CS FOR HOUSE BILL NO. 179(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 4/4/07
Referred: Finance

Sponsor(s): REPRESENTATIVE KELLY

A BILL

FOR AN ACT ENTITLED

"An Act relating to insurance for public employees, teachers, and certain retired public employees and teachers and to supplemental employee benefits; relating to teachers' and public employees' defined benefit retirement plans, to teachers' and public employees' defined contribution retirement plans, to employee and employer contributions to the teachers' retirement system and the public employees' retirement system, and to the administration of the Public Employees' Retirement System of Alaska and the deferred compensation program for state employees; establishing in the Department of Revenue the teachers' retirement system past service cost liability account and the public employees' retirement system past service cost liability account; relating to benefits of, references to federal law in, and investments in the teachers' retirement system and the public employees' retirement system; modifying the jurisdiction of the independent office of administrative hearings as related to retirement and related personnel benefits;

and providing for an effective date."

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

*** Section 1.** AS 14.25.070(a) is amended to read:

(a) An employer shall make contributions to the plan **in accordance with this section and as certified by the board** in an amount sufficient, after subtracting member contributions, to provide the benefits of AS 14.25.009 - 14.25.220. The amount shall be calculated by applying **the employer normal cost rate to the sum total of the base salaries paid to members in the plan and by applying the past service rate to the sum total of the base salaries paid to members in the system** [AN EMPLOYER CONTRIBUTION RATE, CERTIFIED BY THE BOARD, AGAINST THE SUM TOTAL OF THE BASE SALARIES PAID TO MEMBERS], including any adjustments to contributions required by AS 14.25.173(a). **The employer shall remit this amount to the administrator in accordance with AS 14.25.065.**

*** Sec. 2.** AS 14.25.070 is amended by adding new subsections to read:

(d) In (a) of this section, "employer normal cost rate" means the percentage of compensation of all active members in the plan that, when combined with the member contribution rate of active members in the plan, is sufficient to provide the benefits that are expected to be credited with respect to service during the year beginning after the last valuation date. This percentage is uniformly determined for all employers and is applicable to each employer.

(e) In (a) of this section, "past service rate" means the percentage of compensation of all active members in the system necessary to provide the annual amount required to amortize the unfunded obligations of the employers for benefits earned by members in the plan before the date of the last actuarial valuation over a period not to exceed the maximum period allowed by generally accepted accounting principles of the Governmental Accounting Standards Board. This percentage is uniformly determined for all employers and is applicable to each employer.

*** Sec. 3.** AS 14.25.125(c) is amended to read:

(c) Membership service for which contributions were refunded is not

creditable under this section [UNLESS THE REFUNDED CONTRIBUTIONS HAVE BEEN REPAID. FOR PURPOSES OF THIS SECTION, A MEMBER OR FORMER MEMBER DOES NOT HAVE TO BE REEMPLOYED UNDER THIS PLAN IN ORDER TO REPAY REFUNDED CONTRIBUTIONS. COMPOUND INTEREST AT THE RATE PRESCRIBED BY REGULATION MUST BE ADDED TO THE REINSTATEMENT INDEBTEDNESS FROM THE DATE OF THE REFUND TO THE DATE OF REPAYMENT].

*** Sec. 4.** AS 14.25.310 is amended to read:

Sec. 14.25.310. Applicability of AS 14.25.310 - 14.25.590. The provisions of AS 14.25.310 - 14.25.590 apply only to teachers who first become members on or after July 1, 2006, **<u>to members who are employed by employers that do not participate in the retirement benefit plan established under AS 14.25.009 - 14.25.220, to former members as that term is defined under AS 14.25.220,</u>** or to members who transfer into the defined contribution plan under AS 14.25.540.

*** Sec. 5.** AS 14.25.320(c) is amended to read:

(c) The defined contribution retirement plan is intended to qualify under 26 U.S.C. 401(a)**<u>,</u>** [AND] 414(d)**<u>, and 414(k)</u>** (Internal Revenue Code) as a qualified retirement plan established and maintained by the state for its employees and for the employees of school districts and regional educational attendance areas in the state.

*** Sec. 6.** AS 14.25.350 is amended by adding a new subsection to read:

(e) An employer shall make annual contributions to a trust account in the plan, applied as a percentage of each member's compensation from July 1 to the following June 30, in an amount determined by the board to be actuarially required to fully fund the cost of providing occupational disability and occupational death benefits under AS 14.25.310 - 14.25.590.

