Leg. Finance-House & Senate Finance Comte Files (1991-1992) 757 57

State of Alaska

Committees

CO-CHAIR, HOUSE JUDICIARY
VICE-CHAIR, HOUSE LABOR AND COMMERCE
HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4712
465-4968/4986
(SESSION)

914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

MEMORANDUM

TO: Members of the House Finance Committee

FROM: Representative Max Gruenberg

DATE: March 15, 1991

RE: HB 213, the oil spill settlement oversight bill

I would very much appreciate your support of HB 213, the oil spill settlement oversight bill.

This bill provides for legislative review of any settlement of the Exxon Valdez oil spill litigation between the state and Exxon by:

1. requiring the governor to submit any settlement to the legislature, and

2. allowing time for the legislature to review and, if necessary, reject the settlement.

The administration has indicated that they intend to submit the settlement to the legislature for review. This bill sets up the procedure for that review process. Hopefully, its passage will provide the public assurance that the process will be open for public input and legislative review.

If you have any questions concerning HB 213, please contact me or my Legislative Assistant, Mark Handley, at ext. 4968.

Thank you.

HB217

HOUSE COMMITTEE REPORT

(11)

Date Referred: April 11, 1991 FURTHER REFERRALS:

Date of Committee Action: 4/19/91

The FINANCE Committee considered: HB 217

HOUSE BILL NO. 217 STATE BOARD OF EDUCATION MEMBERS

"An Act relating to the state Board of Education."

RECOMMENDATIONS:
be replaced with CS HB 217 (FIN) [✓] the same title [ ] a new title

[ ] have attached amendments(s)
[✓] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the ______________ Committee

ADOPTS: HES letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact ______________ [ ] fiscal note(s) ______________

[✓] zero fiscal note D/EDUCATION [✓] zero fiscal note(s) OFFICE OF GOVERNOR

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*DNP*	*NR*	*AM*
Eileen P. MacLean MACLEAN	✓	Barnes			
Mike Navarre NAVARRE		SHARD		✓	
Mark Boyer Boyer	X	Phillips		✓	
Brown BROWN	X				
Koponen	✓				
JACKO	X				
LARSON	X				
ULMER	✓				

Mike Navarre Eileen P. MacLean
CHAIRMAN'S SIGNATURE
NAVARRE MacLean

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CS HB 217(HES)

Revision Date:

Title: State Board of Education

Sponsor: Ellis

Requestor: House HESS

Department Affected: Education

BRU: Executive Administration

Component: State Board of Education

COMPONENT SERIAL NO.

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: none

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Mary Hakala

Phone: 465-2800

Division: Commissioner's Office

Date: 3/29/91

Approved by Commissioner: Steve Hole, Acting Commissioner

Agency: Education

Date: 3/29/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

No. 1
Bill Version: CSHB 217(HES)
(H) Publish Date: 4/12/91

Revision Date: ______
Title: "An Act relating to the state Board of Education."
Sponsor: Representatives Ellis, Gruenberg, et al.
Requestor: Representative Ellis

Department Affected: Office of the Governor
BRU: Executive Operations
Component: Executive Office
COMPONENT SERIAL NO. 6

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
FULL-TIME	-	-	-	-	-	-
PART-TIME						
TEMPORARY						

Estimate of current year impact: none

ANALYSIS: (Attach a separate page if necessary.)

HB 217 would not have fiscal impact on the Office of the Governor.

Prepared By: Michael A. Nizich, Director
Phone: 465-3616
Division: Division of Administrative Services
Date: 3/27/91
Approved by Commissioner: D. Max Hodel, Chief of Staff
Agency: Office of the Governor
Date: 3/27/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

COMMITTEE COPY

April 5, 1991

by the House Health, Education and Social Services Committee.

LETTER OF INTENT
FOR
CSHB 217 (HES)

It is the intent of the Legislature in passing CSHB 217 (HES) that at least one appointee to the State Board of Education be a teacher who holds a teaching certificate issued by the State of Alaska.

Representative Patrick J. Carney
Co-Chair

Representative Georgianna Lincoln
Co-Chair

CS FOR HOUSE BILL NO. 217 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES ELLIS, Gruenberg, C.Davis, Kubina, Carney, Lincoln, Brown, Bruckman, Ivan, Boyer, Donley, Ulmer, Navarre, Davidson, B.Davis, Koponen, Moyer, Finkelstein, Parnell, MacLean

A BILL

FOR AN ACT ENTITLED

"An Act relating to the state Board of Education."

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

*** Section 1.** AS 14.07.085(a) is amended to read:

(a) The seven members of the board, no more than four of whom shall be members of the same political party [AS THE GOVERNOR], shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. In appointing board members, the governor shall consider recommendations made by recognized educational associations in the state.

*** Sec. 2.** AS 14.07.085(b) is amended to read:

(b) One member shall be appointed from each of the four judicial districts and three from the state at large<u>. At</u> [WITH AT] least one member <u>shall be a person who resides in a</u> [REPRESENTING] regional educational attendance <u>area</u> [AREAS].

*** Sec. 3.** AS 14.07.095 is amended to read:

Sec. 14.07.095. TERM OF OFFICE. The members of the board shall be appointed for overlapping <u>four-year</u> [FIVE-YEAR] terms commencing February 1 of the year of appointment. A member appointed to fill a vacancy serves for the unexpired term of the member whose vacancy is filled. A vacancy occurring during a term of office is filled in the same manner as the original appointment.

* **Sec. 4.** AS 14.07.115 is repealed and reenacted to read:

Sec. 14.07.115. REMOVAL OF BOARD MEMBERS. The governor may remove a board member only for neglect of duty or misconduct in office. The governor shall initiate a removal by delivering to the member a written copy of the charges and giving the member an opportunity to be heard in person or by counsel at a public hearing before the governor or the governor's designee. The member shall receive written notice of the charges by registered mail at least 10 days before a hearing on the removal and has the right to confront and cross-examine witnesses who testify. The removal is effective 15 days after the governor files a complete statement of all charges made against the member in the main office of the board.

* **Sec. 5.** APPLICABILITY. AS 14.07.095, as amended by sec. 3 of this Act, applies to the term of a member of the state Board of Education appointed after the effective date of this Act.

7-LS0800\D.1
Ford
04/09/91

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE ELLIS

TO: CSHB 217(HES)

Page 2, lines 14 - 17:

Delete all material and insert:

"* **Sec. 5.** APPLICABILITY. AS 14.07.095, as amended by sec. 3 of this Act, applies to the term of a member of the state Board of Education appointed after the effective date of this Act."

3111 C STREET, SUITE 455
ANCHORAGE, ALASKA 99503
(907) 561-7628

WHILE IN SESSION
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3704

ALASKA STATE HOUSE

CHAIR
RULES COMMITTEE

JUDICIARY

SPECIAL COMMITTEE ON INTERNATIONAL
TRADE & TOURISM

LEGISLATIVE COUNCIL

REPRESENTATIVE JOHNNY ELLIS

MEMORANDUM

TO: Rep. Mike Navarre, Co-Chair, Finance Committee
Rep. Eileen Maclean, Co-Chair, Finance Committee

FROM: Representative Johnny Ellis

RE: Scheduling of CSHB 217 (HES)

DATE: April 9, 1991

****

I would appreciate if you could schedule HB 217 for a hearing at your earliest possible convenience. This bill changes the law in regard to the composition, terms and removal of the members of the State Board of Education.

HB 217 will help to insulate state education policy from political partisanship and will provide for better continuity in the making of educational policy.

Section 1 of this bill changes the law so that the Governor may not stack the Board entirely with members of the same political party regardless of the Governor's own political party. Clearly, the intent of the existing law is to achieve a balance on the Board so that a broader group of interests can participate in educational policy making. This section protects against the abuse of this intent.

Section 2 of the bill amends existing law so that one board member must reside in a regional educational attendance area and not simply represent REAAs.

Section 3 changes the terms of state Board members from five to four years. This section works to integrate Board turnover more logically with the four year term of the Governor.

Section 4 changes the law so that Board members may be removed only for neglect of duty or misconduct in office, and would no longer serve simply at the pleasure of the Governor. There are several other boards and commissions whose members may only be removed for cause, as allowed under article III, section 26 of the State Constitution. The purpose of this section is to ensure some continuity between the Board members appointed by one Governor and the Board members appointed by the succeeding Governor. Due to the staggered terms already established, the Governor can still replace the entire Board membership, thus retaining significant control in educational policy making.

Section 5 reestablishes the overlapping terms of Board members. Upon review, I have discovered that this section is not necessary and will be offering an amendment to eliminate it.

Thank you for your consideration of this request.

SAMPLING OF STATE BOARDS & COMMISSIONS upon which MEMBERS MAY ONLY BE REMOVED FOR CAUSE

BOARD OR COMMISSION	AUTHORITY
Public Broadcasting Commission	44.21.258 (a)
Public Utilities Commission	42.05.030
Labor Relations Agency	23.05.360 (c)
Personnel Board	39.25.060 (c)
Mental Health Board	47.30.663 (c)
Commercial Fisheries Entry Commission	16.43.020
Board of Forestry	41.17.041
Science & Technology Foundation	37.17.040 (a)
Citizens Advisory Commission on Federal Areas	41.37.050
Profesional Teaching Practice Commission	14.20.430
Violent Crimes Compensation Board	18.67.020
Occupational Safety & Health Review Board	18.60.057 (b)

HB221

HOUSE COMMITTEE REPORT

(11)
Date Referred: March 15, 1991

FURTHER REFERRALS:

Date of Committee Action: 5-9-91

The FINANCE Committee considered: HB 221

HOUSE BILL NO. 221 INVESTMENTS OF GENERAL FUND

"An Act authorizing the Department of Revenue to purchase either the guaranteed investment contracts held by the supplemental benefits system or the underlying securities; and providing for an effective date."

RECOMMENDATIONS:
be replaced with CS HB 221 (FINANCE)

[ ] the same title
[X] a new title

[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the ________ Committee

ADOPTS: ________ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact ________

[X] zero fiscal note HFC / REVENUE

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) ________

[ ] zero fiscal note(s) ________

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Eileen P. MacLean	✓	[illegible]		✓	
Mike Navarre	✓				
[illegible] Brown	✓				
[illegible]	✓				
[illegible]	✓				
[illegible]	X				
[illegible]	X				
[illegible] Boyer	X				
[illegible]	X				
[illegible]	X				

Mike Navarre E.P. MacLean
CHAIRMAN'S SIGNATURE

CS FOR HOUSE BILL NO. 221 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES/LEGISLATIVE BUDGET AND AUDIT COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act creating the investment loss trust fund; and providing for an effective date."

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

*** Section 1.** LEGISLATIVE PURPOSE. The purpose of AS 37.14.300, enacted by sec. 2 of this Act, is to provide financial security to participants in the state supplemental annuity plan established under AS 39.30.150 - 39.30.180 and other annuity holders who may be harmed by the possible insolvency of the Executive Life Insurance Company of California.

*** Sec. 2.** AS 37.14 is amended by adding a new section to read:

ARTICLE 4. INVESTMENT LOSS TRUST FUND.

Sec. 37.14.300. INVESTMENT LOSS TRUST FUND. (a) There is established as a separate fund in the state treasury the investment loss trust fund. The trust fund consists of money appropriated to it by the legislature. The Department of Revenue is the custodian of the trust fund and shall invest the trust fund in accordance with AS 37.10.071. Subject to appropriation, the amount earned on money in the trust fund shall be retained in the trust fund. The trust fund shall be held in trust for the benefit of participants in the supplemental annuity

plan established under AS 39.30.150 - 39.30.180 and for other purposes authorized by this section, subject to the conditions set out in this section.

(b) The Department of Administration shall spend money from the trust fund as necessary to

(1) hold participants in the plan and annuity holders harmless from a loss on investments in guaranteed investment and annuity contracts issued by Executive Life Insurance Company of California;

(2) pursue a right to recover amounts from persons who may have unlawfully caused or contributed to the loss on investments; and

(3) protect the interest of participants in the plan and annuity holders during proceedings to conserve or liquidate the assets of Executive Life Insurance Company of California.

