

Leg. Finance-House & Senate Finance Comte Files (1991-1992) 887

(11)

HOUSE COMMITTEE REPORT  
FURTHER REFERRALS:

Date Referred: February 26, 1992

Date of Committee Action: 4/23/92

The FINANCE Committee considered:

CSSB 329(STA)

CS FOR SENATE BILL NO. 329 (STATE AFFAIRS) AK STATE PENSION INVESTMENT BOARD

"An Act establishing the Alaska State Pension Investment Board; relating to management and investment of state pension funds, receipts of the supplemental employee benefits program, receipts of the deferred compensation program, and other state funds; and providing for an effective date."

RECOMMENDATIONS:  
be replaced with HCSCS SB 329 (FIN) [X] the same title [ ] a new title  
[ ] have attached amendments(s)  
[X] do pass  
[ ] do not pass  
[ ] no recommendations  
[ ] individual recommendations  
[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: SENATE STATE AFFAIRS letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)  
[X] fiscal impact Administration [X] fiscal note(s) Revenue 1/24/92  
[ ] zero fiscal note [ ] zero fiscal note(s)

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Mike Nauarve NAUARVE	✓	<del>Koponen</del> Koponen		✓	
Lay Brown BROWN	✓	Beth Sharp Sharp		✓	
Geoff Jacko JACKO	X	EP McLean McLean		✓	
Phillips Phillips	✓	Donna Barnes Barnes		X	
Ronald Larson LARSON	X				
Tom Ulmer ULMER	X				

Mike Nauarve NAUARVE  
EP McLean  
CHAIRMAN'S SIGNATURE McLean

## FISCAL NOTE

BILL NO. HCSCSSB 329 (FIN)STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Revision Date: April 21, 1992  
 Title: An Act establishing the Alaska State Pension Investment Board  
 Sponsor: Pourchot  
 Requestor: House Finance Committee

Department Affected: Administration  
 BRU: Retirement and Benefits  
 Component: Retirement and Benefits  
 COMPONENT SERIAL NO. 64

## Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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	(1)	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 FUND SOURCE:	0	0	0	0	0	0

## FUNDING: (Thousands of dollars)

GENERAL FUND	(3,013.2)	(3,013.2)	(3,013.2)	(3,013.2)	(3,013.2)	(3,013.2)
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE	3,013.2	3,013.2	3,013.2	3,013.2	3,013.2	3,013.2
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: none

ANALYSIS: (attach a separate page if necessary.) Updating the impact of moving the funding authority for the Supplemental Benefits System (SBS) and Deferred Compensation programs from general fund/program receipts to an "other" funding source (Benefit System Receipts). This update is congruent with the FY 93 Governor's Budget (form C21b, page 000618).

Prepared By: Garv Bader  
 Division: Retirement and Benefits

Phone: 465-4470  
 Date: April 21, 1992

Approved by Commissioner: Nancy Bear User  
 Agency: Department of Administration

Date: 4/23/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB & Impacted Agency(ics).  
 Rev 10/90 Page 1 of 1

Session Date: \_\_\_\_\_

Department Affected: Revenue (S) Publish Date: 1-24-92

Requestor: Alaska State Pension Investment Board.

BRU: Operations

Component: Treasury Management

Author: Senator Pourchot

Component Serial No.

Requestor: Senator Pourchot

0	1	2	1
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	50.0	52.0	54.1	56.2	58.5	60.8
TRAVEL	99.0	80.6	83.8	87.3	90.8	94.4
CONTRACTUAL	9.6	10.0	10.4	10.8	11.2	11.7
SUPPLIES	3.3	2.6	2.7	2.8	2.9	3.0
EQUIPMENT	15.0	1.0	1.0	1.0	1.0	1.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	176.9	146.2	152.0	158.1	164.4	170.9

PITAL						
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REVENUE						
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ENDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER	176.9	146.2	152.0	158.1	164.4	170.9
TOTAL	176.9	146.2	152.0	158.1	164.4	170.9

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

State of current year impact: None

ANALYSIS: See attached worksheet.

Changes in CSSB 329 (STA) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

1-23-92 date Marie K. [Signature] Come Aide (initial)

Prepared by: Brian C. Andrews [Signature]

Phone: 465-2350

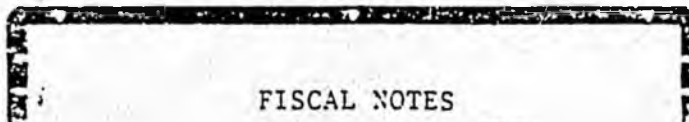
Division: Treasury

Date: December 20, 1991

Reviewed by Commissioner: [Signature]

Subject: Revenue

Publication (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & impacted Agency(ies).



Cost Analysis of Investment Board Legislation  
 Prepared by Brian C. Andrews  
 December 20, 1991

Assumptions:	Meeting Yr 1	Meeting Yrs 2-6	Education Yrs 1-6
of Board members	0	0	0
of Meetings	6	4	1.5
length of Meetings (days)	2	2	3
travel days	1	1	1.5
annual cost increase		4%	4%

Meeting Costs:	Per Category	Per Member	Per Meeting	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
travel @	\$1500	\$500	\$4,000	\$24,000	\$16,640	\$17,306	\$17,998	\$18,718	\$19,466
per Diem @	150	450	3,600	21,600	14,976	15,575	16,198	16,846	17,520
honorarium @	150	450	3,150	18,900	13,104	13,628	14,173	14,740	15,330
supplies/Misc @	50	50	400	2,400	1,664	1,731	1,800	1,872	1,947
<b>Total</b>	<b>850</b>	<b>1,450</b>	<b>11,150</b>	<b>66,900</b>	<b>46,384</b>	<b>48,239</b>	<b>50,169</b>	<b>52,176</b>	<b>54,263</b>

Education Costs:	Per Category	Per Member	Per Meeting	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
travel @	1,500	1,500	12,000	18,000	10,720	19,469	20,248	21,057	21,900
per Diem @	175	700	6,300	9,450	9,828	10,221	10,630	11,055	11,497
honorarium @	150	675	4,725	7,088	7,371	7,666	7,972	8,291	8,623
supplies/Misc @	75	75	600	900	936	973	1,012	1,053	1,095
registration @	000	000	0,400	9,600	9,984	10,383	10,799	11,231	11,680
<b>Total</b>	<b>2,700</b>	<b>3,830</b>	<b>30,025</b>	<b>45,038</b>	<b>46,839</b>	<b>48,713</b>	<b>50,661</b>	<b>52,688</b>	<b>54,795</b>

Personal Service Costs:	PFT	Salary	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
Board Liaison	1	50,000	50,000	52,000	54,080	56,243	58,493	60,833
Equipment - Projector/PC/Software			15,000	1,000	1,000	1,000	1,000	1,000
<b>Total</b>			<b>65,000</b>	<b>53,000</b>	<b>55,080</b>	<b>57,243</b>	<b>59,493</b>	<b>61,833</b>

**Total Investment Board Operating Costs:** 176,938 146,223 152,032 158,073 164,356 170,890

Budget Categorization:	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
Personal Service	50,000	52,000	54,080	56,243	58,493	60,833
Travel	99,038	80,639	83,865	87,219	90,708	94,336
Contractual	9,600	9,984	10,383	10,799	11,231	11,680
Supplies	3,300	2,600	2,704	2,812	2,925	3,042
Equipment	15,000	1,000	1,000	1,000	1,000	1,000
<b>Unding - Other</b>	<b>\$176,938</b>	<b>\$146,223</b>	<b>\$152,032</b>	<b>\$158,073</b>	<b>\$164,356</b>	<b>\$170,890</b>
FT	1	1	1	1	1	1

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2  
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## HOUSE CS FOR CS FOR SENATE BILL NO. 329 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): SENATORS POURCHOT, Sturgulewski, Duncan, Collins, Pearce, Rodey, Kerttula, Craft, Uehling, Shultz, Ellason

REPRESENTATIVES Donley, Navarre, Ulmer

## A BILL

## FOR AN ACT ENTITLED

1 "An Act establishing the Alaska State Pension Investment Board; relating to management  
2 and investment of state pension funds, receipts of the supplemental employee benefits  
3 program, receipts of the deferred compensation program, and other state funds; and  
4 providing for an effective date."

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

6 \* Section 1. AS 37.10 is amended by adding new sections to read:

7 ARTICLE 5. ALASKA STATE PENSION INVESTMENT BOARD.

8 Sec. 37.10.210. ALASKA STATE PENSION INVESTMENT BOARD. (a) There is  
9 established the Alaska State Pension Investment Board in the Department of Revenue. The  
10 purpose of the board is to provide prudent and productive management and investment of state  
11 pension funds and, upon agreement with the commissioner of the department or the fiduciary  
12 responsible for the fund, of other state funds.

13 (b) The board consists of eight trustees. Two of the trustees shall be elected by the  
14 members of the public employees' retirement system from the membership of the system.

1 Nominations may be made by the Public Employees' Retirement Board or by petition signed by  
2 at least 10 persons eligible to vote in the election. One of the trustees elected from the  
3 membership of the public employees' retirement system must be a participant in the supplemental  
4 employee benefits program established under AS 39.30.150 - 39.30.180. Two of the trustees  
5 shall be elected by the members of the teachers' retirement system from the membership of the  
6 system. Nominations may be made by the Teachers' Retirement Board or by petition signed by  
7 at least 10 persons eligible to vote in the election. The governor shall appoint three trustees. At  
8 least one of the appointed trustees must represent employers, other than the state, who participate  
9 in one of the retirement systems. The appointed trustees must have business and investment  
10 experience. The commissioner of revenue serves as a trustee.

11 (c) The appointed and elected trustees shall serve for staggered terms of four years and  
12 may be reappointed or reelected to the board.

13 (d) The governor may, by written notice to the trustee, remove an appointed trustee for  
14 cause. The Public Employees' Retirement Board may, by written notice to the trustee, remove  
15 a member elected from the membership of that retirement system for cause. The Teachers'  
16 Retirement Board may, by written notice to the trustee, remove a member elected from the  
17 membership of that retirement system for cause. After a trustee receives written notice of  
18 removal, the trustee may not participate in board business and may not be counted for purposes  
19 of establishing a quorum.

20 (e) A vacancy on the board of trustees shall be promptly filled in the same manner as  
21 the seat was originally filled. A person filling a vacancy holds office for the balance of the  
22 unexpired term of the person's predecessor. A vacancy on the board does not impair the  
23 authority of a quorum of the board to exercise all the powers and perform all the duties of the  
24 board.

25 (f) The board of trustees shall annually elect a chair from among its members.

26 (g) Five trustees constitute a quorum for the transaction of business and the exercise of  
27 the powers and duties of the board.

28 (h) A trustee may not designate another person to serve on the board in the absence of  
29 the trustee.

30 (i) The board shall adopt a policy concerning investment education for trustees.

31 Sec. 37.10.220. POWERS AND DUTIES OF THE BOARD. (a) The board shall

1 (1) hold regular and special meetings at the call of the chair or of at least four  
2 members;

3 (2) establish investment policies for the funds for which it is responsible after  
4 reviewing recommendations from the investment advisory council and the Department of  
5 Revenue;

6 (3) submit long-range and quarterly investment reports to the Legislative Budget  
7 and Audit Committee;

8 (4) report to the governor, the legislature, and employers participating in the  
9 retirement systems by the first day of each regular legislative session concerning the investment  
10 of funds for which the board is responsible, including financial and investment policies  
11 established by the board, and enclose a summary of the most recent performance evaluations of  
12 the funds managed by the board;

13 (5) contract with external performance evaluators to review the performance of  
14 each fund for which the board is responsible and report each year on the fund's condition to the  
15 board of trustees and to the other appropriate boards;

16 (6) engage independent certified public accountants to perform an annual audit  
17 of each of the funds for which the board is responsible and to report to the board with the results  
18 of the audit;

19 (7) review the actuarial earnings assumption for each fund for which the board  
20 is responsible every two years and report its findings and recommendations to the appropriate  
21 board or agency;

22 (8) after reviewing the recommendations from the Department of Revenue and  
23 the advisory council, select and retain the external investment managers and custodians for the  
24 funds managed by the board;

25 (9) develop an annual operating budget plan and present it to the Department of  
26 Revenue, the office of management and budget, and the legislature.

27 (b) The board may

28 (1) employ outside investment advisors to review investment policies and make  
29 recommendations to the board;

30 (2) employ legal counsel subject to the approval of the attorney general;

31 (3) contract for services necessary to carry out its powers and duties;

1 (4) enter into an agreement with the commissioner of the department or the  
2 fiduciary responsible for another state fund to assume fiduciary or management responsibilities  
3 for investing the other state fund;

4 (5) do all acts necessary to carry out the powers expressly granted or necessarily  
5 implied in this chapter.

6 (c) The board shall meet annually, either jointly or separately, with the Public  
7 Employees' Retirement Board, the Teachers' Retirement Board, and the Department of  
8 Administration to review benefit administration of each of the retirement systems and of the  
9 employee benefits program established under AS 39.30.150 - 39.30.180 and the deferred  
10 compensation program under AS 39.45. The Department of Administration and each retirement  
11 board shall report to the investment board on benefit administration and other issues for that  
12 retirement system or program that may affect the investment and management of the fund.

13 (d) The chair of the board shall appoint a trustee to present the board's position to  
14 legislative committees when the committees are considering the board's operating budget. The  
15 board is otherwise subject to AS 37.07.

16 Sec. 37.10.230. CONFLICTS OF INTEREST. (a) Trustees are subject to the provisions  
17 of AS 39.50.

18 (b) If a trustee acquires, owns, or controls an interest, direct or indirect, in an entity or  
19 project in which assets under the control of the board are invested, the trustee shall immediately  
20 disclose the interest to the board. The disclosure is a matter of public record and shall be  
21 included in the minutes of the board meeting next following the disclosure. The board shall  
22 adopt regulations to restrict trustees from having a substantial interest in an entity or project in  
23 which assets under the control of the board are invested.

24 Sec. 37.10.240. REGULATIONS AND OPEN MEETINGS. (a) The board may adopt  
25 regulations to implement AS 37.10.210 - 37.10.390. Regulations adopted by the board are not  
26 subject to the Administrative Procedure Act (AS 44.62). The board shall adopt regulations  
27 required by AS 36.30.015(f) relating to procurement. The board shall comply with the  
28 requirements of AS 44.62.310 - 44.62.312.

29 (b) Notwithstanding (a) of this section, a regulation adopted under AS 37.10.210 -  
30 37.10.390 shall be published in the Alaska Administrative Register and Alaska Administrative  
31 Code for informational purposes. A regulation adopted under this section shall conform to the

1 style and format requirements of the drafting manual for administrative regulations that is  
2 published under AS 44.62.050.

3 (c) At least 30 days before the adoption, amendment, or repeal of a regulation under this  
4 chapter, the board shall provide notice of the action that is being considered. The notice must  
5 include publication in one or more newspapers of general circulation in each judicial district of  
6 the state.

7 (d) A regulation adopted under this chapter takes effect 30 days after adoption by the  
8 board unless a later effective date is stated in the regulation.

9 (e) Notwithstanding the other provisions of this section, a regulation may be adopted,  
10 amended, or repealed, effective immediately, as an emergency regulation. For an emergency  
11 regulation to be effective the board must find that the immediate adoption, amendment, or repeal  
12 of the regulation is necessary. The board shall, within 10 days after adoption of an emergency  
13 regulation, give notice of the adoption under (c) of this section. An emergency regulation  
14 adopted under this subsection may not remain in effect past the date of the next regular meeting  
15 of the board unless the board complies with the procedures set out in this section and adopts the  
16 regulation as a permanent regulation.

17 (f) In this section, "regulation" has the meaning given in AS 44.62.640(a).

18 Sec. 37.10.250. COMPENSATION OF TRUSTEES. Trustees, other than trustees who  
19 are employees of the state or a political subdivision of the state, receive an honorarium of \$150  
20 for each day spent at a meeting of the board or at a meeting of a subcommittee of the board or  
21 at a public meeting as a representative of the board. Trustees who are state employees are  
22 entitled to administrative leave for service as a trustee. Trustees who are employees of a political  
23 subdivision of the state are entitled to leave benefits provided by their employers comparable to  
24 those provided to state employees for service as a trustee. Trustees are entitled to per diem and  
25 travel expenses authorized for boards and commissions under AS 39.20.180.

26 Sec. 37.10.260. STAFF. (a) The Department of Revenue shall provide staff for the  
27 board.

28 (b) The board may designate a trustee or an officer or employee of the Department of  
29 Revenue to be responsible for signing on behalf of the board a deed, contract, or other document  
30 that must be executed by or on behalf of the board.

31 Sec. 37.10.270. INVESTMENT ADVISORY COUNCIL. (a) The board shall appoint

1 an investment advisory council composed of at least three and not more than five members.  
2 Members of the council shall possess experience and expertise in financial investments and  
3 management of investment portfolios for public, corporate, or union pension benefit funds,  
4 foundations, or endowments.

5 (b) Members of the council serve at the pleasure of the board for staggered terms of three  
6 years.

7 (c) The board shall establish the compensation of members of the council. Members of  
8 the council are entitled to per diem and travel expenses authorized for boards and commissions  
9 under AS 39.20.180.

10 (d) The council shall

11 (1) review the investments made by the board;

12 (2) make recommendations to the board concerning the board's investment  
13 policies, investment strategy, and investment procedures;

14 (3) advise the board on selection of performance consultants and on the form and  
15 content of annual reports;

16 (4) provide other advice as requested by the board.

17 (e) With approval of the board, the council may contract with other state agencies to  
18 provide investment advice.

