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III. Research Reports, Investment Recommendations and Actions.

A. Reasonable Basis and Representations

1. The financial analyst/Chartered Financial Analyst shall exercise diligence and thoroughness in making an investment recommendation to others or in taking an investment action for others.

2. The financial analyst/Chartered Financial Analyst shall have a reasonable and adequate basis for such recommendations and actions, supported by appropriate research and investigation.

3. The financial analyst/Chartered Financial Analyst shall make reasonable and diligent efforts to avoid any material misrepresentation in any research report or investment recommendation.

4. The financial analyst/Chartered Financial Analyst shall maintain appropriate records to support the reasonableness of such recommendations.

B. Research Reports.

1. The financial analyst/Chartered Financial Analyst shall use reasonable judgment as to the inclusion of relevant factors in research reports.

2. The financial analyst/Chartered Financial Analyst shall distinguish between facts and opinion in research reports.

3. The financial analyst/Chartered Financial Analyst shall indicate the basic characteristics of the investment involved when preparing for general public distribution a research report that is not directly related to a specific portfolio or client.

C. Portfolio Investment Recommendations and Actions.

The financial analyst/Chartered Financial Analyst shall, when making an investment recommendation or taking an investment action for a specific portfolio or client, consider its appropriateness and suitability for such portfolio or client. In considering such matters, the financial analyst/Chartered Financial Analyst shall take into account (1) the needs and circumstances of the client, (2) the basic characteristics of the investment involved, and (3) the basic characteristics of the total portfolio. The financial analyst/Chartered Financial Analyst shall use reasonable judgment to determine the applicable relevant factors. The financial analyst/Chartered Financial Analyst shall distinguish between facts and opinion in presentation of investment recommendations.

D. Prohibition Against Plagiarism.

The financial analyst/Chartered Financial Analyst shall not, when presenting material to his employer, associates, customers, clients, or the general public, copy or use in substantially the same form, material prepared by other persons without acknowledging its use and identifying the name of the author or publisher of such material. The analyst may, however, use without acknowledgment factual information published by recognized financial and statistical reporting services or similar sources.

E. Prohibition Against Misrepresentation of Services.

The financial analyst/Chartered Financial Analyst shall not make any statements, orally or in writing, which materially misrepresent (1) the services that the analyst or his firm is capable of performing for the client, (2) the qualifications of such analyst or his firm, (3) the investment performance that the analyst or his firm has accomplished or can reasonably be expected to achieve for the client, or (4) the expected performance of any investment. The financial analyst/Chartered Financial Analyst shall not make any unsupported oral or written statement that assures or guarantees any investment or its return either explicitly or implicitly.

F. Fair Dealing With Customers and Clients.

The financial analyst/Chartered Financial Analyst shall act in a manner consistent with his obligation to deal fairly with all customers and clients when (1) disseminating investment recommendations, (2) disseminating material changes in prior investment advice, and (3) taking investment action.

IV. Priority of Transactions.

The financial analyst/Chartered Financial Analyst shall conduct himself in such a manner that transactions for his customers, clients, and employer have priority over personal transactions, and so that his personal transactions do not operate adversely to their interests. If a financial analyst/Chartered Financial Analyst decides to make a recommendation about the purchase or sale of a security, he shall give his customers, clients, and employer adequate opportunity to act on this recommendation before acting on his own behalf.

V. Disclosure of Conflicts.

The financial analyst/Chartered Financial Analyst, when making investment recommendations, or taking investment actions, shall disclose

to his customers and clients any material conflict of interest relating to him and any material beneficial ownership of the securities involved which could reasonably be expected to impair his ability to render unbiased and objective advice.

The financial analyst/Chartered Financial Analyst shall disclose to his employer all matters which could reasonably be expected to interfere with his duty to the employer, or with his ability to render unbiased and objective advice.

The financial analyst/Chartered Financial Analyst shall also comply with all requirements as to disclosure of conflicts of interest imposed by law and by rules and regulations of organizations governing his activities and shall comply with any prohibitions on his activities if a conflict of interest exists.

VI. Compensation.

A. Disclosure of Additional Compensation Arrangements.

The financial analyst shall inform his customers, clients, and employer of compensation arrangements in connection with his services to them which are in addition to compensation from them for such services.

B. Disclosure of Referral Fees.

The financial analyst shall make appropriate disclosure to a prospective client or customer of any consideration paid to others for recommending his services to that prospective client or customer.

C. Duty to Employer.

The financial analyst shall not undertake independent practice for compensation in competition with his employer unless he has received written consent from both his employer and the person for whom he undertakes independent employment.

VII. Relationships with Others.

A. Preservation of Confidentiality.

A financial analyst shall preserve the confidentiality of information communicated by the client concerning matters within the scope of the confidential relationship, unless the financial analyst receives information concerning illegal activities on the part of the client.

B. Maintenance of Independence and Objectivity.

The financial analyst, in relationships and contacts with an issuer of securities, whether individually or as a member of a group, shall use particular care and good judgment to achieve and maintain independence and objectivity.

C. Fiduciary Duties.

The financial analyst, in relationships with clients, shall use particular care in determining applicable fiduciary duty and shall comply with such duty as to those persons and interests to whom it is owed.

VIII. Use of Professional Designation.

FAF

The qualified financial analyst may use the professional designation "Fellow of The Financial Analysts Federation," and is encouraged to do so, but only in a dignified and judicious manner. The use of the designation may be accompanied by an accurate explanation (1) of the requirements that have been met to obtain the designation and (2) of The Financial Analysts Federation.

ICFA

The Chartered Financial Analyst may use the professional designation Chartered Financial Analyst, or the abbreviation CFA, and is encouraged to do so, but only in a dignified and judicious manner. The use of the designation may be accompanied by an accurate explanation (1) of the requirements that have been met to obtain the designation and (2) of The Institute of Chartered Financial Analysts.

IX. Professional Misconduct.

The financial analyst shall not (1) commit a criminal act that upon conviction materially reflects adversely on his honesty, trustworthiness, or fitness as a financial analyst in other respects or (2) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

APPENDIX K

State of Alaska
Department of Revenue
Delegation of Investment Authority

I, Milton B. Barker, Acting Commissioner of Revenue for the State of Alaska, do hereby delegate the authority vested in me by the Alaska Statutes and the Resolutions of various State boards and committees to invest and reinvest the assets of State funds to the state officers whose signatures appear below.

James R. Wilson State Investment Officer	/s/ James R. Wilson
Kenneth L. Shaffer State Investment Officer	/s/ Kenneth L. Shaffer
James A. Corrao State Investment Officer	/s/ James A. Corrao
Steven C. Verschoor State Investment Officer	/s/ Steven C. Verschoor

The officers designated above are authorized to open an account or accounts with one or more firms or banks for the purpose of engaging in transactions to purchase, sell, assign, transfer or otherwise enter into agreements, contracts, commitments or similar arrangements, for cash or forward settlement or future contracts relating to the investment of assets.

The designated officers are authorized to commit, bind, and obligate the State of Alaska for investment transactions, to execute those transactions, and in connection therewith to deliver securities and monies, to sign and deliver agreements, contracts, commitments and confirmations and other necessary, desirable or customary documents. Other parties to the transactions may rely and act upon any verbal or written orders and instructions from the designated officers in connection with such accounts and transactions.

This delegation is effective November 5, 1986 and shall continue in force until amended or revoked in writing by the Commissioner of Revenue.

/s/ Milton B. Barker
Milton B. Barker
Acting Commissioner of Revenue
November 5, 1986

APPENDIX L

State of Alaska
Department of Revenue
Delegation of Investment Authority

I, Milton B. Barker, Acting Commissioner of Revenue for the State of Alaska, do hereby delegate the authority vested in me by the Alaska Statutes to invest and reinvest the assets of the State of Alaska General and Segregated Funds, the Public Employees Retirement System and Fund, and the Teachers Retirement System and Fund to the state officers whose signatures appear below.

Martin W. Lentz
State Investment Officer /s/ Martin W. Lentz

OR

Karen Ann L. Carlson
Loan Examiner /s/ Karen Ann L. Carlson

The officers designated above are authorized to open an account or accounts with one or more firms or banks for the purpose of engaging in loan and mortgage transactions to purchase, sell, convey, assign, transfer or otherwise enter into agreements, contracts, commitments or similar arrangements, for cash or forward settlement or future contracts relating to the investment of the assets of the above funds. The officers designated above are also authorized to convey any and all real property acquired by the State of Alaska as a result of any of the above described transactions.

For all accounts authorized above, the designated officers are authorized to commit, bind and obligate the State of Alaska for conveyances of real property and loan and mortgage transactions, to execute such transactions, and in connection therewith to deliver securities and monies, to sign and deliver agreements, contracts, deeds, commitments, confirmations and other necessary, desirable or customary documents. Other parties to the transactions may rely and act upon any verbal or written orders and instructions from the designated officers in connection with such accounts and transactions.

This delegation is effective October 3, 1986 and shall continue in force until amended or revoked in writing by me or my successor.

/s/ Milton B. Barker
Milton B. Barker
Acting Commissioner of Revenue
October 3, 1986

APPENDIX M

REAL ESTATE MORTGAGES
REQUIREMENT & POLICIES

GENERAL INFORMATION

** Approved Seller/Servicers cannot submit new loans when their 60 day delinquency ratio reaches more than 1/2 of 1% of the portfolio.

** No refinancings or interest rate reductions of an existing investment by a fund are allowed, except for bankruptcies, sale of properties acquired through foreclosure to a new borrower, or interest rate buydowns.

** Discounts for early payoff are not allowed.

COMMERCIAL LOANS

1. In addition to regular commercial real estate loans, anything non-owner occupied and of five or more units, whether owner-occupied or not, is considered a commercial loan.

2. Maximum loan-to-value ratio is 75 percent.

3. Maximum term is 25 years.

4. Loans must be secured by real estate improvements.

5. All loans must have private mortgage insurance down through 50 percent LTV or a minimum bank participation of 25 percent. An original participation certificate is required for each participation loan.

6. Commitments will be for six months with allowance for an additional six months.

7. Commitment fee of 1 percent (for six months) must be submitted with request for approval. Additional commitment of 1/6 of 1 percent for each month extension for a maximum of 2 percent for a total commitment period of one year.

8. No take-out refinances will be purchased except in the case of construction loans.

9. Minimum debt service coverage of 1.25 percent.

10. Banks must certify there is at least 75 percent occupancy prior to our funding.

11. All loans will be purchased at par.

12. After approval, final loan packages must be received by the 10th with disbursement made near the 25th of each month. The purchase date must be verified each month before preparing the delivery schedule.

13. Service charge will be 3/8 of 1 percent on loans under $100,000; 1/4 of 1 percent on loans $100,000 to $299,000; and 1/8 of 1 percent on loans $300,000 to a maximum of $1,000,000.

14. All loans purchased will be serviced by seller from one office.

15. Participation in any one loan is a maximum of $1,000,000.

16. Condo project take-out (AHFC approval):

1 of 3 or 4 units	4 of 9 through 12 units
2 of 5 or 6 units	5 of 13 through 20 units
3 of 7 or 8 units	maximum 10 units in any one project

17. Audited financial statements and tax returns as follows:

    a. Total loan of $500,000 to $1,500,000 - at least one year financial statements and two years tax returns.

    b. Total loan of $1,500,000 or more - three years of financial statements and tax returns.

    The audited financial statements requirement applies to companies only. The opinion must be unqualified unless it is the first audit or for some other reason no opinion has been rendered on the prior year. In this case the State will accept a qualified opinion. Tax returns will be required in the case of individuals in accordance with the above schedule. If the personal assets of individual owners have been pledged to secure a company loan, the State will further require tax returns of the owners covering the prior three calendar years for both categories above. In special cases, the State will consider a loan without audited financial statements provided the owners are pledging all of their personal assets to secure the loan and that the required tax returns are supplied. Records that reflect the life of the company if less than two years will be considered.

18. The State will not issue or repurchase:

    a. Standby Commitments

    b. Development Loans

    c. Construction Loans

DELINQUENCIES AND FORECLOSURES

DELINQUENCIES

Each Seller/Servicer is required to take progressive actions against borrowers that are delinquent one or more payments and provide to the State a monthly written delinquency report. The actions and reports thereon are broken down into the following three categories:

a. 30 day (1 payment) - These loans are reported to the State. The Seller/Servicer automatically issues late notices to the borrowers on the 16th day and demand notices on the 30th day. On the 45th day they send a notice of intent to foreclose.

b. 60 day (2 payments) - Details of collection efforts are sent to the State. The Seller/Servicer issues to the borrower a second demand notice. When the loan reaches this level the Seller/Servicer contacts the borrower and if financially possible, a modification of the loan terms is considered and, if not, a "Request for Legal Action" form is sent to the State with the Seller/Servicer's recommendations on foreclosure. If applicable, an Assignment of Rents is put into effect at this time.

c. 90 days (3 payments) - At this level the Seller/Servicer provides detailed reports and other correspondence. Loans are either on a Seller/Servicer or State approved workout, have a modification in process, have filed bankruptcy, or have a legal action pending. Each report details the activity that the Seller/Servicer is pursuing and if the loan is on an approved workout, the status of the payments on the workout.

d. over 90 days (4 or more payments) - These loans have had some type of action finalized. Foreclosure has been initiated, bankruptcy has delayed collection, or a modification is in the final stages of approval. The Seller/Servicer has to follow very strict collection policies set down under the Federal Truth

in Lending Laws and the Fair Debt Collection Practices Act (P.L. 95-109) and their guidelines.

Each month Treasury investment staff consult with Seller/ Servicer personnel on resolution of delinquencies.

BANKRUPTCIES

In the collection process the borrowers often file for protection under the United State bankruptcy laws and this stops all direct contact with the borrower. The Seller/Servicer then hires an attorney and proceeds under very rigid guidelines in the continuation of the collection process through the bankruptcy court. The State must evaluate the value of the collateral versus the debt and, when applicable, file for a relief from stay. This process is very time consuming and costly as the bankruptcy court requires a formal appraisal to verify the value in order to consider a relief from stay. The bankruptcy court must evaluate the State's claim to the asset as well as other creditors', secured or otherwise, and determine the best course of action for all parties concerned.

FORECLOSURES

This process may take one of the following three forms:

a. Deed in Lieu: The borrower offers their property back to the Seller/Servicer willingly without the time delays or the cost of a legal foreclosure. This process is only considered if the borrowers can give a title clear of any other obligations and the value of the collateral plus insurance is at least sufficient to cover the debt. The private mortgage insurance company must concur with this action, and the amount of the claim settlement is considered when evaluating possible loss in this transaction.

b. Non-Judicial Foreclosure: This is also referred to as a summary foreclosure and allows the State to foreclose on the collateral. This eliminates all other liens following the State's first deed of trust position. This process takes a minimum of 120 days from the Notice of Intent to Foreclose and includes filing for foreclosure and the actual sale. This process is considered when the value of the collateral is at least sufficient to cover the debt but the title is encumbered. Private mortgage insurance on the loan is also taken into consideration and may cover any possible loss to the State.

c. Judicial Foreclosure: This process allows the State to foreclose on the collateral and on any other

current or future assets that the borrower may have. This process takes one year to foreclose and then has a one year right of redemption for the borrower. A deficiency judgement is issued for any possible loss and filed against the other remaining assets of the borrower. This judgement is valid for 10 years. The costs to do this type of foreclosure are very high, and it is only considered when the loss level is extreme and the chance of recovery on the deficiency judgement exists. Again, private mortgage insurance will in some cases offset some of the losses, but they do not have to pay on the claim until given clear title which does not occur until the end of the second year.

Each loan is reviewed and analyzed for the proper procedure from the first 60 day notice through the delinquency and foreclosure process.

MODIFICATIONS

Each loan that is presented for modification to receive some type of temporary relief will be reviewed on a case by case basis. Each loan presented to the State for modification must have the following information and it is evaluated on the merits of that particular loan:

Two years tax returns on the individuals and the corporate entity, if applicable

Financial statements on all participants

Cashflow analysis for the past year on the subject property

Cashflow projection for at least the next six months to one year

Written analysis from the borrower explaining in detail their financial problems and their request for modification

A letter from the Seller/Servicer recommending a modification whether it conforms with the borrower's request or not.

These packages are thoroughly analyzed and, if feasible, a modification may be allowed. If the borrowers can subsidize the loan payment from other sources of income, the State will require this. Not every request is approved. Some are rejected and the borrower told to resume regular payments, whereas others are changed to meet a minimum level of modification that the State will allow.