(c) If the plan or an annuity holder does not incur a loss on investments, or, if after compensating the plan and annuity holders for the loss on investments, a balance remains in the trust fund, the trust fund created in (a) of this section is terminated and the balance of the trust fund lapses pro rata into the funds from which the appropriations to the trust fund were made. The state is subrogated to a right of claim held by participants in the plan and annuity holders to the extent of amounts spent from the trust fund.

(d) In this section,

(1) "annuity holder" means

(A) a plan participant who elects to receive an annuity contract acquired by the Department of Administration and issued by Executive Life Insurance Company of California; and

(B) members of the Unlicensed Vessel Personnel Annuity Retirement Plan who receive a contract acquired by the Department of Administration and issued by Executive Life Insurance Company of California;

(2) "loss on investments" means

(A) the difference between the principal amount plus accrued interest earned through May 3, 1991, on the guaranteed investment contracts issued by Executive Life Insurance Company of California, according to the terms of the contracts, and a lesser amount received by the plan upon maturity, sale, or other termination of the

contracts; plus

(B) accrued earnings on the amount described in (A) of this subsection, beginning May 4, 1991, and continuing until the earlier of a participant's benefit commencement date or the maturity, sale, or other termination of the contracts, at a rate equal to the rate, less one percent to be used for the purposes of (b)(2) - (3) of this section, earned each month on the investment loss trust fund; or

(C) any unpaid annuity amounts due to annuity holders under an annuity contract issued by Executive Life Insurance Company of California;

(3) "plan" means the supplemental annuity plan established under AS 39.30.150 - 39.30.180;

(4) "trust fund" means the investment loss trust fund established under this section.

* **Sec. 3.** The Department of Revenue shall notify the lieutenant governor, the revisor of statutes, and the commissioner of administration when the investment loss trust fund is terminated under AS 37.14.300(c), enacted by sec. 2 of this Act.

* **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSHB 221(FIN)

Revision Date: ______

Department Affected: Revenue

Title: Investment of General Fund

BRU: ______

Component: ______

Sponsor: House Finance Committee

Requestor: House Finance Committee

COMPONENT SERIAL NO. ______

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						

REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: ______

ANALYSIS: (Attach a separate page if necessary.)

M. Navarre

Prepared By: Representative Mike Navarre, Co-Chair
Representative Eileen MacLean, Co-Chair

Phone: 465-3706

Division: House Finance Committee Co E MacLean

Date: 5/10/91

Approved by Commissioner: ______

Agency: ______ Date: ______

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

Page ____ of ____

Attachment 2
4/8/91
HB 221

– adopted –

HOUSE AMENDMENT

BY: Representative Ron Larson

TO: Senate Bill 204 & House Bill 221

Page 1 Lines 1 and 6

Before the word "guaranteed" insert the words "Executive Life Insurance Company"

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

FISCAL NOTE

BILL NO. HB 221

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date:
Title: An Act authorizing Department of Revenue to purchase GICs held by the Supplemental Benefits System

Sponsor: House Rules Committee for LB & A
Requestor:

Department Affected: Administration
BRU: Retirement and Benefits

Component: Retirement and Benefits

COMPONENT SERIAL NO. 64

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS

FULL-TIME:	0	0	0	0	0	0
PART-TIME:	0	0	0	0	0	0
TEMPORARY:	0	0	0	0	0	0

Estimate of current year impact:

ANALYSIS: (attach a separate page if necessary.) The Supplemental Benefits System Annuity Plan holds "guaranteed investment contracts" (GIC's) with a present value of approximately $450 million. Of the $450 million, approximately $132 million are from contracts issued by Executive Life Insurance Company(E.L.). An exchange of general fund cash for GIC's (or underlying securities) could result in a complete loss if the GIC's (or underlying securities) become worthless. The contract value of the E.L. GICs increase approximately $1 million per month.

Prepared By: Gary Bader *Gary M. Bader*
Phone: 465-4460
Division: Retirement and Benefits
Date:

Approved by Commissioner: Millett Keller *Millett Keller*
Date: 4/2/91
Agency: Department of Administration

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB & Impacted Agency(ies).

Rev 10/90

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 221

Revision Date:

Title: An act authorizing the Department of Revenue to purchase either the guaranteed investment contracts held by SBS...

Sponsor: House Rules Committee

Requestor: Finance

Department Affected: Revenue

BRU: Revenue Operations

Component: Treasury Management

Component Serial No. 1 2 1

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE	(10,560.0)	(11,404.8)	(12,317.2)	(13,302.6)	(14,366.8)	(15,516.1)

FUNDING: (Thousands of Dollars)

GENERAL FUND	(10,560.0)	(11,404.8)	(12,317.2)	(13,302.6)	(14,366.8)	(15,516.1)
FEDERAL FUNDS						
OTHER						
TOTAL	(10,560.0)	(11,404.8)	(12,317.2)	(13,302.6)	(14,366.8)	(15,516.1)

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: From $0 to $132 million reduction in unrestricted revenues.

ANALYSIS: Reduction is based on 8% interest compounded annually. Assumes the entire $132 million is non-performing and no cash will be realized at GIC maturity or sale of underlying securities. This is a worst case scenario.

Prepared by: Darrel Rexwinkel

Phone: 465-2300

Division: Treasury

Date: March 27, 1991

Approved by Commissioner: by Darrel Rexwinkel

Agency: Revenue

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

M E M O R A N D U M

TO: The Honorable Ronald L. Larson, Chair
Legislative Budget and Audit Committee

FROM: Milt Barker
Legislative Aide

DATE: March 25, 1991

RE: General Fund Cash Flow and SBS GIC Purchases

Enclosed are the Department of Revenue's current projections of monthly general fund cash balances for FY 91-92, based on their Spring 1991 revenue projections.

Under the Spring 1991 low scenario revenue forecast, the general fund would run out of cash in January 1992. If the general fund purchases Executive Life Insurance Co. guaranteed investment contracts ("GIC's") from the supplemental benefits system ("SBS") for approximately $130 million and has not recovered any cash from its liquidation, the general fund would run out of cash roughly two months earlier, around the end of November, 1991.

Under the mid-case scenario, general fund cash reaches a minimum at $411 million in February 1992. This minimum would drop to $281 million with the GIC purchase and no recovery.

The general fund cash balances discussed in this memo are not the amount of general funds available for appropriation. Most or all of the cash balances at any point in time are spoken for, under existing appropriations. This cash analysis serves to determine if the State will have enough cash to pay its bills at all points in time.

The potential loss of up to $130 million by the general fund on the GIC needs to be addressed directly in terms of amounts available for appropriation.

ALASKA DEPARTMENT OF REVENUE FY 91-92 CASH FLOW PROJECTION GENERAL FUND ONLY
BASED ON REVENUE RECEIVED THRU FEBRUARY 28, 1991
MID CASE SCENARIO - SPRING 1991
(IN THOUSANDS OF DOLLARS)
(COLUMNS MAY NOT ADD DUE TO ROUNDING)

GF UNRESTRICTED REVENUE	MAR 1991	APR 1991	MAY 1991	JUN 1991	JUL 1991	AUG 1991	SEP 1991	OCT 1991	NOV 1991	DEC 1991	JAN 1992	FEB 1992
BEGINNING LIQUID CASH BALANCE	870764	884979	864618	830326	884385	776607	644074	649422	586281	553695	533964	507368
TAXES												
CORPORATE- PETROLEUM (1)	0	38450	0	38450	0	0	35000	0	0	35000	0	0
CORPORATE- GENERAL	3667	3667	3667	3667	3750	3750	3750	3750	3750	3750	3750	3750
GROSS RECIEPTS	13475	13475	3850	3080	131	131	131	131	131	131	1960	1960
OIL AND GAS PRODUCTION	70793	65552	63372	65418	67939	67939	67939	71726	71726	71726	72387	72387
PROPERTY (RECEIVED ON JUNE 30)	0	0	0	84700	0	0	0	0	0	0	0	0
SALES/USE	5583	5583	5583	5583	5633	5633	5633	5633	5633	5633	5633	5633
OTHER (ESTATE+INSUR PREM TAX)	20317	67	67	67	67	67	67	67	67	67	67	2317
TOTAL TAXES	113835	126794	76539	200965	77519	77519	112519	81307	81307	116307	83797	86047
INVESTMENT INCOME W/ RE-INVEST												
INTEREST EARNINGS	12722	10301	10380	6447	8662	4077	31136	10740	8915	9534	8889	2293
LOAN REPAYMENTS	40	40	40	40	30	30	30	30	30	30	30	30
TOTAL INVESTMENT INCOME	12762	10341	10420	6487	8692	4107	31166	10770	8945	9564	8919	2323
OTHER REVENUE												
LICENSES AND PERMITS	1887	3773	3773	3773	560	560	560	3173	3173	3173	1867	1867
FEDERAL SHARED REVENUE	3375	0	0	3375	0	0	3750	0	0	3750	0	0
OIL AND GAS ROYALTIES (2)	53809	48984	47420	49172	52242	52242	52242	55445	55445	55445	57217	57217
MISCELLANEOUS REVENUES	2975	2975	2975	2975	3133	3133	3133	3133	3133	3133	3133	3133
TOTAL OTHER REVENUE	62045	55733	54168	59295	55935	55935	59685	61752	61752	65502	62217	62217
TOTAL INCOME TO THE STATE	188642	192867	141128	266747	142146	137561	203370	153828	152004	191372	154934	150587
LESS: MENTAL HEALTH ACCT	-11318	-11572	-8468	-16005	-8529	-8254	-12202	-9230	-9120	-11482	-9296	-9035
NET TOTAL INCOME TO THE STATE	177323	181295	132660	250742	133617	129307	191168	144598	142884	179890	145638	141552
EXPENDITURES FY91 APPROPRIATION												
OPERATING BUDGET	151443	160292	154383	175065	1877[illegible]	227581	167383	171703	147220	165943	151541	202084
DEBT SERVICE	7096	32987	6984	12099	29251	20967	4485	20243	20615	25255	10822	25896
CAPITAL BUDGET	4569	8377	5585	9519	24349	13293	13951	15794	7634	8423	9871	9213
OTHER	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL EXPENDITURES	163108	201656	166952	196683	241395	261841	185819	207740	175469	199621	172234	237193
ENDING LIQUID CASH BALANCE	884979	864618	830326	884385	776607	644074	649422	586281	553695	533964	507368	411727
NET MONTHLY CHANGE IN CASH	14215	-20361	-34292	54059	-107778	-132534	5349	-63142	-32585	-19731	-26596	-95641
ADD: INVEST MATURITIES W/ RE-INV	683385	289346	252032	201369	200503	161285	569388	627923	512559	316962	258175	150323
NET MONTHLY CASH INFLOW	697600	268985	217740	255429	92726	28751	574736	564781	479973	297231	231579	54682

BASED ON AVERAGE OIL PRICES OF $20.57/BBL IN FY 1991 AND $16.11/BBL IN FY 1992.