19 Sec. 37.10.280. INSURANCE. The board shall ensure that trustee assets and its own  
20 services are protected. The board may purchase insurance or provide for self-insurance retention  
21 in amounts recommended by the commissioner of revenue and approved by the board to cover  
22 the acts, including fiduciary acts, errors, and omissions of its board members and agents. Insur-  
23 ance must protect the board and the state from liability to others and from loss of trustee assets  
24 due to the acts or omissions of the trustees.

25 Sec. 37.10.290. EXEMPTION FROM TAXATION. Except as provided in  
26 AS 29.45.030(a) for property acquired through foreclosure or deed in lieu of foreclosure, the  
27 board and all properties at any time owned by it, managed by it, or held by it in trust, and the  
28 income from those activities, are exempt from all taxes and assessments in the state. All security  
29 instruments issued by the board and income from them are exempt from all taxes and  
30 assessments in the state, including transfer taxes.

31 Sec. 37.10.300. LIMITATIONS. The board may not engage in commercial banking

1 activity or private trust activity. The board may not act as a depository or trustee for a private  
2 person, association, or corporation. The board may not act as a lender to a private person,  
3 association, or corporation of money from any source except state funds under management by  
4 the board.

5 Sec. 37.10.390. DEFINITIONS. In AS 37.10.210 - 37.10.390, unless the context  
6 otherwise requires,

7 (1) "board" means the board of trustees of the Alaska State Pension Investment  
8 Board;

9 (2) "retirement systems" means the teachers' retirement system, the judicial  
10 retirement system, the Alaska National Guard and Alaska Naval Militia retirement system, and  
11 the public employees' retirement system.

12 \* Sec. 2. AS 14.25.035(d) is amended to read:

13 (d) The commissioner of administration shall report to the board concerning the condition  
14 and administration of the system. The reports shall be distributed to the members of the system.  
15 The Alaska State Pension Investment Board [COMMISSIONER OF REVENUE] shall provide  
16 reports to the board on the condition and investment performance of the teachers' retirement trust  
17 fund including a summary of an annual external performance review.

18 \* Sec. 3. AS 14.25.035 is amended by adding a new subsection to read:

19 (j) The board shall adopt regulations for the election of trustees to the Alaska State  
20 Pension Investment Board and for removal from the investment board of trustees elected from  
21 the system.

22 \* Sec. 4. AS 14.25.180 is amended to read:

23 Sec. 14.25.180. MANAGEMENT AND INVESTMENT OF FUND. (a) The Alaska  
24 State Pension Investment Board [COMMISSIONER OF REVENUE] is the [TREASURER OF  
25 THE SYSTEM AND THE] fiduciary of the fund. In managing the fund, the Alaska State  
26 Pension Investment Board [COMMISSIONER OF REVENUE] shall

27 (1) consider the status of the fund's investments and the system's liabilities on  
28 both a current and a probable future basis;

29 (2) determine the appropriate investment objectives for the fund;

30 (3) establish investment policies aimed at achieving the objectives; and

31 (4) act only in regard to the best financial interests of the system's plan and

1 beneficiaries.

2 (b) The Alaska State Pension Investment Board [COMMISSIONER OF REVENUE]  
3 may invest the fund on the basis of probable total rate of return without regard to the distinction  
4 between principal and income or to the generation of income.

5 (c) In carrying out investment duties under this chapter, the Alaska State Pension  
6 Investment Board [COMMISSIONER OF REVENUE] has the same powers and duties in regard  
7 to the teacher's retirement trust fund as are provided in AS 37.10.071, except that the standard  
8 of prudence that the board [COMMISSIONER] must obey under AS 37.10.071(c) shall be in  
9 regard to the management of large trust investments rather than large investments.

10 \* Sec. 5. AS 14.25.200(a) is amended to read:

11 (a) Except as provided in AS 29.45.030(a)(1), member [MEMBER] contributions and  
12 other amounts held in the system on behalf of a member or other person who is or may become  
13 eligible for benefits under the system are exempt from Alaska state and municipal taxes and are  
14 not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge  
15 of any kind, either voluntary or involuntary, before they are received by the person entitled to  
16 the amount under the terms of the system, and any attempt to anticipate, alienate, sell, transfer,  
17 assign, pledge, encumber, charge, or otherwise dispose of any right to amounts accrued in the  
18 system is void. However, a member's right to receive benefits may be assigned under a qualified  
19 domestic relations order.

20 \* Sec. 6. AS 22.25.048(c) is amended to read:

21 (c) The Alaska State Pension Investment Board [COMMISSIONER OF REVENUE]  
22 is the [TREASURER OF THE SYSTEM AND THE] fiduciary of the fund and has the same  
23 powers and duties under this section in regard to the judicial retirement trust fund as are provided  
24 in AS 14.25.180.

25 \* Sec. 7. AS 26.05.228(c) is amended to read:

26 (c) The Alaska State Pension Investment Board [COMMISSIONER OF REVENUE]  
27 is the [TREASURER OF THE SYSTEM AND THE] fiduciary of the fund and has the same  
28 powers and duties under this section in regard to the fund as are provided under AS 14.25.180.

29 \* Sec. 8. AS 36.30.015(f) is amended to read:

30 (f) The board of directors of the Alaska Housing Finance Corporation, notwithstanding  
31 AS 18.56.088, and the board of directors of the Alaska State Housing Authority shall adopt

1 regulations under the Administrative Procedure Act (AS 44.62) and the board of trustees of the  
2 Alaska State Pension Investment Board shall adopt regulations under AS 37.10.240 to  
3 govern the procurement of supplies, services, professional services, and construction for the  
4 respective public corporations and board. The regulations must

5 (1) reflect competitive bidding principles and provide vendors reasonable and  
6 equitable opportunities to participate in the procurement process; and

7 (2) include procurement methods to meet emergency and extraordinary  
8 circumstances.

9 \* Sec. 9. AS 36.30.850(b)(15) is amended to read:

10 (15) a contract that is a delegation, in whole or in part, of investment powers held  
11 by the commissioner of revenue under [AS 14.25.180,] AS 14.40.400, AS 14.42.200, 14.42.210,  
12 AS 18.56.095, [AS 22.25.048, AS 26.05.228,] AS 37.10.070, 37.10.071, or AS 37.14 [, OR  
13 AS 39.35.080];

14 \* Sec. 10. AS 36.30.990(1) is amended to read:

15 (1) "agency"

16 (A) means a department, institution, board, commission, division,  
17 authority, public corporation, the Alaska Pioneers' Home, or other administrative unit of  
18 the executive branch of state government;

19 (B) does not include

20 (i) the University of Alaska;

21 (ii) the Alaska State Housing Authority;

22 (iii) the Alaska Railroad Corporation;

23 (iv) the Alaska Housing Finance Corporation;

24 (v) a regional Native housing authority created under AS 18.55.996

25 [,] or a regional electrical authority created under AS 18.57.020;

26 (vi) the Alaska Aerospace Development Corporation;

27 (vii) the Alaska State Pension Investment Board;

28 \* Sec. 11. AS 37.05.146 is amended to read:

29 Sec. 37.05.146. DEFINITION OF PROGRAM RECEIPTS. In AS 37.05.142 - 37.05.146  
30 and AS 37.07.080, "program receipts" means fees, charges, income earned on assets, and other  
31 state money received by a state agency in connection with the performance of its functions; all

1 program receipts except the following are general fund program receipts:

2 (1) federal receipts;

3 (2) University of Alaska receipts (AS 14.40.491);

4 (3) individual, foundation, or corporation gifts, grants, or bequests that by their  
5 terms are restricted to a specific purpose;

6 (4) receipts of the following funds:

7 (A) highway working capital fund (AS 44.68.210);

8 (B) correctional industries fund (AS 33.32.020);

9 (C) loan funds;

10 (D) international airport revenue fund (AS 37.15.430);

11 (E) funds managed by the Alaska State Housing Authority (AS 18.55.020),  
12 the Alaska Housing Finance Corporation (AS 18.56.020), the Alaska Railroad Corporation  
13 (AS 42.40.010), the Municipal Bond Bank Authority (AS 44.85.020), the Alaska  
14 Aerospace Development Corporation (AS 14.40.821), or the Alaska Industrial  
15 Development and Export Authority (AS 44.88.020);

16 (F) fish and game fund (AS 16.05.100);

17 (G) school fund (AS 43.50.140);

18 (H) training and building fund (AS 23.20.130);

19 (I) retirement funds (AS 14.25, AS 22.25, AS 26.05.222, AS 39.35, and  
20 former AS 39.37);

21 (J) permanent fund (art. IX, sec. 15, Alaska Constitution);

22 (K) public school fund (AS 37.14.110);

23 (L) second injury fund (AS 23.30.040);

24 (M) fishermen's fund (AS 23.35.060);

25 (N) FICA administration fund (AS 39.30.050);

26 (O) receipts of the employee benefits program established under AS 39.30.150 -

27 39.30.180;

28 (P) receipts of the deferred compensation program established under

29 AS 39.45.

30 \* Sec. 12. AS 37.10.071 is amended to read:

31 Sec. 37.10.071. INVESTMENT POWERS AND DUTIES. (a) In making investments

1 under this section, the fiduciary of a state fund [COMMISSIONER OF REVENUE] shall

2 (1) act as official custodian of cash and investments by securing adequate and safe  
3 custodial facilities for them;

4 (2) receive all items of cash and investments;

5 (3) collect and deposit the principal of and income from owned or acquired  
6 investments;

7 (4) invest and reinvest the assets in accordance with this section;

8 (5) receive and spend appropriations to cover the cost of the exercise of duties  
9 under this section;

10 (6) exercise the powers of an owner with respect to the assets;

11 (7) perform all acts, not prohibited by this section, whether or not expressly  
12 authorized, that the fiduciary [COMMISSIONER] considers necessary or proper in administering  
13 the assets;

14 (8) maintain accounting records in accordance with generally accepted  
15 [INVESTMENT] accounting principles;

16 (9) engage an independent certified public accountant to conduct an annual audit  
17 of the financial condition and investment transactions;

18 (10) enter into and enforce contracts or agreements considered necessary,  
19 convenient, or desirable for the investment purposes of this section; and

20 (11) when choosing to acquire or dispose of investments, secure competitive  
21 national or international market rates or prices, or the equivalence of those rates or prices in the  
22 judgment of the fiduciary [COMMISSIONER].

23 (b) Under this section, the fiduciary of a state fund or the fiduciary's  
24 [COMMISSIONER OR THE COMMISSIONER'S] designee may

25 (1) delegate investment, custodial, or depository authority on a discretionary or  
26 nondiscretionary basis to officers or employees of the state or to independent firms, banks,  
27 financial institutions, or trust companies [,] by designation through appointments, contracts, or  
28 letters of [OR] authority;

29 (2) acquire or dispose of investments either directly, indirectly, or through  
30 investment pools or trusts, by competitive or negotiated agreements, contracts, or auctions, in  
31 public or private markets;

1 (3) concentrate or diversify investments as the fiduciary [COMMISSIONER]  
2 considers appropriate to increase the probable total rate of return or to decrease the overall  
3 exposure to potentially adverse market value risks;

4 (4) protect the market value or the rate of return of the investments by entering  
5 into forward agreements to buy or sell assets at a future date as a hedge against existing held  
6 assets or as a precommitment of future cash flows;

7 (5) lend assets, under an agreement and for a fee, against deposited collateral of  
8 equivalent market value;

9 (6) borrow assets on a short-term basis, under an agreement and for a fee, against  
10 the deposit of collateral consisting of other assets in order to accommodate temporary cash or  
11 investment needs;

12 (7) hold investments in bearer or registered form in the name of the state, a fund,  
13 or nominees authorized by the fiduciary [COMMISSIONER];

14 (8) utilize consultants, advisors, custodians, investment services, and legal counsel  
15 for assistance in investment matters on either a continuing or a limited-term basis and with or  
16 without compensation;

17 (9) declare records to be confidential and exempt from AS 09.25.110 and  
18 09.25.120 if the records contain information that discloses the particulars of the business or the  
19 affairs of a private enterprise, investor, borrower, advisor, consultant, counsel, or manager.

20 (c) In exercising investment, custodial, or depository powers or duties under this section,  
21 the fiduciary of a state fund shall apply the prudent investor rule and exercise the fiduciary  
22 duity in the sole financial best interest of the fund entrusted to the fiduciary. Among  
23 beneficiaries of a fund. the fiduciaries shall treat beneficiaries with impartiality  
24 [COMMISSIONER SHALL EXERCISE THE JUDGMENT AND CARE UNDER THE  
25 CIRCUMSTANCES THEN PREVAILING THAT AN INSTITUTIONAL INVESTOR OF  
26 ORDINARY PROFESSIONAL PRUDENCE, DISCRETION, AND INTELLIGENCE  
27 EXERCISES IN MANAGING LARGE INVESTMENTS WITH CONSIDERATION FOR THE  
28 PURPOSE OF THE FUND, THE INVESTMENT OBJECTIVES, THE CONTINUING  
29 DISPOSITION OF THE FUND'S INVESTMENTS, AND THE PROBABLE SAFETY OF THE  
30 CAPITAL AS WELL AS THE PROBABLE INVESTMENT RETURNS].

31 (d) In exercising investment, custodial, or depository powers or duties under this section,

1 the fiduciary or the fiduciary's [COMMISSIONER OR A] designee [OF THE  
2 COMMISSIONER] is liable for a breach of a duty that is assigned or delegated under this  
3 section, or under AS 14.25.180, AS 14.40.400(b), AS 37.10.070, AS 37.14.110(c), 37.14.160,  
4 37.14.170, or AS 39.35.080. However, the fiduciary or the [COMMISSIONER OR THE  
5 COMMISSIONER'S] designee is not liable for a breach of a duty that has been delegated to  
6 another person if the delegation is prudent under the applicable standard of prudence set out in  
7 statute or if the duty is assigned by law to another person, except to the extent that the fiduciary  
8 [COMMISSIONER] or designee

9 (1) knowingly participates [PARTICIPATE] in, or knowingly undertakes to  
10 conceal, an act or omission of another person [,] knowing that the act or omission is a breach of  
11 that person's duties under this chapter;

12 (2) by failure to comply with this section in the administration of specific  
13 responsibilities, enables another person to commit a breach of duty; or

14 (3) has knowledge of a breach of duty by another person, unless the fiduciary  
15 [COMMISSIONER] or designee makes reasonable efforts under the circumstances to remedy the  
16 breach.

17 (e) The state shall defend and indemnify the fiduciary [COMMISSIONER] or an officer  
18 or employee of the state against liability under (d) of this section to the extent that the alleged  
19 act or omission was performed in good faith and was prudent under the applicable standard of  
20 prudence.

21 (f) In this section, "fiduciary of a state fund" or "fiduciary" ["COMMISSIONER OF  
22 REVENUE" OR "COMMISSIONER"] means

23 (1) the commissioner of revenue for investments under [AS 14.25.180 OR]  
24 AS 37.10.070; [OR]

25 (2) with respect to the Alaska State Pension Investment Board, for  
26 investments under AS 14.25.180,

27 (A) each trustee who serves on the board of trustees; and

28 (B) any other person who exercises control or authority with respect  
29 to management or disposition of assets for which the board is responsible or who  
30 gives investment advice to the board; or

31 (3) the person or body provided by law to manage the investments [,] for

1 investments not subject to AS 14.25.180 or AS 37.10.070.

2 \* Sec. 13. AS 37.14.160 is amended to read:

3 Sec. 37.14.160. DUTIES OF THE COMMISSIONER OF REVENUE. The commissioner  
4 of revenue is the treasurer of the trust fund created in AS 37.14.110 and shall

5 (1) in carrying out investment duties under this section, exercise the same  
6 powers and duties established for the Alaska State Pension Investment Board in  
7 AS 14.25.180(c);

8 (2) deposit the principal and income from investments in separate principal and  
9 income accounts for the fund;

10 (3) invest and maintain accounting records that distinguish between the principal  
11 and income of the fund;

12 (4) provide reports to the board established under AS 37.14.120 on the condition  
13 and investment performance of the fund.

14 \* Sec. 14. AS 39.30 is amended by adding a new section to read:

15 Sec. 39.30.175. INVESTMENT OF BENEFIT PROGRAM RECEIPTS. (a) The Alaska  
16 State Pension Investment Board is the fiduciary of the mandatory receipts, under  
17 AS 39.30.150(a), of the employee benefits program established under AS 39.30.150 - 39.30.180  
18 and has the same powers and duties concerning the management and investment in regard to  
19 those receipts as are provided under AS 14.25.180.

20 (b) The board may provide a range of investment options and permit a participant or  
21 beneficiary of the program to exercise control over the assets in the individual employee annuity  
22 account established under AS 39.30.150(a). If the board offers investment options, and if a  
23 participant or beneficiary exercises control over the assets in the individual employee annuity  
24 account,

25 (1) the participant or beneficiary is not considered a fiduciary for any reason on  
26 the basis of exercising that control; and

27 (2) a person who is otherwise a fiduciary is not liable under this section for any  
28 loss, or by reason of any breach, that results from the individual's exercise of control.

29 (c) If the board is considering entering into a contract or modifying an existing contract  
30 concerning the management or investment of the mandatory receipts of the supplemental  
31 employee benefits program, the board shall consult with the commissioner of administration

1 before making a decision on the issue.

2 (d) The board shall develop a contingency plan that addresses the board's response to  
3 possible future investment problems.

4 (e) Except to the extent clearly set out in the terms of the plan document offered by the  
5 employer to the employee, the employer is not liable to the employee for investment losses if the  
6 prudent investment standard has been met.

7 (f) In this section, "board" means the Alaska State Pension Investment Board.