Some modifications call for a permanent rate reduction and if the borrower or the individuals assuming the loan can afford the process, the State will allow the interest rate to be bought down under the following guidelines.

BUYDOWN POLICY

The interest rate on loans can be bought down to the current interest rate or a maximum of two points if the rate is to be bought down below the current market rate for the fund, whichever affords the greatest reduction to the borrower.

1. Cost of buydown to the borrower or assumptor is a percent of the outstanding principal balance per point bought down depending on the age of the loan as follows:

    a. 4% per point through the first 5 years of the mortgage

    b. 3.5% per point 6 years through 8 years of the mortgage

    c. 3% per point 9 years through 11 years of the mortgage

    d. 2.5% per point 12 years through 14 years of the mortgage

    e. 2% per point 15 years through 17 years of the mortgage

    f. 1.5% per point 18 years through 20 years of the mortgage

    g. 1% per point 21 years to maturity of the mortgage

2. Depending upon the age of the mortgage, equity position, and current market opinion/appraisal, the buydown expenses may be capitalized at the request of the investor under the following conditions:

    a. no other liens will be in place at the time of capitalization or those lien positions will be subordinate to the modification;

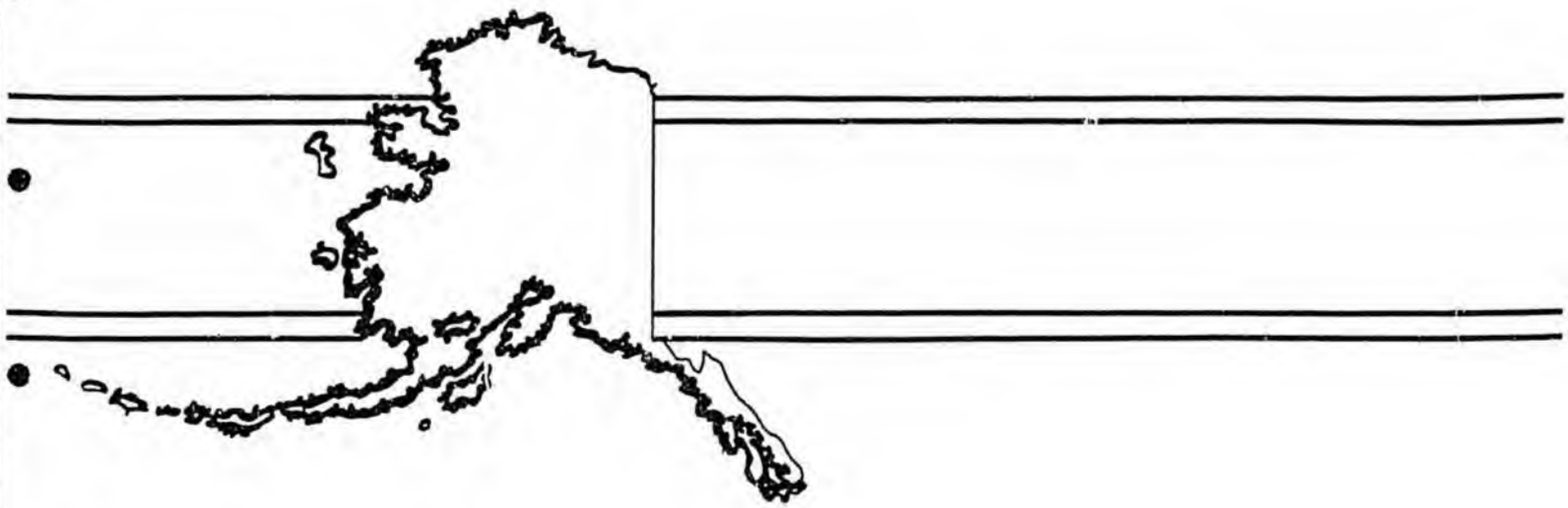
    b. whenever feasible, the capitalized amount will not take the balance to more than the original loan amount;

c. whenever feasible, the new balance will be reamortized so that the maturity on the loan will remain the same but in no case more than 25 years for commercial and 30 years for residential;

d. if reamortization is not economically feasible, a balloon payment will be required at maturity for the remaining unpaid balance.

All of the above processes and procedures are the responsibilities of the Seller/Servicer and they are addressed in the Sales and Servicing Agreement and Sales and Servicing Agreement Addendum which is signed by each of the Seller/Servicers that do business with the State.

It is the discretionary responsibility of the investment staff that manages the mortgage loan portfolios to implement these policies. The Sales and Servicing Agreements follow industry standards and specifically address the Alaska Statutes. Updates to the contracts may take place as the industry changes.



PERS AND TRS FINANCIAL PROJECTIONS

FEBRUARY 29, 1988

WILLIAM M.
MERCER-Meidinger-Hansen
INCORPORATED

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WILLIAM M. MERCER-Meidinger-Hansen
INCORPORATED

February 29, 1988

Mr. James R. Wilson
Statement Investment Officer
State of Alaska
Department of Revenue
Treasury Division
P.O. Box SB
Juneau, AK 99811

Re: PERS and TRS Financial Projections

Dear Jim:

Enclosed you will find projections of financial results for both PERS and TRS for the next 15 years. As with any long-term financial projections, care should be exercised in using these results. Their greatest value lies in determining the sensitivity of contribution rates and funding ratios due to different investment performance and salary increases.

TRS

Table 1 for TRS shows projections based upon the current actuarial assumptions. These projections assume that there will be no actuarial gains or losses in future years. Thus, the funding ratio remains virtually unchanged. Note the decrease in member contribution rate as the number with supplemental contribution decreases.

Table 2 for TRS assumes the overall investment performance of the fund each year will be 10% . . . 1% greater than our 9% actuarial assumption. Greater-than-anticipated investment performance will result in an actuarial gain. These gains will lead to an increasing funding ratio and decreasing employer contribution rate.

Table 3 for TRS assumes actuarial gains from salary increases which are 1% less than our actuarial assumption. A one percent difference in salary increases is not as important as a one percent difference in investment return. Table 4 for TRS assumes both actuarial gains from both investment return and salary increases.

PERS

Unlike TRS, PERS has a small unfunded liability, with a funding ratio of 98.5%. Based upon the current actuarial assumptions, this small unfunded liability will gradually get amortized and the funding ratio will stay very close to 100%, assuming that there are no actuarial gains or losses.

A Marsh & McLennan Company
3200 One Union Square • Seattle, Washington 98101 • 206 382-0600

Table 2 for PERS shows projections assuming an extra 1% investment return each year. The funding ratio for PERS increases 11.2% (from 98.5% to 109.7%) after 15 years.

Tables 3 and 4 for PERS project similar results to the TRS tables. Please note that the financial projections for PERS are less "responsive" to this decrease in projected salary increases than for TRS. This is primarily because benefits to retirees, under the automatic PRPA, will continue to be provided even though benefits to new retirees will be relatively smaller because of the lower salary increase assumption.

Summary

Actuarial gains, primarily from greater-than-anticipated investment performance, as well as the prudent and disciplined funding procedures adopted by both TRS and PERS Boards, have contributed to the excellent funding progress of both plans. Both PERS and TRS are virtually 100% funded. In the ensuing years, employer contribution rates will continue to decrease if the system continues to realize actuarial gains. The two most important sources of actuarial gains are investment performance and salary increases. Actuarial gains and/or losses from other sources are relatively minor when compared to the importance of these two assumptions.

Sincerely,

Robert F. Richardson

Robert F. Richardson, ASA
Principal

RFR:js

Enclosures

State of Alaska PERS- TABLE 1
Financial Projections ('000 omitted)

Investment Return 9.00% (nominal) Salary Increases 6.04% (6.5/5.5 assumed)

Year	--Valuation Amounts on July 1-- Assets	Accrued Liability	Surplus* (Deficit)	Flow Amounts During Following 12 Months Total Salaries	Employer Contribs	Employee Contribs	Total Contribs	Benefit Payments	Net Contribs	Investment Earnings	Ending Asset Valuation
1987	1,898,253	1,926,488	(28,235)	891,300	88,927	60,876	149,802	87,347	62,455	181,341	2,142,049
1988	2,142,049	2,164,620	(22,570)	945,135	92,559	64,553	157,112	95,459	61,654	204,234	2,407,937
1989	2,407,937	2,425,131	(17,194)	1,002,221	96,560	68,452	165,012	104,231	60,781	229,202	2,697,920
1990	2,697,920	2,709,914	(11,994)	1,062,755	100,921	72,586	173,507	113,715	59,793	256,430	3,014,142
1991	3,014,142	3,021,014	(6,871)	1,126,945	105,638	76,970	182,608	123,764	58,644	286,119	3,358,905
1992	3,358,905	3,360,639	(1,733)	1,195,013	110,708	81,619	192,328	135,036	57,291	318,483	3,734,680
1993	3,734,680	3,731,175	3,505	1,267,191	116,634	86,549	203,184	146,994	56,189	353,775	4,144,645
1994	4,144,645	4,135,199	9,446	1,343,730	123,144	91,777	214,921	159,904	55,017	392,280	4,591,941
1995	4,591,941	4,575,492	16,449	1,424,891	129,981	97,320	227,301	173,837	53,465	434,278	5,079,684
1996	5,079,684	5,055,060	24,624	1,510,954	137,161	103,198	240,360	188,869	51,490	480,061	5,611,235
1997	5,611,235	5,577,146	34,089	1,602,216	144,701	109,431	254,132	205,084	49,048	529,944	6,190,227
1998	6,190,227	6,145,251	44,977	1,698,990	152,616	116,041	268,657	222,568	46,089	584,265	6,820,582
1999	6,820,582	6,763,155	57,427	1,801,609	160,925	123,050	283,975	241,416	42,559	643,391	7,506,532
2000	7,506,532	7,434,938	71,593	1,910,426	169,646	130,482	300,128	261,728	38,399	707,717	8,252,649
2001	8,252,649	8,165,004	87,644	2,025,816	178,797	138,363	317,160	283,614	33,546	777,671	9,063,866
2002	9,063,866	8,958,105	105,761	2,148,175	188,399	146,720	335,119	307,189	27,930	853,713	9,945,510

* Surpluses reduce employer contributions over 5 years
* Deficits increase employer contributions over 25 years

PERCENTAGE RATIO RELATIONSHIPS OF ABOVE DATA

Year	Funding Ratio	As % of Salaries Employer Contribs	Employee Contribs	Total Contribs	Benefit Payments	As % of Assets-- Net Contribs	Investment Earnings
1987	98.5	9.98%	6.83%	16.81%	9.80%	3.10%	9.00%
1988	99.0	9.79%	6.83%	16.62%	10.10%	2.72%	9.00%
1989	99.3	9.63%	6.83%	16.46%	10.40%	2.39%	9.00%
1990	99.6	9.50%	6.83%	16.33%	10.70%	2.10%	9.00%
1991	99.8	9.37%	6.83%	16.20%	11.00%	1.84%	9.00%
1992	99.9	9.26%	6.83%	16.09%	11.30%	1.62%	9.00%
1993	100.1	9.20%	6.83%	16.03%	11.60%	1.43%	9.00%
1994	100.2	9.16%	6.83%	15.99%	11.90%	1.26%	9.00%
1995	100.4	9.12%	6.83%	15.95%	12.20%	1.11%	9.00%
1996	100.5	9.08%	6.83%	15.91%	12.50%	0.97%	9.00%
1997	100.6	9.03%	6.83%	15.86%	12.80%	0.83%	9.00%
1998	100.7	8.98%	6.83%	15.81%	13.10%	0.71%	9.00%
1999	100.8	8.93%	6.83%	15.76%	13.40%	0.60%	9.00%
2000	101.0	8.88%	6.83%	15.71%	13.70%	0.49%	9.00%
2001	101.1	8.83%	6.83%	15.66%	14.00%	0.39%	9.00%

State of Alaska PERS- TABLE 2
Financial Projections ('000 omitted)

Investment Return 10.00% (nominal) Salary Increases 6.04% (6.5/5.5 assumed)

Year	--Valuation Amounts on July 1-- Assets	Accrued Liability	Surplus* (Deficit)	Flow Amounts During Following 12 Months Total Salaries	Employer Contribs	Employee Contribs	Total Contribs	Benefit Payments	Net Contribs	Investment Earnings	Ending Asset Valuation
1987	1,898,253	1,926,488	(28,235)	891,300	88,927	60,876	149,802	87,347	62,455	202,439	2,163,147
1988	2,163,147	2,164,620	(1,472)	945,135	87,583	64,553	152,136	95,459	56,677	229,964	2,449,789
1989	2,449,789	2,425,131	24,658	1,002,221	90,202	68,452	158,654	104,231	54,423	259,949	2,764,161
1990	2,764,161	2,709,914	54,247	1,062,755	93,026	72,586	165,612	113,715	51,897	292,832	3,108,889
1991	3,108,889	3,021,014	87,876	1,126,945	95,810	76,970	172,780	123,964	48,816	328,874	3,486,580
1992	3,486,580	3,360,639	125,941	1,195,013	98,537	81,619	180,157	135,036	45,120	368,347	3,900,047
1993	3,900,047	3,731,175	168,872	1,267,191	101,190	86,549	187,739	146,994	40,745	411,542	4,352,334
1994	4,352,334	4,135,199	217,135	1,343,730	103,747	91,777	195,523	159,904	35,619	458,776	4,846,729
1995	4,846,729	4,575,492	271,237	1,424,891	106,185	97,320	203,505	173,837	29,668	510,390	5,386,787
1996	5,386,787	5,055,060	331,727	1,510,954	108,479	103,198	211,677	188,869	22,808	566,753	5,976,348
1997	5,976,348	5,577,146	399,202	1,602,216	110,600	109,431	220,032	205,084	14,948	628,264	6,619,560
1998	6,619,560	6,145,251	474,309	1,698,990	112,518	116,041	228,559	222,568	5,991	695,353	7,320,904
1999	7,320,904	6,763,155	557,749	1,801,609	114,196	123,050	237,246	241,416	(4,169)	768,486	8,085,221
2000	8,085,221	7,434,938	650,283	1,910,426	115,598	130,482	246,080	261,728	(15,648)	848,166	8,917,739
2001	8,917,739	8,165,004	752,734	2,025,816	116,680	138,363	255,043	283,614	(28,571)	934,934	9,824,102
2002	9,824,102	8,958,105	865,997	2,148,175	117,395	146,720	264,116	307,189	(43,073)	1,029,377	10,810,405

* Surpluses reduce employer contributions over 5 years
* Deficits increase employer contributions over 25 years

PERCENTAGE RATIO RELATIONSHIPS OF ABOVE DATA

Year	Funding Ratio	As % of Salaries Employer Contribs	Employee Contribs	Total Contribs	Benefit Payments	As % of Assets Net Contribs	Investment Earnings
1987	98.5	9.98%	6.83%	16.81%	9.80%	3.09%	10.00%
1988	99.9	9.27%	6.83%	16.10%	10.10%	2.46%	10.00%
1989	101.0	9.00%	6.83%	15.83%	10.40%	2.09%	10.00%
1990	102.0	8.75%	6.83%	15.58%	10.70%	1.77%	10.00%
1991	102.9	8.50%	6.83%	15.33%	11.00%	1.48%	10.00%
1992	103.7	8.25%	6.83%	15.08%	11.30%	1.22%	10.00%
1993	104.5	7.99%	6.83%	14.82%	11.60%	0.99%	10.00%
1994	105.3	7.72%	6.83%	14.55%	11.90%	0.78%	10.00%
1995	105.9	7.45%	6.83%	14.28%	12.20%	0.58%	10.00%
1996	106.6	7.18%	6.83%	14.01%	12.50%	0.40%	10.00%
1997	107.2	6.90%	6.83%	13.73%	12.80%	0.24%	10.00%
1998	107.7	6.62%	6.83%	13.45%	13.10%	0.09%	10.00%
1999	108.2	6.34%	6.83%	13.17%	13.40%	-0.05%	10.00%
2000	108.7	6.05%	6.83%	12.88%	13.70%	-0.18%	10.00%
2001	109.2	5.76%	6.83%	12.59%	14.00%	-0.31%	10.00%

State of Alaska PERS-- TABLE 3
Financial Projections ('000 omitted)

Investment Return 9.00% (nominal) Salary Increases 5.04% (5.5/4.5 assumed)