1. RECEIVED ON THE 15TH OF THE MONTH
2. NET OF PERMANENT FUND PAYMENTS

ALASKA DEPARTMENT OF REVENUE FY 91-92 CASH FLOW PROJECTION GENERAL FUND ONLY
BASED ON REVENUE RECEIVED THRU FEBRUARY 28, 1991
LOW CASE SCENARIO - SPRING 1991
(IN THOUSANDS OF DOLLARS)
(COLUMNS MAY NOT ADD DUE TO ROUNDING)

GF UNRESTRICTED REVENUE	MAR 1992	APR 1992	MAY 1992	JUN 1992
BEGINNING LIQUID CASH BALANCE	-152735	-191670	-235102	-290636
TAXES				
CORPORATE- PETROLEUM (1)	0	28750	0	28750
CORPORATE- GENERAL	2917	2917	2917	2917
GROSS RECIEPTS	5096	7709	7709	7709
OIL AND GAS PRODUCTION	46721	48455	48455	48455
PROPERTY (RECEIVED ON JUNE 30)	0	0	0	80700
SALES/USE	5633	5633	5633	5633
OTHER (ESTATE+INSUR PREM TAX)	20317	67	67	67
TOTAL TAXES	80684	93531	64781	174231
INVESTMENT INCOME W/ RE-INVEST				
INTEREST EARNINGS	6575	5043	5652	5869
LOAN REPAYMENTS	30	30	30	30
TOTAL INVESTMENT INCOME	6605	5073	5682	5899
OTHER REVENUE				
LICENSES AND PERMITS	1867	3733	3733	3733
FEDERAL SHARED REVENUE	3750	0	0	3750
OIL AND GAS ROYALTIES (2)	33006	34505	34505	34505
MISCELLANEOUS REVENUES	3133	3133	3133	3133
TOTAL OTHER REVENUE	41756	41372	41372	45122
TOTAL INCOME TO THE STATE	129045	139976	111835	225251
LESS: MENTAL HEALTH ACCT	-7743	-8399	-6710	-13515
NET TOTAL INCOME TO THE STATE	121302	131577	105125	211736
EXPENDITURES FY91 APPROPRIATION				
OPERATING BUDGET	148660	157436	151675	171838
DEBT SERVICE	6839	8886	3194	11469
CAPITAL BUDGET	4738	8687	5791	9871
OTHER	0	0	0	0
TOTAL EXPENDITURES	160237	175009	160660	193178
ENDING LIQUID CASH BALANCE	-191670	-235102	-290636	-272078
NET MONTHLY CHANGE IN CASH	-38935	-43432	-55535	18558
ADD: INVEST MATURITIES W/ RE-INV	100039	163831	218841	228344
NET MONTHLY CASH INFLOW	61104	120400	163306	246903

BASED ON AVERAGE OIL PRICES OF $19.43/BBL IN FY 1991 AND $11.84/BBL IN FY 1992.
1. RECEIVED ON THE 15TH OF THE MONTH
2. NET OF PERMANENT FUND PAYMENTS

FY 1991 - 1992 CASH FLOW PROJECTION

- GENERAL FUND -

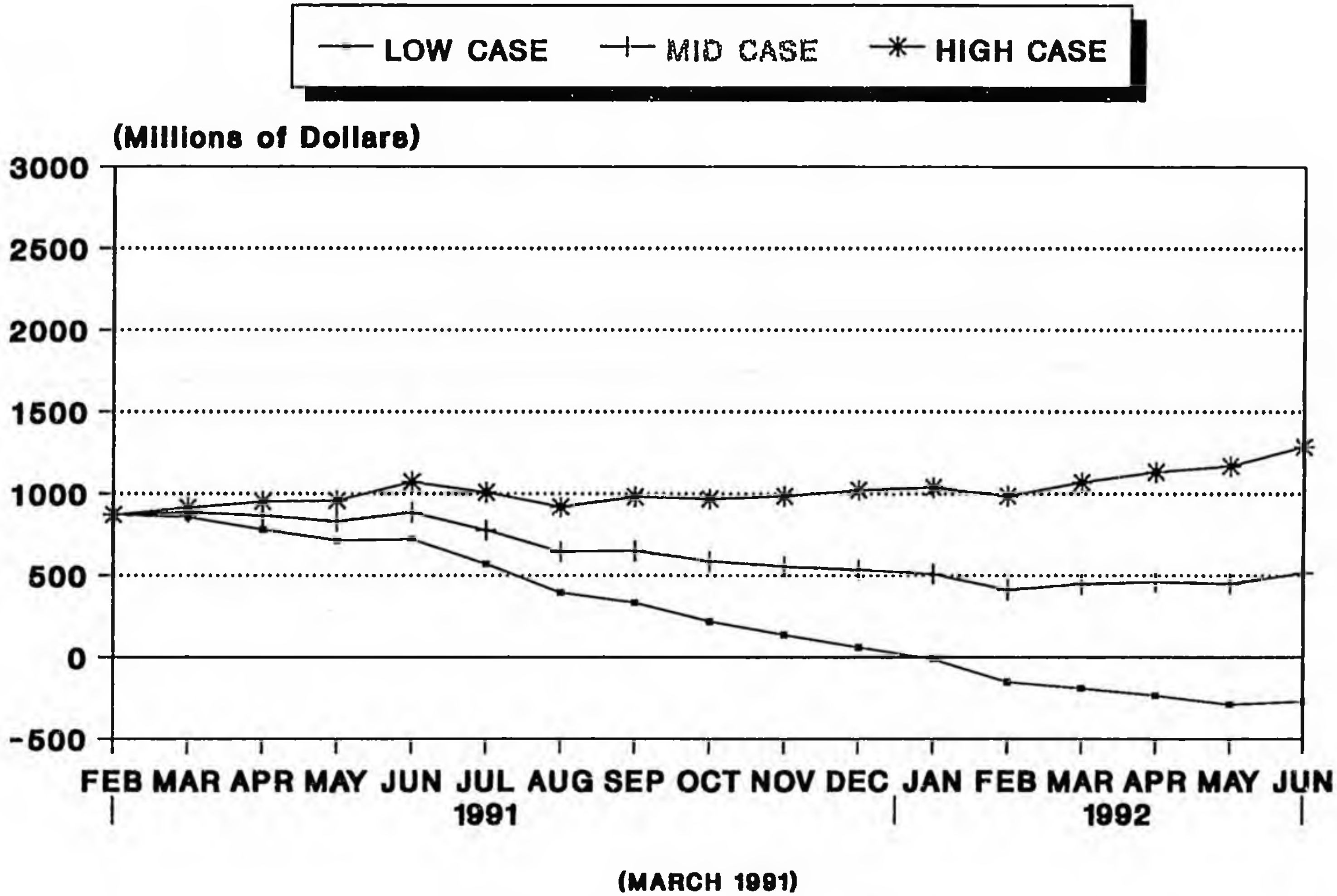
Based on Revenue Received thru February 28, 1991
and Spring 1991 Revenue Projections

Alaska Department of Revenue
March 15, 1991

ENDING LIQUID CASH BALANCE

- General Fund Cash Flow Projection -

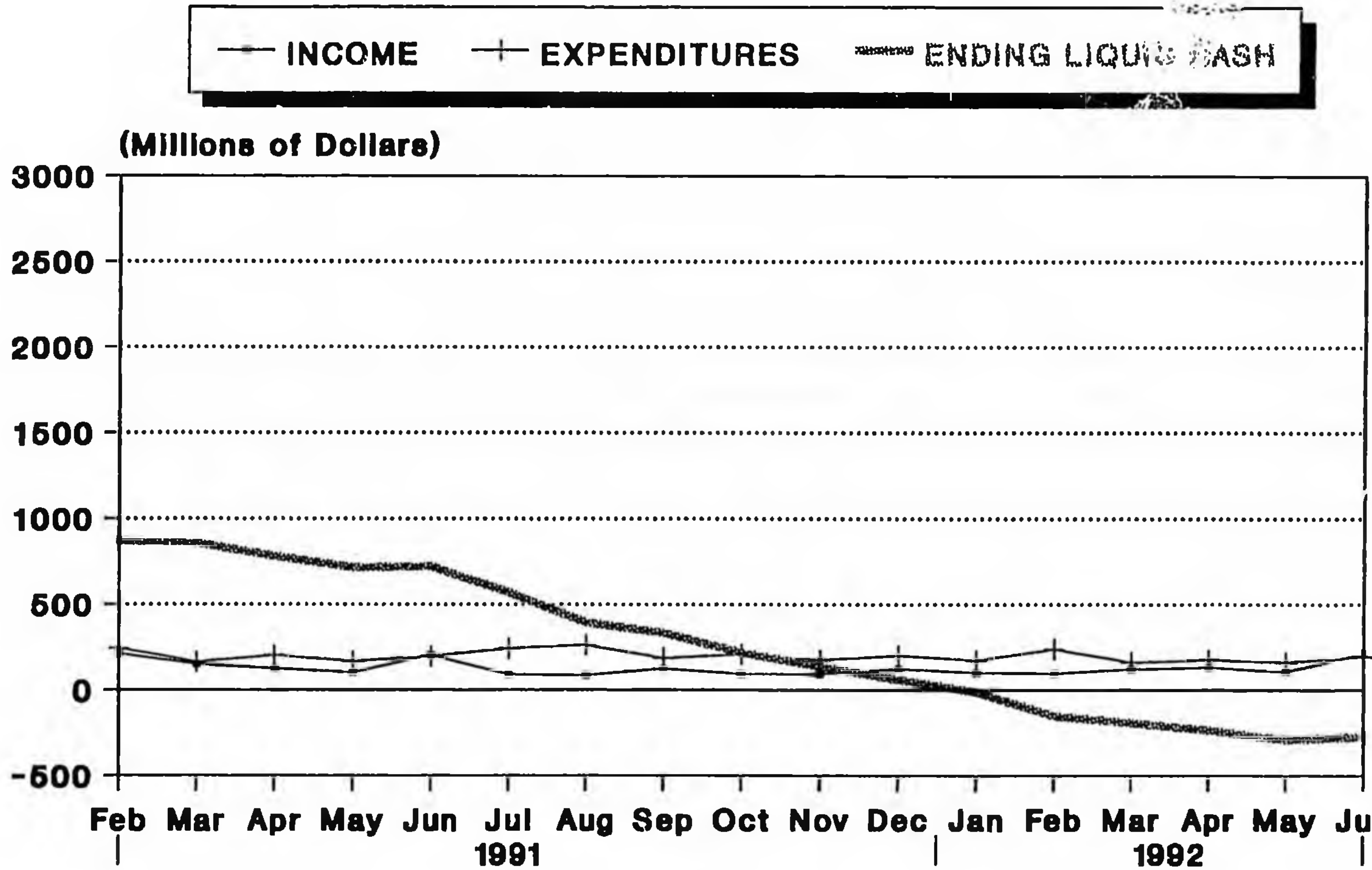
(FY 1991 - 1992)