8 \* Sec. 15. AS 39.35.020 is amended to read:

9 Sec. 39.35.020. ADMINISTRATION. The commissioner of administration is responsible  
10 for the administration of the system and for carrying out this chapter. In addition, the  
11 commissioner shall

12 (1) maintain the accounts of the system;

13 (2) make payments for the various purposes specified;

14 (3) submit periodic reports or statements of account that are needed;

15 (4) issue a statement of account to an employee requesting it showing the amount  
16 of the employee's contributions to the system;

17 (5) as soon as possible after the close of each fiscal year, and not later than six  
18 months after the close of each fiscal year, send to the governor, the legislature, and the board an  
19 annual statement on the operations of the system containing

20 (A) a balance sheet;

21 (B) a statement of income and expenditures for the year;

22 (C) a report on an actuarial valuation of its assets and liabilities;

23 (D) a summary of assets held in the pension fund listed by the categories  
24 of investment, as provided by the Alaska State Pension Investment Board  
25 [COMMISSIONER OF REVENUE];

26 (E) other statistical financial data that are necessary for a proper  
27 understanding of the financial condition of the system and the result of its operations;

28 (6) establish a public employees retirement trust fund in which the assets of the  
29 system shall be deposited and held;

30 (7) engage an independent certified public accountant to conduct an annual audit  
31 of the system's accounts and the annual report of the system's financial condition and activity;

1 (8) report to the board concerning the condition and administration of the system  
2 and distribute the report to the members of the system.

3 \* Sec. 16. AS 39.35.040 is amended by adding a new paragraph to read:

4 (11) adopt regulations for the election of trustees to the Alaska State Pension  
5 Investment Board and for removal from the investment board of trustees elected from the system.

6 \* Sec. 17. AS 39.35.080 is amended to read:

7 Sec. 39.35.080. DUTIES OF THE ALASKA STATE PENSION INVESTMENT  
8 BOARD [COMMISSIONER OF REVENUE]. The Alaska State Pension Investment Board  
9 [COMMISSIONER OF REVENUE] is the [TREASURER OF THE SYSTEM AND THE]  
10 fiduciary of the fund. The board [COMMISSIONER] has the same powers and duties  
11 established under this chapter in regard to the fund as are provided in AS 14.25.035(d) and  
12 14.25.180.

13 \* Sec. 18. AS 39.35.500 is amended to read:

14 Sec. 39.35.500. SAFEGUARD OF EMPLOYEE FUNDS HELD BY THE SYSTEM.  
15 Except as provided in AS 29.45.030(a)(1)(D), employee [EMPLOYEE] contributions and other  
16 amounts held in the system are exempt from Alaska state and local taxes. Amounts held on  
17 behalf of, or payable to, any employee or other person who is or may become eligible for  
18 benefits under the system are not subject to anticipation, alienation, sale, transfer, assignment,  
19 pledge, encumbrance, or charge of any kind, either voluntary or involuntary, before being  
20 received by the person entitled to the amount under the terms of the system. An attempt to  
21 anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, or otherwise dispose of a  
22 right to amounts held under the system is void. However, an employee's right to receive benefits  
23 may be assigned under a qualified domestic relations order.

24 \* Sec. 19. AS 39.45.030(a) is repealed and reenacted to read:

25 (a) The Alaska State Pension Investment Board is authorized, subject to contracts with  
26 individual employees, to invest the funds held under a deferred compensation program. The  
27 board has the same powers and duties concerning the management and investment in regard to  
28 those funds as are provided under AS 14.25.180.

29 \* Sec. 20. AS 39.45.030 is amended by adding new subsections to read:

30 (c) The board may provide a range of investment options and permit a participant or  
31 beneficiary of the program to exercise control over the assets in the individual's account. If the

1 board offers investment options, and if a participant or beneficiary exercises control over the  
2 assets in the individual's account,

3 (1) the participant or beneficiary is not considered a fiduciary for any reason on  
4 the basis of exercising that control; and

5 (2) a person who is otherwise a fiduciary is not liable under this section for any  
6 loss, or by reason of any breach, that results from the individual's exercise of control.

7 (d) If the board is considering entering into a contract or modifying an existing contract  
8 concerning the management or investment of funds of the deferred compensation program, the  
9 board shall consult with the commissioner of administration before making a decision on the  
10 issue.

11 (e) The board shall develop a contingency plan that addresses the board's response to  
12 possible future investment problems.

13 (f) Except to the extent clearly set out in the terms of the plan document offered by the  
14 employer to the employee, the employer is not liable to the employee for investment losses if the  
15 prudent investment standard has been met.

16 (g) In this section, "board" means the Alaska State Pension Investment Board.

17 \* Sec. 21. AS 39.50.200(b) is amended by adding a new paragraph to read:

18 (54) Alaska State Pension Investment Board (AS 37.10.210).

19 \* Sec. 22. AS 44.25.020 is amended to read:

20 Sec. 44.25.020. DUTIES OF DEPARTMENT. The Department of Revenue shall

21 (1) enforce the tax laws of the state;

22 (2) collect, account for, have custody of, invest, and manage all state funds and  
23 all revenues of the state except revenues incidental to a program of licensing and regulation  
24 carried on by another state department and funds managed and invested by the Alaska State  
25 Pension Investment Board;

26 (3) register cattle brands;

27 (4) supply necessary clerical and administrative services for the Alcoholic  
28 Beverage Control Board; [AND]

29 (5) invest and manage the balance of the power development fund in accordance  
30 with AS 44.83.386;

31 (6) in accordance with the policies established by the board of trustees of the

1 Alaska State Pension Investment Board, collect, account for, have custody of, invest, and  
2 manage the state funds for which the board is responsible.

3 \* Sec. 23. AS 44.25 is amended by adding a new section to read:

4 Sec. 44.25.028. CONFLICT OF INTEREST FOR ALASKA STATE PENSION  
5 INVESTMENT BOARD. (a) The commissioner of revenue may designate employees of the  
6 department who are subject to the provisions of AS 39.50 because of their responsibility for  
7 participating in the management or investment of the funds for which the Alaska State Pension  
8 Investment Board is responsible.

9 (b) If an officer or employee of the department with responsibility for funds for which  
10 the Alaska State Pension Investment Board is responsible acquires, owns, or controls an interest,  
11 direct or indirect, in an entity or project in which assets under the control of the board are  
12 invested, the officer or employee shall immediately disclose the interest to the board. The  
13 disclosure is a matter of public record and shall be included in the minutes of the board meeting  
14 next following the disclosure. The commissioner shall adopt regulations to restrict officers and  
15 employees of the department from having a substantial interest in an entity or project in which  
16 assets under the control of the board are invested.

17 (c) Failure to comply with the requirements of this section or regulations enacted under  
18 it is grounds for termination of employment.

19 \* Sec. 24. AS 39.45.030(b) is repealed.

20 \* Sec. 25. TRANSITION. All litigation, hearings, investigations, and other proceedings pending  
21 under a law amended or repealed by this Act, or in connection with functions transferred by this Act,  
22 continue in effect and may be continued and completed notwithstanding a transfer, amendment, or repeal  
23 provided for in this Act. Orders and regulations issued or adopted under authority of a law amended  
24 or repealed by this Act remain in effect for the term issued, or until revoked, vacated, or otherwise  
25 modified under the provisions of this Act. All contracts, rights, liabilities, and obligations created by  
26 or under a law amended or repealed by this Act, and in effect on the effective date set out in sec. 30 of  
27 this Act, remain in effect notwithstanding this Act's taking effect. Records, equipment, and other  
28 property of agencies of the state whose functions are transferred under this Act shall be transferred  
29 commensurate with the provisions of this Act.

30 \* Sec. 26. ORGANIZATION OF TRUSTEES. (a) Notwithstanding AS 37.10.210(c), enacted by  
31 sec. 1 of this Act, the initial terms of the members, other than the commissioner of revenue, of the board

1 of trustees of the Alaska State Pension Investment Board shall be as follows:

2 (1) one member elected from the public employees' retirement system and one appointed  
3 member shall serve terms of four years;

4 (2) one member elected from the teachers' retirement system and one appointed member  
5 shall serve terms of three years;

6 (3) one member elected from the public employees' retirement system and one appointed  
7 member shall serve terms of two years;

8 (4) one member elected from the teachers' retirement system shall serve a one-year term.

9 (b) The board of trustees of the Alaska State Pension Investment Board may hold organizational  
10 meetings as soon as a quorum of the board has been appointed to or selected for the board.

11 \* Sec. 27. AS 37.10.210 and 37.10.230 - 37.10.390, enacted by sec. 1 of this Act, and sec. 26 of this  
12 Act take effect July 1, 1992.

13 \* Sec. 28. Except as provided in sec. 27 of this Act, this Act takes effect on the earlier of July 1,  
14 1993, or the date established by resolution of the board of trustees of the Alaska State Pension  
15 Investment Board for the transfer to it of securities and assets of all the funds of the retirement systems,  
16 as defined in AS 37.10.390, enacted by sec. 1 of this Act, and the receipts of the employee benefits  
17 program established under AS 39.30.150 - 39.50.180 and of the deferred compensation programs under  
18 AS 39.45. The board shall promptly provide the revisor of statutes and the lieutenant governor with a  
19 copy of this resolution.

HOUSE CS FOR CS FOR SENATE BILL NO. 329 ( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATORS POURCHOT, Sturgulewski, Duncan, Collins, Pearce, Rodey, Kerttula, Craft, Uehling, Shultz, Eliason

REPRESENTATIVES Donley, Navarre, Ulmer

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the Alaska State Pension Investment Board; relating to management  
2 and investment of state pension funds, receipts of the supplemental employee benefits  
3 program, receipts of the deferred compensation program, and other state funds; and  
4 providing for an effective date."

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

6 \* Section 1. AS 37.10 is amended by adding new sections to read:

7 ARTICLE 5. ALASKA STATE PENSION INVESTMENT BOARD.

8 Sec. 37.10.210. ALASKA STATE PENSION INVESTMENT BOARD. (a) There is  
9 established the Alaska State Pension Investment Board in the Department of Revenue. The  
10 purpose of the board is to provide prudent and productive management and investment of state  
11 pension funds and, upon agreement with the commissioner of the department or the fiduciary  
12 responsible for the fund, of other state funds.

13 (b) The board consists of eight trustees. Two of the trustees shall be elected by the  
14 members of the public employees' retirement system from the membership of the system.

1 Nominations may be made by the Public Employees' Retirement Board or by petition signed by  
2 at least 10 persons eligible to vote in the election. One of the trustees elected from the  
3 membership of the public employees' retirement system must be a participant in the supplemental  
4 employee benefits program established under AS 39.30.150 - 39.30.180. Two of the trustees  
5 shall be elected by the members of the teachers' retirement system from the membership of the  
6 system. Nominations may be made by the Teachers' Retirement Board or by petition signed by  
7 at least 10 persons eligible to vote in the election. The governor shall appoint three trustees. At  
8 least one of the appointed trustees must represent employers, other than the state, who participate  
9 in one of the retirement systems. The appointed trustees must have business and investment  
10 experience. The commissioner of revenue serves as a trustee.

11 (c) The appointed and elected trustees shall serve for staggered terms of four years and  
12 may be reappointed or reelected to the board.

13 (d) The governor may, by written notice to the trustee, remove an appointed trustee for  
14 cause. The Public Employees' Retirement Board may, by written notice to the trustee, remove  
15 a member elected from the membership of that retirement system for cause. The Teachers'  
16 Retirement Board may, by written notice to the trustee, remove a member elected from the  
17 membership of that retirement system for cause. After a trustee receives written notice of  
18 removal, the trustee may not participate in board business and may not be counted for purposes  
19 of establishing a quorum.

20 (e) A vacancy on the board of trustees shall be promptly filled in the same manner as  
21 the seat was originally filled. A person filling a vacancy holds office for the balance of the  
22 unexpired term of the person's predecessor. A vacancy on the board does not impair the  
23 authority of a quorum of the board to exercise all the powers and perform all the duties of the  
24 board.

25 (f) The board of trustees shall annually elect a chair from among its members.

26 (g) Five trustees constitute a quorum for the transaction of business and the exercise of  
27 the powers and duties of the board.

28 (h) A trustee may not designate another person to serve on the board in the absence of  
29 the trustee.

30 (i) The board shall adopt a policy concerning investment education for trustees.

31 Sec. 37.10.220. POWERS AND DUTIES OF THE BOARD. (a) The board shall

1 (1) hold regular and special meetings at the call of the chair or of at least four  
2 members;

3 (2) establish investment policies for the funds for which it is responsible after  
4 reviewing recommendations from the investment advisory council and the Department of  
5 Revenue;

6 (3) submit long-range and quarterly investment reports to the Legislative Budget  
7 and Audit Committee;

8 (4) report to the governor, the legislature, and employers participating in the  
9 retirement systems by the first day of each regular legislative session concerning the investment  
10 of funds for which the board is responsible, including financial and investment policies  
11 established by the board, and enclose a summary of the most recent performance evaluations of  
12 the funds managed by the board;

13 (5) contract with external performance evaluators to review the performance of  
14 each fund for which the board is responsible and report each year on the fund's condition to the  
15 board of trustees and to the other appropriate boards;

16 (6) engage independent certified public accountants to perform an annual audit  
17 of each of the funds for which the board is responsible and to report to the board with the results  
18 of the audit;

19 (7) review the actuarial earnings assumption for each fund for which the board  
20 is responsible every two years and report its findings and recommendations to the appropriate  
21 board or agency;

22 (8) after reviewing the recommendations from the Department of Revenue and  
23 the advisory council, select and retain the external investment managers and custodians for the  
24 funds managed by the board;

25 (9) develop an annual operating budget plan and present it to the Department of  
26 Revenue, the office of management and budget, and the legislature.

27 (b) The board may

28 (1) employ outside investment advisors to review investment policies and make  
29 recommendations to the board;

30 (2) employ legal counsel; *subject to the approval of the Army*

31 (3) contract for services necessary to carry out its powers and duties; *qwt*

*Not adopted* →

1 (4) enter into an agreement with the commissioner of the department or the  
2 fiduciary responsible for another state fund to assume fiduciary or management responsibilities  
3 for investing the other state fund;

4 (5) do all acts necessary to carry out the powers expressly granted or necessarily  
5 implied in this chapter.

6 (c) The board shall meet annually, either jointly or separately, with the Public  
7 Employees' Retirement Board, the Teachers' Retirement Board, and the Department of  
8 Administration to review benefit administration of each of the retirement systems and of the  
9 employee benefits program established under AS 39.30.150 - 39.30.180 and the deferred  
10 compensation program under AS 39.45. The Department of Administration and each retirement  
11 board shall report to the investment board on benefit administration and other issues for that  
12 retirement system or program that may affect the investment and management of the fund.

13 (d) The chair of the board shall appoint a trustee to present the board's position to  
14 legislative committees when the committees are considering the board's operating budget. The  
15 board is otherwise subject to AS 37.07.

16 Sec. 37.10.230. CONFLICTS OF INTEREST. (a) Trustees are subject to the provisions  
17 of AS 39.50.

18 (b) If a trustee acquires, owns, or controls an interest, direct or indirect, in an entity or  
19 project in which assets under the control of the board are invested, the trustee shall immediately  
20 disclose the interest to the board. The disclosure is a matter of public record and shall be  
21 included in the minutes of the board meeting next following the disclosure. The board shall  
22 adopt regulations to restrict trustees from having a substantial interest in an entity or project in  
23 which assets under the control of the board are invested.

24 Sec. 37.10.240. REGULATIONS AND OPEN MEETINGS. (a) The board may adopt  
25 regulations to implement AS 37.10.210 - 37.10.390. Regulations adopted by the board are not  
26 subject to the Administrative Procedure Act (AS 44.62). The board shall adopt regulations  
27 required by AS 36.30.015(f) relating to procurement. The board shall comply with the  
28 requirements of AS 44.62.310 - 44.62.312.

29 (b) Notwithstanding (a) of this section, a regulation adopted under AS 37.10.210 -  
30 37.10.390 shall be published in the Alaska Administrative Register and Alaska Administrative  
31 Code for informational purposes. A regulation adopted under this section shall conform to the

1 style and format requirements of the drafting manual for administrative regulations that is  
2 published under AS 44.62.050.

3 (c) At least 30 days before the adoption, amendment, or repeal of a regulation under this  
4 chapter, the board shall provide notice of the action that is being considered. The notice must  
5 include publication in one or more newspapers of general circulation in each judicial district of  
6 the state.

7 (d) A regulation adopted under this chapter takes effect 30 days after adoption by the  
8 board unless a later effective date is stated in the regulation.

9 (e) Notwithstanding the other provisions of this section, a regulation may be adopted,  
10 amended, or repealed, effective immediately, as an emergency regulation. For an emergency  
11 regulation to be effective the board must find that the immediate adoption, amendment, or repeal  
12 of the regulation is necessary. The board shall, within 10 days after adoption of an emergency  
13 regulation, give notice of the adoption under (c) of this section. An emergency regulation  
14 adopted under this subsection may not remain in effect past the date of the next regular meeting  
15 of the board unless the board complies with the procedures set out in this section and adopts the  
16 regulation as a permanent regulation.

17 (f) In this section, "regulation" has the meaning given in AS 44.62.640(a).

18 Sec. 37.10.250. COMPENSATION OF TRUSTEES. Trustees, other than trustees who  
19 [are employees of the state or a political subdivision of the state, receive an honorarium of \$150  
20 for each day spent at a meeting of the board or at a meeting of a subcommittee of the board or ]  
21 at a public meeting as a representative of the board. Trustees who are state employees are  
22 entitled to administrative leave for service as a trustee. Trustees who are employees of a political  
23 subdivision of the state are entitled to leave benefits provided by their employers comparable to  
24 those provided to state employees for service as a trustee. Trustees are entitled to per diem and  
25 travel expenses authorized for boards and commissions under AS 39.20.180.

26 Sec. 37.10.260. STAFF. (a) The Department of Revenue shall provide staff for the  
27 board.

28 (b) The board may designate a trustee or an officer or employee of the Department of  
29 Revenue to be responsible for signing on behalf of the board a deed, contract, or other document  
30 that must be executed by or on behalf of the board.

