

LEGAL SERVICES

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MEMORANDUM

March 30, 2018

SUBJECT: (CSHB 83(); Work Order No. 30-LS0315\T)

TO: Representative Sam Kito
Attn: Edric Carrillo

FROM: Daniel C. Wayne
Legislative Counsel 

The draft CS you requested is attached. Please review it carefully. As requested, I changed the bill's effective date, and dates in sec. 39.35.128 to July 1, 2019, and deleted the requirements under secs. 12 and 25 that a new employee's spouse sign off on the employee's one-time irrevocable election to participate in a defined contribution plan instead of a defined benefit plan, in order for that election to be valid.

It is foreseeable that a spouse may litigate an election under sec. 12 or sec 25, if the draft CS becomes law, even though at the time of the election under those sections the employee's pension benefits are not yet vested, the present value of the benefits may be very small, and their future value is speculative. In *Laing v. Laing*, the Alaska Supreme Court held that nonvested pension rights are a marital asset.¹ The Court reasoned that an employee's spouse has a contractual right to the employee's nonvested pension benefits, and "the fact that a contractual right is contingent upon future events does not degrade that right to an expectancy."² This may raise a constitutional issue under art. I, sec. 15, Constitution of the State of Alaska, which prohibits laws that impair the obligation of contracts.

As noted in a previous memo to your office dated May 1, 2017, in 1981 the Alaska Supreme Court determined that earned pension benefits cannot be diminished, and the future right to a specified benefit is vested when employment begins.³ Because under

¹ *Laing v. Laing*, 741 P.2d 649, 656 (Alaska 1987).

² *Id.*, (internal citations and quotations omitted).

³ *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). It is worth noting that the reductions in benefits found invalid in *Hammond* included a reduction in occupational death benefits. Occupational death benefits are among the benefits to which an employee's spouse has rights under PERS and TRS.

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both PERS and TRS, an employee's spouse may have future legal rights to the employee's retirement benefits, an argument can be made that an election by the employee to give up rights under PERS or TRS requires the spouse's assent.

Also, as advised in our memo to your office dated April 17, 2017, (referencing ver. O) "language referencing coverage that was 'in effect before July 1, 2006,' added by request to AS 14.25.168 on page 4, lines 4 - 5, and AS 39.35.535, on page 11, lines 15 - 16, is superfluous. As amended by the bill without adding this language, AS 14.25.168 (in TRS) and AS 39.35.535 (in PERS) already make it clear that everyone to whom a respective section applies will receive the same major medical coverage under this section, whether they were members of the plan before July 1, 2006, or became members later as permitted by the bill. Furthermore, the added language may cause confusion, beginning with the meaning of "coverage in effect before July 1, 2006," that makes it more difficult to administer the respective plans."

If I may be of further assistance, please advise.

DCW:dls
18-183.dls

Attachment