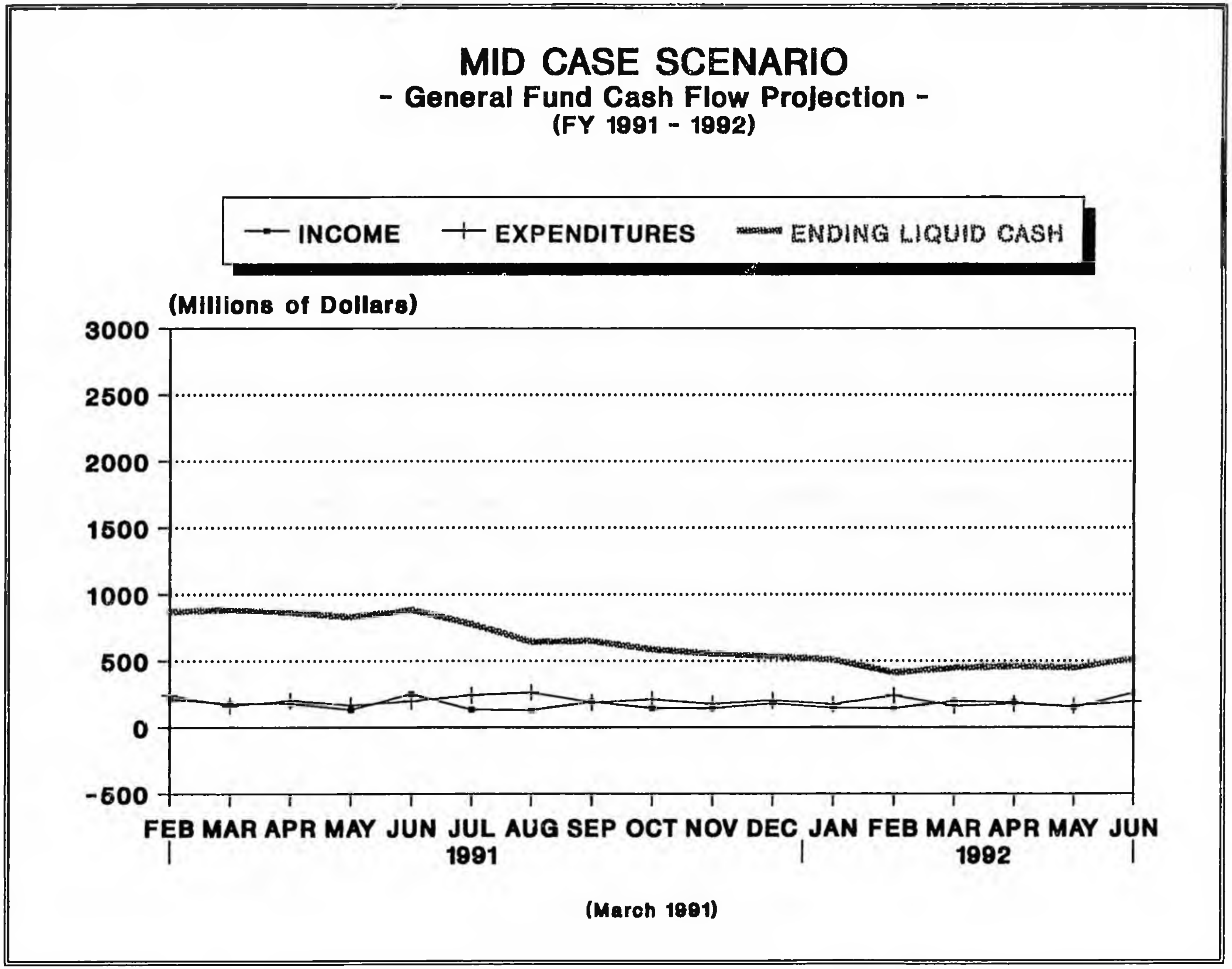
LOW CASE SCENARIO

- General Fund Cash Flow Projection -

(FY 1991 - 1992)



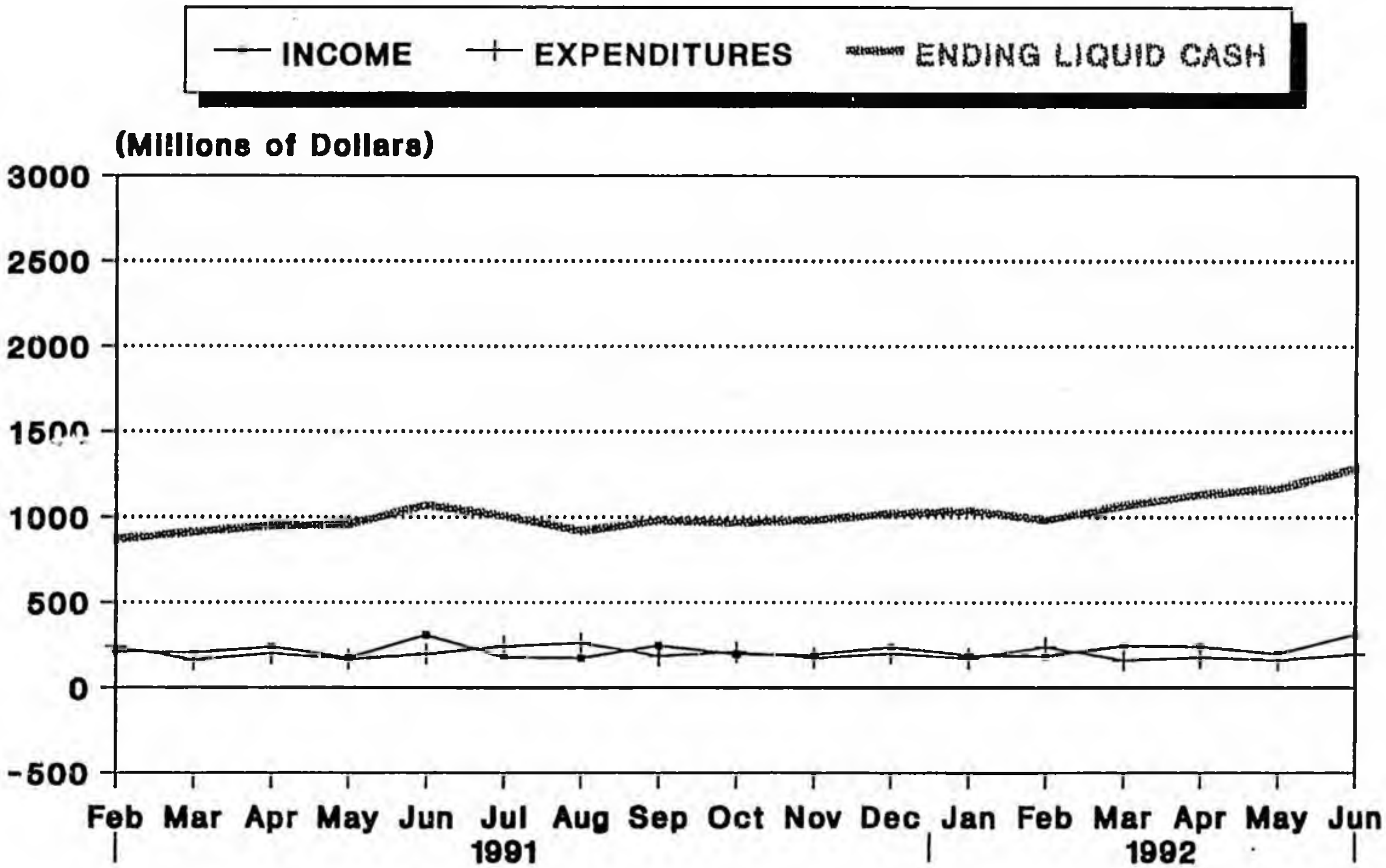
(MARCH 1991)


MID CASE SCENARIO
- General Fund Cash Flow Projection -
(FY 1991 - 1992)
INCOME
EXPENDITURES
ENDING LIQUID CASH
(Millions of Dollars)
3000
2500
2000
1500
1000
500
0
-500
FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC JAN FEB MAR APR MAY JUN
1991
1992
(March 1991)

HIGH CASE SCENARIO

- General Fund Cash Flow Projection -

(FY 1991 - 1992)



(March 1991)

SENATE FINANCE COMMITTEE REPORT

DATE: 5/13/91 FURTHER:

DATE TURNED INTO OFFICE: 5/16/91

Finance Committee considered CS FOR HOUSE BILL NO. 221 (FINANCE) am

"An Act creating the investment loss trust fund; and providing for an effective date."

and recommended:

[ ] replace with S CS CSHB 221 (Fin)
[ ] or adopt ______ CS ______

[✓] same title
[ ] new title
[ ] technical title change (HB only)

[ ] attached amendment(s)
[ ] ______ letter of intent adopted

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to ______

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

[✓] fiscal note(s) DOR .26.c 5/14/91

[ ] zero fiscal note(s) ______

[ ] appropriation-no fiscal note

APPROVES PREVIOUS:

Dept/Date:

[ ] fiscal note(s) ______

[ ] zero fiscal note(s) ______

SIGNING DO PASS:

[signatures]

OTHER RECOMMENDATIONS:

2. Do pass

Co-Chairs: Signatures and Recommendations

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSHB 221 /CSHB 51

Revision Date: May 14, 1991

Title: An act creating the investment loss trust fund; and providing for an effective date."

Sponsor: House Rules/Legislative Budget and Audit Comm.

Requestor: House Finance

Department Affected: Revenue

BRU: Treasury

Component:

Component Serial No.

	1	2	1

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	5.0	5.0	5.0	5.0	5.0	5.0
TRAVEL						
CONTRACTUAL	20.0	20.0	20.0	20.0	20.0	20.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	25.0	25.0	25.0	25.0	25.0	25.0

CAPITAL						

REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER	25.0	25.0	25.0	25.0	25.0	25.0
TOTAL	25.0	25.0	25.0	25.0	25.0	25.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact:

ANALYSIS: Basic personal services and contractual costs for a trust fund consisting of $45 million dollars managed by the Treasury Division. Contractual costs would consist of external investment management, auditing and custodial services. Future costs increases are dependent on the asset growth of the trust fund from contributions and market gains.

Prepared by: Brian C. Andrews

Phone: 465-2350

Division: Treasury

Date: May 14, 1991

Approved by Commissioner:

Agency: Revenue

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

Page ___ of ___

SENATE CS FOR CS FOR HOUSE BILL NO. 221 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES/LEGISLATIVE BUDGET AND AUDIT COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act creating the investment loss trust fund; and providing for an effective date."

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

* **Section 1.** LEGISLATIVE PURPOSE. The purpose of AS 37.14.300, enacted by sec. 2 of this Act, is to provide financial security to participants in the state supplemental annuity plan established under AS 39.30.150 - 39.30.180 and other annuity holders who may be harmed by the possible insolvency of the Executive Life Insurance Company of California.

* **Sec. 2.** AS 37.14 is amended by adding a new section to read:

ARTICLE 4. INVESTMENT LOSS TRUST FUND.

Sec. 37.14.300. INVESTMENT LOSS TRUST FUND. (a) There is established as a separate fund in the state treasury the investment loss trust fund. The trust fund consists of money appropriated to it by the legislature. The Department of Revenue is the custodian of the trust fund and shall invest the trust fund in accordance with AS 37.10.071. Subject to appropriation, the amount earned on money in the trust fund shall be retained in the trust fund. The trust fund shall be held in trust for the benefit of participants in the supplemental annuity

plan established under AS 39.30.150 - 39.30.180 and for other purposes authorized by this section, subject to the conditions set out in this section.

(b) The Department of Administration shall spend money from the trust fund as necessary to

(1) hold participants in the plan and annuity holders harmless from a loss on investments in guaranteed investment and annuity contracts issued by Executive Life Insurance Company of California;

(2) pursue a right to recover amounts from persons who may have unlawfully caused or contributed to the loss on investments; and

(3) protect the interest of participants in the plan and annuity holders during proceedings to conserve or liquidate the assets of Executive Life Insurance Company of California.

(c) If the plan or an annuity holder does not incur a loss on investments, or, if after compensating the plan and annuity holders for the loss on investments, a balance remains in the trust fund, the trust fund created in (a) of this section is terminated and the balance of the trust fund lapses pro rata into the funds from which the appropriations to the trust fund were made. The state is subrogated to a right of claim held by participants in the plan and annuity holders to the extent of amounts spent from the trust fund.

(d) In this section,

(1) "annuity holder" means

(A) a plan participant who elects to receive an annuity contract acquired by the Department of Administration and issued by Executive Life Insurance Company of California; and

(B) members of the Unlicensed Vessel Personnel Annuity Retirement Plan who receive an annuity contract acquired by the Department of Administration and issued by Executive Life Insurance Company of California;

(2) "loss on investments" means

(A) the difference between the principal amount plus accrued interest earned through May 3, 1991, on the guaranteed investment contracts issued by Executive Life Insurance Company of California, according to the terms of the contracts, and a lesser amount received by the plan upon maturity, sale, or other termination of the

contracts; plus

(B) accrued earnings on the amount described in (A) of this subsection, beginning May 4, 1991, and continuing until the earlier of a participant's benefit commencement date or the maturity, sale, or other termination of the contracts, at a rate equal to the rate, less one percent to be used for the purposes of (b)(2) - (3) of this section, earned each month on the investment loss trust fund; or

(C) any unpaid annuity amounts due to annuity holders under an annuity contract issued by Executive Life Insurance Company of California;

(3) "plan" means the supplemental annuity plan established under AS 39.30.150 - 39.30.180;

(4) "trust fund" means the investment loss trust fund established under this section.

*** Sec. 3.** The Department of Revenue shall notify the lieutenant governor, the revisor of statutes, the commissioner of administration, and the legislative budget and audit committee when the investment loss trust fund is terminated under AS 37.14.300(c), enacted by sec. 2 of this Act.

*** Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

[redacted]

WORK DRAFT WORK DRAFT WORK DRAFT

Added by JFC 5-15-92 p. 3 add notice to LBA

7-LS0988\P
Bannister
5/15/91

SENATE CS FOR CS FOR HOUSE BILL NO. 221 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): **HOUSE RULES/LEGISLATIVE BUDGET AND AUDIT COMMITTEE**

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*** Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

REPLY TO:

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☒ *P.O. BOX K— STATE CAPITOL*
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

May 15, 1991

Honorable Pat Pourchot
Co-chairman Senate Finance Committee
Alaska State Senate
P O Box V
Juneau, Alaska 99811

Re: Analysis of CS HB 221 (Fin); CS HB 51 (Fin) SBS investment loss trust fund

Dear Senator Pourchot:

At the request of your aide Susan K. Barnette, we submit for your consideration the following analysis of CS HB 221 (Fin), an Act creating the investment loss trust fund. This bill and the accompanying appropriation bill (CS HB 51) is intended to provide a means for holding employees and former employees harmless from potentially failing investments made in guaranteed investment contracts issued by Executive Life Insurance Company of California (the insurer). The insurer is subject to an order issued by the superior court of the State of California appointing a conservator and directing other measures as to the operation of the company. Insurance Comm'r of Calif. v. Executive Life Insurance Company, Calif. Superior Court for Los Angeles County Case No. BS006912.

ANALYSIS

I. HB 221 - Investment loss trust fund:

A. HB 221 would establish a trust fund for the benefit of plan participants limited to the purpose of making up a loss on investments of the supplemental annuity plan (the plan).

1. The trust remains in effect until the loss on investment incurred by plan participants is satisfied. Upon satisfaction, the balance of the fund lapses into the fund from which the original appropriations were made.

2. The trust would be used to compensate for a loss incurred on four guaranteed investment contracts purchased for the plan issued by Executive Life of California. The details on the contracts are set out below:

Year	Surrender value	Maturity	Rate	Contrib.
A) 1990	$ 2 million	January 2, 1996	8.46%	$ 1.3
B) 1989	$90.3 million	July 1, 1994	9.10%	$58.4
C) 1988	$52.9 million	January 3, 1994	9.9%	$30
D) 1987	$27.1 million	January 4, 1993	8.6%	$16.6

The contribution column set out above shows the principal contributed by participants to each contract during the applicable window period for each contract. The surrender value column shows the amount that would be paid, including principal and interests, upon maturity.

B. The phrase "loss on investments" is a defined term. It means the book value of the four guaranteed investment contracts on May 3, 1991 (approximately $134.7 million consisting of principal plus accrued interest at the contract rate) plus interest earned by the Department of Revenue after May 3 less one percent.

1. The May 3rd date is used in the bill because it is the deadline imposed by the public employees retirement board for the final payment of full value on plan accounts. Unless this bill is enacted, for applications received after May 3, plan participants will receive their account balances less twenty-one percent. This retention (known as a "wall off") is designed to protect active plan participants from having to absorb the loss on investment if the loss is realized.

2. The amount of loss will not be known until the conservatorship is litigated through the California court system (this could take a substantial amount of time).

3. The principal of the trust fund will be invested at market rates by the Department of Revenue according to the prudent man rule applicable to investment of treasury receipts. The one percent interest reduction will finance the cost of administering the fund and legal fees incurred to recover losses either from the conservator of the insurer or third party advisers to the plan.

C. The bill would provide benefits to terminated employees who elected to receive an annuity under a group annuity purchased by the plan.

1. Approximately 300 terminated employees received annuities under a group annuity plan with Executive Life of California. Under the terms of a court order, these annuitants are receiving only seventy percent of their annuities until the status of the insurer is finally determined.

2. Because the employees are covered under a group contract held by the plan, it is expected that the California guarantee association will question their entitlement to coverage under a guarantee fund established by California law. Under California law, claims by states are not covered by the guarantee fund.

D. The trust fund is established separate from the SBS annuity account to anticipate any problems that may arise with the Internal Revenue Service.

1. The IRS may contend that the benefit provided by the bill is additional compensation that will exceed limits imposed for governmental plans.

2. Another tax issue concerns the affect of the benefits on highly compensated participants and whether the IRS will consider the plan to discriminate in favor of those persons.

3. Under the plan document, amounts going into the annuity account cannot be returned to the state. By establishing a separate fund, it would be possible to return amounts to unrestricted status when the loss is finally liquidated.

II. HB 51 - Implementing Appropriations:

HB 221 is accompanied by appropriations made in CS HB 51 (Fin).

A. If HB 221 is enacted, $45,000,000 plus interest would be appropriated from the general fund.

B. An additional appropriation of $93,100,000 is made from the statutory budget reserve fund if HB 221 is enacted and would take effect on the effective date of HB 221 or July 1, 1991, whichever date is later. It is expected that the statutory budget reserve fund will have a sufficient balance to cover this appropriation through the operation of sec. 20(b) of ch. 209 SLA 1990.

C. Amounts could be expended from the budget reserve fund appropriation only if the commissioners of administration and revenue determine that the trust fund balance is insufficient to compensate beneficiaries and subject to the budgetary review process set out in the Executive Budget Act.

D. The total appropriation amounts to $138.1 million. Of that amount, $134.7 would compensate plan participants for a loss in investment, and $3.4 million is to cover any loss suffered by annuitants receiving payments under the group annuity policy.

Thank-you for the opportunity to comment on this bill.

Sincerely yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: James L. Baldwin
James L. Baldwin
Assistant Attorney General

JLB:jr

WALTER J. HICKEL, GOVERNOR

REPLY TO:

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

May 10, 1991

The Honorable Jim Duncan
Alaska State Senate
P O Box V
Juneau, Alaska 99811

Re: HB 221; Potential conflict of interest arising from vote on SBS annuity plan
Our file: 663-91-0459

Dear Senator Duncan:

You requested our advice concerning whether legislators have a conflict of interest to the extent that they will be unable to vote on HB 221, a bill establishing an investment loss trust fund for the benefit of participants in the supplemental annuity plan established under AS 39.30.150 - 39.30.180. Under this bill, participants in the plan will benefit to the extent that the trust fund is drawn upon to make up losses caused by the expected insolvency of an insurer that has issued guaranteed investment contracts to the plan. The plan provides a part of the benefits for public officers and state employees that were substituted when the state withdrew from the social security system. All sitting legislators are participants in the plan along with approximately 21,000 other persons.

In our opinion, even though legislators have a pecuniary interest in the passage of HB 221, a vote on the bill does not present a conflict of interest that would require a legislator to be excused from voting. The statutory standards of conduct applicable to legislators contains the following provision:

> A conflict exists if benefits accrue to a person to whom this chapter applies beyond that which may accrue uniformly to members of the profession, occupation or group to which the person belongs, or to the public at large.

AS 24.60.030(d); <u>accord</u> Mason's Manual of Legislative Procedure Sec. 552, para 1 (1989 Ed.). The pecuniary interest gained through the enactment of HB 221 is identical to the benefit to be received by all other legislators and a large group of persons in the state.

03-C5LH

The benefit provided by the bill will be applied uniformly according to the valuation of guaranteed investment contracts on a date certain. The amount of the benefit will be set by factors which existed before HB 221 was voted upon by the legislature and over which individual legislators will have no control.

We believe that the pecuniary benefit realized by legislators under this bill does not go beyond that which accrues to all plan participants. The leeway granted under the standard of conduct cited above recognizes, that there is no other lawmaking body in the state with the power to take the action necessary to repair the injury to the large number of persons affected by the pending insolvency of a major asset of the plan. Any apparent benefit to individual legislators will be offset by the benefit realized by the state treasury through an equitable settlement of potential liability claims without incurring substantial additional liability for consequential damages, costs, and attorney fees.

We hope this adequately answers your question.

Sincerely yours,

CHARLES E.COLE
ATTORNEY GENERAL

By: James L. Baldwin
James L. Baldwin
Assistant Attorney General

JLB:jr

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

M E M O R A N D U M May 3, 1991

SUBJECT: Conflicts of interest and SBS vote (Work Order No. 7-LS1332)

TO: Senator Jim Duncan
Attn: Pete Carran

FROM: John B. Gaguine JBG
Legislative Counsel

You have asked whether it would be a conflict of interest for members of the legislature to vote on the SBS "bailout" legislation. Because all senators and most representatives (except for those who are very new) will have SBS accounts with significant investments in Executive Life, and therefore would be significantly affected by the bailout bill, it would appear to be a violation of the language of AS 24.60.-030(b) for them to vote on the bill.[1/]

However, since this conflict is inescapable, and applies to a majority of the legislature, I believe that AS 24.60.030(b) is simply not applicable here. If it were applicable, the legislature would never be able to vote on matters such as legislative pay and allowances, or even on matters that financially benefit the entire Alaskan population, such as permanent fund dividends. While there is no specific statutory language creating this exception to AS 24.60.030(b),[2/] I think that this construction of (b) is necessary as a matter of common sense and sound policy.

[1/] AS 24.60.030(b) provides, "A conflict of interest exists when a person to whom this chapter applies takes or withholds official action or exerts official influence that could substantially benefit or harm a financial matter in which the person has a direct or indirect private interest." It could be argued that a legislator's SBS account is not a "private" interest, thus making the subsection inapplicable. However, I think that this would be an inappropriately narrow reading of the subsection.

[2/] AS 24.60.030(c), which creates an exception for certain conduct that would otherwise be a conflict of interest, provides, "(c) Conflicts of interest are prohibited but there is not a conflict of interest if, as to a specific matter, there is no substantial impropriety or appearance of impropriety because (1) the person's interest is relatively insignificant; or (2) the person's authority is relatively far removed from any official action that could reasonably be affected by the potential conflict of interest, provided that no attempt has been made to remove the appearance of impropriety by delegating responsibility for official action."

The analogous situation arises with regard to the courts when a case presents issues with a financial impact on all judges, as, for instance, a case concerning the judicial retirement system. In such a case the courts have stated that they will hear the case out of necessity, despite their personal interest in the outcome, which might otherwise disqualify them under rules such as a code of judicial conduct. See generally 48A C.J.S. Judges, sec. 100 ("The rules for disqualification of judges must yield to necessity and will not prevail if disqualification will prevent resort to the only tribunal in which relief may be obtained").

At any rate, even if a conflict rule were held to be applicable, under Uniform Rule 34(b) a legislator may not choose to abstain, but may only ask for the body's permission to abstain. Since, as a matter of tradition, this permission is never granted, even a legislator who has a genuine, individual conflict as to a matter must always vote on it. In view of Uniform Rule 34(b), it might even be argued that AS 24.60.030(b) simply does not apply to votes taken on the floor of the legislature.

If I may be of further assistance, please advise.

JBG:pl
91-333.plm

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM May 8, 1991

SUBJECT: Dedicated funds issue in proposed CSHB 221(Finance)

TO: Representative Mike Navarre
Co-Chair, House Finance Committee
Attn: Carol

FROM: Theresa L. Bannister TB
Legislative Counsel

Enclosed is the committee substitute you requested. Section 1, establishing the investment loss trust fund, may violate the state constitutional prohibition contained in article IX, section 7, against the dedication of funds. The section provides that the fund includes interest on money in the fund.

In an opinion concerning the dedicated funds prohibition, November 30, 1982, the Attorney General noted that the retention of interest earned on the principal and other earnings of a fund (in that opinion, a revolving loan fund) raises a dedicated fund question. The opinion goes on to note, at page 16,

> A difficulty that arises from the view that the dedicated funds prohibition is not applicable to interest or investment income on separate funds is that it permits steadily increasing amounts of money to be received and used by state departments and agencies without legislative control through the annual budget process. . . . (W)e doubt that a blanket exception for derivative income would be approved by the courts.

If you wish to avoid this issue, you could add "subject to appropriation," before "Interest" on page 1, line 8 of the bill.

If I may be of further assistance, please advise.