31 Sec. 37.10.270. INVESTMENT ADVISORY COUNCIL. (a) The board shall appoint

1 an investment advisory council composed of at least three and not more than five members.  
2 Members of the council shall possess experience and expertise in financial investments and  
3 management of investment portfolios for public, corporate, or union pension benefit funds,  
4 foundations, or endowments.

5 (b) Members of the council serve at the pleasure of the board for staggered terms of three  
6 years.

7 (c) The board shall establish the compensation of members of the council. Members of  
8 the council are entitled to per diem and travel expenses authorized for boards and commissions  
9 under AS 39.20.180.

10 (d) The council shall

11 (1) review the investments made by the board;

12 (2) make recommendations to the board concerning the board's investment  
13 policies, investment strategy, and investment procedures;

14 (3) advise the board on selection of performance consultants and on the form and  
15 content of annual reports;

16 (4) provide other advice as requested by the board.

17 (e) With approval of the board, the council may contract with other state agencies to  
18 provide investment advice.

19 Sec. 37.10.280. INSURANCE. The board shall ensure that trustee assets and its own  
20 services are protected. The board may purchase insurance or provide for self-insurance retention  
21 in amounts recommended by the commissioner of revenue and approved by the board to cover  
22 the acts, including fiduciary acts, errors, and omissions of its board members and agents. Insur-  
23 ance must protect the board and the state from liability to others and from loss of trustee assets  
24 due to the acts or omissions of the trustees.

25 Sec. 37.10.290. EXEMPTION FROM TAXATION. Except as provided in  
26 AS 29.45.030(a) for property acquired through foreclosure or deed in lieu of foreclosure, the  
27 board and all properties at any time owned by it, managed by it, or held by it in trust, and the  
28 income from those activities, are exempt from all taxes and assessments in the state. All security  
29 instruments issued by the board and income from them are exempt from all taxes and  
30 assessments in the state, including transfer taxes.

31 Sec. 37.10.300. LIMITATIONS. The board may not engage in commercial banking

1 activity or private trust activity. The board may not act as a depository or trustee for a private  
2 person, association, or corporation. The board may not act as a lender to a private person,  
3 association, or corporation of money from any source except state funds under management by  
4 the board.

5 Sec. 37.10.390. DEFINITIONS. In AS 37.10.210 - 37.10.390, unless the context  
6 otherwise requires,

7 (1) "board" means the board of trustees of the Alaska State Pension Investment  
8 Board;

9 (2) "retirement systems" means the teachers' retirement system, the judicial  
10 retirement system, the Alaska National Guard and Alaska Naval Militia retirement system, and  
11 the public employees' retirement system.

12 \* Sec. 2. AS 14.25.035(d) is amended to read:

13 (d) The commissioner of administration shall report to the board concerning the condition  
14 and administration of the system. The reports shall be distributed to the members of the system.  
15 The Alaska State Pension Investment Board [COMMISSIONER OF REVENUE] shall provide  
16 reports to the board on the condition and investment performance of the teachers' retirement trust  
17 fund including a summary of an annual external performance review.

18 \* Sec. 3. AS 14.25.035 is amended by adding a new subsection to read:

19 (j) The board shall adopt regulations for the election of trustees to the Alaska State  
20 Pension Investment Board and for removal from the investment board of trustees elected from  
21 the system.

22 \* Sec. 4. AS 14.25.180 is amended to read:

23 Sec. 14.25.180. MANAGEMENT AND INVESTMENT OF FUND. (a) The Alaska  
24 State Pension Investment Board [COMMISSIONER OF REVENUE] is the [TREASURER OF  
25 THE SYSTEM AND THE] fiduciary of the fund. In managing the fund, the Alaska State  
26 Pension Investment Board [COMMISSIONER OF REVENUE] shall

27 (1) consider the status of the fund's investments and the system's liabilities on  
28 both a current and a probable future basis;

29 (2) determine the appropriate investment objectives for the fund;

30 (3) establish investment policies aimed at achieving the objectives; and

31 (4) act only in regard to the best financial interests of the system's plan and

1 beneficiaries.

2 (b) The Alaska State Pension Investment Board [COMMISSIONER OF REVENUE]  
3 may invest the fund on the basis of probable total rate of return without regard to the distinction  
4 between principal and income or to the generation of income.

5 (c) In carrying out investment duties under this chapter, the Alaska State Pension  
6 Investment Board [COMMISSIONER OF REVENUE] has the same powers and duties in regard  
7 to the teacher's retirement trust fund as are provided in AS 37.10.071, except that the standard  
8 of prudence that the board [COMMISSIONER] must obey under AS 37.10.071(c) shall be in  
9 regard to the management of large trust investments rather than large investments.

10 \* Sec. 5. AS 14.25.200(a) is amended to read:

11 (a) Except as provided in AS 29.45.030(a)(1), member [MEMBER] contributions and  
12 other amounts held in the system on behalf of a member or other person who is or may become  
13 eligible for benefits under the system are exempt from Alaska state and municipal taxes and are  
14 not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge  
15 of any kind, either voluntary or involuntary, before they are received by the person entitled to  
16 the amount under the terms of the system, and any attempt to anticipate, alienate, sell, transfer,  
17 assign, pledge, encumber, charge, or otherwise dispose of any right to amounts accrued in the  
18 system is void. However, a member's right to receive benefits may be assigned under a qualified  
19 domestic relations order.

20 \* Sec. 6. AS 22.25.048(c) is amended to read:

21 (c) The Alaska State Pension Investment Board [COMMISSIONER OF REVENUE]  
22 is the [TREASURER OF THE SYSTEM AND THE] fiduciary of the fund and has the same  
23 powers and duties under this section in regard to the judicial retirement trust fund as are provided  
24 in AS 14.25.180.

25 \* Sec. 7. AS 26.05.228(c) is amended to read:

26 (c) The Alaska State Pension Investment Board [COMMISSIONER OF REVENUE]  
27 is the [TREASURER OF THE SYSTEM AND THE] fiduciary of the fund and has the same  
28 powers and duties under this section in regard to the fund as are provided under AS 14.25.180.

29 \* Sec. 8. AS 36.30.015(f) is amended to read:

30 (f) The board of directors of the Alaska Housing Finance Corporation, notwithstanding  
31 AS 18.56.088, and the board of directors of the Alaska State Housing Authority shall adopt

1 regulations under the Administrative Procedure Act (AS 44.62) and the board of trustees of the  
2 Alaska State Pension Investment Board shall adopt regulations under AS 37.10.240 to  
3 govern the procurement of supplies, services, professional services, and construction for the  
4 respective public corporations and board. The regulations must

5 (1) reflect competitive bidding principles and provide vendors reasonable and  
6 equitable opportunities to participate in the procurement process; and

7 (2) include procurement methods to meet emergency and extraordinary  
8 circumstances.

9 \* Sec. 9. AS 36.30.850(b)(15) is amended to read:

10 (15) a contract that is a delegation, in whole or in part, of investment powers held  
11 by the commissioner of revenue under [AS 14.25.180,] AS 14.40.400, AS 14.42.200, 14.42.210,  
12 AS 18.56.095, [AS 22.25.048, AS 26.05.228,] AS 37.10.070, 37.10.071, or AS 37.14 [, OR  
13 AS 39.35.080];

14 \* Sec. 10. AS 36.30.990(1) is amended to read:

15 (1) "agency"

16 (A) means a department, institution, board, commission, division,  
17 authority, public corporation, the Alaska Pioneers' Home, or other administrative unit of  
18 the executive branch of state government;

19 (B) does not include

20 (i) the University of Alaska;

21 (ii) the Alaska State Housing Authority;

22 (iii) the Alaska Railroad Corporation;

23 (iv) the Alaska Housing Finance Corporation;

24 (v) a regional Native housing authority created under AS 18.55.996

25 [,] or a regional electrical authority created under AS 18.57.020;

26 (vi) the Alaska Aerospace Development Corporation;

27 (vii) the Alaska State Pension Investment Board;

28 \* Sec. 11. AS 37.05.146 is amended to read:

29 Sec. 37.05.146. DEFINITION OF PROGRAM RECEIPTS. In AS 37.05.142 - 37.05.146  
30 and AS 37.07.080, "program receipts" means fees, charges, income earned on assets, and other  
31 state money received by a state agency in connection with the performance of its functions; all

1 program receipts except the following are general fund program receipts:

2 (1) federal receipts;

3 (2) University of Alaska receipts (AS 14.40.491);

4 (3) individual, foundation, or corporation gifts, grants, or bequests that by their  
5 terms are restricted to a specific purpose;

6 (4) receipts of the following funds:

7 (A) highway working capital fund (AS 44.68.210);

8 (B) correctional industries fund (AS 33.32.020);

9 (C) loan funds;

10 (D) international airport revenue fund (AS 37.15.430);

11 (E) funds managed by the Alaska State Housing Authority (AS 18.55.020),  
12 the Alaska Housing Finance Corporation (AS 18.56.020), the Alaska Railroad Corporation  
13 (AS 42.40.010), the Municipal Bond Bank Authority (AS 44.85.020), the Alaska  
14 Aerospace Development Corporation (AS 14.40.821), or the Alaska Industrial  
15 Development and Export Authority (AS 44.88.020);

16 (F) fish and game fund (AS 16.05.100);

17 (G) school fund (AS 43.50.140);

18 (H) training and building fund (AS 23.20.130);

19 (I) retirement funds (AS 14.25, AS 22.25, AS 26.05.222, AS 39.35, and  
20 former AS 39.37);

21 (J) permanent fund (art. IX, sec. 15, Alaska Constitution);

22 (K) public school fund (AS 37.14.110);

23 (L) second injury fund (AS 23.30.040);

24 (M) fishermen's fund (AS 23.35.060);

25 (N) FICA administration fund (AS 39.30.050);

26 (O) receipts of the employee benefits program established under AS 39.30.150 -  
27 39.30.180;

28 (P) receipts of the deferred compensation program established under  
29 AS 39.45.

30 \* Sec. 12. AS 37.10.071 is amended to read:

31 Sec. 37.10.071. INVESTMENT POWERS AND DUTIES. (a) In making investments

- 1 under this section, the fiduciary of a state fund [COMMISSIONER OF REVENUE] shall
- 2 (1) act as official custodian of cash and investments by securing adequate and safe
- 3 custodial facilities for them;
- 4 (2) receive all items of cash and investments;
- 5 (3) collect and deposit the principal of and income from owned or acquired
- 6 investments;
- 7 (4) invest and reinvest the assets in accordance with this section;
- 8 (5) receive and spend appropriations to cover the cost of the exercise of duties
- 9 under this section;
- 10 (6) exercise the powers of an owner with respect to the assets;
- 11 (7) perform all acts, not prohibited by this section, whether or not expressly
- 12 authorized, that the fiduciary [COMMISSIONER] considers necessary or proper in administering
- 13 the assets;
- 14 (8) maintain accounting records in accordance with generally accepted
- 15 [INVESTMENT] accounting principles;
- 16 (9) engage an independent certified public accountant to conduct an annual audit
- 17 of the financial condition and investment transactions;
- 18 (10) enter into and enforce contracts or agreements considered necessary,
- 19 convenient, or desirable for the investment purposes of this section; and
- 20 (11) when choosing to acquire or dispose of investments, secure competitive
- 21 national or international market rates or prices, or the equivalence of those rates or prices in the
- 22 judgment of the fiduciary [COMMISSIONER].
- 23 (b) Under this section, the fiduciary of a state fund or the fiduciary's
- 24 [COMMISSIONER OR THE COMMISSIONER'S] designee may
- 25 (1) delegate investment, custodial, or depository authority on a discretionary or
- 26 nondiscretionary basis to officers or employees of the state or to independent firms, banks,
- 27 financial institutions, or trust companies [,] by designation through appointments, contracts, or
- 28 letters of [OR] authority;
- 29 (2) acquire or dispose of investments either directly, indirectly, or through
- 30 investment pools or trusts, by competitive or negotiated agreements, contracts, or auctions, in
- 31 public or private markets;

1 (3) concentrate or diversify investments as the fiduciary [COMMISSIONER]  
2 considers appropriate to increase the probable total rate of return or to decrease the overall  
3 exposure to potentially adverse market value risks;

4 (4) protect the market value or the rate of return of the investments by entering  
5 into forward agreements to buy or sell assets at a future date as a hedge against existing held  
6 assets or as a precommitment of future cash flows;

7 (5) lend assets, under an agreement and for a fee, against deposited collateral of  
8 equivalent market value;

9 (6) borrow assets on a short-term basis, under an agreement and for a fee, against  
10 the deposit of collateral consisting of other assets in order to accommodate temporary cash or  
11 investment needs;

12 (7) hold investments in bearer or registered form in the name of the state, a fund,  
13 or nominees authorized by the fiduciary [COMMISSIONER];

14 (8) utilize consultants, advisors, custodians, investment services, and legal counsel  
15 for assistance in investment matters on either a continuing or a limited-term basis and with or  
16 without compensation;

17 (9) declare records to be confidential and exempt from AS 09.25.110 and  
18 09.25.120 if the records contain information that discloses the particulars of the business or the  
19 affairs of a private enterprise, investor, borrower, advisor, consultant, counsel, or manager.

20 (c) In exercising investment, custodial, or depository powers or duties under this section,  
21 the fiduciary of a state fund shall apply the prudent investor rule and exercise the fiduciary  
22 duty in the sole financial best interest of the fund entrusted to the fiduciary. Among

23 beneficiaries of a fund, the fiduciaries shall treat beneficiaries with impartiality

24 [COMMISSIONER SHALL EXERCISE THE JUDGMENT AND CARE UNDER THE  
25 CIRCUMSTANCES THEN PREVAILING THAT AN INSTITUTIONAL INVESTOR OF  
26 ORDINARY PROFESSIONAL PRUDENCE, DISCRETION, AND INTELLIGENCE  
27 EXERCISES IN MANAGING LARGE INVESTMENTS WITH CONSIDERATION FOR THE  
28 PURPOSE OF THE FUND, THE INVESTMENT OBJECTIVES, THE CONTINUING  
29 DISPOSITION OF THE FUND'S INVESTMENTS, AND THE PROBABLE SAFETY OF THE  
30 CAPITAL AS WELL AS THE PROBABLE INVESTMENT RETURNS].

31 (d) In exercising investment, custodial, or depository powers or duties under this section,

1 the fiduciary or the fiduciary's [COMMISSIONER OR A] designee [OF THE  
2 COMMISSIONER] is liable for a breach of a duty that is assigned or delegated under this  
3 section, or under AS 14.25.180, AS 14.40.400(b), AS 37.10.070, AS 37.14.110(c), 37.14.160,  
4 37.14.170, or AS 39.35.080. However, the fiduciary or the [COMMISSIONER OR THE  
5 COMMISSIONER'S] designee is not liable for a breach of a duty that has been delegated to  
6 another person if the delegation is prudent under the applicable standard of prudence set out in  
7 statute or if the duty is assigned by law to another person, except to the extent that the fiduciary  
8 [COMMISSIONER] or designee

9 (1) knowingly participates [PARTICIPATE] in, or knowingly undertakes to  
10 conceal, an act or omission of another person [,] knowing that the act or omission is a breach of  
11 that person's duties under this chapter;

12 (2) by failure to comply with this section in the administration of specific  
13 responsibilities, enables another person to commit a breach of duty; or

14 (3) has knowledge of a breach of duty by another person, unless the fiduciary  
15 [COMMISSIONER] or designee makes reasonable efforts under the circumstances to remedy the  
16 breach.

17 (e) The state shall defend and indemnify the fiduciary [COMMISSIONER] or an officer  
18 or employee of the state against liability under (d) of this section to the extent that the alleged  
19 act or omission was performed in good faith and was prudent under the applicable standard of  
20 prudence.

21 (f) In this section, "fiduciary of a state fund" or "fiduciary" ["COMMISSIONER OF  
22 REVENUE" OR "COMMISSIONER"] means

23 (1) the commissioner of revenue for investments under [AS 14.25.180 OR]  
24 AS 37.10.070; [OR]

25 (2) with respect to the Alaska State Pension Investment Board, for  
26 investments under AS 14.25.180,

27 (A) each trustee who serves on the board of trustees; and

28 (B) any other person who exercises control or authority with respect  
29 to management or disposition of assets for which the board is responsible or who  
30 gives investment advice to the board; or

31 (3) the person or body provided by law to manage the investments [,] for

1 investments not subject to AS 14.25.180 or AS 37.10.070.

2 \* Sec. 13. AS 37.14.160 is amended to read:

3 Sec. 37.14.160. DUTIES OF THE COMMISSIONER OF REVENUE. The commissioner  
4 of revenue is the treasurer of the trust fund created in AS 37.14.110 and shall

5 (1) in carrying out investment duties under this section, exercise the same  
6 powers and duties established for the Alaska State Pension Investment Board in  
7 AS 14.25.180(c);

8 (2) deposit the principal and income from investments in separate principal and  
9 income accounts for the fund;

10 (3) invest and maintain accounting records that distinguish between the principal  
11 and income of the fund;

12 (4) provide reports to the board established under AS 37.14.120 on the condition  
13 and investment performance of the fund.

14 \* Sec. 14. AS 39.30 is amended by adding a new section to read:

15 Sec. 39.30.175. INVESTMENT OF BENEFIT PROGRAM RECEIPTS. (a) The Alaska  
16 State Pension Investment Board is the fiduciary of the mandatory receipts, under  
17 AS 39.30.150(a), of the employee benefits program established under AS 39.30.150 - 39.30.180  
18 and has the same powers and duties concerning the management and investment in regard to  
19 those receipts as are provided under AS 14.25.180.

