, A SEPERATE ACCOUNT FROM THE STATE'S GENERAL FUND, IS NOT INVESTED. CURRENT INCOME POTENTIAL RANGES FROM \$300 - \$400,000 PER YEAR. THE INVESTMENT INCOME WOULD MORE THAN PAY ALL ADMINISTRATIVE COSTS, IN ADDITION TO CLAIMS ADJUSTMENT COSTS. THE REMAINDER COULD BE PLOWED BACK INTO THE FUND.

THERE ARE OTHER PROBLEMS, BUT THESE ARE THE MAIN POINTS.

WHEN THE SECOND INJURY FUND WAS CREATED, IT WAS TO BE ADMINISTERED BY ALASKAN EMPLOYERS. FOR WHATEVER REASON, ALASKAN EMPLOYERS DEFERRED ADMINISTRATIVE RESPONSIBILITY TO THE DEPARTMENT OF LABOR WHO HAS STRUGGLED WITH THE TASK FOR MANY YEARS. IT IS PERHAPS BECAUSE OF EMPLOYERS DISINTEREST THAT THE AFOREMENTIONED PROBLEMS WITH THE FUND HAVE COME TO PASS.

ALASKAN EMPLOYERS ARE READY TO STEP FORTH AND ACCEPT RESPONSIBILITY FOR MANAGEMENT OF THE SECOND INJURY FUND. IT IS OUR MONEY - AND OUR RESPONSIBILITY.

WE DO NOT DISAGREE WITH THE INTENT OF HE-177 - IT IS CERTAINLY NOT THE RESPONSIBILITY OF THE STATE TO PAY FOR ADMINISTRATION OF EMPLOYERS' MONEY - BUT WE WOULD LIKE TO BROADEN THE SCOPE OF HB 177 BE AMENDING AS SEC 23.30.040 AS FOLLOWS:

A) (ALL PARAGRAPHS) SUBSTITUTE THE WORDS "EMPLOYERS BOARD OF TRUSTEES" FOR THE WORD "COMMISSIONER". THIS WOULD ALLOW EMPLOYERS TO ASSUME ADMINISTRATION OF THE SECOND INJURY FUND.

B) AMEND PARAGRAPH (H) TO READ ADMINISTRATION EXPENSES OF THE TRUSTEES UNDER THIS SECTION AND AS 23.30.205 MUST BE PAID FROM THE SECOND INJURY FUND.

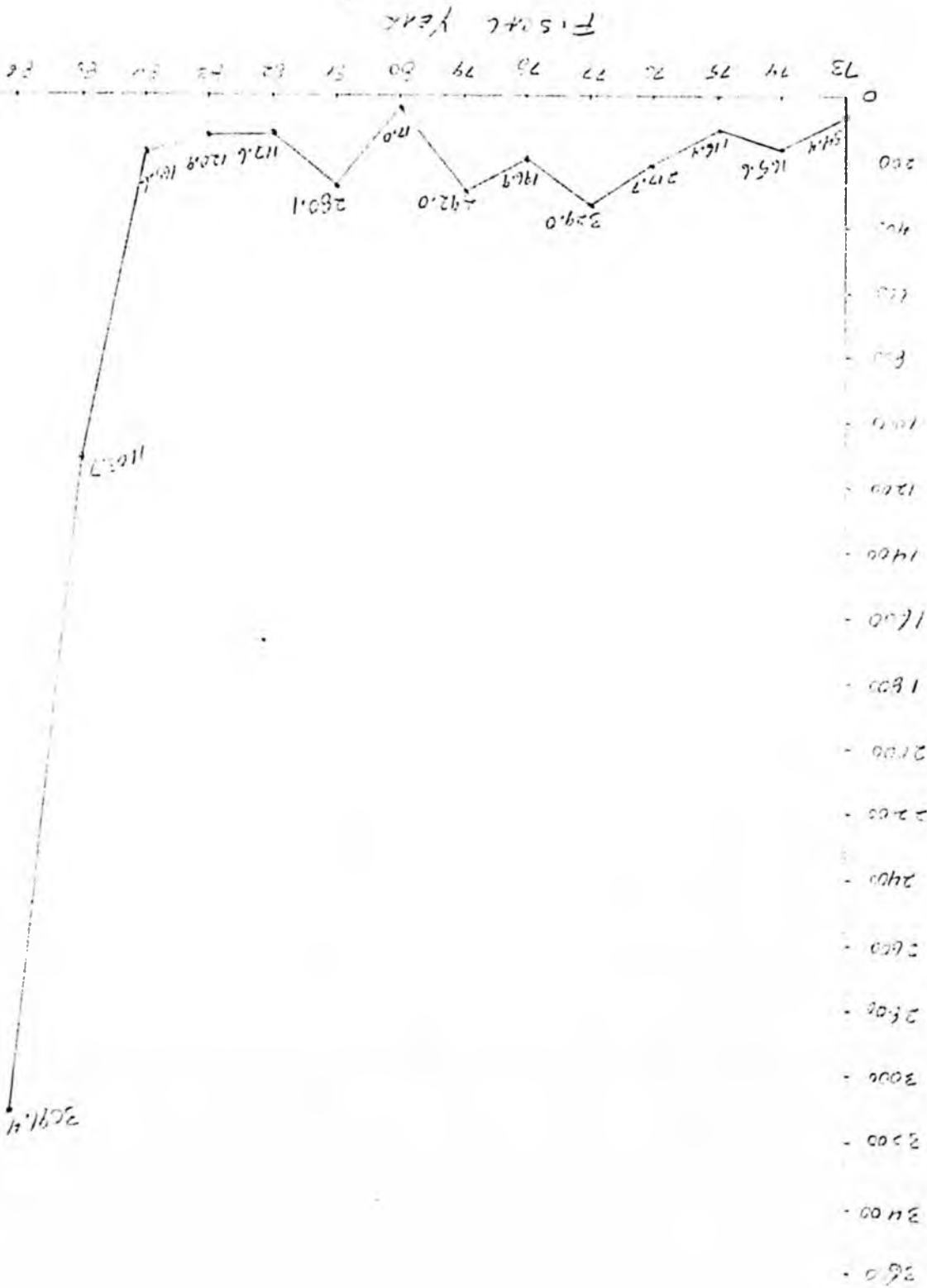
C) AND PROVIDE FOR AN EFFECTIVE DATE OF JULY 1, 1987.