Year	--Valuation Amounts on July 1-- Assets	Accrued Liability	Surplus* (Deficit)	Flow Amounts During Following 12 Months: Total Salaries	Employer Contribs	Employee Contribs	Total Contribs	Benefit Payments	Net Contribs	Investment Earnings	Ending Asset Valuation
1987	1,898,253	1,926,488	(28,235)	891,300	88,927	60,876	149,802	87,347	62,455	181,341	2,142,049
1988	2,142,049	2,152,141	(10,092)	936,222	88,794	63,944	152,738	94,558	58,179	204,078	2,404,306
1989	2,404,306	2,397,803	6,503	983,407	90,161	67,167	157,328	102,274	55,053	228,602	2,687,962
1990	2,687,962	2,665,110	22,852	1,032,971	93,209	70,552	163,761	110,528	53,233	255,198	2,996,393
1991	2,996,393	2,955,832	40,561	1,085,033	96,360	74,108	170,468	119,354	51,114	284,111	3,331,619
1992	3,331,619	3,271,882	59,737	1,139,718	99,617	77,843	177,459	128,788	48,671	315,529	3,695,819
1993	3,695,819	3,615,323	80,495	1,197,160	102,980	81,766	184,746	138,871	45,875	349,656	4,091,350
1994	4,091,350	3,988,390	102,960	1,257,497	106,451	85,887	192,338	149,642	42,696	386,713	4,520,759
1995	4,520,759	4,393,494	127,265	1,320,875	110,031	90,216	200,246	161,147	39,100	426,937	4,986,795
1996	4,986,795	4,833,243	153,553	1,387,447	113,720	94,763	208,483	173,431	35,052	470,585	5,492,433
1997	5,492,433	5,310,453	181,980	1,457,374	117,519	99,539	217,058	186,544	30,514	517,936	6,040,883
1998	6,040,883	5,828,171	212,712	1,530,626	121,429	104,555	225,984	200,538	25,446	569,290	6,635,619
1999	6,635,619	6,389,690	245,929	1,607,979	125,448	109,825	235,272	215,469	19,803	624,971	7,280,393
2000	7,280,393	6,990,568	281,825	1,689,021	129,575	115,360	244,935	231,396	13,539	685,330	7,979,263
2001	7,979,263	7,658,654	320,609	1,774,148	133,810	121,174	254,984	248,381	6,604	750,747	8,736,613
2002	8,736,613	8,374,109	362,504	1,863,565	138,150	127,282	265,432	266,490	(1,058)	821,631	9,557,186

* Surpluses reduce employer contributions over 5 years
* Deficits increase employer contributions over 25 years

PERCENTAGE RATIO RELATIONSHIPS OF ABOVE DATA

Year	Funding Ratio	As % of Salaries: Employer Contribs	Employee Contribs	Total Contribs	Benefit Payments	As % of Assets: Net Contribs	Investment Earnings
1987	98.5	9.98%	6.83%	16.81%	9.80%	3.10%	9.00%
1988	99.5	9.48%	6.83%	16.31%	10.10%	2.57%	9.00%
1989	100.3	9.17%	6.83%	16.00%	10.40%	2.17%	9.00%
1990	100.9	9.02%	6.83%	15.85%	10.70%	1.88%	9.00%
1991	101.4	8.88%	6.83%	15.71%	11.00%	1.62%	9.00%
1992	101.8	8.74%	6.83%	15.57%	11.30%	1.39%	9.00%
1993	102.2	8.60%	6.83%	15.43%	11.60%	1.18%	9.00%
1994	102.6	8.47%	6.83%	15.30%	11.90%	0.99%	9.00%
1995	102.9	8.33%	6.83%	15.16%	12.20%	0.82%	9.00%
1996	103.2	8.20%	6.83%	15.03%	12.50%	0.67%	9.00%
1997	103.4	8.06%	6.83%	14.89%	12.80%	0.53%	9.00%
1998	103.6	7.93%	6.83%	14.76%	13.10%	0.40%	9.00%
1999	103.8	7.80%	6.83%	14.63%	13.40%	0.29%	9.00%
2000	104.0	7.67%	6.83%	14.50%	13.70%	0.18%	9.00%
2001	104.2	7.54%	6.83%	14.37%	14.00%	0.08%	9.00%

State of Alaska PERS TABLE 4
Financial Projections ('000 omitted)

Investment Return 10.00% (nominal) Salary Increases 5.04% (5.5/4.5 assumed)

Year	--Valuation Amounts on July 1-- Assets	Accrued Liability	Surplus* (Deficit)	Flow Amounts During Following 12 Months Total Salaries	Employer Contribs	Employee Contribs	Total Contribs	Benefit Payments	Net Contribs	Investment Earnings	Ending Asset Valuation
1987	1,898,253	1,926,488	(28,235)	891,300	88,927	60,876	149,802	87,347	62,455	202,439	2,163,147
1988	2,163,147	2,152,141	11,006	936,222	85,385	63,944	149,329	94,558	54,771	229,869	2,447,787
1989	2,447,787	2,397,803	49,984	983,407	86,100	67,167	153,267	102,274	50,992	259,567	2,758,347
1990	2,758,347	2,665,110	93,237	1,032,971	86,635	70,552	157,187	110,528	46,659	291,959	3,096,966
1991	3,096,966	2,955,832	141,133	1,085,033	86,967	74,108	161,075	119,354	41,721	327,267	3,465,954
1992	3,465,954	3,271,882	194,073	1,139,718	87,070	77,843	164,913	128,788	36,125	365,731	3,867,810
1993	3,867,810	3,615,323	252,487	1,197,160	86,916	81,766	168,682	138,871	29,812	407,611	4,305,233
1994	4,305,233	3,988,390	316,843	1,257,497	86,475	85,887	172,362	149,642	22,720	453,185	4,781,138
1995	4,781,138	4,393,494	387,644	1,320,875	85,712	90,216	175,928	161,147	14,781	502,759	5,298,678
1996	5,298,678	4,833,243	465,435	1,387,447	84,591	94,763	179,354	173,431	5,923	556,657	5,861,258
1997	5,861,258	5,310,453	550,805	1,457,374	83,072	99,539	182,611	186,544	(3,933)	615,235	6,472,560
1998	6,472,560	5,828,171	644,389	1,530,826	81,111	104,555	185,667	200,538	(14,871)	678,875	7,136,564
1999	7,136,564	6,389,690	746,874	1,607,979	78,661	109,825	188,486	215,469	(26,983)	747,990	7,857,571
2000	7,857,571	6,998,568	859,003	1,689,021	75,669	115,360	191,029	231,396	(40,367)	823,027	8,640,230
2001	8,640,230	7,658,654	981,576	1,774,148	72,078	121,174	193,252	248,381	(55,129)	904,468	9,489,569
2002	9,489,569	8,374,109	1,115,460	1,863,565	67,827	127,282	195,108	266,490	(71,382)	992,836	10,411,023

* Surpluses reduce employer contributions over 5 years
* Deficits increase employer contributions over 25 years

PERCENTAGE RATIO RELATIONSHIPS OF ABOVE DATA

Year	Funding Ratio	As % of Salaries Employer Contribs	Employee Contribs	Total Contribs	Benefit Payments	As % of Assets Net Contribs	Investment Earnings
1987	98.5	9.98%	6.83%	16.81%	9.80%	3.09%	10.00%
1988	100.5	9.12%	6.83%	15.95%	10.10%	2.38%	10.00%
1989	102.1	8.76%	6.83%	15.59%	10.40%	1.96%	10.00%
1990	103.5	8.39%	6.83%	15.22%	10.70%	1.60%	10.00%
1991	104.8	8.02%	6.83%	14.85%	11.00%	1.27%	10.00%
1992	105.9	7.64%	6.83%	14.47%	11.30%	0.99%	10.00%
1993	107.0	7.26%	6.83%	14.09%	11.60%	0.73%	10.00%
1994	107.9	6.88%	6.83%	13.71%	11.90%	0.50%	10.00%
1995	108.8	6.49%	6.83%	13.32%	12.20%	0.29%	10.00%
1996	109.6	6.10%	6.83%	12.93%	12.50%	0.11%	10.00%
1997	110.4	5.70%	6.83%	12.53%	12.80%	-0.06%	10.00%
1998	111.1	5.30%	6.83%	12.13%	13.10%	-0.22%	10.00%
1999	111.7	4.89%	6.83%	11.72%	13.40%	-0.36%	10.00%
2000	112.3	4.48%	6.83%	11.31%	13.70%	-0.49%	10.00%
2001	112.8	4.06%	6.83%	10.89%	14.00%	-0.61%	10.00%

State of Alaska TRS - TABLE 1
Financial Projections ('000 omitted)

Investment Return 9.00% (nominal) Salary Increases 6.04% (6.5/5.5 assumed)

Year	--Valuation Amounts on July 1-- Total Assets	Accrued Liability	Surplus* (Deficit)	----------Flow Amounts During Following 12 Months---------- Total Salaries	Employer Contribs	Employee Contribs	Total Contribs	Benefit Payments	Net Contribs	Investment Earnings	Ending Asset Valuation
1987	1,225,009	1,215,568	9,441	348,606	30,981	26,250	57,231	78,672	(21,441)	114,247	1,317,816
1988	1,317,816	1,306,100	11,715	369,662	32,693	27,725	60,418	80,539	(20,121)	123,035	1,420,730
1989	1,420,730	1,406,534	14,196	391,989	34,502	29,282	63,784	117,266	(53,483)	131,213	1,498,460
1990	1,498,460	1,481,548	16,912	415,666	36,412	30,926	67,338	137,433	(70,095)	137,776	1,566,141
1991	1,566,141	1,546,390	19,751	440,772	38,442	32,661	71,103	138,119	(67,016)	144,280	1,643,405
1992	1,643,405	1,620,744	22,661	467,394	40,603	34,494	75,097	153,207	(78,110)	151,047	1,716,342
1993	1,716,342	1,690,672	25,670	495,625	42,903	36,428	79,331	147,132	(67,801)	158,371	1,806,912
1994	1,806,912	1,778,164	28,748	525,561	45,351	38,471	83,822	153,540	(69,717)	166,803	1,903,997
1995	1,903,997	1,872,043	31,955	557,305	47,953	40,628	88,581	156,968	(68,388)	175,994	2,011,603
1996	2,011,603	1,976,301	35,303	590,966	50,717	42,904	93,621	175,007	(81,386)	185,529	2,115,747
1997	2,115,747	2,076,927	38,820	626,660	53,651	45,308	98,959	176,888	(77,929)	195,479	2,233,297
1998	2,233,297	2,190,819	42,478	664,510	56,769	47,845	104,614	187,376	(82,762)	206,317	2,356,852
1999	2,356,852	2,310,538	46,313	704,647	60,079	50,523	110,602	194,637	(84,034)	217,880	2,490,698
2000	2,490,698	2,440,363	50,335	747,207	63,594	53,351	116,944	191,111	(74,167)	230,913	2,647,444
2001	2,647,444	2,592,878	54,566	792,339	67,324	56,335	123,659	184,536	(60,877)	246,253	2,832,819
2002	2,832,819	2,773,740	59,079	840,196	71,276	59,486	130,762	193,912	(63,150)	263,585	3,033,254

* Surpluses reduce employer contributions over 5 years
* Deficits increase employer contributions over 25 years

PERCENTAGE RATIO RELATIONSHIPS OF ABOVE DATA

Year	Funding Ratio	----------As % of Salaries---------- Employer Contribs	Employee Contribs	Total Contribs	Benefit Payments	--As % of Assets-- Net Contribs	Investment Earnings
1987	100.8	8.89%	7.53%	16.42%	22.57%	-1.69%	9.00%
1988	100.9	8.84%	7.50%	16.34%	21.79%	-1.47%	9.00%
1989	101.0	8.80%	7.47%	16.27%	29.92%	-3.67%	9.00%
1990	101.1	8.76%	7.44%	16.20%	33.06%	-4.58%	9.00%
1991	101.3	8.72%	7.41%	16.13%	31.34%	-4.18%	9.00%
1992	101.4	8.69%	7.38%	16.07%	32.78%	-4.65%	9.00%
1993	101.5	8.66%	7.35%	16.01%	29.69%	-3.85%	9.00%
1994	101.6	8.63%	7.32%	15.95%	29.21%	-3.76%	9.00%
1995	101.7	8.60%	7.29%	15.89%	28.17%	-3.50%	9.00%
1996	101.8	8.58%	7.26%	15.84%	29.61%	-3.95%	9.00%
1997	101.9	8.56%	7.23%	15.79%	28.23%	-3.59%	9.00%
1998	101.9	8.54%	7.20%	15.74%	28.20%	-3.61%	9.00%
1999	102.0	8.53%	7.17%	15.70%	27.62%	-3.47%	9.00%
2000	102.1	8.51%	7.14%	15.65%	25.58%	-2.89%	9.00%
2001	102.1	8.50%	7.11%	15.61%	23.29%	-2.22%	9.00%
2002	102.1	8.48%	7.08%	15.56%	23.08%	-2.16%	9.00%

State of Alaska TRS - TABLE 2
Financial Projections ('000 omitted)

Investment Return 10.00% (nominal) Salary Increases 6.04% (6.5/5.5 assumed)

Year	--Valuation Amounts on July 1-- Total Assets	Accrued Liability	Surplus* (Deficit)	Flow Amounts During Following 12 Months Total Salaries	Employer Contribs	Employee Contribs	Total Contribs	Benefit Payments	Net Contribs	Investment Earnings	Ending Asset Valuation
1987	1,225,009	1,215,568	9,441	348,606	30,981	26,250	57,231	78,672	(21,441)	127,554	1,331,122
1988	1,331,122	1,306,100	25,022	369,662	31,450	27,725	59,175	80,539	(21,364)	138,700	1,448,458
1989	1,448,458	1,406,534	41,924	391,989	31,912	29,282	61,194	117,266	(56,072)	149,284	1,541,670
1990	1,541,670	1,481,548	60,122	415,666	32,377	30,926	63,302	137,433	(74,131)	158,169	1,625,708
1991	1,625,708	1,546,390	79,318	440,772	32,878	32,661	65,540	138,119	(72,579)	167,070	1,720,199
1992	1,720,199	1,620,744	99,455	467,394	33,431	34,494	67,925	153,207	(85,282)	176,357	1,811,274
1993	1,811,274	1,690,672	120,602	495,625	34,036	36,428	70,465	147,132	(76,667)	186,350	1,920,957
1994	1,920,957	1,778,164	142,793	525,561	34,700	38,471	73,171	153,540	(80,369)	197,682	2,038,270
1995	2,038,270	1,872,043	166,227	557,305	35,413	40,628	76,040	156,968	(80,928)	209,972	2,167,314
1996	2,167,314	1,976,301	191,013	590,966	36,174	42,904	79,078	175,007	(95,929)	222,772	2,294,157
1997	2,294,157	2,076,927	217,230	626,660	36,988	45,308	82,296	176,888	(94,592)	236,157	2,435,722
1998	2,435,722	2,190,819	244,903	664,510	37,863	47,845	85,708	187,376	(101,668)	250,667	2,584,721
1999	2,584,721	2,310,538	274,183	704,647	38,797	50,523	89,320	194,637	(105,317)	266,130	2,745,534
2000	2,745,534	2,440,363	305,171	747,207	39,793	53,351	93,143	191,111	(97,967)	283,383	2,930,950
2001	2,930,950	2,592,878	338,071	792,339	40,845	56,335	97,180	184,536	(87,356)	303,382	3,146,976
2002	3,146,976	2,773,740	373,236	840,196	41,935	59,486	101,421	193,912	(92,492)	325,808	3,380,292

* Surpluses reduce employer contributions over 5 years
* Deficits increase employer contributions over 25 years