20 (b) The board may provide a range of investment options and permit a participant or  
21 beneficiary of the program to exercise control over the assets in the individual employee annuity  
22 account established under AS 39.30.150(a). If the board offers investment options, and if a  
23 participant or beneficiary exercises control over the assets in the individual employee annuity  
24 account,

25 (1) the participant or beneficiary is not considered a fiduciary for any reason on  
26 the basis of exercising that control; and

27 (2) a person who is otherwise a fiduciary is not liable under this section for any  
28 loss, or by reason of any breach, that results from the individual's exercise of control.

29 (c) If the board is considering entering into a contract or modifying an existing contract  
30 concerning the management or investment of the mandatory receipts of the supplemental  
31 employee benefits program, the board shall consult with the commissioner of administration

1 before making a decision on the issue.

2 (d) The board shall develop a contingency plan that addresses the board's response to  
3 possible future investment problems.

4 (e) Except to the extent clearly set out in the terms of the plan document offered by the  
5 employer to the employee, the employer is not liable to the employee for investment losses if the  
6 prudent investment standard has been met.

7 (f) In this section, "board" means the Alaska State Pension Investment Board.

8 \* Sec. 15. AS 39.35.020 is amended to read:

9 Sec. 39.35.020. ADMINISTRATION. The commissioner of administration is responsible  
10 for the administration of the system and for carrying out this chapter. In addition, the  
11 commissioner shall

12 (1) maintain the accounts of the system;

13 (2) make payments for the various purposes specified;

14 (3) submit periodic reports or statements of account that are needed;

15 (4) issue a statement of account to an employee requesting it showing the amount  
16 of the employee's contributions to the system;

17 (5) as soon as possible after the close of each fiscal year, and not later than six  
18 months after the close of each fiscal year, send to the governor, the legislature, and the board an  
19 annual statement on the operations of the system containing

20 (A) a balance sheet;

21 (B) a statement of income and expenditures for the year;

22 (C) a report on an actuarial valuation of its assets and liabilities;

23 (D) a summary of assets held in the pension fund listed by the categories  
24 of investment, as provided by the Alaska State Pension Investment Board  
25 [COMMISSIONER OF REVENUE];

26 (E) other statistical financial data that are necessary for a proper  
27 understanding of the financial condition of the system and the result of its operations;

28 (6) establish a public employees retirement trust fund in which the assets of the  
29 system shall be deposited and held;

30 (7) engage an independent certified public accountant to conduct an annual audit  
31 of the system's accounts and the annual report of the system's financial condition and activity;

1 (8) report to the board concerning the condition and administration of the system  
2 and distribute the report to the members of the system.

3 \* Sec. 16. AS 39.35.040 is amended by adding a new paragraph to read:

4 (11) adopt regulations for the election of trustees to the Alaska State Pension  
5 Investment Board and for removal from the investment board of trustees elected from the system.

6 \* Sec. 17. AS 39.35.080 is amended to read:

7 Sec. 39.35.080. DUTIES OF THE ALASKA STATE PENSION INVESTMENT  
8 BOARD [COMMISSIONER OF REVENUE]. The Alaska State Pension Investment Board  
9 [COMMISSIONER OF REVENUE] is the [TREASURER OF THE SYSTEM AND THE]  
10 fiduciary of the fund. The board [COMMISSIONER] has the same powers and duties  
11 established under this chapter in regard to the fund as are provided in AS 14.25.035(d) and  
12 14.25.180.

13 \* Sec. 18. AS 39.35.500 is amended to read:

14 Sec. 39.35.500. SAFEGUARD OF EMPLOYEE FUNDS HELD BY THE SYSTEM.  
15 Except as provided in AS 29.45.030(a)(1)(D), employee [EMPLOYEE] contributions and other  
16 amounts held in the system are exempt from Alaska state and local taxes. Amounts held on  
17 behalf of, or payable to, any employee or other person who is or may become eligible for  
18 benefits under the system are not subject to anticipation, alienation, sale, transfer, assignment,  
19 pledge, encumbrance, or charge of any kind, either voluntary or involuntary, before being  
20 received by the person entitled to the amount under the terms of the system. An attempt to  
21 anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, or otherwise dispose of a  
22 right to amounts held under the system is void. However, an employee's right to receive benefits  
23 may be assigned under a qualified domestic relations order.

24 \* Sec. 19. AS 39.45.030(a) is repealed and reenacted to read:

25 (a) The Alaska State Pension Investment Board is authorized, subject to contracts with  
26 individual employees, to invest the funds held under a deferred compensation program. The  
27 board has the same powers and duties concerning the management and investment in regard to  
28 those funds as are provided under AS 14.25.180.

29 \* Sec. 20. AS 39.45.030 is amended by adding new subsections to read:

30 (c) The board may provide a range of investment options and permit a participant or  
31 beneficiary of the program to exercise control over the assets in the individual's account. If the

1 board offers investment options, and if a participant or beneficiary exercises control over the  
2 assets in the individual's account,

3 (1) the participant or beneficiary is not considered a fiduciary for any reason on  
4 the basis of exercising that control; and

5 (2) a person who is otherwise a fiduciary is not liable under this section for any  
6 loss, or by reason of any breach, that results from the individual's exercise of control.

7 (d) If the board is considering entering into a contract or modifying an existing contract  
8 concerning the management or investment of funds of the deferred compensation program, the  
9 board shall consult with the commissioner of administration before making a decision on the  
10 issue.

11 (e) The board shall develop a contingency plan that addresses the board's response to  
12 possible future investment problems.

13 (f) Except to the extent clearly set out in the terms of the plan document offered by the  
14 employer to the employee, the employer is not liable to the employee for investment losses if the  
15 prudent investment standard has been met.

16 (g) In this section, "board" means the Alaska State Pension Investment Board.

17 \* Sec. 21. AS 39.50.200(b) is amended by adding a new paragraph to read:

18 (54) Alaska State Pension Investment Board (AS 37.10.210).

19 \* Sec. 22. AS 44.25.020 is amended to read:

20 Sec. 44.25.020. DUTIES OF DEPARTMENT. The Department of Revenue shall

21 (1) enforce the tax laws of the state;

22 (2) collect, account for, have custody of, invest, and manage all state funds and  
23 all revenues of the state except revenues incidental to a program of licensing and regulation  
24 carried on by another state department and funds managed and invested by the Alaska State  
25 Pension Investment Board;

26 (3) register cattle brands;

27 (4) supply necessary clerical and administrative services for the Alcoholic  
28 Beverage Control Board; [AND]

29 (5) invest and manage the balance of the power development fund in accordance  
30 with AS 44.83.386;

31 (6) in accordance with the policies established by the board of trustees of the

1 Alaska State Pension Investment Board, collect, account for, have custody of, invest, and  
2 manage the state funds for which the board is responsible.

3 \* Sec. 23. AS 44.25 is amended by adding a new section to read:

4 Sec. 44.25.028. CONFLICT OF INTEREST FOR ALASKA STATE PENSION  
5 INVESTMENT BOARD. (a) The commissioner of revenue may designate employees of the  
6 department who are subject to the provisions of AS 39.50 because of their responsibility for  
7 participating in the management or investment of the funds for which the Alaska State Pension  
8 Investment Board is responsible.

9 (b) If an officer or employee of the department with responsibility for funds for which  
10 the Alaska State Pension Investment Board is responsible acquires, owns, or controls an interest,  
11 direct or indirect, in an entity or project in which assets under the control of the board are  
12 invested, the officer or employee shall immediately disclose the interest to the board. The  
13 disclosure is a matter of public record and shall be included in the minutes of the board meeting  
14 next following the disclosure. The commissioner shall adopt regulations to restrict officers and  
15 employees of the department from having a substantial interest in an entity or project in which  
16 assets under the control of the board are invested.

17 (c) Failure to comply with the requirements of this section or regulations enacted under  
18 it is grounds for termination of employment.

19 \* Sec. 24. AS 39.45.030(b) is repealed.

20 \* Sec. 25. TRANSITION. All litigation, hearings, investigations, and other proceedings pending  
21 under a law amended or repealed by this Act, or in connection with functions transferred by this Act,  
22 continue in effect and may be continued and completed notwithstanding a transfer, amendment, or repeal  
23 provided for in this Act. Orders and regulations issued or adopted under authority of a law amended  
24 or repealed by this Act remain in effect for the term issued, or until revoked, vacated, or otherwise  
25 modified under the provisions of this Act. All contracts, rights, liabilities, and obligations created by  
26 or under a law amended or repealed by this Act, and in effect on the effective date set out in sec. 30 of  
27 this Act, remain in effect notwithstanding this Act's taking effect. Records, equipment, and other  
28 property of agencies of the state whose functions are transferred under this Act shall be transferred  
29 commensurate with the provisions of this Act.

30 \* Sec. 26. ORGANIZATION OF TRUSTEES. (a) Notwithstanding AS 37.10.210(c), enacted by  
31 sec. 1 of this Act, the initial terms of the members, other than the commissioner of revenue, of the board

1 of trustees of the Alaska State Pension Investment Board shall be as follows:

2 (1) one member elected from the public employees' retirement system and one appointed  
3 member shall serve terms of four years;

4 (2) one member elected from the teachers' retirement system and one appointed member  
5 shall serve terms of three years;

6 (3) one member elected from the public employees' retirement system and one appointed  
7 member shall serve terms of two years;

8 (4) one member elected from the teachers' retirement system shall serve a one-year term.

9 (b) The board of trustees of the Alaska State Pension Investment Board may hold organizational  
10 meetings as soon as a quorum of the board has been appointed to or selected for the board.

11 \* Sec. 27. AS 37.10.210 and 37.10.230 - 37.10.390, enacted by sec. 1 of this Act, and sec. 26 of this  
12 Act take effect July 1, 1992.

13 \* Sec. 28. Except as provided in sec. 27 of this Act, this Act takes effect on the earlier of July 1,  
14 1993, or the date established by resolution of the board of trustees of the Alaska State Pension  
15 Investment Board for the transfer to it of securities and assets of all the funds of the retirement systems,  
16 as defined in AS 37.10.390, enacted by sec. 1 of this Act, and the receipts of the employee benefits  
17 program established under AS 39.30.150 - 39.50.180 and of the deferred compensation programs under  
18 AS 39.45. The board shall promptly provide the revisor of statutes and the lieutenant governor with a  
19 copy of this resolution.



# Alaska State Legislature

SENATE

Official Business

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

## SENATE STATE AFFAIRS COMMITTEE

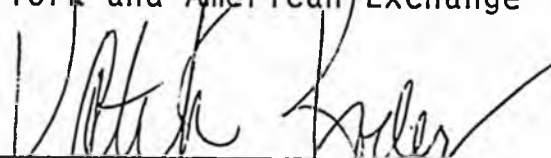
### LETTER OF INTENT

#### CSSB 329 (STA)

An Act establishing the Alaska State Pension Investment Board; relating to management and investment of state pension funds, receipts of the supplemental employee benefits program, receipts of the deferred compensation program and other state funds; and providing for an effective date.

Acting within the fiduciary responsibility under the Prudent Investor Rule, and provided that, in the judgement of the manager, Purchase/Sale execution and transaction cost are competitive with Non-Alaska affiliated brokers, active managers are encouraged to do business with brokerage firms having offices in Alaska. The managers and index account managers are not required to execute trades with Alaska firms if they are not competitive. All brokerage firms must be members of the New York and American Exchange

1/22/92  
Date

  
\_\_\_\_\_  
Senator Pat Rodey, Chair  
Senate/State Affairs Committee

*adopted by the Senate 1/23/92*

# Alaska State Pension Investment Board (ASPIB)

## *CSSB 329 (STA), Senator Pourchot*

A Board of Trustees established to manage the following funds:

Public Employees Retirement System Fund **\$3.2 billion**

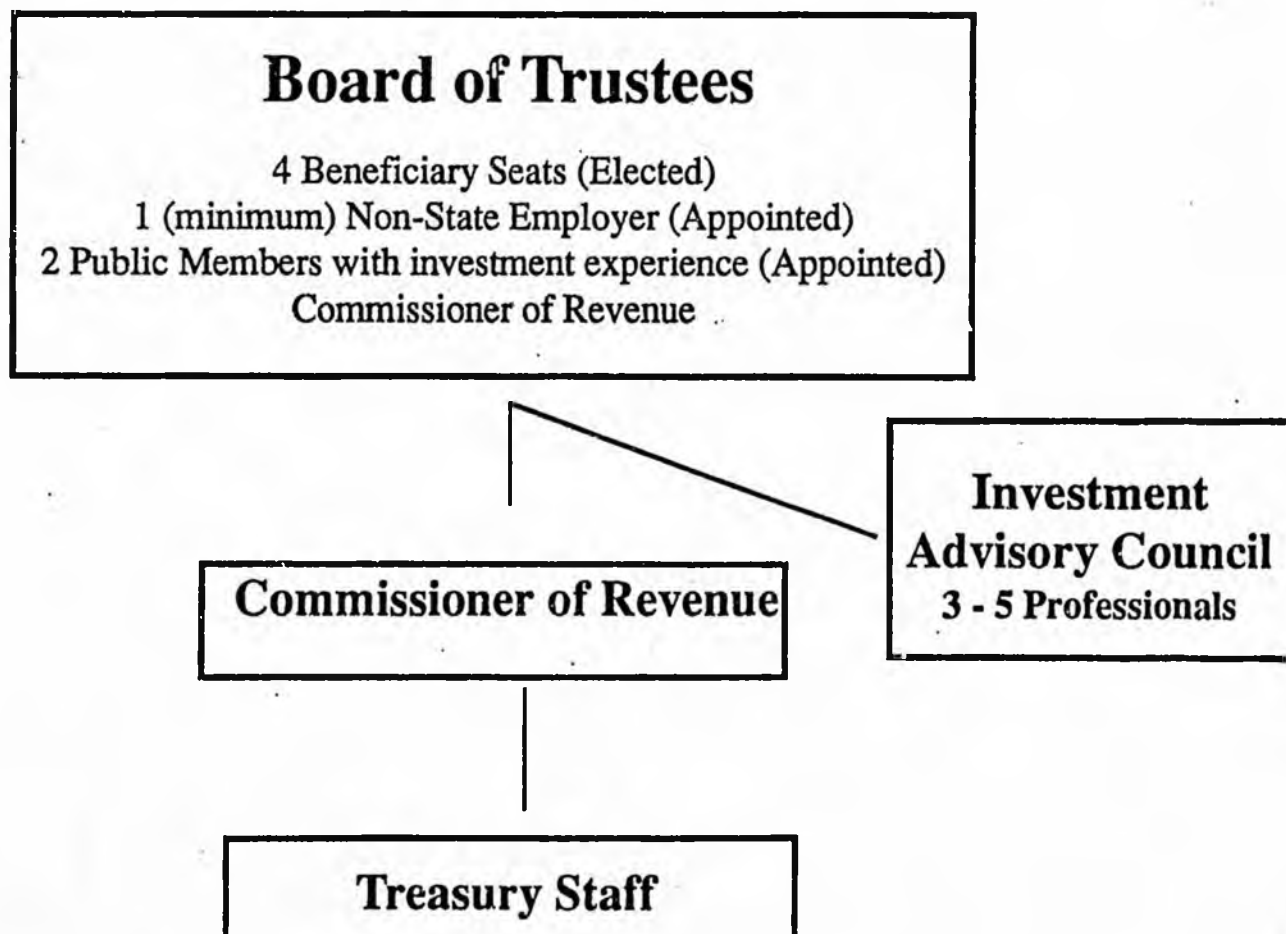
Teachers Retirement System Fund **\$1.90 billion**

Judicial Retirement System Fund **\$34.1 million**

Military Retirement Fund **\$4.2 million**

Supplemental Benefits System (SBS) **\$675 million**

Deferred Compensation **\$125 million**



## DESCRIPTION OF CHANGES TO HCSCSSB 329 (FINANCE)

Page 1, Lines 11-12:

The language referencing the Board's ability to manage "other state funds upon agreement with the commissioner of the department or the fiduciary responsible for the fund" may lend itself to misinterpretation that the Department of Revenue Commissioner somehow has veto power. To clarify that an agreement to manage other state funds is between the fiduciary or the commissioner of the department in which the fund is located and the Board, the order of the language has been changed.

Page 7:

The liability clause has been deleted from the previous bill version. This language was carried over from the previous pension investment bill, SB 18, and was considered to be essential under the corporate concept. Given that the Defined Benefits systems are protected by Art. 12, sec. 7 of the state constitution and that the specific liability language raised concerns of several beneficiaries, I support deletion of the liability section (37.10.310) in entirety. This assures that the state level of liability remains at status quo.

Page 12, Lines 21-23:

This change adds impartiality language to the statute to further clarify that it would be imprudent to favor one group of beneficiaries over another. This change was recommended by Representative Larson.

Page 12: Lines 24-30:

Also recommended by Representative Larson, this change eliminates the two sets of investment standards that were in the previous bill version. The changes apply the Prudent Investor Rule to all funds managed by the Department of Revenue and removes the "ordinary professional prudence" language.

Page 15: Lines 4-6:

Adds employer liability language to SBS, clarifying that the state is not liable for investment losses if the prudent investment standard has been met.

Page 17: Lines 13-15:

Adds employer liability language to The Deferred Compensation Program, clarifying that the state is not liable for investment losses if the prudent investment standard has been met.

Senator Pat Pourchot  
3/16/92

## HISTORY OF CHANGES IN THE LEGISLATIVE PROCESS FOR SB 329

**Senate State Affairs Committee: 1/22/92**

The State Affairs Committee adopted a Committee Substitute, incorporating the following two changes:

1. Chapter 85 SLA 91 allows municipal taxation of foreclosed properties held for investments. DCRA recommended that Sections 8 and 9 of the SB 329 be deleted as they are considered unnecessary.

2. The words (AND ASSETS) were eliminated from Sec. 37.10.280. The Board does not hold assets. The assets are held by the retirement system.