7/25/87

WE WOULD PROPOSE NO FURTHER CHANGES IN THE SECOND INJURY FUND STATUTES UNTIL WE HAVE HAD TIME TO ASSUME ADMINISTRATION OF THE FUND AND CAN CONTEMPLATE AND RATIFY NECESSARY CHANGES.

WE WOULD ALSO ASK FOR THE COOPERATION OF THE GOVERNOR AND THE DEPARTMENT OF LABOR, DIVISION OF WORKERS' COMPENSATION IN THIS EFFORT.

SECOND INJURY FUND BALANCE



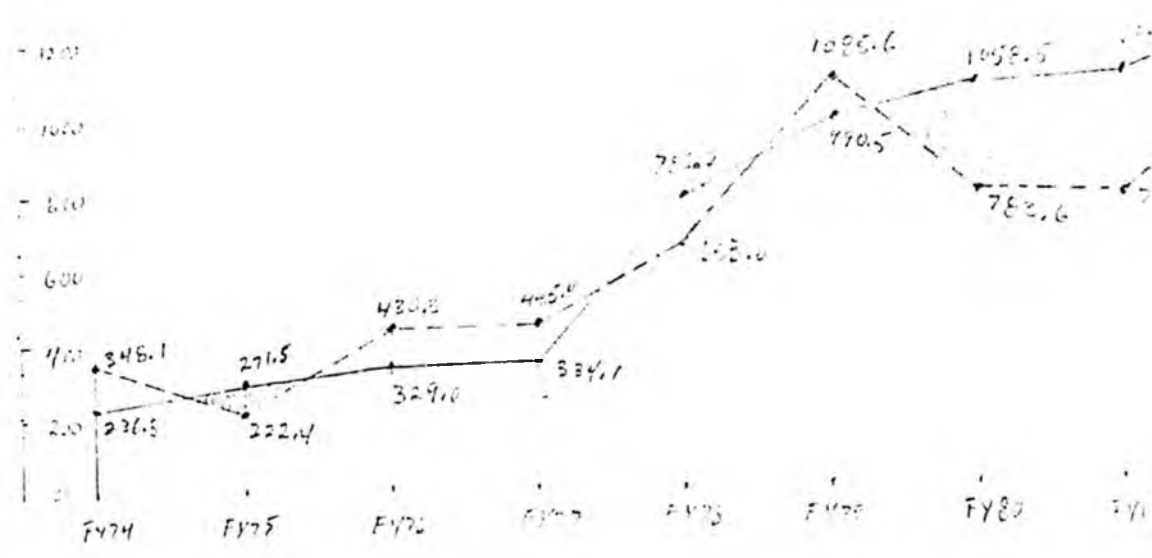
THOUSANDS

1200
 1100
 1000
 900
 800
 700
 600
 500
 400
 300
 200
 100
 0

————— EXPENDITURES

----- RECEIPTS

SHALL BE OPEN TO THE PUBLIC



SECOND INJURY FUND

4116.3

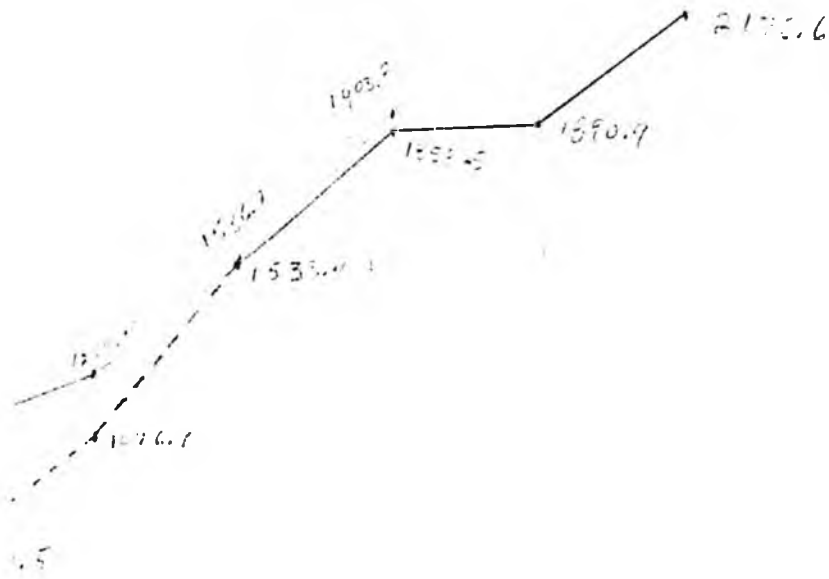
- 86 - 3091.4
- 85 - 1103.7
- 84 - 165.6
- 83 - 120.9
- 82 - 117.6
- 81 - 280.1



FY81 Suppl.

2600.0

3091.4



FY81 FY82 FY83 FY84 FY85 FY86