

# KETCHIKAN GATEWAY BOROUGH

## RESOLUTION NO. 2316

**A Resolution of the Assembly of the Ketchikan Gateway Borough, supporting a Bill to end requirements that employers who terminate some or all participation in the Public Employees' Retirement System of Alaska pay termination costs, and making the changes retroactive; and Providing for an Effective Date**

### RECITALS

- A. **WHEREAS**, the Alaska State Legislature, in SB 125, helped Alaska's PERS employers tremendously by adopting the flat statutory 22% rate of salary to help fund current costs and the unfunded liability of the PERS system; and
- B. **WHEREAS**, our legislators, in crafting SB 125 struggled hard to come up with a fair and equitable solution to a problem that most of them did not create. Further, in crafting SB 125, legislators never envisioned, intended, nor did they want to create any inequitable financial damage to any PERS member employer, nor negatively interfere with the current or future delivery of any member's services or programs because of SB 125, which the termination studies law does do; and
- C. **WHEREAS**, 2 AAC 35.235. Calculation of termination costs states: (a) An employer that proposes to terminate coverage of a department, group, or other classification of employees under AS 39.35.615 or 39.35.957, or terminate participation of the employer under AS 39.35.620 or 39.35.958, must have a termination study completed by the plan actuary to determine the actuarial cost to the employer for future benefits due employees whose coverage is terminated. And (b): In addition to the costs calculated in (a) ...the employer under AS 39.35.620 or 39.35.958, is required to pay to the plan until the past service liability of the plan is extinguished an amount calculated by applying the current past service rate adopted by the board to salaries of the terminated employees as required by AS 39.35.625 (a). This payment shall be made each payroll period or the employer may enter into a payment plan acceptable to the administrator for each fiscal year; and
- D. **WHEREAS**, if a PERS employer reduces its employee count because it made a decision to alter or suspend one of its programs or services, per 2 AAC, 35.235 PERS will send the employer three bills. The first bill will be for the cost of doing a termination study. The second bill will be what the study says is owed the System, due to the employee change(s) made. The third bill, the big bill, requires the employer to pay the past service cost (PSC) on each position's salary PERS determines has been removed from PERS by voluntary request of the

employer or should be removed from PERS (whether voluntarily or involuntarily in response to direction from PERS) due to the change in staffing. The employer will be required to pay the PSC (currently 18.63%) on the salary(s) of the position(s) PERS determines has been removed (as indicated), until the unfunded obligation is paid off, perhaps 30 years from now. These three bills cumulatively can run from hundreds of thousands of dollars to several millions of dollars; and

- E. **WHEREAS**, the underlying fear that certain employers would purposely act in a manner that jeopardized payment of the unfunded obligation, and thus shrink the salary base that pays off the unfunded obligations, has simply not happened. The total PERS salary base must be sustained and have reasonable growth, which it has to the tune of about 19% since the 6/30/2008 last pay period floor was set; and
- F. **WHEREAS**, the future financial stability of PERS employers, and their ability to efficiently and effectively manage the delivery of their programs and services, is being directly impacted and undermined by 2 AAC 35.235; and
- G. **WHEREAS**, equitable and consistent application of the State's termination law does not seem to be occurring, nor likely can it ever occur given the uniqueness of all PERS employers' positions. A law like this that has such a material financial impact on PERS employers should at a minimum be able to be fairly, equitably, and consistently applied to all PERS employers, yet the Division of Retirement and Benefits has taken the position that the State, with half of the PERS salary base, is exempt from termination studies and their financial impacts; and
- H. **WHEREAS**, there is an inescapably inequitable impact to small PERS employers. This State law, or its application by PERS, creates a clear and unconscionable inequitable impact on small PERS employers, versus larger PERS employers. Many smaller communities only have "one" employee for a program or service. If the community loses a grant, or is simply faced with budget constraints and have to eliminate a position, for example a personnel director, the employer will be required to have a termination study done, then pay all of the related costs because "function or a group" was cut; and
- I. **WHEREAS**, termination studies negatively impact a PERS employer's decision, and the ability to accept grants because of the potential future liability. Grant funded positions may become subject to the termination studies, once the positions are terminated due to grant funding ending. Employers will find themselves using other revenues to pay the past service cost rate on the salaries for former grant funded positions. Essentially, if an employer accepts a grant it is possible, depending upon the circumstances, that once those grant funded positions are ended the employer will need to use other dollars to pay the PSC on those former grant