3. LETTER OF INTENT: The letter of intent encourages the board of trustees to utilize Alaska firms who are members of the New York and American Exchange, when all factors are equal.

**Senate Finance Committee: 1/28/92**

The Senate Finance Committee adopted the State Affairs CS and Letter of Intent and the DOA and DOR fiscal notes. No changes.

**Senate Floor: 2/3/92**

Y= 16 N=0 E=4

**House State Affairs: 2/25/92**

No amendments. Adopted previous Letter of Intent and fiscal notes.

## **CSSB 329 (STA) ALASKA STATE PENSION INVESTMENT BOARD**

CSSB 329 (STA) replaces the Commissioner of Revenue as the sole fiduciary of the \$5 billion pension funds with an eight member Board of Trustees. The Department of Revenue invests these funds at the direction of this Board.

### **BOARD COMPOSITION:**

SB 329 establishes a balanced eight member Board, four elected and four appointed. The elected members are 1 PERS/SBS, 1 PERS, 2 TRS. The PERS and TRS Boards are empowered to set regulations concerning election and removal of the PERS/TRS board members. The Governor appointed members are: Commissioner of Revenue and three members who have investment experience, with at least one of these representing a non-state employer, such as municipalities and school districts. The Governor may remove the appointed members for cause.

**CSSB 329 sets out the highest standards for the Board, including:**

- A. Prudent Investor Rule
- B. Conflict of Interest and Open Meetings provisions.
- C. Procurement regulations
- D. Access to professional investment and legal counsel.
- E. Training for trustees.

**CSSB 329 provides for stringent oversight by requiring:**

- A. Long-range and quarterly investment reports to LB&A.
- B. Performance evaluations, audits and investment policies to the Governor, Legislature, participating employers and PERS/TRS boards.
- C. Review of actuarial earnings assumptions and report to appropriate boards.
- D. Development of an annual operating budget and presentation to DOR, OMB and Legislature.

**CSSB 329 is supported by the Administration as well as the following organizations: NEA-AK, AARP, ASEA, APEA, AML.**

**A Letter of Intent was adopted in the Senate State Affairs Committee which encourages the Board to utilize Alaskan firms when all factors are equal.**

By Senator Pat Rourchot  
1/26/92

# MEMORANDUM

State of Alaska

Department of Law

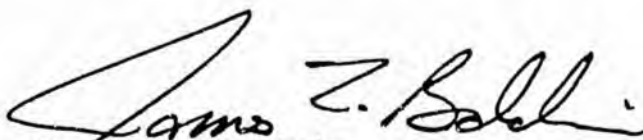
TO: The Honorable Pat Pourchot  
Alaska State Senate

DATE: March 18, 1992

FILE NO.:

TEL. NO.: 465-3600

SUBJECT: SB 329; state investment  
board



FROM: James L. Baldwin  
Assistant Attorney General  
Governmental Affairs - Juneau

You requested our review of a section in SB 329 which attempts to limit the recovery for a "liability" incurred by a board of trustees that would be established to invest state pension and other funds. The section in question provides:

A liability incurred by the board shall be satisfied exclusively from the trust assets or trust revenue, and a creditor or other person may not have a right of action against the state because of a debt, obligation, or liability of the board.

CSSB 329 (State Affairs), page 7, lines 5 - 7. (hereinafter "the liability provision"). Critics of the liability provision believe it sets a bad public policy and may not be enforceable. It is their feeling that the state treasury should remain primarily liable for all acts of state officials who serve as fiduciaries to public retirement funds.

The liability provision first appeared in another version of a bill vetoed by Governor Hickel during the first session of the Seventeenth legislature. SB 18 (1st Sess., 17th Alaska St. Leg.). Senate Bill 18 would have created a public corporation to manage the investment of pension funds. The public corporation would have been a political subdivision of the state with an independent legal existence. During the interim between legislative sessions, Governor Hickel agreed to support the provisions of SB 329 if the public corporation concept was abandoned. A state board of trustees serving as the fiduciary in charge of investment of pension funds was substituted in place of the public corporation. The board would be a state agency within the Department of Revenue. The new bill carried forward the liability provision now under review.

The first clause of the liability provision is beneficial because it would limit the ability of claimants to assert personal liability against board members. Unless some protection from this

type of liability is offered, the personal assets of a board member are susceptible to being seized or encumbered to repay a liability incurred while performing official functions. With the threat of this liability exposure present, it would be difficult for the administration to attract responsible persons to serve on the board. This clause is opposed by a person who believes that a liability incurred through the actions of board members should be the responsibility of the individual trustees or the state.

The second clause of the liability provision precludes a claimant from proceeding against the state because of a liability incurred by a fiduciary. This provision raises questions of enforceability and whether it is founded on sound public policy. The effect of this statutory limitation of liability will be to make the trust bear any loss caused by tortious or imprudent actions of the board which is a state instrumentality. However, the bill eases the effect of the liability limit by authorizing the purchase of insurance or the retention of reserves that would be adequate to "protect the board and the state from liability to others and from loss of trustee assets due to the acts or omissions of the trustees." See SB 329, page 6, lines 19 - 24 (emphasis added). The cost of the insurance would be a cost of administration which is customarily payable from trust assets. By knowing that this liability may be imposed, the trust can take steps to insure and avoid any large anticipated loss caused by a fiduciary, including a board member.

I am concerned about the enforceability of the second clause of the liability provision because it purports to cut off a right of action against the state to enforce a claim based on an act or omission of board members who are a direct instrumentality of the state. If a claimant believes that the board of trustees are furthering interests of the state which conflict with the interests of the retirement systems, a court may be offended that the claimant would be denied due process to seek redress from the state. See State v. Abbott, 498 P.2d 712 (Alaska 1972) (basic policy of the law should be that when there is negligence, the rule is liability; immunity is the exception). Additionally, the section appears to conflict with the waiver of sovereign immunity granted in AS 09.50.250 for contract, quasi-contract, or tort claims. In a 1963 opinion, the attorney general determined that a general limitation of liability included in the Workers' Compensation Act (AS 23.30) was not valid unless it was enacted as an exception to the waiver granted in AS 09.50.250. 1963 Op. Att'y Gen., No. 28.

The Honorable Pat Pourchot  
SB 329; state investment board

March 18, 1992  
Page 3

Even though the first clause of the liability provision has a limited beneficial effect, I recommend that the bill be redrafted to delete all material set out on page 7, lines 5 - 7. The trustees could protect the trustee assets and their personal assets through the purchase of insurance which is authorized elsewhere in the bill. By making the bill silent on these liability issues, questions of liability would be resolved under common law and other statutes to the extent that they are relevant. Under existing law, if a state official acts within the scope of his or her authority, the state defends and indemnifies the official from loss. However, if the employee acts in a manner that exceeds his or her scope of authority, the state may decline to defend.

Nothing in existing law prevents the legislature from appropriating trust receipts to pay a "liability" if the trust is properly responsible for the claim. Additionally, nothing in existing law prevents the trustees from providing protection to the state treasury, trustee assets, and their personal assets by the purchase of fiduciary liability insurance. Therefore, the trustee assets and the state treasury can be adequately protected without the liability provision set out in the bill.

We hope this memorandum adequately answers your concerns.

cc: Commissioner Rexwinkel

By Senator <sup>Pat</sup> Pourchot  
1/29/92

## COMPARISON OF CSSB 329 AND SB 18 PENSION FUND MANAGEMENT

Senate Bill 18, which established the Alaska State Pension Corporation, passed both bodies in 1991 and was vetoed by the Governor. SB 329 was drafted in cooperation with the Department of Revenue and the Department of Administration and incorporates many of the concepts that were included in SB 18. The major differences between the two bills are listed below.

### SB 329 ESTABLISHES A BOARD OF TRUSTEES WHICH DIRECTS THE DEPARTMENT OF REVENUE IN THE MANAGEMENT AND INVESTMENT OF PENSION FUNDS.

SB 329 does not establish a separate corporation, as was proposed in SB 18. SB 329 does not contain any provisions for an executive director, corporate exempt employees, banking examination, or holding of assets. SB 329 does contain a new provision that allows the Commissioner of Revenue to designate employees who are subject to conflict of interest and whose failure to comply would be grounds for termination.

### SB 329 ADDS DEFERRED COMPENSATION FUNDS TO THE PREVIOUS SB 18 LIST OF FUNDS.

The Board of Trustees in SB 329 will manage the funds of the following systems: PERS, TRS, Judicial, Military, SBS and Deferred Compensation. Deferred Compensation was included at the recommendation of both the Administration and PERS Board members. Provisions have been added that require the Board to consult with the Department of Administration prior to making any changes to either the SBS or the Deferred Compensation programs. The Board is also required to develop contingency plans for potential carrier investment problems.

### BOARD REQUIREMENTS:

In addition to the duties and responsibilities listed in SB 18, SB 329 requires that the Board shall:

1. Develop and present a budget to DOR, OMB and the Legislature
2. Review every two years, the actuarial earnings assumption for each fund and report to the appropriate boards and agencies
3. Adopt procurement regulations that include public notice requirements and emergency procedures
4. Select and monitor external investment managers
5. Meet annually with the PERS and TRS board and the Department of Administration to review benefit administration of each system.

# Alaska State Legislature

Chairman  
State Affairs  
Committee  

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Legislative Council  

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Transportation  
Committee



Representative Eugene Kubina

During Session:  
State Capitol  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4859

During Interim:  
P.O. Box 2463  
Valdez, Alaska 99686  
(907) 835-2111

February 27, 1992

Rep. Eileen MacLean, Co-Chair  
Rep. Mike Navarre, Co-Chair  
House Finance Committee  
Alaska House of Representatives  
State Capitol  
Juneau, AK 99811


Dear Representatives MacLean and Navarre,

On Wednesday, February 26, 1991, the House State Affairs Committee heard CSSB 329 - relating to the Alaska State Pension Investment Board. Although this bill was passed out of the committee and on to the House Finance Committee, there were substantial concerns voiced during the hearing. The purpose of this letter is to inform you of these concerns and request that you address them before taking action on CSSB 329.

Due to the SBS fiasco of last year, the issue of liability for the mismanagement of the funds has arisen. Although there are some liability provisions for the board proposed by CSSB 329, the concern is that the state will no longer be liable for losses incurred by the recipients of the funds. The question posed is whether the people who benefit from these funds are trading a guarantee from the state under current law for no guarantees under the proposed system of an investment board.

The House State Affairs Committee respectfully requests that you examine this area carefully to ensure that protection against loss will continue to be provided for the people who participate in these funds. Thank you very much.

Sincerely,

  
Representative Gene Kubina, Chairman  
House State Affairs Committee

cc: Senator Pat Pourchot  
House Finance Committee Members

— DISTRICT SIX —

• Chenega Bay • Chitina • Cooper Landing • Cordova • Hope • Moose Pass • Seward • Tatitlek • Valdez • Whittier •

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

P.O. BOX 5  
JUNEAU, ALASKA 99811-0400  
PHONE: (907) 465-2300  
TELEFAX: (907) 465-2389

March 4, 1992

The Honorable Mike Navarre  
The Honorable Elaine MacLean  
Co-Chairs, House Finance Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Representative Navarre:

The purpose of this letter is to speak to the concerns stated in the letter of February 27, 1992 from the House State Affairs Committee Chairs dealing with the insurance and liability clauses of CSSB 329.

The insurance section of CSSB 329 allows the trustees of the investment board to obtain errors and omissions ("E&O") insurance which protects the assets of the pension plans from negligent acts of the trustees. This insurance also protects the individual trustees and their assets from legal challenges due to their participation on the investment board. The availability of trustee insurance is available to attract participation from individuals who normally decline from appointment due to the uncertainty of personal liability a trustee position of this type carries. To provide E&O insurance does not water down the responsibility of a trustee. Nor does it provide an escape from personal liability for gross negligence or criminal actions.

E&O insurance is intended as a safety net for the pension plans and for the trustees. The pension plans are protected from loss due to trustee misfeasance and malfeasance and the trustee is protected from personal liability from superficial legal challenge. While the insurance company will defend an action brought against a trustee, if the trustee is found to have breached his or her fiduciary duties or if the action was caused by the trustee's gross negligence, the insurance company would ordinarily seek to reclaim any damages from the trustee under a right of subrogation. If desired, additional insurance premiums can be paid which would waive an insurance company's right to subrogation against the trustees.

The liability clause of this bill merely provides that the retirement funds will pay their own way. If the board hires a consultant, the consultant will be paid out of the funds of the pension plans. If a consultant must sue to recover fees, he or she cannot sue the State of Alaska but must seek remedy against the pension plans. It is not reasonable to ask the general population to pay the debts of the State's pension plans. The State's general fund must not be held directly responsible for investment losses or liabilities of the pension plans. Indirectly the general fund is held responsible since employer (not employee) contributions are adjusted meet the future liabilities of the pension plans.

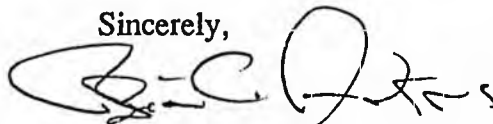
March 4, 1992  
Page 2

It is important to recognize that benefits due the retirement fund beneficiaries are contractually guaranteed by the State constitution. Should the trust fund ever be unable to provide vested retirement benefits, the State would be required to provide the benefits from some other source of funds. The liability clause does not affect that responsibility.

This liability clause does not address the rights of any person to bring an action against the pension plans, board, or a trustee nor does it affect any criminal remedy a court may impose. The liability clause is not providing any new intent or change to the treatment of the pension plans' liabilities as they exist today.

I hope these comments prove to be useful in your reading of CSSB 329. I have enclosed a copy of the Government Finance Officers Association's publication "The Legal Obligations of Public Pension Plan Governing Boards and Administrators" for your review. Please contact me if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "B.C. Andrews", with a stylized flourish at the end.

Brian C. Andrews  
Deputy Commissioner

BCA/mem  
Enclosure  
92-053

cc: Darrel J. Rexwinkel, Commissioner

# University of Alaska Southeast

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Ketchikan Campus  
7th and Madison  
Ketchikan, Alaska 99901  
225-6177

February 24, 1992

RECEIVED FEB 26 1992

The Honorable Pat Pourchot  
Alaska State Senate  
P. O. Box V  
Juneau, Alaska 99811

SUBJECT: The Alaska State Pension Investment Board, SB 329

Dear Senator Pourchot:

On behalf of the UAS Faculty Senate, I am writing to express support for SB 329. The Faculty Senate endorsed last year's form of this initiative, SB 18, and while that bill was superior in our view, SB 329 does bring about a change in management that is long overdue, removing the five billion dollars in State employee pension funds from the sole control of a political appointee.

Once again, the UAS Faculty Senate appreciates your part in sponsoring this important legislation.

Sincerely yours,

*Michael Baran*  
Michael Baran  
Assistant Professor of Business  
Administration  
UAS Faculty Senate President

cc: UAS Faculty Senate  
Southeast Legislative Delegation  
Chancellor Marshall Lind  
UAS Assembly President  
UAS Classified Association  
UA General Assembly President Ray Highsmith  
UA President Jerome Komisar  
UA Vice President for University Relations Wendy Redman

amp

## The Alaska Teachers' Retirement System Board

January 31, 1992

Charlie Arteaga, Chairperson  
1439 Millar  
Ketchikan, Alaska 99901

Senate Finance Committee

RE: SB 329 - An Act Establishing the Alaska State Pension Investment Board..

Dear Sirs,

As Chairperson for the Alaska State Teachers' Retirement Board I lend my support to SB 329. In previous meetings our Board has taken a position of support for similar legislation, our lack of a recent meeting has not provided the opportunity to take official action on SB 329. But I am confident that the Board will be supportive when offered the opportunity to take such action.

The major concern regarding SB 329 is the lack of independence for the Pension Investment Board. Previous legislation, which spoke to the creation of an independent trust company, included that independence. But SB 329 does offer features which are agreeable. The increase in constituent representation for the TRS, and the shared fiduciary are two features which make the legislation attractive and worthwhile. I urge your support and "do pass" on SB 329.

Thank you for your attention to this important piece of legislation.

Sincerely,

C. Arteaga, Chairperson  
Teachers' Retirement System  
Board of Directors



**MANAGEMENT OF ALASKA STATE PENSION FUNDS  
POSITION PAPER  
1992**

**AARP POSITION**

The Alaska State Legislative Committee of the American Association of Retired Persons advocates creation of an independent investment corporation to manage the state pension funds and ensure the state's prudent and faithful discharge of its investment responsibilities as the fiduciary of various trust funds.

This public corporation would carry out the state's responsibilities to facilitate the prudent maximization of trust fund earnings by providing broader and more flexible management powers.

Size of the Corporation Board of Trustees should be small (7 to 9 members, yet operationally efficient and financially prudent. Representation on the Board should include TRS and PERS members (active and retired), employers, the public, and the Commissioner of Revenue.

Provision should be made for an Investment Advisory Council to make recommendations to the Board on investment strategies and procedures. The present TRS and PERS Boards should be retained.

Benefit management should remain in the Department of Administration.

**PROBLEM**

Many Alaskans are contributors to various State Retirement Systems with the expectation that the funds will be carefully protected and prudently invested to ensure the availability of benefits to the eligible beneficiary upon retirement.

The State of Alaska has the responsibility for the management of investments for the trust funds (approximately \$5 billion) of the Public Employees' Retirement System (PERS), Teachers' Retirement System (TRS), Judicial Retirement System, Military Retirement System and Elected Public Officers' Retirement System.

By law, the Commissioner of Revenue is the sole fiduciary for the investment of the funds. (The Teachers' Retirement Board and Public Employees' Retirement Board have no direct role in the investment of the funds, although the boards are responsible for administering retirement benefits.) The Commissioner is a political appointee, subject to change every four years, which is disruptive to the continuity of the investment program. Since the Commissioner of Revenue has numerous responsibilities, there are limitations on the time that he/she can devote to the management of the funds.

ment's ability to tax oil and gas property within its jurisdiction. Any state initiative to impose a more restrictive interpretation should be rejected.