TBL:pl
91-349.plm

Enclosure

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM May 2, 1991

SUBJECT: Appropriations to satisfy judgments (Work Order No. 7-LS1333)

TO: Senator Jim Duncan

FROM: Tamara Brandt Cook
Director TBC

You have asked whether the judicial branch could force the state to pay a judgment for recent investment losses suffered by SBS if the state were found liable for those losses. In my opinion, this is extremely unlikely to happen.

No money may be expended from the state treasury without an appropriation and only the legislature may enact an appropriation, subject to the governor's veto power. For this reason, generally the state is not bound to pay court judgments without an appropriation. (Chevron U.S.A., Inc. v. Hammond, A77-195 Civil, United States District Court (1978) unpublished) AS 09.50.270 sets out a procedure for payment of a judgment that is subject to the appropriation process. The court cannot order the legislature to appropriate money to pay a particular settlement without creating very severe questions regarding the application of the separation of powers doctrine. The "power of the purse" is after all, a very important legislative power, distinct from those powers exercised by the judicial or executive branches.

There have been some cases from other jurisdictions in which a judge has ordered a state or local government to spend money or to raise money through taxation. However, this is a very unusual remedy, applied only in cases involving utter failure on the part of the government to carry out its constitutionally mandated duties, and it is very unlikely that a court in this state would choose to follow those precedents with respect to the SBS situation. While legislators should, as a matter of policy, appropriate funds to pay properly entered judgments against the state because otherwise this results in unfair treatment by the state of its citizens, the legislature has discretion in the matter and may decline to pay a judgment.

TBC:pl
91-330.plm

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 30, 1991

SUBJECT: State payment of Supplement Benefit System accounts (W.O. No. 7LS-1252)

TO: Senator Jim Duncan

FROM: Teresa B. Cramer TBC
Legislative Counsel

You have asked whether the state is obligated to pay the accounts of members of the Supplemental Benefits System (SBS) who terminated from state service and whether that answer changes depending on when the employee terminated from state service. You have also asked whether the full balance in the employee contribution account should be paid or whether that amount should be reduced to reflect the reduction in value of the SBS portfolio and whether the state may delay payment because of the current financial condition of Executive Life.

Summary

In my opinion, the state is required to pay in full the accounts of members of SBS who terminated from state service, regardless of when they terminated from state service. The reduction in the value of the SBS portfolio may not be passed on to participants of the system under the system as it is currently structured. The state does not have a legal basis to delay paying those obligations.

Discussion

1. Provisions of the SBS statutes, plan and insurance contract.

An employee of a participating employer who would have been required to participate in the federal social security system if the employer had not opted out of social security is required to participate in the supplemental benefits system. AS 39.30.150(a).[1] A "participating employer" is defined in AS 39.30.170 as the

[1] There is an exception for certain marine highway employees covered by collective bargaining contracts contained in AS 39.30.150(c).

state or an employer as defined by the Public Employees' Retirement System who is not participating in the federal social security system and whose participation in SBS has been approved by the commissioner of administration.

The mandatory contributions to SBS from employee wages and from the employer are paid into the employee's individual employee annuity account under AS 39.30.-150(a).[2/] Under AS 39.30.153, the amount held on behalf of a terminating employee in that account is to be paid to the employee under the terms of the state's Supplemental Annuity Plan.

The plan, which is set out at the end of the State of Alaska Supplemental Benefits System Information Booklet, Plan Year 1991, beginning at page 100, provides that the accounts be maintained by the employer (Art. IV.A), that each participant's account is fully vested and nonforfeitable at all times (Art. V. A), and that a terminated employee is eligible for payment of the account 90 days after the termination of employment (Art. A. B). The plan offers various forms of payment, including a lump sum payment and several forms of annuities (Art. V. D). The plan administrator may not modify or amend the plan retroactively to reduce the accrued benefits of any participant. (Art. VII. C.2.)

The amount in the account depends on the valuation. Under the plan,

> [a]ccounts shall be valued and investment earnings and contract dividends shall be credited to each Participant's account at least annually in accordance with the Insurance Contract.

(State of Alaska Supplemental Annuity Plan, Art. IV.B.) By regulation, investment income is posted monthly to the individual annuity accounts. 2 AAC 37.171. Under the insurance contract between the state and Executive Life dated December 19, 1989, interest is guaranteed at a net effective annual rate of 8.46 percent (Part VI, B, page 26).

The state is responsible for determining the value of accounts and notifying the insurance carrier to purchase annuities or make lump sum payments (Part III, Annuity Contract Terms, sec. 4.01). There is also a provision for a penalty payment for lump sum benefit payments that are made more than 15 days after the state notifies the carrier to process the payment. (Part III, Annuity Contract Terms, sec. 4.06).

[2/] Under AS 39.30.150(c), employees may choose to make additional contributions to pay for supplemental benefits that the system offers under AS 39.30.160. Before 1989, employees could purchase health, death, disability, and survivor benefits from the mandatory contributions. In 1988, the supplemental benefit statutes were amended to require that those benefits be paid for from special benefit accounts. The mandatory contributions could only be used for annuities.

1. Is the state obligated to pay in full the accounts of members of SBS who terminated from state service? Does the answer depend on when the member terminated?

In my opinion, the state is obligated to pay the full value of the accounts of employees who have terminated their employment with the state. The answer does not depend on when the employee terminated.

Under AS 39.30.153, the state is required to pay the employee the amount in the employee's annuity account. Payment is to be made under the terms of the Supplemental Annuity Plan. Nothing in the plan limits the obligation to pay the full amount.

As quoted above, Art. IV. B, of the plan requires that accounts be valued and investment earnings credited to employee accounts in accordance with the insurance contract. It is possible that a court would interpret this to refer to the performance the insurance contract rather than the term of the insurance contract. I believe the better interpretation is to look to the terms of the contract.

Under the plan, the employee is eligible to receive the amount 90 days after employment with the employer ended or, if the employee chooses, at a later date. The value of the account the employee is entitled to receive is the value of the account as of the benefit commencement date. There is nothing that permits the state to pass investment losses to the employees. The insurance contract, which is made applicable to the valuation of employee accounts under Art. IV.B., guarantees a net interest rate of 8.46 percent. These provisions apply regardless of whether the employee was eligible to receive the SBS payment before or after the State of California acted to take over Executive Life and the Internal Revenue Service assessed overdue taxes and penalties against it.

2. Can the state delay payment of SBS payments because of the financial condition of Executive Life?

In my opinion, the state may not delay payment because of the financial condition of Executive Life. Under AS 39.30.153, the individual employee annuity account "must be paid to the employee under the terms of" the annuity plan. The plan provides that the account is fully vested and nonforfeitable and that employees are eligible for payment 90 days after terminating employment. (Art. V. A and B). Benefits commence "as soon as administratively feasible" after the first date that the employee satisfies the waiting period and has made a complete application for payment unless the employee has requested that the benefit payment be deferred to a later date. [3] Since the plan administrator may not modify the plan to reduce benefits of any recipient (Art. VII.C.2), administrative feasibility cannot be based on the expected financial condition of the insurer.

If I may be of further assistance, please advise.

TC:pl:gc
91-321.plm

[3] There are also provisions for payment to participants who reach normal retirement age and for the beneficiaries of participants who have died who have not applied for payment.

April 29, 1991

The Honorable Pat Pourchot
P. O. Box V
Juneau, AK 99811

Dear Senator Pourchot:

Bashing of state employees is popular right now; especially with the Hickel administration saying that the state government is overstaffed, so at times you might feel that refunding of SBS is not the popular thing to do. You might also be concerned that because you're covered by SBS, your constituents might feel that your primary reason for refunding is to cover yourself. However, there are many, many people within Alaska that feel the SBS should be refunded, myself included.

I'm sending you the attached article to show that there are also people nationwide who believe the employer has a fiduciary responsibility to do so. This writer says better than I could how I feel about the present situation.

Please do what you can to help resolve this problem..

Sincerely,

Colleen Rutledge

Colleen Rutledge
mail: P. O. Box 92752
Anchorage, AK 99509

Residence: 3016 W. 31st
Anchorage, AK

Attachment

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

P.O. BOX C
JUNEAU, ALASKA 99811-0200
PHONE: (907) 465-2200
FAX: (907) 465-2135

April 22, 1991

APR 23 1991

All Legislators
Public Employee Union Leaders

Re: SBS Annuity Plan--April Distributions

Enclosed is a letter that is being sent to approximately 300 SBS participants. These former employees have requested a lump sum payment or annuity purchase during the March/April cycle.

We are taking this action to give the PERS Board adequate time to consider and approve a revised policy on SBS distributions. These revisions are necessary due to the extraordinary events that have occurred since April 1, 1991, regarding Executive Life Insurance Company of California.

Please call me at 465-2200 if you have any questions or need further information.

Sincerely,

Millett Keller

Millett Keller
Commissioner

MK/nl
Enclosure
cc: PERS Board

Governor Hickel

Max Hodel
Chief of Staff
Office of the Governor

Charles Cole
Commissioner
Department of Law

02-89LH

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

P.O. BOX C
JUNEAU, ALASKA 99811-0200
PHONE: (907) 465-2200
FAX: (907) 465-2135

April 22, 1991

Dear SBS Participant:

During the past year there has been considerable concern over the troubled financial condition of Executive Life Insurance Company of California (ELIC).

On April 11, the California Commissioner of Insurance seized control of the company. One of the stated goals of the California Commissioner was to "ensure maximum protection for Executive Life Insurance Company policyholders." The Supplemental Benefit Annuity Plan has approximately $132 million (current value) invested in contracts with ELIC.

If the California Insurance Commissioner is not able to recover ELIC, your SBS investments may be affected. It is therefore prudent to review our current policy in the event that changes in account values or fund distribution are required.

On May 3, the Public Employees' Retirement System Board will meet to consider our valuation and fund distribution policies. The ongoing work by our attorneys, accountants, and other advisors should provide the Board with sufficient information to make informed policy decisions.

I am writing you because you are scheduled to receive either a lump sum payment or purchase an annuity during the April cycle. Due to the extraordinary circumstances surrounding the Executive Life seizure and the resultant uncertainties, I am unable to process the April list until the Board makes a determination of our account valuation policies. Pat Wellington, Chairman of the Public Employees' Retirement Board, also believes valuation policies should be adopted by the Board before we make the April distribution.

I truly regret having to advise you of this delay. It is possible there will be policy changes made at the May 3 meeting that affect the benefit election you previously made. We will inform you of the actions taken by the Board after the May 3 meeting. If you have any further questions, please contact Retirement and Benefits at 465-4460.

Sincerely,

Millett Keller

Millett Keller
Commissioner

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

P.O. BOX C
JUNEAU, ALASKA 99811-0200
PHONE: (907) 465-2200
FAX: (907) 465-2135

April 12, 1991

The Honorable Pat Pourchot
Co-Chairman
Senate Finance Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Pourchot:

During testimony on SB 204, Senator Duncan requested a short history of the Supplemental Benefits System. Enclosed is some information that I hope will serve to answer any general historical questions that Senator Duncan or other members of the committee may have.

Sincerely,

Millett Keller
Commissioner

MK/MBC/crd
Enclosure

April 9, 1991

A Brief History of the State of Alaska Supplemental Benefits System

WITHDRAWAL FROM SOCIAL SECURITY

The State of Alaska began consideration of withdrawal from the social security system in the early 70's when studies were requested by the State legislature to determine the advantages and disadvantages of withdrawal. The first study consisted of a detailed description of the benefits which would be lost through termination of coverage and a proposal of alternatives for the replacement of those benefits in the event coverage was actually terminated.

In December 1975, the State notified the Social Security Administration of their intent to terminate coverage on January 1, 1978. The alternative benefits proposed in the study were further described as to their probable cost and administrative expediency. The study concluded that the duplication of benefits that would be lost under social security would cost approximately 22% of covered wages as compared to the approximate 12% of covered wages under social security. In addition, the study painted a grim picture of the expense and difficulty of administering such a duplicate plan.

