SB

252

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER SB 252

SPONSOR Judiciary Committee

BILL TITLE Exempting amounts held in the judicial retirement system from execution

DATE REFERRED 3-31-89

HEARING SCHEDULED 4-19-89

FISCAL NOTE PREPARED req 4-14 noon - DOA zero

SPONSOR CONTACTED Chris 4523

INTERESTED PARTIES CONTACTED

Act will testify ✓ Jan Strandberg Courts 463-4770

✓ Bob Stalnaker Div Retirement 4460

OTHER

STATE OF ALASKA
1989 LEGISLATIVE SESSION

Bill Version: SB 252
Publish Date:

FISCAL NOTE

REQUEST:

Revision Date:
Title: An Act exempting amounts held in the Judicial Retirement System.
Sponsor: Judiciary Committee
Requestor:

Agency Affected: Department of Administration
BRU: Retirement and Benefits
Components: Retirement and Benefits

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	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 1034	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: (Attach a separate page if necessary)

Please refer to page 2 for discussion of financial implications..

Prepared By: Sally Smith, Directo Sally Smith
Phone: 465-4470
Division: Retirement and Benefits
Date: April 17, 1989
Approved by Commissioner: for John M. Andrews
Date: 4/18/89
Agency: Department of Administration

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

8/6K2/041410-9/2

Senate Bill 252
Analysis of the Fiscal Implications to the Retirement Fund
Prepared by Division of Retirement & Benefits
Department of Administration
April 14, 1989

Analysis: Passage of this bill will have no impact on the judicial retirement fund. There would be no effect on the funding ratio and the unfunded liability.

Alaska Court System

State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

JANALEE R. STRANDBERG
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8226

April 18, 1989

Senator Pat Pourchot
Senate
P. O. Box V
Juneau, AK 99811

Re: cs for SB 252 An Act exempting amounts held in the judicial retirement system or the elected public officers' retirement system from execution.

Dear Senator Pat Pourchot:

The court system supports this bill that would amend AS 9.38.015. Presently, this law exempts from execution funds held in the Teachers' and Public Employees' Retirement Systems. The amendments would add the Judicial Retirement System and the Elected Public Officers' Retirement System to this list.

I am enclosing a copy of the resolution supporting this amendment, passed in 1986 by the Conference of Alaska Judges. If you have any questions about this proposed amendment, I would be very happy to answer them.

Very truly yours,

Jan Strandberg
Staff Counsel

JS:gb

Encl

cc: Senator Jan Faiks, Chair
Senate Judiciary Committee

CONFERENCE OF ALASKA JUDGES

Resolution No. 86 - 03

A RESOLUTION SUPPORTING EXEMPTION OF JUDICIAL RETIREMENT FUNDS FROM EXECUTION

IT IS HEREBY RESOLVED by the Conference of Alaska Judges that the Court Administration propose the amendment of Alaska Statutes Section 09.38.015 to exempt funds held in the Judicial Retirement System from execution.

PASSED this 2nd day of July, 1986, at Anchorage, Alaska, by the members of the Conference of Alaska Judges.

H. E. Crutchfield

HERSCHEL "ED" CRUTCHFIELD
President

ATTEST:

Acting Secretary

creditor's claim. If the individual does not exercise the repurchase right under this subsection, the clerk of the court shall first remit an amount determined to be exempt to the individual from the proceeds of sale and the balance less the cost of the sale to the creditor. For the purpose of collecting an amount remaining unpaid on a judgment after repurchase of property by an individual under this subsection, the creditor or the creditor's assignee may not make another levy on the property repurchased.

(d) Upon entry of the order of confirmation under (c) of this section and expiration of the time period for repurchase, the clerk may execute a deed to the property and when delivered it shall be sufficient to convey all title of the individual in the premises sold to the purchaser at the sale. (§ 2 ch 62 SLA 1982; am §§ 1, 2 ch 135 SLA 1988)

Cross references. — For current exemption amounts, see 8 Alaska Administrative Code 95.030.

Effect of amendments. — The 1988 amendment substituted "the individual" for "that individual" twice in subsection (a) and once in the last sentence in subsection (b), and "$54,000" for "$27,000" in subsection (a) and in the last two sentences in subsection (b).

NOTES TO DECISIONS

Avoidance of judicial lien to extent of impairment of homestead exemption. — Section 522(f) of the Bankruptcy Code provides that ". . . the debtor may avoid the fixing of a [judicial] lien on . . . property to the extent that such lien impairs an exemption . . . ." To determine whether there is such an impairment of a homestead exemption, the following steps are taken by the court: (1) all liens are ranked in order of priority (and equity, if any) to the extent of the value of the property; (2) the gross amount of the homestead exemption is subtracted from the value of the property; and (3) from the remainder left, each lien is subtracted, one at a time, beginning with the most senior lien, until a judicial lien is reached. Then the judicial lien is subtracted. To the extent that all or any portion of the judicial lien exceeds the remainder derived in (2), above, it is voidable. In re Duncan, 43 Bankr. 833 (Bankr. D. Alaska 1984).

except for child support under 09.65.132

Sec. 09.38.015. Property exempt without limitation. (a) An individual is entitled to exemption of the following property:

(1) a burial plot for the individual and the individual's family;

(2) health aids reasonably necessary to enable the individual or a dependent to work or to sustain health;

(3) benefits paid or payable for medical, surgical, or hospital care to the extent they are or will be used to pay for the care;

(4) an award under AS 18.67 (Violent Crimes Compensation Board) or a crime victim's reparations Act of another jurisdiction;

(5) benefits paid or payable as a longevity bonus under AS 47.45;

(6) compensation or benefits paid or payable and exempt under federal law;

(7) liquor licenses granted under AS 04;

(8) limited entry permits granted under AS 16.43, except as provided in that chapter.