In 1988 the Senate Select Committee on Oil and Gas Taxation, chaired by former Department of Community and Regional Affairs Commissioner Lee McAnerney, was appointed to review the method by which the state interpreted and applied local taxing limitations on oil and gas property. After thoroughly researching this issue and conducting a series of public hearings, the committee recommended in its 1989 report that the present state interpretations of how local government limitations on oil and gas property are applied should continue.

9. **Tax Increment Financing:** The League urges the legislature to amend tax increment financing statutes to enable second class boroughs to sell revenue bonds for financing of public-owned infrastructure necessary for coal development.

#### E. PUBLIC EMPLOYEES' RETIREMENT

1. **Increases in Benefits:** The League urges that any legislation that increases the cost of the Public Employees' Retirement System or the Teachers' Retirement System due to increased benefits require the cost to be borne by contributions from the employees. The League urges the legislature to require fiscal notes to address the impact on each participating municipal employer if any amendments are made to the Public Employees' Retirement System or the Teachers' Retirement System.

Because municipal employees, including teachers, are members of the Public Employees' Retirement System or the Teachers' Retirement System, municipalities are affected by changes made by the legislature to either retirement program. Many times proposals are made to change a retirement system without focusing on the increased cost to municipalities that such changes will cause. Because the municipality has no control over the retirement system and any increase in retirement benefits will decrease funds available for other municipal services, any increase in retirement system costs resulting from legislative action should be borne by the employees who will benefit from the increased retirement benefits. Additionally, in order to assist municipalities and the legislature in evaluating changes to the retirement systems, fiscal notes accompanying such legislation should include an analysis of the fiscal impact on each of the participating municipalities.

2. **PERS/TRS Investment Board:** The League supports the establishment of an investment board for the management and investment of state pension trust funds, including the trust funds of the Public Employees' Retirement System (PERS) and the Teachers' Retirement System (TRS), insofar as the investment board includes representatives of trust beneficiaries and employers.

Alaskan municipalities make over half of all employer contributions to the PERS and TRS and are directly affected by the performance of these funds because of the effect fund earnings have on employer contribution rates and, thus, on local tax rates. At present, both PERS and TRS funds are managed by the Department of Revenue, with the Commissioner of the Department as the sole fiduciary.

Creation of an investment board would give visibility to and strengthen the trust status of pension trust funds. It would increase accountability, continuity, and public disclosure for the investment management of the funds by establishing a board as fiduciary, incorporating professional investment managers and trust administrators, as well as representatives of beneficiaries, on the investment board, and providing for the exercise of fiduciary powers through the forum of regularly scheduled public meetings rather than administrative actions. A board would give management the authority to act in a timely manner and compete fully with other professional institutional investors.

#### **F. FISCAL NOTES/GOVERNMENT MANDATES**

**1. Fiscal Notes: The League supports enactment of legislation requiring affected state agencies to prepare, in consultation with the affected local governments, notes assessing the fiscal impact on local government of any proposed bill or regulation, including pass-through grants.**

Numerous bills are introduced each year that would have an impact on the cost of the operation of the local governments. However, it appears that no analysis and little thought are given to the actual impact such legislation would have on affected municipalities. In order to assist the municipalities and the legislature in making informed decisions about such legislation, fiscal notes assessing the fiscal impact on local government of such bills are necessary.

**2. Reimbursement for Responsibilities Transferred from State: The League urges passage of legislation that would require a government agency unilaterally transferring responsibility for a program to a municipality or imposing regulations on a municipality to reimburse the municipality for the costs of the transferred responsibility or regulations.**

Proposals are occasionally made to require municipalities to undertake programs or activities for which there is either inadequate or no reimbursement. Proposals that shift the burden of such programs to municipalities should provide adequate reimbursement to the municipalities for the administration of such programs. No state or federal regulation that imposes a cost upon local governments should be enacted without reimbursement for that cost.

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**



**MANAGEMENT OF ALASKA STATE PENSION FUNDS  
POSITION PAPER  
1992**

**AARP POSITION**

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This public corporation would carry out the state's responsibilities to facilitate the prudent maximization of trust fund earnings by providing broader and more flexible management powers.

Size of the Corporation Board of Trustees should be small (7 to 9 members, yet operationally efficient and financially prudent. Representation on the Board should include TRS and PERS members (active and retired), employers, the public, and the Commissioner of Revenue.

Provision should be made for an Investment Advisory Council to make recommendations to the Board on investment strategies and procedures. The present TRS and PERS Boards should be retained.

Benefit management should remain in the Department of Administration.

**PROBLEM**

Many Alaskans are contributors to various State Retirement Systems with the expectation that the funds will be carefully protected and prudently invested to ensure the availability of benefits to the eligible beneficiary upon retirement.

The State of Alaska has the responsibility for the management of investments for the trust funds (approximately \$5 billion) of the Public Employees' Retirement System (PERS), Teachers' Retirement System (TRS), Judicial Retirement System, Military Retirement System and Elected Public Officers' Retirement System.

By law, the Commissioner of Revenue is the sole fiduciary for the investment of the funds. (The Teachers' Retirement Board and Public Employees' Retirement Board have no direct role in the investment of the funds, although the boards are responsible for administering retirement benefits.) The Commissioner is a political appointee, subject to change every four years, which is disruptive to the continuity of the investment program. Since the Commissioner of Revenue has numerous responsibilities, there are limitations on the time that he/she can devote to the management of the funds.

**For further information, please contact:**

**C. Keith Campbell**  
State Legislative Committee Chairman  
(907) 224-5631

**Joe Alter**  
Capital City Task Force Coordinator  
(907) 586-6680

**Merrit Olson**  
Pension Management Subcommittee Chairman  
(907) 272-9156

Adopted November 13, 1991

akpen.pos

ment's ability to tax oil and gas property within its jurisdiction. Any state initiative to impose a more restrictive interpretation should be rejected.

In 1988 the Senate Select Committee on Oil and Gas Taxation, chaired by former Department of Community and Regional Affairs Commissioner Lee McAnerney, was appointed to review the method by which the state interpreted and applied local taxing limitations on oil and gas property. After thoroughly researching this issue and conducting a series of public hearings, the committee recommended in its 1989 report that the present state interpretations of how local government limitations on oil and gas property are applied should continue.

9. Tax Increment Financing: The League urges the legislature to amend tax increment financing statutes to enable second class boroughs to sell revenue bonds for financing of public-owned infrastructure necessary for coal development.

#### E. PUBLIC EMPLOYEES' RETIREMENT

1. Increases in Benefits: The League urges that any legislation that increases the cost of the Public Employees' Retirement System or the Teachers' Retirement System due to increased benefits require the cost to be borne by contributions from the employees. The League urges the legislature to require fiscal notes to address the impact on each participating municipal employer if any amendments are made to the Public Employees' Retirement System or the Teachers' Retirement System.

Because municipal employees, including teachers, are members of the Public Employees' Retirement System or the Teachers' Retirement System, municipalities are affected by changes made by the legislature to either retirement program. Many times proposals are made to change a retirement system without focusing on the increased cost to municipalities that such changes will cause. Because the municipality has no control over the retirement system and any increase in retirement benefits will decrease funds available for other municipal services, any increase in retirement system costs resulting from legislative action should be borne by the employees who will benefit from the increased retirement benefits. Additionally, in order to assist municipalities and the legislature in evaluating changes to the retirement systems, fiscal notes accompanying such legislation should include an analysis of the fiscal impact on each of the participating municipalities.

2. PERS/TRS Investment Board: The League supports the establishment of an investment board for the management and investment of state pension trust funds, including the trust funds of the Public Employees' Retirement System (PERS) and the Teachers' Retirement System (TRS), insofar as the investment board includes representatives of trust beneficiaries and employers.

Alaskan municipalities make over half of all employer contributions to the PERS and TRS and are directly affected by the performance of these funds because of the effect fund earnings have on employer contribution rates and, thus, on local tax rates. At present, both PERS and TRS funds are managed by the Department of Revenue, with the Commissioner of the Department as the sole fiduciary.

Creation of an investment board would give visibility to and strengthen the trust status of pension trust funds. It would increase accountability, continuity, and public disclosure for the investment management of the funds by establishing a board as fiduciary, incorporating professional investment managers and trust administrators, as well as representatives of beneficiaries, on the investment board, and providing for the exercise of fiduciary powers through the forum of regularly scheduled public meetings rather than administrative actions. A board would give management the authority to act in a timely manner and compete fully with other professional institutional investors.

#### **F. FISCAL NOTES/GOVERNMENT MANDATES**

**1. Fiscal Notes: The League supports enactment of legislation requiring affected state agencies to prepare, in consultation with the affected local governments, notes assessing the fiscal impact on local government of any proposed bill or regulation, including pass-through grants.**

Numerous bills are introduced each year that would have an impact on the cost of the operation of the local governments. However, it appears that no analysis and little thought are given to the actual impact such legislation would have on affected municipalities. In order to assist the municipalities and the legislature in making informed decisions about such legislation, fiscal notes assessing the fiscal impact on local government of such bills are necessary.

**2. Reimbursement for Responsibilities Transferred from State: The League urges passage of legislation that would require a government agency unilaterally transferring responsibility for a program to a municipality or imposing regulations on a municipality to reimburse the municipality for the costs of the transferred responsibility or regulations.**

Proposals are occasionally made to require municipalities to undertake programs or activities for which there is either inadequate or no reimbursement. Proposals that shift the burden of such programs to municipalities should provide adequate reimbursement to the municipalities for the administration of such programs. No state or federal regulation that imposes a cost upon local governments should be enacted without reimbursement for that cost.

(907) 586-4004

**Douglas Kemp Mertz**

*fax (907) 586-4141*

Attorney at Law  
319 Seward Street  
Juneau, Alaska 99801

February 28, 1992

Senator Patrick Pourchot  
Alaska State Senate  
P.O. Box V  
Juneau, Alaska 99811

Re: CSSB 329 (STA), establishing the Alaska State Pension Investment Board

Dear Senator Pourchot:

Michael Kirk has asked me to look at CSSB 329 (STA), of which you are the prime sponsor, to evaluate his perception that it contains significant legal or drafting problems. He also asked me to consider your comments at the hearing on the bill in the House State Affairs Committee on February 26th, in which you related your understanding of the provisions which concern him.

My conclusion is that the courts would probably read the literal language of the bill in a way that contradicts your stated intention, and that if the literal language of the bill were to determine its interpretation, it would cause substantial legal difficulties.

#### The Problem of Judicial Interpretation

The obvious first step in reviewing legal drafting is to discern whether the language can be reasonably read in more than one way. In this effort, the interpretation of the prime sponsor is important to predicting how a court will understand it, especially if the sponsor's interpretation is stated in the record, either through a letter of intent or recorded testimony. But it is a longstanding legal rule that legislative history cannot substitute for incompatible or missing statutory language. Moreover, you should be aware that there is a significant judicial trend toward minimizing use of external aids, such as legislative history, in interpreting statutory language. In short, if a statute, read solely within its "four corners," does not convey its author's meaning clearly and unequivocally, there is a very real possibility that a court or administrative agency will adopt a contrary reading. This is a particular concern in Alaska, where the courts do not permit legislators to testify on the meaning of legislation.

So the initial step in looking at your bill is to analyze whether particular language is susceptible of differing but reasonable interpretations. If so, there is an obvious need for defensive redrafting to eliminate all readings except the intended one.

Proposed AS 37.10.310

In proposed AS 37.10.310 (on page seven, lines five through seven), I conclude that the language of the bill not only contradicts what you have stated as your intention, but also raises significant legal difficulties which it appears you did not intend. The provision reads:

Sec. 37.10.310. LIABILITY. A liability incurred by the board shall be satisfied exclusively from the trust assets or trust revenue, and a creditor or other person may not have a right of action against the state because of a debt, obligation, or liability of the board.

The context is clear: The bill would create a board of trustees whose duty would be to invest and manage the state pension trust funds and possibly other funds. Although the state itself is clearly the ultimate trustee, it would utilize the board as its instrument and the board members, or trustees, would be the fiduciaries charged with carrying out the duties of the trust. In this context, the question is how would a court likely interpret this section?

Taken literally, this paragraph appears to make two quite sweeping statements. 1) The first clause says that a liability "incurred by the board" shall be satisfied exclusively from trust assets (or trust revenue, which is a trust asset). Put another way, it states that no such claim may be paid out of any other source than the trust assets. I can see no other possible reading than that a liability of the board must be paid from trust assets and cannot be paid from another source, no matter what the circumstances. Thus neither state funds nor the assets of individual trustees could be used to satisfy liabilities, even if wrongdoing by the state or individual trustees was the cause of the liability, and no matter what the extent of the liability.

(The language of this provision leaves open the question of what exactly constitutes "a liability incurred by the board." The restrictions imposed here would certainly apply to liabilities arising because of official board action, but there is an open question whether the assets of individual trustees may still be used to satisfy liabilities arising from a trustee's unauthorized actions, e.g., a criminal embezzlement. By not clearly delineating what liabilities must be satisfied from trust assets and what liabilities may be satisfied from other sources, CSSB 329(STA) risks having a court apply the

restriction to all liabilities related to board members' actions, including unauthorized wrongdoing.)

2) The second clause says that no one ("a creditor or other person") may have a "right of action" against the state because of a debt, obligation, or liability of the board. This provision goes beyond the first clause by denying even a right of action -- the right to bring a lawsuit -- against the state because of board acts. While the first clause does not permit forcing reimbursement of a liability from the funds of anyone other than the trust assets, the second clause does not even permit a person to sue to establish that the state or the board (which is an agency of the state) owes a debt, obligation, or liability.

These two clauses are clearly mandatory and no exceptions are set out. Fund assets are the "exclusive" source of payments, and a person "may not have" a right of action against the state. Moreover the language may encompass liabilities, debts, and obligations arising from any cause whatsoever, including willful wrongdoing, gross negligence, waste, misappropriation of assets, failure to follow statutory duties, or even criminal embezzlement. In short, it appears that this provision would prevent any person from forcing either the state or the board members to reimburse funds improperly removed from the trust assets, and in the case of a liability to a third party by the state or the trustees in the course of their management of the trusts, would require that only the trust, and not the state or any responsible trustees, bear the burden of the liability.

#### The Sponsor's Intent

As I understood it, in your testimony on February 26th, you commented that if the trustees were not being prudent in managing the trusts, a beneficiary could sue "the fund", by which I assume you meant sue the offending board and its members. You also said, I believe, that a person could bring an action for gross negligence or for violation of the prudent investor rule. Frankly, I do not see how any court could agree that the language of the bill permits such suits. CSSB 329(STA) simply does not allow suits to be brought against the state arising out of an obligation of the board, and since the board is itself a state agency, it could not be sued on a matter arising out of an obligation it creates by its own actions. Moreover, even if the board or its individual members could be sued, the first clause would restrict any recovery to the trusts' own assets, so there would never be the opportunity to gain reimbursement to the trust of funds improperly removed from it. At its most extreme, this provision could prevent the state from requiring that a wrongdoing trustee or state employee compensate the trust for losses he or she causes to the trust, including losses caused by criminal acts. My view is not that a court could read both your intended meaning and a contrary one into the bill's

language, but that it could reasonably read only the contrary meaning; the bill simply does not permit what you believe it does.

### The Provision May be Unenforceable in its Present Form

The consequences of restricting recoveries to trust fund assets and of denying a right of action against the state are potentially complex and serious. There is a good chance that the courts would refuse to apply the restriction.

In the law of trusts, a provision which effectively immunizes a trustee from liability due to his actions in connection with the trust is called an exculpatory or immunity clause. It is generally considered to be a reduction in the amount of skill and prudence which a trustee is obligated to use. See Restatement, Trusts, Second, §222. Courts will generally enforce exculpatory trusts inserted in a trust by the settlor, or maker of the trust, except to the extent that they attempt to relieve trustees of liability for reckless, intentional, or bad faith breaches of the trust duties.<sup>1</sup> And even as to exculpatory clauses for ordinary failures, courts generally interpret such clauses as narrowly as possible. Indeed, some courts have even considered exculpatory clauses as unethical when they are required by trustees as a condition of service, since limiting one's liability to the trust for breaches of duties owed to the trust in an inherent conflict. See, for example, *Perling v. Citizens & Southern National Bank*, 300 S.E.2d 649 (Geo. 1983).

As to exculpatory clauses that would excuse reckless or dishonest conduct, however, the courts almost always refuse to enforce such provisions, usually on public policy grounds. See, e.g., *Hazzard v. Chase National Bank*, 287 N.Y.S. 541 (1936), affirmed 14 N.Y.S. 147 (App. Div. 1939), affirmed 26 N.E.2d 801 (N.Y. 1940). As one commentator put it,

To permit a trustee to hide behind an exculpatory clause and to avoid liability for bad faith, dishonesty, willful breach, and gross negligence would be against public policy, since it would encourage highly reprehensible or even criminal conduct. Hence such clauses are void to the extent that they attempt to relieve the trustee from liability for breaches of these types.

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<sup>1</sup> A typical exculpatory clause would read that trustees shall have no liability "except for breaches deemed willful and intentional, acts of bad faith, dishonesty, or acts of gross negligence."

Bogert on Trusts (6th Ed.) §94, p. 340. See also *Browning v. Fidelity Trust Co.*, 250 Fed. 321, 325 (3rd Cir. 1918); *New England Trust Co. v. Paine*, 59 N.E.2d 263 (Mass. 1945). See cases collected in Appendix, Restatement, Trusts, Second, §222.

Federal law prohibits such exculpatory clauses in most employee retirement trusts, 29 U.S.C.A. §1110, Employee Retirement Income Security Act of 1974. However that act does not apply to government sponsored retirement funds such as those at issue here.