PERCENTAGE RATIO RELATIONSHIPS OF ABOVE DATA

Year	Funding Ratio	As % of Salaries: Employer Contribs	Employee Contribs	Total Contribs	Benefit Payments	As % of Assets: Net Contribs	Investment Earnings
1987	100.8	8.89%	7.53%	16.42%	22.57%	-1.68%	10.00%
1988	101.9	8.51%	7.50%	16.01%	21.79%	-1.54%	10.00%
1989	103.0	8.14%	7.47%	15.61%	29.92%	-3.76%	10.00%
1990	104.1	7.79%	7.44%	15.23%	33.06%	-4.69%	10.00%
1991	105.1	7.46%	7.41%	14.87%	31.34%	-4.34%	10.00%
1992	106.1	7.15%	7.38%	14.53%	32.78%	-4.84%	10.00%
1993	107.1	6.87%	7.35%	14.22%	29.69%	-4.11%	10.00%
1994	108.0	6.60%	7.32%	13.92%	29.21%	-4.07%	10.00%
1995	108.9	6.35%	7.29%	13.64%	28.17%	-3.85%	10.00%
1996	109.7	6.12%	7.26%	13.38%	29.61%	-4.31%	10.00%
1997	110.5	5.90%	7.23%	13.13%	28.23%	-4.01%	10.00%
1998	111.2	5.70%	7.20%	12.90%	28.20%	-4.06%	10.00%
1999	111.9	5.51%	7.17%	12.68%	27.62%	-3.96%	10.00%
2000	112.5	5.33%	7.14%	12.47%	25.58%	-3.46%	10.00%
2001	113.0	5.15%	7.11%	12.26%	23.29%	-2.88%	10.00%
2002	113.5	4.99%	7.08%	12.07%	23.08%	-2.84%	10.00%

State of Alaska TRS - TABLE 3
Financial Projections ('000 omitted)

Investment Return 9.00% (nominal) Salary Increases 5.04% (5.5/4.5 assumed)

Year	--Valuation Amounts on July 1-- Total Assets	Accrued Liability	Surplus* (Deficit)	Flow Amounts During Following 12 Months: Total Salaries	Employer Contribs	Employee Contribs	Total Contribs	Benefit Payments	Net Contribs	Investment Earnings	Ending Asset Valuation
1987	1,225,009	1,215,568	9,441	348,606	30,981	26,250	57,231	78,672	(21,441)	114,247	1,317,816
1988	1,317,816	1,301,220	16,596	366,176	31,918	27,463	59,382	80,497	(21,115)	122,990	1,419,691
1989	1,419,691	1,395,499	24,192	384,631	32,896	28,732	61,628	117,178	(55,550)	131,022	1,495,163
1990	1,495,163	1,462,895	32,267	404,016	33,913	30,059	63,972	137,293	(73,321)	137,321	1,559,162
1991	1,559,162	1,518,443	40,719	424,379	34,985	31,446	66,432	137,922	(71,490)	143,422	1,631,094
1992	1,631,094	1,581,589	49,505	445,768	36,120	32,898	69,017	152,947	(83,930)	149,628	1,696,791
1993	1,696,791	1,638,129	58,662	468,234	37,318	34,415	71,733	146,803	(75,070)	156,205	1,777,926
1994	1,777,926	1,709,757	68,169	491,833	38,587	36,002	74,589	153,135	(78,546)	163,679	1,863,059
1995	1,863,059	1,784,965	78,094	516,622	39,925	37,662	77,587	156,480	(78,893)	171,671	1,955,837
1996	1,955,837	1,867,378	88,459	542,659	41,337	39,397	80,734	174,427	(93,693)	179,730	2,041,875
1997	2,041,875	1,942,574	99,300	570,009	42,825	41,212	84,036	176,208	(92,172)	187,891	2,137,594
1998	2,137,594	2,026,997	110,596	598,738	44,395	43,109	87,504	186,587	(99,082)	196,562	2,235,093
1999	2,235,093	2,112,700	122,393	628,914	46,052	45,093	91,145	193,728	(102,583)	205,594	2,338,105
2000	2,338,105	2,203,401	134,704	660,611	47,799	47,168	94,967	190,072	(95,105)	215,619	2,458,619
2001	2,458,619	2,311,060	147,558	693,906	49,642	49,337	98,978	183,355	(84,377)	227,436	2,601,678
2002	2,601,678	2,440,643	161,035	728,879	51,579	51,605	103,184	192,577	(89,393)	240,665	2,752,951

* Surpluses reduce employer contributions over 5 years
* Deficits increase employer contributions over 25 years

PERCENTAGE RATIO RELATIONSHIPS OF ABOVE DATA

Year	Funding Ratio	As % of Salaries: Employer Contribs	Employee Contribs	Total Contribs	Benefit Payments	As % of Assets: Net Contribs	Investment Earnings
1987	100.8	8.89%	7.53%	16.42%	22.57%	-1.69%	9.00%
1988	101.3	8.72%	7.50%	16.22%	21.98%	-1.55%	9.00%
1989	101.7	8.55%	7.47%	16.02%	30.47%	-3.82%	9.00%
1990	102.2	8.39%	7.44%	15.83%	33.98%	-4.81%	9.00%
1991	102.7	8.24%	7.41%	15.65%	32.50%	-4.49%	9.00%
1992	103.1	8.10%	7.38%	15.48%	34.31%	-5.05%	9.00%
1993	103.6	7.97%	7.35%	15.32%	31.35%	-4.33%	9.00%
1994	104.0	7.85%	7.32%	15.17%	31.14%	-4.32%	9.00%
1995	104.4	7.73%	7.29%	15.02%	30.29%	-4.14%	9.00%
1996	104.7	7.63%	7.26%	14.88%	32.14%	-4.69%	9.00%
1997	105.1	7.51%	7.23%	14.74%	30.91%	-4.42%	9.00%
1998	105.5	7.41%	7.20%	14.61%	31.16%	-4.54%	9.00%
1999	105.8	7.32%	7.17%	14.49%	30.80%	-4.49%	9.00%
2000	106.1	7.24%	7.14%	14.38%	28.77%	-3.97%	9.00%
2001	106.4	7.15%	7.11%	14.26%	26.42%	-3.34%	9.00%
2002	106.6	7.08%	7.08%	14.16%	26.42%	-3.34%	9.00%

State of Alaska TRS - TABLE 4
Financial Projections ('000 omitted)

Investment Return 10.00% (nominal) Salary Increases 5.04% (5.5/4.5 assumed)

Year	--Valuation Amounts on July 1-- Total Assets	Accrued Liability	Surplus* (Deficit)	----------Flow Amounts During Following 12 Months---------- Total Salaries	Employer Contribs	Employee Contribs	Total Contribs	Benefit Payments	Net Contribs	Investment Earnings	Ending Asset Valuation
1987	1,225,009	1,215,568	9,441	348,606	30,981	26,250	57,231	78,672	(21,441)	127,554	1,331,122
1988	1,331,122	1,301,220	29,903	366,176	30,676	27,463	58,139	80,497	(22,358)	138,650	1,447,414
1989	1,447,414	1,395,499	51,915	384,631	30,307	28,732	59,039	117,178	(58,140)	149,072	1,538,346
1990	1,538,346	1,462,895	75,451	404,016	29,880	30,059	59,939	137,293	(77,354)	157,659	1,618,651
1991	1,618,651	1,518,443	100,208	424,379	29,429	31,446	60,876	137,922	(77,046)	166,106	1,707,710
1992	1,707,710	1,581,589	126,121	445,768	28,964	32,898	61,861	152,947	(91,086)	174,755	1,791,380
1993	1,791,380	1,638,129	153,250	468,234	28,484	34,415	62,899	146,803	(83,905)	183,900	1,891,375
1994	1,891,375	1,709,757	181,617	491,833	27,991	36,002	63,993	153,135	(89,142)	194,137	1,996,370
1995	1,996,370	1,784,965	211,405	516,622	27,475	37,662	65,136	156,480	(91,344)	205,052	2,110,078
1996	2,110,078	1,867,378	242,700	542,659	26,932	39,397	66,329	174,427	(108,098)	216,153	2,218,133
1997	2,218,133	1,942,574	275,559	570,009	26,363	41,212	67,574	176,208	(108,634)	227,472	2,336,972
1998	2,336,972	2,026,997	309,974	598,738	25,774	43,109	68,883	186,587	(117,704)	239,497	2,458,765
1999	2,458,765	2,112,700	346,065	628,914	25,161	45,093	70,255	193,728	(123,473)	251,997	2,587,288
2000	2,587,288	2,203,401	383,888	660,611	24,526	47,168	71,694	190,072	(118,378)	265,746	2,734,657
2001	2,734,657	2,311,060	423,596	693,906	23,860	49,337	73,197	183,355	(110,158)	281,631	2,906,130
2002	2,906,130	2,440,643	465,487	728,879	23,145	51,605	74,749	192,577	(117,827)	299,252	3,087,555

* Surpluses reduce employer contributions over 5 years
* Deficits increase employer contributions over 25 years

PERCENTAGE RATIO RELATIONSHIPS OF ABOVE DATA

Year	Funding Ratio	----------As % of Salaries---------- Employer Contribs	Employee Contribs	Total Contribs	Benefit Payments	--As % of Assets-- Net Contribs	Investment Earnings
1987	100.8	8.89%	7.53%	16.42%	22.57%	-1.68%	10.00%
1988	102.3	8.38%	7.50%	15.88%	21.98%	-1.61%	10.00%
1989	103.7	7.88%	7.47%	15.35%	30.47%	-3.90%	10.00%
1990	105.2	7.40%	7.44%	14.84%	33.98%	-4.91%	10.00%
1991	106.6	6.93%	7.41%	14.34%	32.50%	-4.64%	10.00%
1992	108.0	6.50%	7.38%	13.88%	34.31%	-5.21%	10.00%
1993	109.4	6.08%	7.35%	13.43%	31.35%	-4.56%	10.00%
1994	110.6	5.69%	7.32%	13.01%	31.14%	-4.59%	10.00%
1995	111.8	5.32%	7.29%	12.61%	30.29%	-4.45%	10.00%
1996	113.0	4.96%	7.26%	12.22%	32.14%	-5.00%	10.00%
1997	114.2	4.62%	7.23%	11.85%	30.91%	-4.78%	10.00%
1998	115.3	4.30%	7.20%	11.50%	31.16%	-4.91%	10.00%
1999	116.4	4.00%	7.17%	11.17%	30.80%	-4.90%	10.00%
2000	117.4	3.71%	7.14%	10.85%	28.77%	-4.45%	10.00%
2001	118.3	3.44%	7.11%	10.55%	26.42%	-3.91%	10.00%
2002	119.1	3.18%	7.08%	10.26%	26.42%	-3.94%	10.00%

MEMORANDA CONCERNING THE STATE OF ALASKA LEGISLATIVE PROPOSALS REGARDING COMMISSIONER OF REVENUE'S INVESTMENT POWERS AND DUTIES

WILLKIE FARR & GALLAGHER
One Citicorp Center
153 East 53rd Street
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March 1, 1988

WILLKIE FARR & GALLAGHER

New York
Washington, DC
London
Paris

M E M O R A N D U M

TO: State of Alaska Department of Revenue

FROM: Willkie Farr & Gallagher

RE: Executive Summary of WF&G Memorandum Examining Legislative Proposals Regarding Commissioner of Revenue's Investment Powers and Duties

DATED: March 1, 1988

Introduction

This Memorandum is designed to serve as an Executive Summary of the content of the attached Memorandum from Willkie Farr & Gallagher to the State of Alaska Department of Revenue (the "Investment Proposals Memorandum"). The Investment Proposals Memorandum examines the legal issues relevant to, and the rationale for, certain changes proposed by the Commissioner of Revenue of the State (the "Commissioner") to be made to the statutory framework currently governing investments made with the monies of certain public funds established by the State of Alaska (the "Funds"). For convenience, the discussion set out below follows the same organizational structure used in the Investment Proposals Memorandum. Section I thus sets out the legal background of each of the legislative proposals (the "Bill") prepared by the Commissioner. Section II summarizes issues related to the Bill proposals, but not covered by the express terms of the Bill. Section III summarizes the separate proposal to establish an independent trust company. Capitalized terms not otherwise defined in this Memorandum have the same meanings that they do in the Investment Proposals Memorandum.

Section I: Background of the Bill Proposals

A. Establishment and Designation of Certain Funds as Trusts

The Bill clarifies the legal status of the Funds by expressly establishing separate funds for the deposit of the assets of the Retirement Systems and Endowment Funds and specifically designating those Funds as trusts. Trust designation establishes the basic fiduciary responsibility of the Treasurer, as trustee of the Funds, to segregate the assets

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of the Funds from all other monies under the Commissioner's control and to earmark those assets as trust property. The Bill, by specifically conferring trust status, may provide a basis for liability in the event of loss resulting from the commingling of assets. It may also encourage in those responsible for administration of plan assets a sense of duty toward plan beneficiaries, by providing a framework for them to discharge that duty.

B. Designation of the Commissioner as a Fiduciary of the Funds and Requirement to Act Only in the Interest of Beneficiaries.

The Bill expands statutory guidance with respect to proper behavior toward trust property and beneficiaries by expressly designating the Commissioner as a "fiduciary" of certain of the Funds and by requiring the Commissioner to act "only in regard to the best financial interests" (or long-term interests, in the case of the Endowment Funds) of Fund beneficiaries. Under common law, two primary duties flow from the "fiduciary" relationship: a duty to act prudently in the administration of the trust and a duty of loyalty to trust beneficiaries. The duty of loyalty requires a trustee to administer the trust solely in the interest of its beneficiaries; a trustee is prohibited from self-dealing, favoring certain beneficiaries over others, and dealing with trust property for the benefit of third parties. The Bill proposal incorporates and expands upon this common law duty of loyalty. Guidance as to the parameters of permissible behavior under the Bill may be found by looking to case law interpreting the "exclusive purpose" rule contained in the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which is generally similar in intent to the Bill's "only in the financial interest" standard.

C. Repeal of Legal Lists and Implementation of a New Rule of Prudence.

The Bill repeals the current statutes' "legal list" restrictions, which are limitations on the Commissioner's investment authority as to type of investments that may be held by a Fund and, in some instances, as to maximum percentage or dollar amount of Fund assets that may be invested in particular instruments. The legal lists serve to restrict investment choices, lessen investment performance, and preclude investments that, when viewed in the context of a Fund, would clearly be deemed prudent by an institutional investor. In addition to repealing the legal list provisions, the Bill imposes a stringent statutory obligation requiring the Commissioner to act with "professional" prudence by exercising

the judgment and care of an institutional investor managing large investments under a trust relationship. This standard appears to require that the Commissioner, as fiduciary, exercise the care and skill of a sophisticated professional investor whose knowledge and ability is substantially greater than that expected of an ordinarily prudent layman. A court would, therefore, in interpreting the provisions of the Bill, in all probability, look to the regulations and case law construing ERISA as the body of law governing the conduct of private, professional institutional investors. The significance of the State's adopting an ERISA-type approach to prudence, especially in conjunction with repeal of the legal list statutes, is that it would permit a much larger universe of investments to be considered in investing the monies of the Funds, thereby benefiting Fund beneficiaries.

D. Authorization to Delegate Responsiblities

The Bill authorizes the Commissioner expressly to delegate his investment, custodial and depository authority with respect to the Funds to officers or employees of the State or to independent firms, banks or trust companies. This proposal is a necessary corollary to the fiduciary duty of prudence. The cases construing ERISA's prudent man rule suggest that the Commissioner, in seeking to meet the prudent institutional investor rule, has an affirmative duty to obtain competent professional assistance by hiring qualified employees or by entering into contracts with qualified outside professionals. The Bill's proposal serves to emphasize this general duty of delegation and to provide a framework for the discharge of that duty.

E. Establishment of Reporting and Statutory Auditing Requirements

The Bill requires the Commissioner to cause periodic reports on the condition and investment performance of certain of the Funds to be prepared and furnished to the board overseeing the operation of those Funds. In addition, annual audits of the Funds must be conducted by an independent firm of public accountants. This, in large part, reflects current practice. The Commissioner's reporting and auditing proposal, which is comparable to reporting requirements under ERISA, should facilitate the Commissioner's fulfilling his fiduciary obligations toward the Funds.

Section II: Related Issues

A. Federal Income Tax Implications

The Bill's proposal to designate the Retirement Funds as trusts will serve to ensure compliance with the implicit

requirement of Section 401 of the Internal Revenue Code (the "Code") that the assets of public plans be held in trust. In addition, the Bill's proposal that the assets of the Retirement Funds be used only in regard to the financial interests of their beneficiaries should act to ensure compliance with the exclusive benefit rule contained in Section 401(a) of the Code.

B. Liability, Indemnification and Insurance

The increase in the extent of the fiduciary obligations of the Commissioner and his staff under the Bill, raises the issues of: potential liability in the event of breach of those obligations; the extent to which those the Commissioner employs may be indemnified; and the extent to which insurance may be obtained.