*** Sec. 7.** AS 14.25.380 is amended to read:

Sec. 14.25.380. Limitations on contributions <u>and benefits</u>. Notwithstanding any other provisions of this plan, the annual additions to each member's individual account under this plan and under all defined contribution plans of the employer required to be aggregated with the contributions from this plan under the provisions of 26 U.S.C. 415 may not exceed, for any limitation year, the amount permitted under 26

U.S.C. 415**(c)** at any time. If the amount of a member's **individual account** [DEFINED CONTRIBUTION PLAN] contributions exceeds the limitation of 26 U.S.C. 415(c) for any limitation year, the administrator shall take any necessary remedial action to correct an excess contribution. **A fixed benefit provided under this plan may not exceed, for or during a limitation year, the amount permitted under 26 U.S.C. 415(b). If a fixed benefit provided under this plan exceeds, for or during a limitation year, the amount permitted under 26 U.S.C. 415(b), the administrator shall take remedial action necessary to comply with the limits on the benefit amount in 26 U.S.C. 415(b).** The provisions of 26 U.S.C. 415, and the regulations adopted under that statute, as applied to qualified [DEFINED CONTRIBUTION] plans of governmental employees are incorporated as part of the terms and conditions of the plan.

*** Sec. 8.** AS 14.25.400(b) is amended to read:

(b) A participant may direct investment of plan funds held in an **individual** account among available investment funds in accordance with rules established by the board.

*** Sec. 9.** AS 14.25.485(b) is amended to read:

(b) The occupational disability benefits accrue beginning the first day of the month following termination of employment as a result of the disability and are payable the last day of the month. If a final determination granting the benefit is not made in time to pay the benefit when due, a retroactive payment shall be made to cover the period of deferment. The last payment shall be for the first month in which the disabled member

(1) dies;

(2) recovers from the disability;

(3) fails to meet the requirements under (f)**, (h),** or **(j)** [(h)] of this section; or

(4) reaches normal retirement age.

*** Sec. 10.** AS 14.25.485(d) is amended to read:

(d) The monthly amount of an occupational disability benefit is 40 percent of the disabled member's gross monthly compensation at the time of termination due to

disability. **Notwithstanding AS 14.25.390(b), at the time a member is appointed to disability, the member becomes fully vested in the employer contributions made under AS 14.25.350(a). A disabled member is fully vested in the contributions to the member's individual account made under this subsection. A member is not entitled to elect distributions from the member's individual account under AS 14.25.410 while the member is receiving disability benefits under this section.** While a member is receiving disability benefits, based on the disabled member's gross monthly compensation at the time of termination due to disability, the employer shall make contributions to the

(1) member's individual account under AS 14.25.340 on behalf of the member, without deduction from the member's disability payments; and

(2) appropriate accounts and funds on behalf of the member under AS 14.25.350.

*** Sec. 11.** AS 14.25.485(g) is amended to read:

(g) A disabled member's occupational disability benefit terminates **the last day of the month in which** [WHEN] the disabled member first **qualifies** [ATTAINS ELIGIBILITY] for normal retirement. At that time, the member's retirement benefit shall be determined under the provisions of AS 14.25.420 - 14.25.440, 14.25.470, and 14.25.480. A member **whose occupational disability benefit terminates under this subsection** [RECEIVING DISABILITY BENEFITS UP UNTIL ELIGIBILITY FOR RETIREMENT] shall be considered to have retired directly from the plan.

*** Sec. 12.** AS 14.25.485(i) is amended to read:

(i) Upon the death of a disabled member who is receiving or is entitled to receive an occupational disability benefit, the administrator shall pay the surviving spouse a surviving spouse's pension, equal to 40 percent of the member's monthly compensation at the termination of employment because of occupational disability. If there is no surviving spouse, the administrator shall pay the survivor's pension in equal parts to the dependent children of the member. **While the monthly survivor's pension is being paid, the survivor is not entitled to elect distributions from the employee's individual contribution account under AS 14.25.410.** The first payment of the surviving spouse's pension or of a dependent child's pension shall accrue from