STATE CHANGES ITS MIND

As a result of the study and because of the lack of time to examine other alternatives, Alaska rescinded its notice of intent to withdraw in May of 1977. Since a strong desire to continue the investigations remained among employees and union representatives , a second notice of intent to withdraw was filed in November 1977 with the Social Security Administration to become effective on January 1, 1980. A second study was initiated at that time to examine alternate kinds of benefits that might be more desirable to State employees, but did not attempt to duplicate social security benefits.

STATE LEGISLATURE TAKES ACTION

As a result of this second study conducted by an ad hoc committee composed of employee representatives, legislators and administrators, legislation was introduced in 1978 to provide for an employee vote on social security withdrawal and for various enhancements to the Alaska Public Employees' Retirement System in the event that employees approved the withdrawal. The legislation which finally passed in May of 1979 did provide for a secret ballot, with a simple majority of those employees voting deciding the outcome. However, instead of enhancing the PERS, a program consisting of five categories of benefits was specifically named in the final legislation and ultimately became the defined contribution plan that still forms the basis for the program today.

THE EMPLOYEE REFERENDUM

Informational materials that explained the advantages and disadvantages of social security and stressed the fact that each person would be uniquely affected by social security withdrawal were distributed to all employees during July and August of 1979. Information was also distributed which outlined the basic structure of the proposed replacement program.

The results of the balloting were announced in September 1979. Of the employees voting, 52% chose to withdraw, 39% chose to stay in, and 9%, not enough to change the outcome of the election, submitted ballots that were "questioned" and ruled invalid. This election resulted in all of Alaska's State employees "opting out" of social security effective January 1, 1980, the first such group of State employees ever to do so.

THE PROGRAM BECOMES EFFECTIVE

The Alaska Supplemental Benefits System (SBS) became effective upon withdrawal. The SBS offered benefit options from which the employee could select which would best meet his or her individual needs. The options could be changed on an annual basis in consideration of changing personal circumstances. The benefit options available to each employee were death benefits, survivor benefits, disability benefits, health benefits and annuities.

One of the primary differences between the SBS and social security is that under the federal program, contributions made by and on behalf of an employee may not be received by the employee or the employee's beneficiary. In contrast, the SBS program was designed so that benefits bear a direct relationship to the contributions made for the employee. This "individual oriented" defined contribution program was seen to be preferable to programs such as social security which are more "welfare oriented."

THE EARLY SBS

In accordance with the law, the State contributed 6.13% of gross wages into a special individual employee account for each employee up to the current social security wage base. Each employee's wages were reduced by 6.13% to match the State contribution and were also allocated to the special individual accounts. Although the taxable wage base does change from year to year, the contribution rate was fixed in state statute, instead of increasing in steps like the federal social security rate. The monthly contribution was distributed among the various insurance coverages that had been chosen by each employee. Each employee had the option of choosing any, all or none of the types of insurance.

In the original system, contributions remaining after insurance premiums and the annual administrative fee were deposited in the individual employee's annuity account. Virtually all employees participated in the annuity program since any excess contributions remaining after insurance premiums were paid were automatically deposited in the annuity account.

SBS ANNUITY INVESTMENTS

The first annuity contract was procured with an RFP in 1979. The resulting contract with Mutual Benefit Life (MBL) Insurance Company guaranteed a rate of interest on all funds received from the state for a one year period. The company could announce the interest rate each November for the coming calendar year. All recordkeeping was performed by MBL including the distribution of checks to eligible employees. The state continued this relationship with MBL through 1984.

In 1984 all the funds that had accumulated at MBL were separated into two accounts. One account became payable in five equal installments beginning on 1/1/86. Each of these installments were rolled over to the then current investment carrier for the SBS. All installments on this contract have now been received.

The second account in MBL was rolled over to the 1985 investment carrier, State Mutual Life (SML). The 1985 contract with SML was the first of the GIC contracts that the SBS purchased. This GIC with SML matured on 1/1/91 at over $150 million, and was deposited with the Department of Revenue.

The contract in 1985 was also the first that was purchased using an Invitation to Bid (ITB) rather than a Request for Proposal. The bid process was less cumbersome to use for both the state and carriers. The bid process was used for procuring GICs through 1990.

GICs were purchased annually through 1990. In some years, more than one GIC was purchased. For example, if large amounts of cash were due from an earlier maturity or rollover, the state would bid an "investment" GIC(s) for the rollover and purchase a "window" GIC for the year's contributions. For that reason, the state has 2 GICs maturing in 1992, 2 in 1993, 3 in 1994, 2 in 1995 and 1 in 1996. Following is a schedule of these GICs:

SBS ANNUITY CONTRACTS

Contractorholder and Inital year	Rate of Return	Maturity Value in Millions (est)	Present Value in Millions (est)	Maturity Date
Transamerica Occidental '86	10.66%	77.4	64.2	1/2/92
Aetna '86	9.5%	41.5	35.0	1/2/92
Executive Life '87	8.6%	27.1	21.5	1/4/93
New York Life '87	8.6%	69.2	54.7	1/4/93
Transamerica Occidental '88	9.21%	59.7	42.6	1/3/94
Executive Life '88	9.9%	52.9	36.8	1/3/94
Metropolitan '89	9.69%	73.7	46.8	1/3/95
Transamerica '89	9.15%	55.0	42.7	1/3/95
Executive Life '89	9.10%	90.3	61.9	7/1/94
Executive Life '90	7.07%	1.99	1.33	1/2/96

Shortly after the 1990 GIC was awarded to Executive Life Insurance, their risky financial position due to junk bond holding was highly publicized throughout the country. The state negotiated an end to the 1990 contract. In return for this early termination, the state agreed to accept a lower rate of interest on the $1.9 million that had been deposited. Employee contributions received after January 1990 had been deposited with the Department of Revenue for investment.

An interim investment agreement was approved by the Public Employees Retirement System board and signed by the Departments of Administration and Revenue in 1990. Funds are currently being invested by the Department of Revenue in accordance with this agreement.

CHANGES OVER THE YEARS

The program has changed since its inception. In the first two years refunds of all contributions were made to a terminating employee ONLY if the account balance was less than $1000. If the account was greater than $1000, the employee was not eligible for receipt of the funds until age 55. Due to much employee dissatisfaction, the state sought and received IRS approval of a change in the Plan to allow payment of funds after termination for 90 days.

In 1986, federal legislation was enacted that required the restructuring of the SBS in 1989. Prior to the restructuring, the SBS had always been a combination annuity and insurance benefit plan. The annuity plan had a separate and unique qualification from the IRS. The benefit portion of the plan had no distinct qualification at that time.

The restructured SBS had two distinct parts--annuities and benefits. Annuities only would now receive a full 12.26% of salary. Insurance benefits would be paid for through additional voluntary pre-tax deductions to wages. Following extensive employee meetings in 1988, the structure was endorsed by the workforce and adopted by the legislature. Effective in 1989, the annuity plan and the benefit plan were separately qualified under IRS code sections 401(a) and 125. Effective also in 1989 was the addition of a dependent care benefit as a separately qualified and approved plan under IRC 129.

Legislative Budget and Audit
Committee Meeting
March 12, 1991

Issues and Questions
regarding the
Supplemental Benefits System ("SBS")

1. Ability to sell GIC's

   - does contract allow sale

   - is issuer willing to allow sale

   - are there any tax or ERISA implications for issuer or SBS

   - if issuer files bankruptcy prior to sale, can sale be consummated

2. Use of Legislative Authorization

   - is a purchase expected in the near future

   - is speedy action required by the Legislature

   - what is the reason for the December 31, 1992 repeal

3. Cash Flow

   - would State's payment for purchase be paid in lump sum or over time, at or toward the front or back of any time period, or on same schedule as GIC's mature

   - what would be the projected monthly liquid general fund balances through FY 93, given the expected payment schedule and updated revenue forecasts

4. Management of Purchased GIC's

   - would the State expect to hold the GIC's to maturity, barring default

   - if not,

     - what would the State attempt to negotiate to shorten or cash out GIC's

     - what would be the expected cost to the State

     - how would this compare to expected value of GIC's in bankruptcy liquidation or workout

- who would negotiate for State, including legal or investment counsel

- would results of negotiation be placed before the Legislature or Budget and Audit

5. Budget

- would the Governor's budget for FY 92 be reduced by either

    - cash paid for GIC purchases

    - cost to the State if GIC shortening or surrender is negotiated

6. Alternatives

- what sureties or collateral could be negotiated from issuers to reinforce their guarantee under GIC's (see page labelled "Alternatives" attached to enclosed memorandum of March 8, 1990)

- what would happen if the State enacted a law requiring amendment or rescission of GIC contracts, allowing withdrawal of funds (see paragraph 5 of enclosed memorandum of March 8, 1990)

- could the potential purchase of a non-investment grade, illiquid asset for the State's operating account (general fund) set a precedent for allowing other uses of the State treasury requiring waiver of the statutory rule of prudence

- would it be preferable to make an appropriation, contingent upon a GIC loss to the State--either as a result of negotiated surrender or bankruptcy settlement--that would avoid waiver of prudence and the holding of a much larger non-investment grade, illiquid asset in the general fund

7. Issuer Creditworthiness

- what is the financial condition and outlook for GIC issuers, including Executive Life and Great Western (Deferred Compensation GIC issuer)

- what rating changes have occurred recently for GIC issuers

- what are the trends in policy and contract surrenders for issuers

HELLER, EHRMAN, WHITE & McAULIFFE
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PAUL W. SUGARMAN
DIRECT DIAL [illegible]

March 8, 1990

<u>VIA TELECOPY</u>

The Hon. Frank Baxter, Commissioner
The Department of Administration
P.O. Box C
Juneau, Alaska 99811

<u>Executive Life Insurance Company</u>

Dear Commissioner Baxter:

In anticipation of tomorrow's meeting with Executive Life, I suggest the following overall negotiating position be presented. (Based on our telephone conversation earlier this week, I have assumed that your immediate objective is to terminate the most recent contract and not to address the earlier contracts at this time.)

(1) The State of Alaska's purchase of Guaranteed Investment Contracts from Executive Life using retirement fund contributions of state employees has become a heated <u>political</u> issue in Alaska. Executive Life must understand and appreciate the political realities. The State of Alaska cannot, and will not, accept any result which is politically untenable.

(2) Whatever the true state of Executive Life's finances -- a matter about which Alaska currently lacks sufficient information -- it has become politically impossible for the State to invest additional funds in any contract issued by Executive Life.

(3) For the moment Alaska is willing to leave the three earlier, paid-in-full contracts in place, at least until such time as circumstances (whether political in Alaska, or financial at Executive Life) dictate otherwise. But the most recent contract, No. 26805, must be terminated effective immediately, with the full value of Alaska's account (principal and compound interest) transferred to a carrier to be selected by Alaska for reinvestment.

(4) Alaska has no desire to cause Executive Life any further negative publicity and proposes that the contract be terminated in a consensual, low-key fashion, without public relations fanfare.

(5) If Executive Life refuses to consent to contract termination, then Alaska will be forced -- politically -- to pursue other actions. At a minimum, in all likelihood these would entail exercising Alaska's right to audit Executive Life, a right available to Alaska both under contract and by virtue of Executive Life's insurance activities in Alaska. Alaska will also seek to achieve termination non-consensually. One likely scenario is that the Legislature, which is currently in session, will enact legislation forbidding the State or any of its agencies from investing public funds, or retirement plan funds, in instruments such as guaranteed investment contracts issued by an institution whose own assets are disproportionately invested -- for example, in excess of 20 percent -- in junk bonds. The existing contracts obligate Executive Life to remain in compliance with the laws of Alaska, and such a law would, in Alaska's view, entitle it to terminate the most recent contract, and the earlier contracts as well.