(1) Liability

[A] Liability of the State, the Commissioner and State Employees

Although no specific liability provisions are contained in the Bill, the Commissioner and those he employs, as fiduciaries of the Funds, may be potentially liable for breaches of their fiduciary obligations. In addition, the State may be liable for these employee breaches. Although it is unlikely that the State can claim "sovereign immunity" under Alaska case law interpreting that doctrine, employees of the Commissioner may be immune from suit under the broader "official immunity" doctrine. Because immunity may be viewed as inconsistent with the public policy considerations underlying the Bill, the Commissioner should consider amending current law to provide explicitly that a State employee will generally be liable for breach of a fiduciary obligation, unless he acted prudently, in good faith, and within the scope of his employment.

[B] Liability of Service Providers

The Bill does not address the potential liability of third parties for breaches of fiduciary duties, nor does it deal with the potential liability of the Commissioner for the actions of third party service providers. Under an ERISA-type analysis, a third party service provider is liable if that party meets ERISA's broad definition of "fiduciary." Most third parties to which the Commissioner would typically delegate responsibilities for the Funds are likely to fall within the ERISA definition of fiduciary and, thus, under an ERISA analysis, would be potentially liable for breach of fiduciary duty. ERISA's provisions and case law with respect

to co-fiduciary liability, however, suggest that the Commissioner may limit his potential liability for misconduct of third party service providers by diligently selecting those entities and monitoring their services. Because the issue of third party conduct is a significant one, the Commissioner should consider dealing with it by express statute rather than by application of analogous provisions of law.

(2) Indemnification and Insurance

The Bill in its current form contains no specific provision for indemnification of the Commissioner's employees for alleged breach of fiduciary duty. In view of the increased amount of fiduciary obligations that would be imposed on those employees under the Bill, the Commissioner might consider adding indemnification provisions to the Bill. In addition, the Commissioner may wish to consider obtaining insurance covering potential breaches, although we note that a meaningful amount of insurance is currently quite difficult to obtain at acceptable prices.

Section III: Establishment of Independent Trust Company

The Commissioner has presented, in a legislative package separate from the Bill, a proposal to create an independent trust company (the "Trust Company") that would be responsible for the management of the investments and the custody of the assets of the Funds. The proposal to create the Trust Company reflects an attempt to insulate investment of Fund assets from political pressures and to deal with the conflicts of interest inherent in investment management by State officials. Substitution of an independent professional corporation, expert in investment management, for the State as trustee, may reduce the chance of political or administrative factors interfering with the Funds' investing in a manner consistent with the financial interest of Fund beneficiaries.

Although the Trust Company proposal contemplates a fundamental change in the structure of the Funds' investment operations, the proposal is not without some precedent; most notable is the Minnesota retirement system's statutory scheme. Even though the proposal reflects a significant improvement over the Minnesota scheme and similar structures in place outside Alaska, the Commissioner should consider adding to the proposal provisions that (1) clearly specify who would be potentially liable to Fund beneficiaries, and designate those persons as "fiduciaries", and (2) specifically authorize beneficiaries of the Funds to institute appropriate legal actions against the Company for any potential breaches of fiduciary duty, thereby strengthening the accountability of

those individuals responsible for managing the assets of the Funds and ensuring compliance with fiduciary standards imposed under Alaska law.

Conclusion

The Bill, if adopted, should serve to modify and clarify the Commissioner's investment powers and fiduciary obligations under the statutory scheme governing the investment of Fund assets. In general, the Bill's proposals would increase the amount of the Commissioner's investment flexibility and at the same time increase the Commissioner's responsibility and accountability with respect to the Funds' investments. The Trust Company proposal, which reflects a more dramatic form of changing current Alaska law regarding the Funds' investment operations, may serve to insulate Fund investment operations from political pressure, and provide the Funds with skilled, professional investment management.

WILLKIE FARR & GALLAGHER

WILLKIE FARR & GALLAGHER

New York
Washington, DC
London
Paris

M E M O R A N D U M

TO: State of Alaska Department of Revenue

FROM: Willkie Farr & Gallagher

RE: Legislative Proposals Regarding Commissioner of Revenue's Investment Powers and Duties

DATED: March 1, 1988

Introduction

This Memorandum responds to the request of the State of Alaska Department of Revenue for an examination of the legal issues relevant to, and the rationale for, proposed changes in the statutory framework currently governing investments made with the monies of certain public funds established by the State of Alaska (the "Funds"). Included among the Funds are: the State of Alaska General Investment Fund, the Public Employees' Retirement Fund, the Teachers' Retirement Fund, the Judicial Retirement Fund, the Alaska National Guard and Alaska Naval Militia Retirement Fund, the Public School Fund and the University of Alaska Fund.

Under current law, the Commissioner of Revenue of the State (the "Commissioner") has the general authority to invest all State monies under Alaska Stat. § 44.25.010 and Alaska

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Stat. § 44.25.020(2), and has either the primary or secondary authority to invest all monies deposited or held in the Funds and to safekeep the assets of the Funds under a number of other specific statutory provisions. The Commissioner's investment authority is limited by statute as to types of investments that may be held by a Fund and, in some instances, as to the maximum percentage or dollar amount of Fund assets that may be invested in particular instruments. Supplementing these limitations is a general statutory obligation imposed on the Commissioner, when investing on behalf of all of the Funds, to act prudently by exercising the judgment and care of an institutional investor managing large investments under a trust relationship.

The Commissioner has found that the current statutory framework governing the investment of the Funds' monies restricts the Commissioner's ability to invest effectively on behalf of the Funds. The various statutory limitations have, in the view of the Commissioner, served in many instances to reduce investment returns, impede the Commissioner's ability to invest in a manner appropriate to the purposes of the Funds, and limit the adaptability of the investment policies followed by the Funds to changing markets and newly developing instruments and techniques.

In an attempt to address the problems raised by current investment provisions, the Commissioner has prepared a set of legislative proposals (the "Bill") that, if adopted, would make fundamental changes to those provisions. The Bill

seeks, among other things (1) to clarify the legal status of certain of the Funds, (2) to clarify the legal relationship of the Commissioner to certain of the Funds, (3) to repeal the limitations on the types and amounts of investments that may be made by the Funds, and restate and amplify the rule of prudence applicable to the Commissioner, (4) to authorize the Commissioner expressly to delegate investment, custodial and depository responsibilities with respect to certain of the Funds to officers or employees of the State or to independent firms, banks or trust companies, and (5) to establish reporting and statutory auditing requirements applicable to the Funds. The Commissioner has also presented a proposal separate from the Bill providing for the establishment of an independent trust company that would assume the responsibility for the custody of the assets and the management of the investments of certain of the Funds.

The first section of the discussion that follows sets out the legal background of each of the Bill proposals described above. Section II discusses certain issues related to the Bill proposals, but not covered by the express terms of the proposals. Finally, Section III discusses the independent trust company proposal.

Discussion

Section I: Background of the Proposals

A. Establishment and Designation of Certain Funds as Trusts

Current Alaska statutory law creates systems for the payment of retirement, disability and death benefits for

the teachers (the "Teachers' Retirement System"),[1] judges (the "Judicial Retirement System"),[2] military personnel (the "Military Retirement System")[3] and other employees (the "Public Employees' Retirement System")[4] of the State of Alaska (collectively, the "Retirement Systems") and authorizes and requires the Alaska Commissioner of Administration to take certain actions for the administration of each of these Systems, including maintenance of accounts for the System and preparation of periodic reports.[5] The statutes also designate the Commissioner of Revenue as Treasurer of the Retirement Systems and assign the responsibility for investing and safekeeping the assets of the Retirement Systems to the Commissioner, thereby implicitly making him sole fiduciary for the funds of the Retirement Systems. Current statutes governing the Retirement Systems do not, however, require that the assets maintained in these Systems be segregated from other public

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1 Alaska Stat. § 14.25.010 (1987).

2 Alaska Stat. § 22.25.010 (1982).

3 Alaska Stat. § 26.05.222 (1986).

4 Alaska Stat. § 39.35.010 (1987).

5 Alaska Stat. § 14.25.030 (1987), § 22.25.025 (1982). (general delegation of responsibility for administration of the system; no delegation of specific duties). § 26.05.228 (1986), § 39.35.060 (1987).

monies.[6] Current statutory law also creates a "separate fund" in which all money derived from the sale or lease of certain public lands, and all monetary gifts made to the University of Alaska for the purpose of the fund, are to be held "in trust" (the "University of Alaska Fund")[7] and establishes "as a separate fund the public school fund" the income of which "may not be appropriated for a purpose other than for the support of public education programs" (the "Public School Fund")[8] (collectively, the "Endowment Funds").

The Bill proposes to amend the statutes governing the Retirement Systems to expressly require the establishment of a "Teachers' Retirement Trust Fund," a "Judicial Retirement Trust Fund," a "Military Retirement Trust Fund" and a "Public Employees' Retirement Trust Fund" (collectively, the "Retirement Funds") in which "the assets of the [relevant] system shall be deposited and held."[9] The Bill also proposes specifically to designate the University of Alaska Fund as an

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6 Alaska Stat. § 22.25.048(a) and § 26.05.228(a) require the Commissioner of Administration to establish "funds" for the Judicial Retirement System and the Military Retirement System and to maintain accounts and records for the Systems, but do not prohibit the commingling of other monies with the assets of the Systems within these funds.

7 Alaska Stat. § 14.40.400(a) (1987).

8 Alaska Stat. §§ 37.14.110(a), 37.14.140 (1983).

9 Sections 3, 16, 18 and 35, respectively, of the Bill.

"endowment trust" fund and to establish the Public School Fund as a "separate endowment trust" fund.[10]

(1) The Retirement Funds

Without the creation of separate funds for the assets of the Retirement Systems and the designation of these funds as trusts, the Commissioner has no clear mandate for the manner in which the assets of these Systems are to be held. In the event that these assets are commingled with other monies and/or appropriated for a purpose other than for the benefit of the beneficiaries of the Retirement Systems, resulting in a loss to these beneficiaries, the basis for recovery against the Commissioner, therefore, is correspondingly unclear.[11]

Designating the Retirement Funds as trusts addresses a problem that has historically characterized public plans in the United States. In a 1978 task force report on the operation of public employee retirement systems in the United States (the

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10 Sections 10 and 26, respectively, of the Bill.

11 Staff of the House Comm. on Education and Labor, 95th Cong., 2d Sess., Task Force Report on Public Employee Retirement Systems 197 (Comm. Print 1978) [hereinafter cited as the "Task Force Report"] (the absence of clear statutory fiduciary standards for public pension trustees often results in the ripening of conflicts of interest into clear examples of fiduciary abuse); Leibig & Kalman, How Much Federal Regulation do Public Funds Need?, Pension World, August 1978 at 25 (traditional fiduciary obligations are difficult to enforce where no specific "fund" is involved nor an explicit declaration of trust with respect to fund assets).

"Task Force Report"),[12] Congress noted that, although the nature of the responsibility vested in those who have control over and direct the investment of public plan assets dictates that these persons be held to the high standards of behavior normally reserved to those in a fiduciary relationship, such as a trustee to a trust, state and local government retirement systems rarely create a clear fiduciary relationship or impose on these persons clear standards for behavior. The report states that:

> The substance of the standard of conduct to which plan trustees and fiduciaries with plan management and investment responsibilities are subject is. . .seldom set forth with any clarity. Thus, even when it is perceived that a trustee's conduct or an investment manager's performance has been unsatisfactory, or even irresponsible and highly imprudent, the absence of a codified, substantive standard of conduct to which the fiduciary can be held frequently precludes recovery by the plan or its aggrieved participants. A review of well-known public plan 'abuses' demonstrates that the erring plan fiduciary is seldom held liable to the plan for the damages the fiduciary's irresponsible actions

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12 The Task Force Report was undertaken in accordance with a requirement contained in the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). ERISA, which regulates the conduct of private employee benefit plans in the United States, was originally intended to include public pension plans within its scope. Prior to enactment, however, ERISA's scope was narrowed to private pension plans because of the unavailability of information regarding public plans generally and questions regarding the constitutionality of federally regulating state and local pension plans. Task Force Report at 1; Note, Public Pension Funds: The Need for Federal Regulation of Trustee Investment Decisions, 4 Yale L. & Pol'y Rev. 188, 207 & n.111 (1985) [hereinafter cited as "Public Pension Funds"].

have caused to the plan, its participants and the sponsoring governmental entity.[13]

The Bill proposal to require the establishment of separate funds for the Retirement Systems and the designation of those funds as trust funds clearly establishes a trust relationship between the Treasurer of the Retirement Systems and the assets of the Retirement Systems. By establishing a trust, the Treasurer is placed under a duty, as the trustee, to segregate the assets of each of the Retirement Systems from all other monies under the Commissioner's control and to earmark those assets as trust property.[14] The creation of separate trust funds to hold assets may not, by itself, be sufficient to establish the clear standards of behavior advocated by Congress for the broad spectrum of responsibility involved in the administration of public trusts such as the Retirement Funds and the investment of their assets. Trust designation is,

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13 Task Force Report at 188-89.

14 Restatement (Second) of Trusts § 179 (1959) [hereinafter cited as the "Restatement"]; A. Scott, Abridgment of the Law of Trusts §§ 2.6, 179 (1960) [hereinafter cited as "Scott on Trusts"] ("A trust involves rights and duties with respect to property. . . . In every trust there is something more than a merely personal relationship between trustee and beneficiary; there is a duty on the part of the trustee to deal with property for the benefit of another.").

We would suggest, however, the addition of the words "in trust" after the words "deposited and held" in Sections 3, 16, 18 and 35, respectively, of the Bill to conform that language to the existing statutory language governing the Endowment Funds and thereby avoid any possible ambiguity that might otherwise be created upon adoption of the Bill.

however, sufficient to establish the basic responsibility of a trustee to segregate trust property and earmark it as such.[15] Indeed Congress, in regulating private pension systems through the Employee Retirement Income Security Act of 1974, as amended ("ERISA"),[16] also uses the trust mechanism to assure segregation of pension assets.[17]

As a corollary to providing necessary guidance with respect to a fundamental aspect of conduct toward assets of the Retirement Systems, the Bill proposal may provide a basis for liability in the event of loss resulting from the commingling of assets.[18] The proposal may also benefit the Retirement

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15 Use by a legislature of terms such as "trust" and "trustee" indicate an intent to establish a traditional trustee relationship. Campbell & Josephson, Public Pension Trustees' Pursuit of Social Goals, 24 Wash. U.J. Urb. & Contemp. L. 43, 48, 51 (1983) (citing Savings Bank of New London v. New York Trust Co., 27 N.Y.S. 2d 963 (Sup. Ct. 1941); NLRB v. Amax Coal Co., 453 U.S. 322 (1981); and Withers v. Teachers' Retirement Sys., 447 F. Supp. 1248, 1254 (S.D.N.Y. 1978), aff'd mem. 595 F.2d 1210 (2d Cir. 1979)).

16 29 U.S.C.A. §§ 1001-1461 (West 1985 & Supp. 1986) [hereinafter cited as "ERISA"].

17 ERISA § 403(a) ("All assets of an employee benefit plan shall be held in trust by one or more trustees [who shall be] named in the trust instrument."). The Department of Labor has stated that "the underlying rationale for [ERISA's] requirement that a trust be utilized [is] to prevent commingling of plan assets with assets belonging to the person managing the plan assets. . . ." 39 Fed. Reg. 44456 (Dec. 24, 1974); Department of Labor Opinion 76-35 (April 13, 1976).

18 A private trustee is chargeable with any loss or depreciation in value of the trust estate resulting from a breach of any duty which he owes as a trustee to the (Footnote Continued)

Systems in a way that is perhaps less tangible, but no less necessary according to commentators on public pension plans generally, by encouraging in those responsible for the administration of plan assets a sense of duty toward plan participants and beneficiaries, by providing a framework and incentive for them to discharge that duty, and by encouraging them to be viewed by others as fiduciaries vis-a-vis Fund assets and beneficiaries.[19]

(2) The Endowment Funds

As noted above, current statutes already establish separate funds for the assets of the University of Alaska Fund and the Public School Fund. Although not specifically designated as a "trust fund," the Public School Fund is created under Chapter 14 of Title 37 of the Alaska Statutes, which is entitled "Trust Funds," and the statute creating the University of Alaska Fund specifies that the monies deposited in the Fund shall be held "in trust." As discussed above with respect to the Retirement Funds, legal commentators generally interpret the use of words such as "in trust" as an indication of intent

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(Footnote Continued)

18 beneficiaries, any profit made by the trustee through such breach or any profit that would have accrued to the trust estate had no breach of trust occurred. Restatement § 205; Scott on Trusts § 205.