(b) The right to benefits held by the state on behalf of an individual which may become payable by reason of disability, unemployment or illness, amounts held in the teachers' or public employees' retirement system, and child support collections made by the child support enforcement agency are exempt.

(c) Property of the state, a general law or home rule municipality, the Alaska State Building Authority, the Alaska Municipal Bond Bank Authority, or other state public corporation is exempt.

(d) Real property held by a cemetery association established under AS 10.30 for the purpose of a cemetery and not exceeding 80 acres is exempt. (§ 2 ch 62 SLA 1982)

Cross references. — For the applicability of the exemptions from execution in income assignment orders for child support, see AS 09.65.132(g), for provisions exempting teachers' retirement salaries and certain other amounts from garnishment, execution or levy, see AS 14.25.200; for provisions exempting unemployment compensation benefits from levy to enforce collection of a debt, see AS 23.20.405(e); for provisions exempting workers' compensation benefits from levy to enforce the collection of a debt, see AS 23.30.160(b); for provisions exempting amounts held in the public employee pension fund and public employee retirement benefits from levy to enforce the collection of a debt, see AS 39.35.505; for provisions exempting longevity bonuses from levy to enforce collection of a debt, see AS 47.45.120(h); for applicability of the exemptions from execution in proceedings to enforce payment of child support, see AS 47.23.250.

Editor's notes. — This section is set out to reflect the change in the name of the former "Alaska State Housing Authority" to the "Alaska State Building Authority" made by § 1, ch. 103, SLA 1986. Implementation of this legislative action is made by the revisor of statutes under AS 01.05.031.

NOTES TO DECISIONS

Cited in Municipality of Anchorage v. Baugh Constr. & Eng'g Co., Sup. Ct. Op. No. 3083 (File Nos. S-699, S-831), P.2d (1986).

Sec. 09.38.017. Exemption of retirement plan interests and payments. (a) In addition to the exemption under AS 09.38.015(b), the following are exempt from a claim of an individual's creditor:

(1) the interest of the individual in a retirement plan; and

(2) the money or other assets payable to the individual from a retirement plan.

(b) The exemptions provided by (a) of this section do not apply to a contribution made by an individual to a retirement plan within 120 days before the individual files for bankruptcy.

(c) The exemptions provided by (a) of this section do not prevent the payment of benefits under a retirement plan to an alternate payee under a qualified domestic relations order. In this subsection, "qualified domestic relations order" has the meaning given in 26 U.S.C. 414(p).

(d) A retirement plan exempt from claims under (a) of this section is conclusively presumed to be a spendthrift trust under this section.

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 4-13-89
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER JUD

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE 4-19-89

3/31/89

Mr. President:

STATE AFFAIRS Committee considered SB 252

exempting amounts held in the judicial retirement system from execution

and recommended:

[X] replace with CS SB 252 (St Aff) [] same title [X] new title

[ ] attached amendment(s) and

[ ] _____ letter of intent adopted

[X] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to _____

FISCAL NOTE(S) attached [X] zero [ ] fiscal impact
[ ] appropriation no FN attached [ ] Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

Jan Phil
Tim Kelly

OTHER RECOMMENDATIONS

Chair signature and recommendation

[ ] Committee backup attached

Introduced: 3/31/89
Referred: State Affairs and Judiciary

6-1075A

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 SENATE BILL NO. 252

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act exempting amounts held in the judicial re-
7 tirement system from execution."

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

9 * Section 1. AS 09.38.015(b) is amended to read:

10 (b) The right to benefits held by the state on behalf of an
11 individual <u>that</u> [WHICH] may become payable by reason of disability,
12 unemployment or illness, amounts held in the teachers', <u>judicial,</u> or
13 public employees' retirement system, and child support collections
14 made by the child support enforcement agency are exempt.

after 15 yrs gets 75% of salary for rest of life, incl. salary increases!
Judicial system on same ground as PERS, TRS.
less than 100 members
Members' funds are exempt from execution
(i.e. can't be attached except as provided
by law (09.65.132): child support

benefits equal to Judicial system - much more lucrative than PERS/TRS
EPORS Closed system - only in existence
early '80s
for 9 months - referendum to repeal
only about 40 active, 20 retired
6, so only those elected officials in office during those 9 mo.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

Bill Version: CSSB 252 (SA)
Publish Date:

FISCAL NOTE

REQUEST:

Revision Date:
Title: An Act exempting amounts held in the Judicial Retirement System.
Sponsor: Judiciary Committee
Requestor:

Agency Affected: Department of Administration
BRU: Retirement and Benefits
Components: Retirement and Benefits

EXPENDITURES/REVENUES: (Thousands of Dollars)

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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	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 1034	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

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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)

Please refer to page 2 for discussion of financial implications..