(6) Another option, which Alaska is not anxious to utilize, would entail litigation. Several political leaders in Alaska have questioned how the State could have awarded a contract to Executive Life as late as December of last year. They suggest that Executive Life should have disclosed its imminent junk bond-related charge against earnings and that its failure to do so gives Alaska the right to rescind the contract. If necessary, Alaska will seek such a ruling from the Alaska Superior Court, which is the court specified to resolve disputes in connection with the contract.

An alternative approach would focus not on terminating the current contract, but on obtaining security for both existing funds held by and future contributions to Executive Life. Alaska could also try to negotiate an arrangement whereby future contributions are segregated into a trust account. It is difficult to assess the advisability of these approaches, however, in the absence of more information than we now have about Executive Life's financial condition and overall stability. The absence of that information also makes it difficult for us to formulate a credible negotiating position which is likely to persuade Executive Life to agree to change the status quo.

Obviously, Alaska's opening negotiating position can be softened or hardened as circumstances and judgment warrant. I understand that I will be joining you in your meeting on Friday, and I look forward to discussing these suggestions beforehand when we meet at the Radisson Hotel in Manhattan Beach. I am flying to LAX on Friday morning and, unless delayed by weather conditions, should arrive at your hotel by 9:00 A.M.

I look forward to meeting you tomorrow.

Very truly yours,

Paul W. Sugarman

Paul W. Sugarman

cc: James Baldwin, Esq.

SBS ANNUITY CONTRACTS

These companies currently hold "net" deposits from "window period" and "bullet" GICs. At maturity these monies will be reinvested. In what types of investments and with what goals and objectives will be determined by the Public Employees' Retirement System (PERS) board as they diversify from GICs.

Name/Initial Year	06/30/90 Balance	Percent	Value at Maturity	Maturity Date
State Mutual Life Insurance Co./1985	$142.0 million	13.01%	$151.1 million	January 1, 1991
Transamerica Occidental Life Insurance Co./1986	$66.5 million	10.66%	$77.4 million	January 2, 1992
AEtna Life Insurance Co./1986	$36.2 million	9.5%	$41.5 million	January 2, 1992
Executive Life Insurance Co./1987	$22.1 million	8.6%	$27.1 million	January 2, 1993
New York Life Insurance Co./1987	$56.3 million	8.6%	$69.2 million	January 4, 1993
Transamerica Occidental Life Insurance Co./1988	$43.8 million	9.21%	$59.7 million	January 3, 1994
Executive Life Insurance Co./1988	$37.9 million	9.9%	$52.9 million	January 3, 1994
Metropolitan Life Insurance Co./1989	$48.6 million	9.69%	$73.7 million	January 3, 1995
Transamerica Occidental Life Insurance Co./1989	$43.9 million	9.15%	$65.2 million	January 3, 1995
Executive Life Insurance Co./1989	$63.7 million	9.10%	$90.3 million	July 1, 1994
Executive Life Insurance Co./1990	$1.4 million	7.07%	$2.0 million	January 2, 1996
Total at 6/30/90	$562.4 million			

RECEIVED

HELLER, EHRMAN, WHITE & McAULIFFE

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PAUL W. SUGARMAN
DIRECT DIAL (415) 772-6217

March 22, 1990

The Hon. Frank Baxter, Commissioner
The Department of Administration
P.O. Box C
Juneau, Alaska 99811

Executive Life Insurance Company
Contract Award No. 26805

Dear Frank:

You have asked that I summarize my views concerning the modification of the above-referenced agreement (the "Agreement") which is memorialized in your letter of March 16, 1990 to Allan Chapman, Senior Vice President of Executive Life Insurance Company. Briefly, the proposed modification:

1. Relieves the State of Alaska ("Alaska") of any obligation to remit further payments to Executive Life Insurance Company ("Executive Life") under the Agreement, leaving only January's initial net contribution of $1,377,375.90 to be retained by Executive Life until the end of the contract period (January 2, 1996);

2. Reduces the interest to be earned by Alaska on the $1,377,375.90 by approximately $160,770, which sum has a present value of $100,000 discounted at the existing contract rate;

3. Enables Alaska to select an alternative investment medium for the approximately $34,000,000 of SBS funds to be invested in 1990, which sum otherwise would have to be invested with Executive Life in accordance with the terms of the Agreement. I understand from you that you believe that, because of the recent

upward movement in interest rates, Alaska will be able to negotiate an interest rate of approximately 9.1% per annum for SBS funds to be invested in 1990; and

4. Precludes Alaska from seeking withdrawal of funds previously invested with Executive Life under Contract Awards Nos. 25980, 25992 and 26681 until maturity of those contracts, and from seeking to amend, rescind or otherwise modify those contracts, unless (a) Alaska is precluded by law from so refraining to act or (b) Alaska discovers facts of which it is currently unaware entitling it to relief (i.e., on the grounds of fraud, misrepresentation or material omission).

Whether one views the modification of the Agreement from a business or legal perspective, it appears to be a prudent and reasonable deal for Alaska. Although the proposed modification will entail a "cost" of $100,000 (in present value terms) to be paid to Executive Life in the form of a reduced interest rate, that cost will be recouped several times over as a result of Alaska's ability to place 1990 SBS funds in another investment vehicle earning a significantly higher rate of interest. This situation is thus analogous to an investor who purchases a six year certificate of deposit at the rate of 8.46%, only to discover that interest rates move sharply higher after the CD is purchased. Although withdrawal of the funds prior to maturity of the CD would entail payment of a penalty, as long as the additional interest to be earned from an alternative investment more than offsets the penalty, it is prudent for the investor to withdraw the funds, pay the penalty and invest elsewhere.

An additional factor militating in favor of the modification, again from the business perspective, is that Alaska may well be able to negotiate more favorable terms for investment of its 1990 SBS funds if it has succeeded in resolving the uncertainty concerning its obligations to Executive Life. Otherwise, Alaska might need to negotiate an "out" in any substitute investment contract to protect Alaska in the event it must, for whatever reason, resume sending payments to Executive Life under the Agreement. Such an escape clause would no doubt come at a cost.

I also believe that the modification is prudent from a legal perspective. As you know, I have not researched Alaska's rights and obligations under the Agreement and therefore am unable to express any opinion concerning the likelihood of success on the merits should Alaska and Executive Life litigate their respective rights and obligations under the Agreement. I have been able to conceive of several legal arguments which Alaska might consider advancing -- whether asserted affirmatively in litigation initiated by Alaska or in defense in response to claims brought by Executive Life -- in support of a claim that it is entitled to rescind the Agreement or at least terminate its future performance. (For example, Alaska might claim that Executive Life misrepresented and/or failed to disclose material facts at the time that the contract was awarded or that the laws of Alaska (in particular, the prudent investor rule) preclude Alaska from investing further funds with Executive Life.) Were these arguments successful, Alaska would be entitled to walk away from the contract and perhaps even to obtain return of the $1,377,375.90 currently held by Executive Life. But I believe it unlikely that Alaska would be able to establish that it is entitled to affirmative damages beyond return of the January payment, with accumulated interest.

On the other hand, were Alaska's arguments to fail -- i.e., were Executive Life able to prove that Alaska breached its contractual obligations by discontinuing payments under the Agreement -- Alaska would have significant damage exposure. Executive Life would no doubt claim that it was damaged in an amount calculated as the difference between the Agreement's rate of interest (8.46%) and the amount Executive Life would have been able to earn on investment of those funds. (Executive Life claims that it has historically earned more than 11% on its investments.) A spread of 2.5% on approximately $34,000,000 for 5-plus years would yield damages in excess of $4,000,000. In addition, Executive Life would claim consequential damages, including damage to its reputation and, perhaps, damages resulting from further erosion of public confidence occasioned by Alaska's default. In short, litigation with Executive Life offers Alaska little upside potential and significant downside risk.

Furthermore, one cannot overlook the cost that such litigation would entail. Particularly if Alaska sought to establish misrepresentation on the part of Executive Life, a lawsuit would be fact-intensive and thus expensive to litigate. Executive Life might itself decide that such litigation involves a question of principle, because it could not afford to be perceived as a "soft touch" by any contract holder who wanted to terminate the relationship. It would thus be prudent for Executive Life to commit substantial resources to the litigation in the hope of obtaining a high profile victory.

The principal consideration Executive Life demanded for modifying the Agreement was Alaska's assurance that it would not seek rescission, amendment or modification of the three earlier, fully-funded contracts, or withdrawal of funds already invested, except under certain circumstances. Ideally, Alaska would not have had to give any undertakings with respect to those earlier contracts. From a practical perspective, however, Executive Life apparently made it clear during your negotiations that it would not agree to forgive $34,000,000 of future investments, only to be confronted down the road with a further demand from Alaska that funds already invested be returned.

I do not, however, think that Alaska gave up much by agreeing to this term, although again, I have not had the opportunity to research the law, nor have I investigated Executive Life's financial condition. However, some of the same factors which militated in favor of payment of $100,000 to Executive Life in the form of a lower interest rate also support Alaska's decision to leave the earlier contracts in place.

First, whatever the merits of Alaska's arguments in support of a claim that it is entitled to rescind the most recent contract -- i.e., to decline to invest additional funds with Executive Life -- those arguments are weaker when directed to the earlier contracts, which were entered into 6 to 24 months ago and which Alaska has fully performed. I think it highly unlikely, for example, that Alaska could successfully rescind the contracts based on misrepresentation, given the passage of time and the fact that Executive Life's investments in junk bonds were public knowledge. And even if Alaska law (e.g., the prudent investor rule) precluded further investment of funds with Executive Life, it is more difficult to argue that that law entitles Alaska to withdraw funds already invested and avoid compensating the injured party for its damages.

Second, any effort by Alaska to seek return of the funds would in all likelihood require protracted, and expensive, litigation, which Executive Life would have every incentive to resist strenuously. While the litigation was pending Executive Life would continue to retain Alaska's funds. Moreover, even a final judgment in Alaska's favor might well prove either unnecessary (because in the meantime Executive Life would have successfully weathered the current storm) or Pyrrhic (because Executive Life would in the meantime have become insolvent, rendering enforcement of Alaska's judgment at full value impossible).

Third, and perhaps most importantly, the agreed-to modification contains two "outs" for Alaska: (1) it enables Alaska to seek to withdraw funds or to amend, rescind or otherwise modify the contracts, if required by law to do so; and (2) it permits such action on the basis of newly discovered facts of which Alaska is not now aware, or should not reasonably be aware. Thus, if the law of Alaska (including, presumably, laws enacted in the future by a cooperative legislature), should require Alaska to seek contract modification, Alaska is free so to act; similarly, Alaska is free to bring an action based on fraud or misrepresentation if new facts are discovered. These provisions should give Alaska sufficient future flexibility with respect to the earlier contracts.

For all of these reasons, I believe that the modification to the Agreement makes sense for Alaska.

Very truly yours,

Paul W. Sugarman

cc: James Baldwin, Esq.

ALTERNATIVES

1. Obtain domestic or non-domestic LC.

BENEFIT:	Guarantee financial viability of contract.
OBSTACLE:	Given state of banking worldwide, extremely doubtful.

2. Assign proceeds of each Executive contract to a single or series of U. S. Trust(s).

- o Identify Pacific Rim investor(s) willing to purchase assignment value.
- o Equalize loss in future.

BENEFIT:	No book value loss.
OBSTACLE:	Find assignment buyer(s). Length of time to amortize loss and yield. What if Executive does not default?

3. Transfer proportionate share of underlying assets to stronger issuer in return for principal guarantee.

BENEFIT:	Stronger Issuer surplus. Principal guaranteed. Investment experience pass-through if Executive Life Survives.
OBSTACLE:	No incentive to Executive Life. If Executive Life does not default, what is the cost?

4. Master Issuers(s).

BENEFIT:	One or more issuers guarantees principal without assignment.
OBSTACLE:	Assembling appropriate group of issuers. Cost to plan absent Executive Life failure.

5. Assignment of contracts to another plan and equalize smaller loss.

BENEFIT:	No book value loss.
OBSTACLE:	Determination of appropriate cost. Identifying buyer that views such a transaction as prudent. If sale is intra-state, various potental legal and fiduciary issues.