19 L. Kohlmeier, Conflicts of Interest: State and Local Pension Fund Asset Management (1976), contained as Appendix XIV to the Task Force Report at 888 ("[V]ery few public pension fund trustees are viewed or view themselves as fiduciaries responsible solely to public employees.").

to create a traditional fiduciary relationship. The Bill proposal specifying the Endowment Funds as "endowment trust" funds is, therefore, less necessary to impose trust status on these Funds than the proposal creating the Retirement Funds and designating them as trusts. The Endowment Funds proposal is more in the nature of a clarifying and conforming change that serves primarily to emphasize the special nature of these monies as trust property and the concomitant fiduciary duties that attach to those vested with responsibility for administering these assets.

The inclusion of the word "endowment" in the Bill proposal serves to distinguish the Endowment Funds from the Retirement Funds, which may expend, if necessary, the entire principal for plan benefits. In contrast, none of the principal of the Endowment Funds, which consists of gifts or the proceeds from the lease or sale of certain public lands or mineral rights, may be expended. The traditional duty of a trustee to preserve the trust corpus[20] is, therefore, heightened with respect to trusts of this nature. The particular emphasis on preservation of principal in the case of Endowment Funds is also supported by the Bill proposal's

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20 Scott on Trusts §176. The various specific duties that attach to the traditional fiduciary relationship are discussed more fully in Sections I.B and I.C of this Memorandum, and the specific duties that attach to the Commissioner as the party responsible for investing the assets of the Funds under the current statutory framework and under the Bill proposal are discussed more fully in Section I.C.

requirement that net income of each Endowment Fund be accounted for separately from principal and that all realized capital gains be added to the principal and permanently maintained in the Fund for investment purposes.[21]

The Bill proposes certain changes that go beyond clarifying the nature of these Funds and reinforcing the traditional fiduciary responsibilities that attach to these Funds and their beneficiaries. By replacing the current statutory mandate to invest the assets of these Funds only in interest-bearing securities and allowing the Commissioner instead to invest these assets on the basis of "probable total return as a means of promoting the long-term generation of income,"[22] the Bill proposal would provide the Commissioner with the opportunity to increase, rather than merely preserve, the principal available for future investment and generation of income for application in accordance with the stated purposes of the Endowment Funds.

The Bill proposal also recognizes and emphasizes, however, that the factors to be considered in making investments that put the principal of the Endowment Funds at risk may be different from the investment criteria for other

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21 Sections 11, 27 and 30 of the Bill. The Bill's requirement to account separately for principal and interest comports with the common law duty of a trustee to keep and render accounts in the case of trusts established for successive beneficiaries. See Scott on Trusts § 172 ("If the trust is created for beneficiaries in succession, the accounts should show what receipts and what expenditures are allocated to principal and what are allocated to income.").

22 Sections 11 and 31 of the Bill.

types of trust property. The Commissioner is expressly required to consider the status of both principal and income on a current as well as a probable future basis and to act only in regard to the long-term financial interests of the Endowment Funds' beneficiaries.[23] In contrast, the Bill requires only that the Commissioner consider the "best financial interests" of the beneficiaries when investing the assets of the Retirement Funds.[24] The explicit language of the Bill proposal thus provides the Commissioner guidance with respect to the weight to be accorded the various factors to be considered in connection with an investment on behalf of the Endowment Funds and the appropriate level of risk to be assumed. At the same time, however, the requirement to consider only long-term financial interests may heighten a conflict that many commentators have found inherent in the statutory appointment of public officials, who are generally judged on the basis of short-term performance, as investment managers of public trusts.[25]

B. Designation of the Commissioner as a Fiduciary of the Funds and Requirement to Act Only in the Interest of Beneficiaries

As suggested in the discussion above, although certain fiduciary duties are created merely by establishing a trust, these duties may be limited in nature. The Bill effectively

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23 Sections 11 and 31 of the Bill.

24 Sections 5, 17, 19 and 36 of the Bill.

25 See, e.g., Public Pension Funds, supra note 12, at 196.

expands statutory guidance with respect to proper behavior toward trust property and beneficiaries by expressly designating the Commissioner as a "fiduciary" of certain of the Funds[26] and by requiring the Commissioner to act "only in regard to the best financial interests" of the beneficiaries of the Retirement Funds[27] and "only in regard to the long-term financial interests" of the beneficiaries of the Endowment Funds.[28] Absent specific statutory definition or administrative interpretation of the duties arising in connection with "fiduciary" status and the "only in the financial interest" standard, however, one must look to common law and analogous statutory law, particularly, ERISA,[29] to define more clearly the responsibilities that attach to these terms.

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26 Sections 5, 11, 17, 19, 31 and 36 of the Bill.

27 Sections 5, 17, 19 and 36 of the Bill. For purposes of clarity, we would suggest the addition of the words "participants and" before the word "beneficiaries" in Section 5 of the Bill (and incorporated into Sections 17, 19 and 36) to make clear that the Commissioner is a fiduciary with respect to all who have an interest in the Retirement Systems, including currently contributing plan participants as well as retirees, whose interests may not be identical. Our suggestion is supported by the language of ERISA §404(a)(1)(A), which is discussed in the text below, and which refers to "participants and beneficiaries."

28 Sections 11 and 31 of the Bill.

29 One legal commentator suggested recently that ERISA may eventually become a more extensive source of law than the common law in assessing issues relating to fiduciary obligations. See Gordon, The Puzzling Persistence of the Constrained Prudent Man Rule, 62 N.Y.U. L. Rev. 52, 56 n.10 (1987).

Common law has established that two primary duties flow from the fiduciary relationship: a duty to act prudently in the administration of the trust[30] and a duty of loyalty to trust beneficiaries.[31] The common law duty of prudence is discussed below as part of Section I.C of this Memorandum.

The common law duty of loyalty has been termed the most fundamental duty owed by a fiduciary.[32] The duty is present in all fiduciary relationships, but is particularly intense in the case of a trust.[33] The duty of loyalty inherent in the trust relationship is a duty to administer the trust solely in the interest of its beneficiaries.[34] The

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30 Scott on Trusts § 174.

31 Id. §§ 163A, 170.

32 Id. § 170.

33 Id.

34 Probably the most famous enunciation of the fiduciary duty of loyalty is Chief Judge (later Justice) Cardozo's statement that

> many forms of conduct permissible in a work-a-day world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. . . . Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty. . . . Only thus

(Footnote Continued)

fiduciary duty of loyalty requires a trustee to administer the trust as if he had no interest to protect other than that of the trust and its beneficiaries.[35] This duty therefore prohibits a trustee from dealing with trust property for his own account,[36] from unreasonably favoring certain beneficiaries over others in the administration of trust assets (unless authorized to do so in the trust instrument)[37] and from dealing with trust property for the benefit of a third party.[38] The Bill proposal requiring that the Commissioner act only in regard to the best financial interests of the beneficiaries of the Retirement Funds and only in regard to the long-term financial interests of the beneficiaries of the Endowment Funds incorporates the common law duty of loyalty and

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(Footnote Continued)

34 has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. . . .

Meinhard v. Salmon, 249 N.Y. 458, 164 N.E. 545 (N.Y. 1928).

35 Campbell & Josephson, supra note 15, at 50.

36 Withers v. Teachers Retirement Sys., 447 F. Supp. at 1256; Scott on Trusts § 170. Under certain circumstances, a trustee may be justified in dealing with trust property for his own account. Among other things, the trustee must disclose all material facts concerning the transaction to the beneficiaries, the transaction must be fair and reasonable in all respects and the beneficiaries must freely give their consent. Id.

37 Withers v. Teachers' Retirement Sys., 447 F.Supp. at 1257-58; Scott on Trusts § 183.

38 Id. § 170.

appears to expand it by requiring the Commissioner to act only in the best financial interests of trust beneficiaries.

Some guidance as to the parameters of permissible behavior toward Fund property and beneficiaries under the standards established by the Bill may be found in court decisions interpreting Section 404(a)(1)(A) of ERISA, which requires a fiduciary of a plan subject to ERISA "to discharge his duties with respect to [the] plan solely in the interest of the participants and beneficiaries and . . . for the exclusive purpose of . . . providing benefits to [the] participants and their beneficiaries [and] defraying reasonable expenses of administering the plan." This "exclusive purpose" rule of Section 404(a)(1)(A) has been found to have been violated, for example, by a plan fiduciary who causes the plan to invest substantially all of its assets in unsecured promissory notes of the sponsoring corporation, when the fiduciary stands to gain personally, or represents third parties who stand to benefit from the use by that corporation of the monies loaned by the trust to repurchase stock or repay stockholder loans.[39] A court similarly has found a violation of Section 404(a)(1)(A) when pension plan fiduciaries caused plan assets to be invested in the securities of corporations involved in a contest for control when the fiduciaries themselves were actively engaged

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39 Freund v. Marshall and Ilsley Bank, 485 F. Supp. 629, 639 (W.D. Wis. 1979).

in the battle for control of these corporations.[40] It seems clear that conduct similar to that found inconsistent with ERISA's "exclusive purpose" rule would be violative of the Bill's "only in the financial interest" standard.

C. Repeal of Legal Lists and Implementation of a New Rule of Prudence

Under Alaska law, the Commissioner has the general authority and responsibility to invest all monies deposited or held in the Funds.[41] In administering the Funds, the Commissioner has sought to achieve the general objective of increasing the amount of monies available for the benefit of each of the Funds over a time period appropriate to the specific nature of the Fund.[42] Under Alaska's current

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40 Leigh v. Engle, 727 F.2d 113, 124 (7th Cir. 1984). The investments in question in both the Freund and Leigh cases also raise questions under the fiduciary duty of prudence, discussed in Section I.C of this Memorandum.

41 The source of the Commissioner's authority for each Fund is as follows:
Alaska Stat. § 37.10.070 (1983) (Alaska General Investment Fund);
Alaska Stat. § 39.35.10 (1987) (Public Employees' Retirement Fund);
Alaska Stat. § 14.25.180 (1987) (Teachers' Retirement Fund);
Alaska Stat. § 22.25.048(c) (1982) (Judicial Retirement Fund);
Alaska Stat. § 26.05.228(c) (1986) (Alaska National Guard and Naval Militia Retirement Fund);
Alaska Stat. § 37.14.170 (1983) (Public School Fund);
Alaska Stat. § 14.40.400 (1987) (University of Alaska Fund).

42 See State of Alaska Department of Revenue Treasury Division, Memorandum Concerning General Investment Policies 8-13 (January 1988) [hereinafter referred to as "Treasury Policy Memo"].

statutory scheme, the Commissioner is responsible for implementing this general investment policy, subject to certain limitations mandated by statute. Specifically, the Commissioner's investment authority is limited with respect to certain Funds to specific types of investments and, in the case of the Retirement Funds and the Public School Fund, is limited as to the maximum percentage or dollar amount of Fund assets that may be invested in particular instruments.[43]

The permissible investments or so-called "legal lists" for all of the Funds are further limited by a statutory "prudent institutional investor" rule, which is derived from, and expands upon, the common law of trust's "prudent man" standard.[44] In implementing the rule, the statutes dictate that the Commissioner "exercise the judgment and care under the circumstances then prevailing which an institutional investor of ordinary prudence, discretion and intelligence exercises in the management of large investments entrusted to it."[45] This

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43 Currently, the Public Employees' Retirement Fund and the Teachers' Retirement Fund are restricted by identical lists of permissible investments and percentage allocations. Alaska Stat. §§ 39.35.110 (1987) and 14.25.180 (1987). The Judiciary and Military Retirement Systems incorporate those limitations by reference, Alaska Stat. §§ 22.25.048(c) (1982) and 26.05.228(c) (1986), as does the Public School Fund. Alaska Stat. § 37.14.170 (1983). The University of Alaska Fund is subject to different investment criteria. Alaska Stat. § 14.40.400 (1987).

44 Alaska Stat. §§ 39.35.110(c) (1987), 14.25.180(c) (1987), 22.25.048(c) (1982), 37.14.170 (1983).

45 Id.

rule is not applicable expressly to the University of Alaska Fund, but the 1963 Opinion No. 13 of the Attorney General concluded that the "prudent man rule" is the proper investment standard for that Fund, and the Governor of Alaska subsequently imposed the higher standard in delegating investment authority with respect to the Fund to the Commissioner. The Alaska General Investment Fund is also statutorily subject to the standard, even though it is not a trust.[46]

The Commissioner has found that the current statutory framework governing the investment of Fund monies restricts the Commissioner's ability to invest effectively on behalf of the Funds. In particular, the various statutory restrictions have been said to reduce investment returns of the Funds, impede the Commissioner's ability to invest in a manner appropriate to the purposes of each Fund, limit the adaptability of the investment policy followed by the Commissioner to changing markets, and in some cases, conflict with, or are logically inconsistent with, the dictates of the prudent institutional investor rule.

In light of the problems it has faced in managing the Funds, the Commissioner has presented as part of the Bill a proposal that would alter fundamentally the investment standards governing the Fund's investments. Specifically, the Bill proposes to repeal the "legal list" restrictions, while imposing a stringent statutory obligation requiring the

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46 Alaska Stat. § 37.10.070(b) (1983). See generally, Treasury Policy Memo, supra note 42, at 5.

Commissioner to act with "professional" prudence by exercising the judgment and care of an institutional investor managing large trust investments.[47] The Bill further clarifies the Commissioner's duties under the new prudence standard by explicitly delineating the factors to be considered when investing the monies of the Funds. These include consideration of the purpose of the particular Fund, the continuing disposition of the Fund's investments, and the probable safety of the Fund's capital as well as probable investment return.[48] In addition to setting out these general factors for investment of monies of the Funds, the Bill gives the Commissioner specific statutory guidance as to the purposes and goals that should be considered in investment of the Funds.[49]

An analysis of the Bill provisions amending the investment standards to which the Commissioner is subject requires a brief consideration of the development of investment standards applicable to public plans in the United States. Most state and federal statutes applicable to the investment of public funds derive from, and in some way incorporate, the common law of private trusts.[50] As noted above in Section

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47 Section 6 of the Bill. Sections 17, 19, 22, 30 and 36 of the Bill incorporate this standard by reference.

48 See supra note 47.

49 Sections 22, 27, 30 and 31 of the Bill.

50 See Public Pension Funds, supra note 12, at 201-205; Campbell & Josephson, supra note 15, at 48, 50, 57.

I.B of this Memorandum, under common law, trustees have two basic fiduciary duties in making investments--a duty to invest prudently by maximizing return on and safety of the trust assets, and a duty of undivided loyalty to the beneficiaries of their trusts.[51] Over the years, most states have developed and supplemented these basic fiduciary standards by placing specific restrictions on certain types of investments or by codifying the common law prudent man standard, or by using some combination of, or variation on, these concepts.[52] Although until very recently a majority of states prescribed a combination of specific legal list restrictions and statutory variations of the fiduciary duty of prudence, the modern trend is to abandon legal lists in favor of a broad, statutorily-mandated prudence standard.[53] As of the end of 1987, 26 states (including California and Washington) had adopted some form of prudence standard as the sole criterion by

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51 Scott on Trusts §§ 170 and 174; See generally, Public Pension Funds, supra note 12, at 193; Campbell & Josephson, supra note 15, at 67-109.

52 See Public Pension Funds, supra note 12, at 201-202.

53 See L. Eig & J. Luckey, An Analysis of the Fiduciary Responsibility Requirements of the Major Pension and Retirement Plans for Employees of the Fifty States (Congressional Research Service, April 19, 1984). This survey lists 19 states that utilize solely a prudence standard (though some of these place percentage limitations on certain investments). Since the time of the Eig & Luckey study, seven more states have adopted a prudence standard. See also Public Pension Funds, supra note 12, at 202 (listing a 1983 study of legal limitations on investment).

which to measure investment undertaken on behalf of their state employee pension plans.[54]

A host of reasons have been given for the shift away from a legal list approach,[55] but the trend has been given great impetus by the enactment of the rule of prudence contained in Section 404(a) of ERISA, which, as suggested above, incorporates and expands upon common law fiduciary investment standards. The Department of Labor's regulations interpreting the Section specifically reject the use of legal list restrictions in private pension fund investing.[56] In effect, the Bill adopts the rationale underlying those regulations.

The Bill not only reflects the modern trend in public fund investment standards, but also seeks to deal with several fundamental problems with Alaska's current bifurcated statutory scheme. The first problem is the statutory interpretation that should be followed in applying the mandates of these two distinctly different rules of investment. Several courts and commentators have addressed this issue in examining statutes

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54 See supra note 53.