Prepared By: Sally Smith, Director Sally Smith
Phone: 465-4470
Division: Retirement and Benefits
Date: April 24, 1989
Approved by Commissioner: for John M. Andrews
Date: 4/25/89
Agency: Department of Administration

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

8/6K2/041410-9/2

Rev: 01/11/88

Committee Substitute for Senate Bill 252 (SA)
Analysis of the Fiscal Implications to the Retirement Fund
Prepared by Division of Retirement & Benefits
Department of Administration
April 19, 1989

Analysis: Passage of this bill will have no adverse impact on thejudicial retirement fund or the Elected Public Officers' Retirement System. There would be no effect on the funding ratio and the unfunded liability.

Alaska State Legislature

Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman
Sen. Al Adams
Sen. Tim Kelly
Sen. Rick Uehling

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

907-465-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senate State Affairs Committee Members

FROM: Senator Pat Pourchot, Chairman

RE: April 19 Committee Hearing

DATE: April 18, 1989

On Wednesday, April 19 at 1:30 p.m. in the Beltz Room the Senate State Affairs Committee will hear the following bills:

SB 252, An Act exempting amounts held in the judicial retirement system from execution

SB 252 would protect from execution or attachment funds held in the Judicial Retirement System. Current law provides such an exemption for funds in the Teachers' and Public Employees' Retirement Systems. The current statutory exception to protection for payment of child support would apply.

A draft committee substitute, prepared at the sponsor's request, would provide the same protection from execution for funds held in the elected public officers' retirement system.

CSHB 91(Jud), An Act relating to protection for certain public employees and other persons who report or participate in a proceeding connected with a matter of public concern

HB 91 would prohibit public employers from discharging, threatening, or otherwise discriminating against employees who disclose information of public concern before a public body. The protection would apply only if the disclosure is made in good faith. A violation of the provision would be punishable by a civil fine of not more than $10,000.

The bill would apply to employees of the state, the federal government, political subdivisions including municipalities a school districts, the University, and public corporations including the Alaska Railroad.

Similar "whistle blower' protection exists on the federal level and under Alaska's long term care ombudsman law.

CSHB 138(Fin), An Act establishing a state employee incentive award system

HB 138 would establish an Incentive Awards Board in the Department of Administration to authorize payment of cash awards to state employees who make superior contributions to the efficiency and economy of state operations. The contribution must result in a net savings to the agency and must have been developed outside normal working hours. The bill establishes a formula for calculating the amount of the award, to a maximum of $25,000.

6-1075E
Cramer
4/11/89

Sandra

Original sponsor: Judiciary Committee

adopted

IN THE SENATE

CS FOR SENATE BILL NO. 252 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act exempting amounts held in the judicial retirement system or the elected public officers' retirement system from execution."

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

* Section 1. AS 09.38.015(b) is amended to read:

(b) The right to benefits held by the state on behalf of an individual <u>that</u> [WHICH] may become payable by reason of disability, unemployment or illness, amounts held in the teachers'<u>, judicial,</u> or public employees' retirement system, <u>or in the elected public officers' retirement system under former AS 39.37,</u> and child support collections made by the child support enforcement agency are exempt.

252POOP.TXT
4/19/89

SB 252 EXEMPTING AMOUNTS HELD IN THE JUDICIAL RETIREMENT SYSTEM FROM EXECUTION

TO TESTIFY

SEN. FAIKS (JUDICIARY COMMITTEE IS SPONSOR, AT SNOWDEN'S REQUEST)

~~ANN SNOWDEN~~, COURTS Jan Strandberg

BOB STALNAKER, DIV. RETIREMENT, D.O.A. (QUESTIONS ONLY)

F.Y.I.

FAIKS PREPARED C.S. AT RODEY'S REQUEST -- PROVIDES SAME BENEFIT TO E.P.O.R.S. (YOU PROBABLY KNOW THIS IS A CLOSED SYSTEM, ONLY IN EXISTENCE FOR 9 MONTHS IN THE EARLY 1980'S. HAS ABOUT 40 ACTIVE MEMBERS AND 20 RETIRED.) SEEMS FAIR -- NOW ALL 4 RETIREMENT SYSTEMS ARE ON THE SAME FOOTING IN REGARD TO EXECUTION.

BOTH THE JUDICIAL RETIREMENT SYSTEM AND E.P.O.R.S. ARE MORE LUCRATIVE THAN T.R.S. AND P.E.R.S. AFTER 15 YEARS OF SERVICE IN THE JUDICIAL SYSTEM YOU GET 75% OF YOUR SALARY FOR LIFE, INCLUDING SALARY INCREASES! I SUPPOSE YOU COULD CONSIDER THIS "PROTECTION FROM EXECUTION" AS YET ANOTHER BENEFIT.