Thus both federal law and the common law disfavor clauses like those in CSSB 329(STA) which would prevent a trustee from being liable for repayment of amounts due to a trust under any circumstances, and it is likely that the courts would refuse to implement the provision on public policy grounds. It should also be noted that this provision is more offensive than the usual exculpatory clause because here it is not the settlor making the provision, but the trustee itself (the state) for its own benefit.

#### A Constitutional Problem

Finally, the provision may well violate the Alaska Constitution, Article XII, Section 7, which states that membership in employee retirement systems constitutes a contractual relationship, and that accrued benefits shall not be diminished or impaired. At least for existing members of the systems, a change in the law which would require the beneficiaries to bear the burden of malfeasance by others or by the state, without recourse, would be a significant impairment of their existing benefits and could well be considered a breach of this constitutional provision.

#### Summary

The courts will most likely read CSSB 329(STA) as impairing the right of the funds or their beneficiaries to seek reimbursement of improper losses of trust funds from wrong-doers, including the state. Failure to amend the bill by language clearly establishing that such a bar is not intended may well lead to lawsuits and to judicial invalidation, and will certainly cause confusion.

Proposed AS 37.10.210

One final note is appropriate. Mr. Kirk pointed out to you in a previous letter that proposed AS 37.10.210 can be read to give the commissioner of revenue a veto over decisions of the board. Both Commissioner Rexwinkel and you have stated that that was not the intent, but I confess that my initial reading was the same as Mr. Kirk's. If reasonable people can misinterpret your intent, I suggest that the provision be redrafted so as to eliminate any possible contrary reading.

I have attached another copy of the proposed substitute language which Mr. Kirk previously sent you. This proposed language would preserve immunity for the trustees for ordinary negligence, but not for more serious wrongdoing. If you wish language that would eliminate any exculpatory provisions -- for example, that would permit beneficiaries to sue the trustees for failure to follow ordinary prudent investor standards, I would be happy to provide such language as well.

Sincerely,

Douglas K. Mertz

cc: House Finance Committee

Hon. Mike Navarre

PROPOSED CHANGES TO CS SB 329 (STA)

1. At page one, in proposed AS 37.10.210: After the words, "state pension funds", add a comma. This makes clear that the words "upon agreement of the commissioner" modify the phrase starting "and of other state funds..." and not the main clause which precedes it.

2. At page six, in proposed AS 37.10.280, add at the end:

This section is not intended to remove liability of the board, its members, or the state based on acts of gross mismanagement, deliberate misfeasance, bad faith, criminal acts, or other acts not performed solely for the benefit of the trusts or their beneficiaries.

3. At page seven, in proposed AS 37.10.310, amend to read:

LIABILITY. A liability incurred by the board arising out of acts of ordinary negligence shall be satisfied exclusively from the trust assets or trust revenue, and a creditor or other person may not have a right of action against the state because of a debt, obligation, or liability of the board arising out of acts of ordinary negligence. This section is not intended to limit existing rights of any person to bring an action against the state, the board, or a trustee arising out of acts of gross mismanagement, deliberate misfeasance, bad faith, criminal acts, or other acts not performed solely for the benefit of a trust or its beneficiaries. This section is not intended to limit the authority of a court in a criminal proceeding to order restitution to a trust of any assets improperly removed or wasted.

P.O. Box 20844  
Juneau, Alaska 99802  
February 18, 1992

Hon. Mike Navarre  
Alaska House of Representatives  
P.O. Box V  
Juneau, Alaska 99811

Re: CSSB 329, creating the Alaska State Pension  
Investment Board.

Dear Representative Navarre:

I would like to share some urgent concerns regarding provisions of SB 329, which would create a state board to assist in the management of public employee pension funds. This bill has passed the Senate and it has been referred to the State Affairs and Finance Committees in the House. I am afraid that, because of its laudable goal, it may be acted upon too quickly for attention to be given to a few critical problems.

I see three problems in the bill, all of which relate to the extent to which the trustees and others responsible for managing the funds can be held accountable for misfeasance or malfeasance in carrying out their duties.

1. Possible veto authority over board policies. In the bill at page one, in proposed AS 37.10.210(a), the bill states

The purpose of the board is to provide prudent and productive management and investment of state pension funds and of other state funds upon agreement with the commissioner of the department...

I read this as saying that the commissioner (of revenue) has veto power over the management and investment decisions of the board. The prime sponsor of the bill, Senator Pourchot, has written me that the intent of the language is to permit the board to provide management services for other state funds than those listed in the bill, with the agreement of the commissioner of whatever department such a fund is in. I do not doubt that this reading is what Senator Pourchot intended. But nowhere is this intent stated in the bill. Instead, there is an enormous ambiguity, unresolved by any legislative history, which could as easily support my reading as that of Senator Pourchot. I presume that the Senator would agree with me that we do not want ambiguous drafting to permit some future revenue commissioner to claim that this language gives him a veto over the board's decisions. The solution is simple: amend this provision to make Senator Pourchot's reading clear and unambiguous. (A suggested revision is attached. Note that the ambiguity can be resolved by adding a single comma to this section.)

2. Insurance may protect wrong-doers from beneficiaries.

On page 6, at proposed section AS 37.10.280, the board is required to have insurance to protect both its members, the state, and the trust assets from liabilities due to the acts or omissions of the trustees. The problem is that the insurance is to be funded from the trust funds themselves -- including the option of setting aside a portion of the trust funds as "self-insurance retention" -- so that ultimately the beneficiaries of the trust will have to absorb losses or liabilities due to misfeasance. In short, there would be no recourse against wrong-doing trustees. Senator Pourchot says that this is not really the case, since insurance would not protect the wrong-doing trustees against claims based on conflict of interest, bad faith, or reckless or intentional wrongdoing. Frankly, the Senator is wearing rose-colored glasses. In fact, insurance will protect the trustees from bearing liability for such acts unless they rise to the level of provable intentional misconduct.

I do not have any problem with permitting insurance to protect individual trustees from ordinary good-faith claims, although I do think this section should have been framed in terms of requiring bonding of each trustee to protect the trust assets. But we should not permit the trustees to shield themselves from claims based on malfeasance or gross neglect of duty. This problem can be remedied by adding to this section language that states that it is not intended to permit trustees to shield themselves against liability arising out of conflict of interest, bad faith, reckless or intentional malfeasance, or other acts not performed solely in the interests of the trusts and their beneficiaries.

3. The bill would prevent collection of losses from those who caused them. The problem of non-accountability of individual trustees is made even worse by the provisions on page 7, at AS 37.10.310:

LIABILITY. A liability incurred by the board shall be satisfied exclusively from the trust assets or trust revenue, and a creditor or other person may not have a right of action against the state because of a debt, obligation, or liability of the board.

Essentially this provision says that should the board or the State mismanage their fiduciary duties -- or even perform criminal acts in violation of their duties -- it is the trust beneficiaries, not whoever performed the acts, nor the State, who must pay. (Note that the trust beneficiaries are not even permitted to elect a majority of the board members!) In the case of gross mismanagement or deliberate misfeasance, insurance will not cover the losses. So in the worst cases, liability for wrongdoing by the managers will fall squarely on the beneficiaries, with absolutely no recourse against the wrongdoers. In fact if Board members are convicted of criminal wrongdoing in use of the trust funds, this provision would prevent a judge from ordering either the board, its members, or the State to reimburse the trust. This bill would mandate that the

trust beneficiaries themselves remain the uncompensated victims of wrongdoing.

(Note that in a parallel case -- the Mental Health Lands Trust -- such a provision would have barred the Supreme Court from ordering the State as trustee to reimburse the assets it had illegally removed from the trust. There is a very real question whether it is constitutional to bar a trust from recovering from its trustee losses caused by the trustee.)

This section should be labelled for what it really is, a *carte blanche of complete immunity to the board and the State for misfeasance and malfeasance in the administration of a trust*. It would be improper for the legislature to prevent an individual from recovering damages from someone who had injured him; it should be equally improper, if not more so, for the State, as the real trustee of these pension funds, to bar a recovery from itself or its fellow trustees.

I have suggested some amending language to resolve this problem. But the point I really want to make is that this bill, for all its laudable purposes, is gravely flawed. *The provisions mentioned above make the fund vulnerable to mismanagement and malfeasance by making the trustees and the State immune from liability for their own wrongdoing as trustees*. We must remember that the other side of that coin is that the bill would require thousands of retired public servants to bear the losses caused by the State and the trustees. I hope you agree with me that we *must* make all possible real effort to prevent this from happening.

Sincerely yours,

  
Michael J. Kirk

cc: Senator Pourchot

PROPOSED CHANGES TO CS SB 329 (STA)

1. At page one, in proposed AS 37.10.210: After the words, "state pension funds", add a comma. This makes clear that the words "upon agreement of the commissioner" modify the phrase starting "and of other state funds..." and not the main clause which precedes it.

2. At page six, in proposed AS 37.10.280, add at the end:

This section is not intended to remove liability of the board, its members, or the state based on acts of gross mismanagement, deliberate misfeasance, bad faith, criminal acts, or other acts not performed solely for the benefit of the trusts or their beneficiaries.

3. At page seven, in proposed AS 37.10.310, amend to read:

LIABILITY. A liability incurred by the board arising out of acts of ordinary negligence shall be satisfied exclusively from the trust assets or trust revenue, and a creditor or other person may not have a right of action against the state because of a debt, obligation, or liability of the board arising out of acts of ordinary negligence. This section is not intended to limit existing rights of any person to bring an action against the state, the board, or a trustee arising out of acts of gross mismanagement, deliberate misfeasance, bad faith, criminal acts, or other acts not performed solely for the benefit of a trust or its beneficiaries. This section is not intended to limit the authority of a court in a criminal proceeding to order restitution to a trust of any assets improperly removed or wasted.

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

TREASURY DIVISION  
January 21, 1992

WALTER J. HICKEL, GOVERNOR

333 Willoughby Avenue, 11th Floor  
P.O. Box SB  
Juneau, Alaska 99811-0400

Telephone: (907) 465-2350  
Facsimile: (907) 465-2394

Susy Barnett, Aide to Senator Pourchot  
Alaska State Senate  
State Capitol, Room 516  
Juneau, Alaska 99801-1182

Re: SD 329/Insurance and Liability Issues

Dear Ms Barnett:

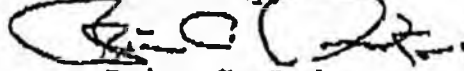
This letter is in response to your request of January 15, 1992 about questions B and C from Michael Kirk. I have read Mr. Kirk's questions several times only to become more confused each time. Rather than to second guess his questions, let me just explain what Sec. 37.10.280 and Sec. 37.10.310 try to set out.

The Insurance section allows the board to obtain errors & omissions (E&O) insurance which protects the assets of the pension plans from negligent acts of the board. This section also allows the board to secure board member insurance. This insurance protects the individual board member's and their assets from legal challenges due to their participation on the board. Acquisition of board member insurance is important to attract participation from board members who would normally decline membership due to the uncertain and unlimited personal liability a position of this type would have.

The Liability section sets out the need for the assets of the pension plan to be used to settle any loss incurred by the plan. The State's general fund should not be held responsible for investment or other losses of the pension plans. As mentioned above, the Insurance section of the bill provides for E&O insurance which would make the pension plans whole if losses resulted from negligent acts of the board. The general fund eventually becomes the "deep pocket" for losses through higher contribution rates. One final point, the State Constitution guarantees that pension plan benefits will not be diminished.

Susy, I hope these comments help you out with your response to Mr. Kirk. Don't hesitate in calling upon me if I can be of further assistance.

Sincerely,



Brian C. Andrews

cc: Darrel J. Rexwinkel  
92-017

# Alaska State Legislature

Sen. Pat Pourchot, Co-Chairman  
Sen. Jay Kerttula, Co-Chairman

Sen. Al Adams  
Sen. Jim Duncan  
Sen. Lyman F. Hoffman  
Sen. Dick Shultz  
Sen. Rick Uehling



State Capitol  
Juneau, Alaska 99801-1182  
907-465-3712

## Senate Finance Committee

January 21, 1992

Michael Kirk  
P.O. Box 20844  
Juneau, AK 99802

Dear Mr. Kirk;

Thank you for taking the time to review SB 329, An Act establishing the Alaska State Pension Investment Board and for your continuing interest on this issue. I have discussed your concerns with both our legislative attorney and with the Department of Revenue. In response to your January 14, 1992 letter:

1. Page 1, Article 5 Sec, 37.10.210. (a) reads:

There is established the Alaska State Pension Investment Board in the Department of Revenue. The purpose of the board is to provide prudent and productive management and investment of state pension funds and of other state funds upon agreement with the commissioner of the department or the fiduciary responsible for the fund.

The highlighted section sets out that the board may manage and invest other state funds, funds not listed in this bill, upon agreement with the commissioner of the Department that other fund is in (i.e. the HESS Self-Sufficiency Fund is in the Department of Health and Social Services) or with the fiduciary of the other state fund if the Commissioner does not serve as fiduciary. This section does not empower the Commissioner of Revenue, except that he/she could enter into an agreement with the Board to manage a fund in the Department of Revenue that is not currently listed in this bill.

2. Page 6. Section 37.10.280 The board is required to ensure that trusted assets are protected and that insurance must protect the board and state from liability to others. In your letter you stated that "liability for wrongdoing by the managers will fall squarely on the beneficiaries", please be assured that the assets are protected and the beneficiary pocket will not be picked. Insurance does not protect trustees in the cases of conflict of interest, bad faith, reckless or intentional wrongdoing. The public pension standard nationwide is to provide errors and omission

OTHER  
STATE  
FUNDS

Insurance

Michael Kirk letter - Our response / Revenue notes / Kirk letter - NSUKA/BE  
ASUB

insurance as most sponsoring governmental entities have limited financial resources and would be hard pressed to pay the defense costs associated with a complex public pension plan fiduciary liability case. Of equal importance, trustees do deserve some protection from "nuisance" lawsuits" and cannot be expected to pay for or even wait for reimbursement for personal suit related costs. There will always be an element of risk involved with any fiduciary, providing insurance transfers some of that risk from the state and the beneficiaries to the insurance company.

3. Page 7 Sec. 37.10.310 Liability. The purpose of this section is to clarify there is no General Fund obligation. Investments losses are to be satisfied by the plan assets, just as investment gains are credited to the plan. SB 329 provides a strong Board of Trustees, an extensive, clear set of governing and reporting requirements, access to professional and legal resources and expectations of fiduciary training in an effort to ensure responsible management of the pension funds. Keep in mind, that the new Board is composed of equal numbers of beneficiary representatives, not just state officials.

*Liability*

Thank you again for your interest in this matter.

Sincerely,

Senator Pat Pourchot  
Co-Chair, Senate Finance

RECEIVED JAN 15 1992

P.O. Box 20844  
Juneau, Alaska 99802  
January 14, 1992

Hon. Pat Pourchot  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Re: Draft bill on management of state pension funds

Dear Senator Pourchot:

You were good enough to share with me a copy of the draft bill worked out between yourself and the administration regarding management of state pension funds. I realize the bill is a compromise, but on reading it over certain aspects strike me as glaringly unwise. I would like to draw your attention to them in the hope that it is early enough to remedy the problems.

*Other  
state  
funds*

A). In the draft bill (draft 7-LS1609\D, 12/19/91), on page one, line 11, the purpose section states that the new Pension Investment Board is to provide prudent and productive management and investment of state pension funds "upon agreement with the commissioner." Nonetheless, although it is not stated in such terms elsewhere in the bill, this language appears to give the Commissioner of Revenue a complete veto over everything the Board does. In short, it becomes merely an advisory Board, which the Commissioner may ignore if he wishes. Was this your intent? If so, I am exceedingly alarmed by it. If it is not your intent, the section needs to be rewritten to make clear that the Board is not merely advisory and that the Commissioner is not free to overrule it.

B) Also, on page 6, lines 19 - 24, the Board is required to obtain insurance protecting the assets against liability to others; but the requirement is that the Board members themselves, as well as the State, be protected by insurance. Where is the incentive to perform according to legal obligations if insurance is required to make sure that the Board members never have any obligation arising out of mismanagement?

C) This non-accountability problem is made even worse by the provision at page 7, lines 5 - 7, which says that should liability arise because of Board actions, the liability shall be satisfied only from the trust assets. In other words, should the Board or the State mismanage their fiduciary duties, it is the beneficiaries -- not whoever did the mismanagement, nor the State -- who must pay. The provision on page 6 requiring insurance will not help in the case of gross mismanagement or deliberate misfeasance, since insurance will not cover deliberate wrongdoing. So in the worst cases, the liability for the wrongdoing by the managers will fall squarely on the beneficiaries, with absolutely no recourse against the wrongdoers. In fact, if the Board should

be convicted of criminal wrongdoing in use of the trust funds, this provision would prevent a judge from ordering either the Board, its members, or the State to reimburse the trust. This section should be labelled for what it is, a grant of complete immunity to the Board and the State for misfeasance and malfeasance in the administration of a trust. I cannot think of any justification for such a provision, and I ask you to reconsider it.

Taken together, these provisions seem to invite fiduciary disaster for the trusts, particularly if the current national experience of managerial misfeasance and malfeasance should strike in Alaska. My concern is not only with ordinary malfeasance or mismanagement due to incompetence, but also with attempts to use the pension funds for unwise public works projects or other schemes which are not in the interests of the beneficiaries. Since a statutory grant of immunity would leave no opportunity for legal appeal or other recourse, I would urge you not to give license to possible mismanagement by the Commissioner or others.

I ask you to please reconsider these provisions so that the fiduciaries of the trusts remain accountable to the beneficiaries for their actions.

I hope these comments have been helpful. I will be out of town until February 3rd, but I will be happy to discuss this matter after I return.

Sincerely yours,

  
Michael J. Kirk