55 See infra text accompanying notes 62-73.

56 See 29 C.F.R. § 2550.404a-1 (1987). In adopting these regulations, the Department of Labor stated that it did "not consider it appropriate to include. . .any list of investments, classes of investments, or investment techniques that might be permissible under the 'prudence' rule. No such list could be complete. . . ." 44 Fed. Reg. 37221, 37225 (June 26, 1979).

similar to the Alaska scheme.[57] The general approach that has been suggested is first to examine whether the particular investment is authorized by the legal list applicable to investing fund, and then to determine whether the fund's fiduciary exercised its duty of prudence in making that investment choice. Thus, under this approach, the presence of a particular type of security or other investment on a legal list makes it eligible for investment consideration, but does not authorize the fidiciary to invest in particular investments of that type. The fiduciary is only empowered to authorize prudent investment, and must, therefore, satisfy its duties to exercise care and skill in investing for the benefit of the fund.[58] In Delafield v. Barret,[59] an early New York case, for example, the court found that a fiduciary who invested in securities specified in the New York statutes was not thereby free from liability when he failed to exercise reasonable judgment and discretion in making the investments.[60]

Even though a legal list and a prudence standard may be interpreted as being consistent, they often conflict. As

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57 See, e.g. Withers v. Teachers Retirement Sys., 447 F. Supp. 1248 (S.D.N.Y. 1978) (in which the court decided that municipal bonds, which were permitted under the legal list, were prudent investments); Delafield v. Barret, 270 N.Y. 43, 200 N.E. 67 (1936); Campbell & Josephson, supra note 15, at 53-54.

58 See supra note 57.

59 270 N.Y. 43, 200 N.E. 67 (1936).

60 Id. at 48, 200 N.E. at 69.

discussed in detail below, under most modern formulations of the prudence rule, a fiduciary investing on behalf of a fund is under an obligation to make investments with a view toward ensuring that the investment objective of the fund will be achieved.[61] The general consensus among commentators is that specific investment limitations overly restrict fiduciaries in making those kinds of investment choices.[62] The statutory legal list formulations are, as one commentator put it, "cumbersome, inflexible and too slow to adapt to a changing environment."[63] Moreover, as the Task Force Report concluded: "[t]he investment performance of many state and local pension funds continues to be hampered because of statutory and policy restrictions on investment expenses and portfolio composition."[64] By restricting investment choices and lessening investment performance, legal lists often preclude investments that, when viewed in the context of the objectives of a fund, would clearly be deemed prudent by an institutional investor.

Several other arguments have been raised by commentators criticizing legal list approaches to investing. First, legal lists have been said to reduce the flexibility

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61 See infra text accompanying notes 86-102.

62 See, e.g. Public Pension Funds, supra note 12, at 206; Campbell & Josephson, supra note 15, at 115-116.

63 Campbell & Josephson, supra note 15, at 115.

64 Task Force Report at 196.

that may be needed if sufficient fund assets are to be invested with a view toward significant capital appreciation.[65] Higher returns through capital appreciation is, in many cases, necessary to maintain impartiality by fiduciaries to the divergent interests of participants of particular funds.[66] The need for impartiality is especially important in the context of retirement funds, where the relative interests of various fund participants in current income versus capital appreciation varies due to the range of retirement dates and life expectancies of those participants. Legal lists, however, may impede the fiduciary's ability to generate high returns on investments.

A second argument made by opponents of legal lists is that a legislature is not a proper body to determine investment strategies for public plans. Legislators, for example, may have overt political interests in promoting local investments that conflict with the interest of fund participants.[67] In addition, public plans have different investment needs determined by size, time focus, and the structure of workforce. No legislature, it has been argued, could promulgate a list of investments that would be broad enough to encompass the needs

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65 Campbell & Josephson, supra note 15, at 116.

66 Id.

67 Public Pension Funds, supra note 12, at 206.

of all funds and their participants and limited enough to ensure a prudent portfolio for each of those funds.[68]

A third argument often made against legal lists is that by limiting the field of permissive investment choices, they may cause the portfolio of a fund to be under-diversified, thereby subjecting the fund to uncompensated risks. These risks, it is asserted, could be eliminated if legal list restrictions were not so limited in scope, and conservative in approach.[69]

The Commissioner's experience with Alaska's current legal list statutes attests to the validity of the various arguments described above. Legal lists applicable to certain of the Funds, for instance, permit investment in equity securities only if the issuer of the securities has paid dividends for the three previous years.[70] Such a standard may have been an appropriate requirement in the past, but in today's market, few institutional investors would accept payment of dividends as an appropriate indicator of investment worthiness.[71]

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68 Id.

69 Id.

70 Alaska Stat. §§ 39.35.110(a)(21)(1987), 14.25.180(b)(21)(1987).

71 Fred Alger Management Inc., one of the outside investment managers utilized by certain of the Funds, has pointed out that this restriction has prevented the Funds from investing in the stock of Digital Equipment Corporation,
(Footnote Continued)

Perhaps the clearest example of the restrictive character of current legal lists to which the Commissioner is subject is a provision limiting investment for the University of Alaska Fund to interest-bearing securities.[72] The Commissioner believes that the nature and purpose of this Fund would more appropriately be served through equity investments, in order to maximize the future income of the Fund.[73] Under the current statutory restrictions, however, this end could not be achieved.

In light of the problems inherent in a legal list approach to investment, the Bill seeks to repeal these statutory restrictions and put in its place a more refined version of the prudent institutional investor rule. The new rule would require that the Commissioner "exercise the judgment and care under the circumstances then prevailing which an institutional investor of ordinary professional prudence, discretion and intelligence exercises in managing trust investments."[74] To best understand the effect that such a

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(Footnote Continued)

71 which increased in value in 1986 by 58%. Citibank N.A. and Invesco, two other managers employed on behalf of certain of the Funds, have also stated that the requirement of three years of current dividends does not signal a prudent investment.

72 Alaska Stat. § 14.40.400 (1987).

73 See Treasury Policy Memo, supra note 42, at 27-28.

74 Section 6 of the Bill (Proposed Alaska Stat. § 14.25.18(b)). Sections 17, 19, 22, 30 and 36 of the Bill incorporate this standard by reference.

standard will have on the investment conduct of the Commissioner and how the standard should be interpreted by a court of law, it is necessary to trace the development of the "prudence" rule.

The common law "prudent man" standard was first articulated by the Supreme Court of Massachusetts in the 1830 case of Harvard College v. Amory.[75] The original formulation, which has been adopted by decision or statute by a majority of states, is a model of flexibility. It dictates that in investing trust funds, the trustee is obligated to "observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested."[76]

Although the court in Harvard College formulated a flexible guideline for trustee investment conduct, over the years it has been given a rather narrow interpretation by many courts and commentators.[77] The reasoning behind that interpretation has been that prudent decisionmaking for a trustee entails greater caution than that expected of a private

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75 26 Mass. (9 Pick.) 446 (1830).

76 Harvard College v. Amory, 26 Mass. at 461.

77 See, e.g. King v. Talbot, 40 N.Y. 76 (1869); In re Bank of New York, 35 N.Y.2d 512, 323 N.E.2d 700 364 N.Y.S. 2d 164 (1974); Scott on Trusts § 227. See generally Gordon, supra note 29, at 57-74.

investor.[78] Thus, a trustee is not only obligated to consider the yield of his investment, but is also under a duty to avoid risks that would be seen as incompatible with his obligation to safeguard the property of others.[79] In other words, under common law, the security of the trust corpus and acquisition of a reasonable income were to be a trustee's paramount objective, even if at the expense of capital appreciation.[80]

Courts applying these principles have interpreted the "prudent man" rule to require that each individual investment made by a trustee be prudent.[81] The fact that the trust's portfolio had increased substantially in value during the period under scrutiny would not insulate the fiduciary from responsibility for imprudence in selecting or retaining particular investments.[82] Prudence, it is reasoned, is a matter of conduct, not investment performance, and no inherent connection exists between a loss sustained on an investment and

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78 King v. Talbot, 40 N.Y. 76,86 (1869); Scott on Trusts § 227.

79 King v. Talbot, 40 N.Y. at 86.

80 See Campbell & Josephson, supra note 15, at 49.

81 See, e.g. In re Bank of New York, 35 N.Y. 2d at 517, 323 N.E. 2d at 703. See generally, Campbell & Josephson, supra note 15, at 49; Public Pension Funds, supra note 12, at 194 n. 33.

82 Campbell & Josephson, supra note 12, at 49-50.

imprudence in the investment selection.[83] Thus, in analyzing individual investment decisions by trustees, the common law requires that a trustee investigate the safety of each individual investment along with its probable income and exercise reasonable care in making that investigation.[84] Profit or loss to the portfolio has no bearing in this formulation.

Although the common law interpretation of the prudent man rule has persisted in some jurisdictions,[85] a general trend away from this position has been evident. Several reasons for the trend have been identified. Commentators have argued that the common law standard is formed on a narrow concept of risk and safety that severely limits the ability of a trustee to maintain an economically efficient portfolio of assets for his funds.[86] These commentators have generally expressed a "modern portfolio theory" of trust investment, which emphasizes the portfolio as a whole rather than a particular investment, as the relevant factor in determining whether prudent investment decisions have been made.[87]

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83 Id. at 50 (citing In re Morgan Guaranty Trust Co., 89 Misc. 2d 1088, 1091, 396 N.Y.S.2d 781, 784 (Sur. Ct. 1977)).

84 See Public Pension Funds, supra note 12, at 203-204.

85 See generally Gordon, supra note 29, at 70-74.

86 See Gordon, supra note 29; Public Pension Funds, supra note 12, at 204-205.

87 Id.

A second cause of the development of a new prudent man standard has been a shift in the nature of funds from an individual to an institutional setting. The conservative common law approach to prudence was developed for private trusts to resolve the basic conflict between the interests of income beneficiaries and remaindermen. That conflict does not arise in many of the new forms of institutional trusts--employee pension plans, for example--because these trusts typically do not terminate and have no remaindermen to whom principal would eventually be distributed. In addition, these types of trusts receive capital infusions throughout their existence. The common law rule was found to be ill-suited to the varying natures and objectives of institutional funds.

The trend away from the use of common law prudence has been reflected in new formulations of the prudent investor rule by Congress and state legislatures. The most prominent of these formulations is embodied in Section 404 of ERISA and the regulations and case law interpreting that Section. Under Section 404, private pension plan fiduciaries are required to discharge their investment duties "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a

like character and with like aims."[88] Although this language clearly codifies certain principles from the common law, Congress instructed the courts to interpret the rule "bearing in mind the special nature and purposes of employee benefit plans intended to be effectuated by [ERISA]."[89] To date, courts and commentators have indicated that the rule establishes a standard of skill of an expert in making pension investments.[90]

In 1979, the Department of Labor issued regulations under Section 404 that explicitly set out criteria for fiduciary conduct that are consistent with the modern portfolio approach to investing.[91] Under the regulations, no investment decision on behalf of a plan is per se prudent or imprudent, but is to be judged in the context of overall portfolio design with reference to the objectives of the plan. To carry out a prudent investment policy, a trustee should take into consideration the following factors in making an investment decision: (1) the composition of the portfolio with regard to diversification; (2) the liquidity and current return of the portfolio relative to the anticipated cash flow

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88 ERISA § 404(a).

89 S. Rep. No. 127, 93rd Cong., 2d Sess. 28-29, reprinted in 1974 U.S. Code Cong. & Ad. News 4838, 4865.

90 Marshall v. Glass/Metal Ass'n & Glaziers & Glassworkers Pension Plan, 507 F. Supp. 378 (D. Hawaii 1980); Campbell & Josephson, supra note 15, at 103.

91 29 C.F.R. § 2550.404a-1(b)(1)(1987).

requirements of the plan; and (3) the projected return of the portfolio relative to the funding objectives of the plan.[92]

Interpretations of the ERISA prudence rule by federal courts provide additional guidance in scrutinizing trustee investment conduct. In general, the courts have examined whether trustees have employed the appropriate method to investigate the merits of an investment.[93] Court analysis has been focused, for example, on a review of the trustee's independent investigation of the merits of a particular investment transaction.[94] Courts have held that a trustee's lack of knowledge of investment is no excuse; trustees are to be judged "according to the standard of others 'acting in a like capacity and familiar with such matters.'"[95]

Cases construing ERISA's rule of prudence may be expected to be of major significance in interpreting the prudent institutional investor rule reflected in the Bill. Although ERISA is not explicitly applicable to any of the funds established by the State, the Attorney General has in recent years embraced an ERISA-type standard in interpreting the

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92 Id.

93 Donovan v. Mazzola, 716 F.2d 1226,1232 (9th Cir. 1983), cert. denied, 464 U.S. 1040 (1984).

94 Donovan v. Cunningham, 716 F.2d 1455,1467 (5th Cir. 1983), cert. denied 467 U.S. 1251 (1984).

95 Katsaros v. Cody, 744 F.2d 270, 279 (2d Cir.), cert. denied, 469 U.S. 1072 (1984)(quoting Marshall v. Glass/Metal Ass'n & Glaziers & Glassworkers Pension Plan, 507 F. Supp. 378, 384 (D. Hawaii 1980).

prudent investor rule.[96] In an opinion discussing the investment powers of the Department of Revenue, the Attorney General set out the general policy of that office:

> We interpret the prudent investor rule...to require that all investment decisions be consistent with an investment strategy which gives consideration to the risks and benefits to each portfolio as a whole. . . Each of the funds which you invest (teachers' retirement fund, public employees' retirement fund, general fund, and Alaska permanent fund) represents a separate portfolio for this purpose.[97]

Indeed, in a 1984 opinion dealing with the prudence of a proposed investment of the Alaska Permanent Fund Corporation (the "Permanent Fund"), the Attorney General specifically referred to the Department of Labor's ERISA regulations for guidance in rendering its decision.[98]

Even in the absence of these opinions, it seems clear that a standard that refers to an "institutional investor of ordinary professional prudence," by its very language, professes to adopt the standard of conduct that governs other institutional investors. The standard would appear to require that the Commissioner, as fiduciary, exercise the care and skill of a sophisticated professional investor whose knowledge and ability is substantially greater than that expected of an ordinarily prudent layman. A court, in analyzing the proposed

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96 See, e.g. Op. (Inf.) Att'y Gen. (Nov. 3, 1986); Op. (Inf.) Att'y Gen. (Oct. 17, 1984); Op. (Inf.) Att'y Gen. (June 17, 1982).

97 Op. (Inf.) Att'y Gen. (June 17, 1982).

98 Op. (Inf.) Att'y Gen. (Oct. 17, 1984).

formulation, therefore, would in all probability look to the body of law that governs the conduct of private, professional institutional investors in rendering a decision. The ERISA standards, and the case law interpreting these standards are, therefore, instructive.

The significance of the State's adopting an ERISA-type approach to prudence especially in conjunction with repeal of the legal list statutes, is that it permits a much larger universe of investments to be considered in investing the monies of the Funds. The Department of Labor, in interpreting ERISA's prudence rule, has stated that investment in securities issued by a small or new company, which could be riskier than those of a "blue chip" company, may be entirely proper under the rule.[99] The Department of Labor has also recognized that investments not producing current income might play a legitimate role in a portfolio. This rationale would suggest that in appropriate circumstances, these and other "nontraditional" investments, such as certain types of venture capital or futures investment, might be permissible as well under the statutory formulation contained in the Bill.[100]

This "modern-portfolio theory" approach to the prudence rule could be criticized as establishing too

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99 44 Fed. Reg. 37,221, 37,222 (June 26, 1979).

100 Id. at 37,225.

permissive a standard for evaluation of trustee behavior.[101] A claim could be made that such a broad standard would enable a fiduciary to invest in any vehicle striking its fancy, and be insulated from liability for its investment decisions.[102] Under the formulation set forth in the Bill, however, the Commissioner, as a fiduciary of the Funds, cannot ignore his obligation to evaluate a particular investment to ensure its being consistent with Fund characteristics and objectives. The Commissioner has the duty, under the prudent professional institutional investor standard of care, to investigate investments made for a Fund with the prudence of a professional to assure an appropriate risk level is maintained in light of the needs of the Fund. The extensive body of law interpreting ERISA provides general guidelines for the proper scrutiny of that investment conduct. Thus, the prudence rule reflected in the Bill, in conjunction with repeal of the existing legal lists, should provide the Commissioner with the broadest scope of investment options. At the same time, the requirement that the Commissioner meet the standard of care exercised by an institutional investor of professional prudence should provide significant protection to Fund beneficiaries and participants.