funded salaries that the employer is no longer paying; and

- J. **WHEREAS,** there are no offsets taken into account for salary increases in one area, for decreases in other areas. In other words, the ability for entities to adjust their programs and services to meet their constituent's needs is negatively impacted. If an employer needs to cut in Area A, and add in Area B, that employer could find itself paying the PSC rate times the salary(s) it is no longer paying in Area A because it shifted its employees to Area B where there is more need, whether driven by local need or a mandate; and
- K. **WHEREAS,** over time, more and more resources will go toward paying for positions that no longer exist than go to the delivery of services such as fire protection, law enforcement, teaching, recreational services, landfill services, library services, flood control services, emergency response services, and the list goes on from here. Once an employer starts shifting employee resources from one area of responsibility to another, it starts a negative downward spiraling in the ability to fund other programs and services; and
- L. **WHEREAS,** an employer will pay more toward the unfunded obligation every pay period on positions that no longer exist than they will for existing paid positions. This is true because the rate set by statute is capped at 22%. The 22% first covers the current normal cost rate and the difference is applied to the unfunded obligation. The current (FY '11) normal cost rate is 9.33%; therefore, an employer pays 11.67% times the working employee's salary toward the unfunded obligation. This same employer is required to pay 18.63% times the salary of an employee they are no longer paying toward the unfunded obligation. That employer is paying almost 7% more for positions that no longer exist because of the unfunded obligation than it pays on salary dollars for existing positions; and
- M. **WHEREAS,** termination studies nullify the intent of SB 125 that employers pay the exact same rate. It is clear that one result of these termination studies is that different employers will in fact be paying different net rates, and therefore, there will not be a single uniform contribution rate for PERS employers. The adoption of SB 125 was based on the acknowledgement that the State does not have a single-agent, multiple employer PERS system, but rather a consolidated un-equitable cost share system. The intent of SB 125 was that all employers would pay the same exact rate. That cannot happen when each employer pays a different termination cost amount, or pays none at all; and
- N. **WHEREAS,** the Ketchikan Gateway Borough supports a sustainable salary base to pay off the PERS unfunded obligations; and
- O. **WHEREAS,** the termination language in SB 125 was a solution to a problem that never

materialized, and is not needed. The negative consequences, the additional charges and the payments that result from the termination language, were never contemplated or intended by the legislature, and are destructive; and

P. **WHEREAS**, A.S. 39.35.625, that requires termination studies, and any other similar statutes or regulations, should be repealed.

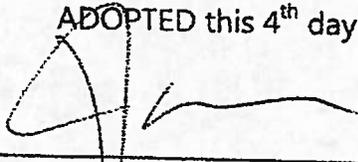
**NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE FACTS, IT IS RESOLVED BY THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH** as follows:

**Section 1.** The Assembly, while supporting a sustainable salary base to pay off the PERS unfunded obligation, believes that AS 39.35.625 and any other similar statutes or regulations that require termination studies, should be repealed, and

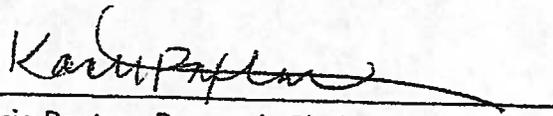
**Section 2.** The Assembly supports adoption and passage of a bill, such as SB 100, removing termination study requirements from the law.

**Section 3.** This resolution is effective upon adoption.

ADOPTED this 4<sup>th</sup> day of April, 2011.

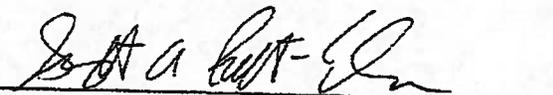


\_\_\_\_\_  
Dave Kiffer, Borough Mayor



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Kacie Paxton, Borough Clerk

APPROVED AS TO FORM:



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Scott A. Brandt-Erichsen, Borough Attorney

| EFFECTIVE DATE:                                 |     | APRIL 4, 2011 |        |   |
|---|-----|---------------|--------|---|
| ROLL CALL                                       | YES | NO            | ABSENT |   |
| Bailey  | ✓   |               |        |   |
| Harrington                                      | ✓   |               |        |   |
| Moran   |     |               |        | ✓ |
| Phillips  | ✓   |               |        |   |
| Rotecki   | ✓   |               |        |   |
| Salazar   | ✓   |               |        |   |
| Shoemaker                                       | ✓   |               |        |   |
| Mayor (tie votes only)                          |     |               |        |   |
| <b>4 AFFIRMATIVE VOTES REQUIRED FOR PASSAGE</b> |     |               |        |   |