



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Administration

KELLY TSHIBAKA, COMMISSIONER

10th Fl. State Office Building
PO Box 110200
Juneau, AK 99811-0200
Main: 907.465.2200
Fax: 907.465.2135
www.doa.alaska.gov

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The Honorable Chuck Kopp
Chairman, House Rules Committee
Alaska State House of Representatives
State Capitol Room 216
Juneau, AK 99801

Subject: SB 241 – Amendment 12 - COLA

Dear Representative Kopp:

Amendment 12 to SB 241 was offered on the Senate floor by Senator Gray-Jackson. The amendment purports to suspend the 90-day return to Alaska deadline in the cost-of-living adjustment (COLA) statutes for the Public Employees' Retirement System (PERS) and the Teachers' Retirement System (TRS). AS 39.35.480 & 14.25.142. Both of the COLA statutes require retirees to be "residing in the state" to obtain COLA benefits. For the purpose of the statutes, "residing in the state means domiciled and physically present in the state." AS 39.35.480(d). The statute provides that a continuous absence of less of 90-days (or six months if the absence is ordered by a doctor) does not impact the "residing in the state" requirement under AS 39.35.480(b) and (d). The terms "domiciled" and "physically present" are further defined by 2 AAC 35.240 (providing a list of documents and actions that indicate domicile).

Amendment 12 would remove the 90-day return to Alaska deadline for individuals that "notified the commissioner of administration or the commissioner's designee that the person expects to be absent from the state for a continuous period that first exceeds 90 days on or after March 11, 2020, as long as the person is absent from the state because of protective measures, including a voluntary or compulsory quarantine, related to avoiding or preventing the spread of the novel coronavirus disease (COVID-19)." While SB 241 has a general sunset clause of September 1, 2020, amendment 12 does not provide any direction when a retiree would need to return to Alaska to continue COLA entitlement, nor does the amendment provide any guidance on how long a person could voluntarily quarantine. To the extent retirees are absent from Alaska as the result of a medically ordered isolation or quarantine, the COLA statutes already provide for an extended absence. See AS 39.35.480(d)(2) (a retiree can be absent for "six months or less, when ordered by a physician to be absent from the state.") Additionally, the amendment does not indicate how to verify whether or not an extended absence is COVID-19 related.

Finally, amendment 12 is ambiguous as to when the individual had to leave Alaska. As written, the waiver applies to anyone who is out of state and eclipses the 90-day deadline "after March 11, 2020." Conceivably, a retiree currently in Alaska could leave the state on May 1, 2020 and continue to receive COLA after July 31st because the 90-day period elapsed after March 11, 2020 (provided they were not returning to the state due to COVID-19).

Moreover, amendment 12 does not clearly delineate whether a general concern regarding COVID-19 is sufficient to trigger the waiver provision. Functionally, amendment 12 acts as a blanket waiver for the 90-day return to Alaska until the bill sunsets, regardless of the safety, feasibility, and practicality of a return to Alaska. As previously stated, it appears from amendment 12 this waiver would also be prospective in effect, allowing retirees currently in the state to leave and take advantage of the waiver until the statute sunsets.

In addition, the Division of Retirement and Benefits would have to know what protective measures were in place in which states at which times to determine whether a member was truly unable to return because of measures in the state they are in. The term "Quarantine" also has no definition in the amendment and the plain meaning is "a state, period, or place of isolation in which people or animals that have arrived from elsewhere or been exposed to infectious or contagious disease are placed." This definition does not account for the retirees who are advanced in age who self-isolate voluntarily and who have not been exposed to the COVID-19 virus. These retiree situations are different, they must pass through airports in infected areas to get back to Alaska and it is unsafe for them to do so. This amendment would not allow an extension for these retirees and they appear to be the majority of those who are truly affected.

Currently the Retirement and Benefits team has been evaluating and adjusting many processes and policies to minimize difficulty for members and accommodate personal health and safety needs during this health crisis. The Division has been working with the Department of Law to determine what is allowable under statute regarding COLA benefits for members.

The Division has begun using the plan provisions to waive overpayments of benefits under AS 39.35.522. This statute allows the Commissioner of the Department of Administration or designee, the power to establish a hardship that may arise, allowing a waiver to be granted. These issues are being examined on a case by case basis as this is required under the statute. To that end, the Division will be asking for documentation such as: canceled airline ticket, contemporary newspaper reports, statement of health from physician(s), or information regarding the airports' members would have to travel through, to establish a legitimate waiver for each member.

The Division does not need this amendment, they currently have the tools available to accommodate the retirees. Please let us know if we can be of further assistance, thank you for your time.

Respectfully,



Kelly Hanke
Legislative Liaison
Department of Administration