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101 Gordon, supra note 29, at 94; see also Hutchinson & Cole, Legal Standards for Governing Investment of Pension Assets for Social and Political Goals, 128 U. Pa. L. Rev. 1340, 1357 (1980).

102 Hutchinson & Cole, supra note 101, at 1357.

have fulfilled his duty to act prudently. Applying these principles, the court in Marshall v. Glass/Metal Ass'n & Glaziers & Glassworkers Pension Plan held, for example, that plan trustees who lacked prior lending experience violated their fiduciary duty under ERISA by failing to follow the type of procedure that a prudent and skillful lender would utilize in making a real estate investment.[106]

The cases construing ERISA's prudent man rule noted above suggest that the Commissioner, in seeking to meet the prudent institutional investor rule specified in the Bill, has an affirmative duty to obtain competent professional assistance by hiring qualified employees or by entering into contracts with qualified outside professionals. The Bill's proposal regarding delegation serves to emphasize this general duty and to provide a framework for the discharge of this duty. Moreover, by, in effect, raising the standard of prudence to which the Commissioner will be subject, the Bill would seem to increase the extent of the Commissioner's duty to delegate.

E. Establishment of Reporting and Statutory Auditing Requirements

The Commissioner has presented as part of the Bill a proposal that would require the Commissioner to cause periodic reports on the condition and investment performance of certain of the Funds to be prepared and furnished to the board overseeing the operation of those Funds. Supplementing these periodic report

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106 507 F. Supp. 378 (D. Hawaii 1980).

provisions under the Bill is a provision requiring that an independent firm of certified public accountants be hired (1) to audit the accounts of the Public Employees' Retirement and Teachers' Retirement Systems annually; (2) to audit the annual report of the financial condition and financial activity of each of the Public Employees' Retirement and Teachers' Retirement Systems; and (3) to the annually audit the Retirement and Endowment Funds' financial condition and investment transactions.

In large part, the Commissioner's reporting and auditing proposals reflect current practice. At present, annual financial audits of both the Public Employees' Retirement and Teachers' Retirement Funds, including a review of internal controls and securities custody and safekeeping procedures, are conducted by independent certified public accountants. In addition, the Treasury Division of the Department of Revenue has contracted with independent organizations to receive comparative investment performance reviews of the two Funds.

The Commissioner's proposals regarding reporting and auditing are a necessary corollary to the proposals designating the Public Employees' Retirement and Teachers' Retirement Funds as trusts and designating the Commissioner as the fiduciary of the Funds. As the Task Force Report noted:

> The establishment and maintenance of professional accounting, auditing, and actuarial practices <u>is part of the general fiduciary responsibility which plan officials owe to the plan participants</u>. Obviously an accurate accounting

> of the plan's assets and liabilities, estimation of funding status and experiences, and auditing of plan procedures are essential to the honest and responsible operation of the pension system.[107]

Recognition of the importance of reporting and auditing standards to the fiduciary obligations of plan managers is reflected in ERISA, which requires private employee benefit plans subject to ERISA to file detailed annual reports with the Department of Labor and to be audited by independent public accountants.[108] Many states now require analagous reports covering their public plans.[109] The Commissioner's reporting and auditing proposal is comparable to these state and federal provisions and should facilitate the Commissioner's fulfilling his fiduciary obligations toward the Public Employees' Retirement and Teacher's Retirement Funds.

Section II: Related Issues

A. Federal Income Taxation Implications

At the present time, the federal government regulates the conduct of public pension plans through the application of

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107 Task Force Report at 185-86 (emphasis added).

108 ERISA § 103(a). The legislative history of ERISA makes clear that Congress believed that annual audit and reporting requirements provide important safeguards to plan beneficiaries by making plan fiduciaries aware that their handling of plan assets will be open to inspection. S. Rep. No. 127, 93d Cong., 1st Sess. 27 (1973), reprinted in 1974 U.S. Code Cong. & Ad. News 4838, 4863; H.R. Rep. No. 533, 93d Cong., 1st Sess. 11 (1973), reprinted in 1974 U.S. Code Cong. & Ad. News 4639, 4649.

109 See, for example, Cal. Gov't Code §§ 20206.5, 20233 (Deering Supp. 1987); Cal. Ed. Code §§ 22218, 22220 (Deering Supp. 1987).

the Internal Revenue Code of 1986 (the "Code"). Under the Code, three principal forms of tax benefits are available with respect to a public pension plan: (1) the public entity sponsoring the plan is entitled to deduct amounts contributed to the plan up to certain limits;[110] (2) the earnings of the plan are not taxed currently;[111] and (3) the contributions made by the public entity to the plan on behalf of an employee are not currently imputed to the employee, even if vested.[112] To be entitled to these benefits, a funded, government-sponsored plan must, among other things, meet certain of the requirements specified in Section 401(a) of the Code for private retirement plans seeking tax-exempt status.[113] Section 401(a) conditions tax-exempt status on,

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110 I.R.C. § 404(a)(1986).

111 Id. § 501(a).

112 Id. § 402(a). The provisions of Section 402(a) are, in effect, an exception to the general rule stated in Section 83 of the Code. Under Section 83, if an employer sets aside contributions to fund deferred compensation or retirement benefits for an employee, the contributions will be included in the employee's income, so long as the employee is not subject to a substantial risk of forfeiture of the benefits. Thus, under Section 83, an employee having a vested interest in a benefit will be currently taxed on the benefit.

113 Rev. Rul. 72-14, 1972-1 C.B. 106. The passage of ERISA in 1974 resulted in many changes in the provisions of the Code applicable to private plans seeking to qualify for tax-exempt status. Public plans are expressly exempted
(Footnote Continued)

among other things, the plan's (1) being organized "for the exclusive benefit" of employees, (2) providing definitely determinable benefits, (3) satisfying anti-discrimination rules and (4) providing full vesting on discontinuance or termination of the plan.[114] Section 401(a) also implicitly requires the assets of a plan seeking to meet the Section's conditions be maintained in trust.[115]

To date, enforcement by the Internal Revenue Service (the "IRS") of the requirements of Section 401(a) against public pension plans has been, for the most part, non-existent.[116] Recognizing that enforcement of the requirements would serve only to harm innocent plan participants, the IRS announced in 1977 that, until a study of the application of Section 401(a) to public plans could be completed, disputes over compliance with the Section would be

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(Footnote Continued)

113 from ERISA and, thus, are not subject to most of the qualification requirements added by ERISA. Public plans are, however, subject to the qualification requirements applicable prior to ERISA. See, for example, Sections 410(c)(2) and 411(e)(2) of the Code.

114 I.R.C. § 401(a).

115 Section 401(a) states that "[a] trust. . .forming part of a stock bonus, pension or profit-sharing plan of an employer. . .shall constitute a qualified trust. . ." if the various requirements listed in the Section are met. See also 26 C.F.R. § 1.401-(a)(3) (1987); Rev. Rul. 69-231, 1969-1 C.B. 118; Internal Revenue Service Publication 778(2-72), Parts 2(b) and 2(f).

116 Task Force Report at 129; Public Pension Funds, supra note 12, at 191 n. 17; Campbell & Josephson, supra note 15, at 62.

settled in favor of the taxpayer or governmental unit.[117] The announcement continues in effect at present.

An IRS decision to change its current policy on enforcement of the requirements of Section 401(a) would not necessarily affect public plans significantly. Historically, the Section's key substantive requirement--the exclusive benefit rule--has not been a stringent constraint.[118] The IRS has interpreted the rule, which has been called a codification of the common law duty of loyalty imposed on a trustee,[119] to permit parties other than the employees covered by the plan to benefit from the plan's investments.[120] Courts considering the issue have agreed that an incidental benefit to a third party is not sufficient to disqualify the plan from tax-exempt status.[121]

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117 I.R.S. Info. Rel. IR-1869 (August 10, 1977).

118 Hutchinson & Cole, supra note 101, at 1348.

119 Campbell & Josephson, supra note 15, at 62.

120 In 1969, the IRS indicated that collateral benefits to other parties are acceptable if four requirements are met with respect to an investment: (1) the cost of the investment may not exceed fair market value at the time the investment is purchased; (2) a fair return commensurate with the prevailing rate must be provided by the investment; (3) sufficient liquidity must be maintained to permit distributions in accordance with the terms of the plan; and (4) the safeguards and diversity that a prudent investor would adhere to must be present. Rev. Rul. 69-494, 1969-2 C.B. 88.

121 Hutchinson & Cole, supra note 101, at 1348; See Shelby U.S. Distribs., Inc. v. Commissioner, 71 T.C. 874, 885 (1979); Feroleto Steel Co. v. Commissioner, 69 T.C. 97, 113 (1977).

Notwithstanding the IRS' position with respect to enforcement of the Code's provisions against public plans, and the manner in which the IRS and courts have interpreted those provisions, at least two commentators have suggested that a trustee of a public plan would breach a fiduciary duty if it caused the plan to jeopardize the tax benefits available under the Code.[122] Underlying this suggestion is the assertion that the tax benefits offered by the Code--particularly the ability of an employee of a public plan to defer taxes--are quite significant.[123]

We are aware of no judicial decision supporting the view that a breach of a fiduciary obligation would be deemed to result if a public plan failed to meet the requirements of the Code. Indeed, the Task Force Report noted in 1978 that well over three-quarters of all public plans have failed to seek an IRS determination letter of tax-exempt status and that about 57 percent of the representatives of public plans surveyed by the

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122 Campbell & Josephson, supra note 15, at 59.

123 Id. Commentators have noted that of the three benefits generally available to public plans under the Code, only the ability of employees to defer tax is of real significance. The other benefits are available to state or local governments even in the event of non-compliance with the provisions of Section 401(a), because state and local governments are generally exempt from federal taxes. See Public Pension Funds, supra note 12, at 192 n.19; Task Force Report at 33.

task force's staff indicated an unfamiliarity with the application of the Code to their plans.[124]

We understand that the Commissioner currently seeks to operate the Public Employees' Retirement Fund and the Teachers' Retirement Fund in accordance with the provisions of the Code.[125] We believe that this policy with respect to compliance with the Code is appropriate. We do note, however, that versions of a proposed federal law governing the operation of public plans, entitled the "Public Employee Pension Plan Reporting and Accountability Act" ("PEPPRA"), would relieve those plans of the obligation to comply with the requirements of the Code to preserve favorable tax treatment for plan participants.

The Commissioner's proposal to designate the Public Employees' Retirement Fund and the Teachers' Retirement Funds as trusts will serve to ensure compliance with the implicit requirement of Section 401 of the Code that plan assets be held

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124 Task Force Report at 77.

125 An examination of whether these Funds are in fact in compliance with all applicable rules of the Code is beyond the scope of this Memorandum. Note, for example, that Section 503(b) of the Code effectively prohibits certain transactions between these Funds and the State. Among the transactions prohibited are (1) loans made without adequate security and a reasonable rate of interest and (2) any transaction that results in a substantial diversion of income or corpus to the State.

in trust.[126] In addition, the Commissioner's proposal that the assets of the Public Employees' Retirement Fund and the Teachers' Retirement Fund be used only in regard to the financial interests of their beneficiaries should act to ensure compliance with the exclusive benefit rule contained in Section 401(a) of the Code.

B. Liability, Indemnification and Insurance

The Commissioner's proposals discussed in Section I of this Memorandum, if adopted, would have the general effect of increasing the fiduciary obligations of the Commissioner and his staff in investing on behalf of the Funds. The increase in the extent of those obligations raises the issues of (1) the potential liability in the event of a breach of those obligations, (2) the extent to which the Commissioner's employees may be indemnified in connection with investment activity undertaken on behalf of the Funds and (3) the extent to which insurance may be obtained covering employees responsible for the Funds' investments. Each of these issues is discussed below.

(1) Liability

[A] Liability of the State, the Commissioner and State Employees

Currently, none of the provisions governing

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126 Note that versions of PEPPRA introduced to date have included a requirement that assets of public plans be held in trust.

investments that may be made on behalf of the Funds specifies the parties that may be found liable for a breach of any obligation imposed by those provisions. In light of the Commissioner's general investment authority with respect to the Funds under Alaska Stat. § 44.25.010 and Alaska Stat. § 44.25.020(2), however, an Alaska court could reasonably conclude that the Commissioner and those he employs are each potentially liable for breach of any of the investment provisions relating to the Funds. The likelihood of a court's finding potential liability on the part of the Commissioner and those he employs would increase significantly to the extent the assets of a Fund were required by statute to be held in trust and the Commissioner were deemed a fiduciary of the Fund. As noted above in Section I.A of this Memorandum, at common law, a trustee who commits a breach of trust is chargeable for any loss or depreciation in value of the trust estate resulting from the breach or any profit made by the trustee through the breach.[127] Drawing on this common law principle, Section 409(a) of ERISA states that a fiduciary of an employee benefit plan that breaches an obligation toward the plan will be:

> personally liable to make good to such plan any losses to the plan resulting from [the] breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial

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[127] Restatement § 205. See note 18 supra.

relief as the court may deem appropriate, including removal of such fiduciary.[128]

Assessing the potential liability of the Commissioner and those he employs for breaches of fiduciary obligations towards the Funds requires consideration of the doctrines of sovereign immunity and official immunity as interpreted by Alaska courts. The doctrine of sovereign immunity is incorporated in Alaska Stat. § 9.50.250, under which the State may be sued for contract and quasi-contract claims only after they have been reviewed administratively. No tort claim may be brought against the State under Alaska Stat. § 9.50.250 that is based upon the act or omission of a State employee exercising due care in the execution of a statute or regulation, and no tort claim may be brought against the State that is based upon the exercise or failure to exercise or perform a discretionary function or duty, whether or not discretion is abused.

In interpreting the term "discretionary function or duty" under Alaska Stat. § 9.50.250, the Alaska Supreme Court has applied a "planning-operational" test to distinguish between protected and unprotected levels of government decision-making.[129] Under this standard, "only decisions that rise to the level of basic planning or policy formulation will be considered discretionary; decisions that implement policy decisions and are ministerial or operational in nature

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128 ERISA § 409(a).

129 Div. of Corrections v. Neakok, 721 P.2d 1121, 1133 (Alaska 1986).

will not be immune."[130] The Alaska Supreme Court has narrowly construed this standard, refusing to immunize "even acts that involve substantial exercise of discretion, but that do not rise to the level of policy decisions."[131] The doctrine of sovereign immunity thus has been interpreted to attach only under those limited circumstances in which basic policy-making is involved.

Whether the role of State employees with respect to the Funds would be deemed to be policy-making in nature under the planning-operational test, as articulated by the Alaska Supreme Court, is questionable. The investment operations of the Funds, by their nature, clearly involve the use of some amount of discretion on the part of employees of the Department of Revenue and/or professionals hired by the State. These discretionary acts, however, could be viewed as merely involving the implementation of the policies of the State reflected in the statutes governing the investment operations of the Funds. A court's accepting this characterization of the role of those persons having investment responsibility for the Funds would result in the State's not being immune from suit under Alaska Stat. § 9.50.250 for breaches of fiduciary duty on the part of those State employees.

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130 Id.

131 Id.

Alaska Stat. § 9.50.250, by its terms, applies only to State immunity, but does not insulate employees of the State from suit.[132] Under the doctrine of official immunity formulated by Alaska courts, however, State employees may be immunized from personal liability for discretionary acts they undertake within the scope of their official authority.[133] The Alaska courts have held that the standards for determining what constitutes a discretionary act for purposes of official immunity is broader than the sovereign immunity planning-operational standard.[134] Discretionary acts, for the purposes of the doctrine of official immunity, have been defined by the courts as "those requiring personal deliberation, decision and judgment," as distinguished from ministerial acts, which are those acts amounting "only to obedience of orders, or the performance of a duty in which the officer is left with no choice of his own."[135]

Under the broader interpretation of discretionary functions used by the courts in applying the doctrine of official immunity, the decisions undertaken by those persons employed by the Commissioner in connection with the Funds' investment operations would appear to be of a discretionary

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132 Aspen Exploration Corp. v. Sheffield, 739 P.2d 150, 162 n.29 (Alaska 1987).

133 Bridges v. ASHA, 375 P.2d 696, 702 (Alaska 1962).

134 Aspen, 739 P.2d at 155.

135 Id.