the first day of the month following the member's death and is payable the last day of the month. The last payment shall be made **the last day of** [FOR] the last month in which there is an eligible surviving spouse or **dependent** child**, or the last day of the month in which date the member would have first qualified for normal retirement if the member had survived, whichever day comes sooner. A retirement benefit shall be determined under the provisions of AS 14.25.420 - 14.25.440, 14.25.470, and 14.25.480 based on** [. ON] the date the **member would have first qualified for** normal retirement [OF THE MEMBER WOULD HAVE OCCURRED] if the member had **survived. In addition to the payment of the member's individual account, the surviving spouse or, if there is no surviving spouse, the surviving dependent children of the member, shall receive an additional benefit in an amount equal to the accumulated contributions that would have been made to the deceased member's individual account under AS 14.25.340(a) and 14.25.350(a), based on the deceased member's gross monthly compensation at the time of occupational disability, from the time of the member's death to the date the member would have first qualified for normal retirement if the member had survived. Earnings shall be allocated to the additional benefit calculated under this subsection based on the actual rate of return, net of expenses, of the trust account established under AS 14.25.350(e) over the period that the contributions would have been made. This additional amount shall be paid in the same manner as determined for the member's individual account under AS 14.25.420 – 14.25.460. For the purpose of determining eligibility of a survivor who is receiving a benefit under this subsection for medical benefits under AS 14.25.470 - 14.25.480, a** [LIVED, THE RETIREMENT BENEFIT SHALL BE DETERMINED UNDER THE PROVISIONS OF AS 14.25.420 - 14.25.440, 14.25.470, AND 14.25.480. A] member who died while receiving disability benefits shall be considered to have retired directly from the plan on the date the **member would have first qualified for** normal retirement [OF THE MEMBER WOULD HAVE OCCURRED] if the member had **survived. The period during which the member was eligible for a disability benefit and the period during which a survivor's pension is paid to a survivor under this**

subsection each constitute membership service for the purposes of determining vesting in employer contributions under AS 14.25.390(b) and eligibility for retirement and medical benefits under this chapter and AS 39.30.300 - 39.30.495 [LIVED].

*** Sec. 13.** AS 14.25.485(j) is repealed and reenacted to read:

(j) For the purposes of this section, a condition qualifies as an occupational disability if

(1) the condition is a physical or mental condition that the administrator determines presumably permanently prevents an employee from satisfactorily performing the employee's usual duties or the duties of another comparable position or job available to the employee and for which the employee is qualified by training or education; and

(2) the proximate cause of the condition is a bodily injury sustained, or a hazard undergone, while in the performance and within the scope of the employee's duties and is not the proximate result of the wilful negligence of the employee.

*** Sec. 14.** AS 14.25 is amended by adding a new section to read:

Sec. 14.25.486. Disability benefit adjustment. (a) Once each year, the administrator shall increase disability benefits. The amount of the increase is a percentage of the current disability benefit equal to the lesser of 75 percent of the increase in the cost of living in the preceding calendar year or nine percent.

(b) If a disabled member was not receiving a benefit during the entire preceding calendar year, the increase in the benefit under this section shall be adjusted by multiplying it by a fraction, the numerator of which is the number of months for which the benefit was received in the preceding calendar year and the denominator of which is 12.

(c) An increase in benefit payments under this section is effective July 1 of each year and is based on the percentage increase in the Consumer Price Index for urban wage earners and clerical workers for Anchorage, Alaska, during the previous calendar year, as determined by the United States Department of Labor, Bureau of Labor Statistics.

(d) Benefit adjustments under this section shall terminate the last day of the

month following the date on which a disabled member is no longer receiving a disability benefit under AS 14.25.485.

*** Sec. 15.** AS 14.25.487(b) is amended to read:

(b) The first payment of the surviving spouse's pension or of a dependent child's pension shall be made for the month following the month in which the member dies**. Payments** [, AND PAYMENT] shall cease **on the last day of the month in which there is no longer an eligible spouse or eligible dependent child, or the last day of the month following the earliest date** [TO BE MADE BEGINNING WITH THE MONTH IN WHICH] the member would have first qualified for **normal** retirement **if the member had survived, whichever day is earlier**.

*** Sec. 16.** AS 14.25.487(c) is amended to read:

(c) The monthly survivor's pension in (b) of this section for survivors of members is 40 percent of the member's monthly compensation in the month in which the member dies. **While the monthly survivor's pension is being paid, the survivor is not entitled to elect distributions from the member's individual contribution account under AS 14.25.410, except as required by AS 14.25.440.** While the monthly survivor's pension is being paid, the employer shall make contributions on behalf of the member's **surviving spouse and member's surviving dependent children** [BENEFICIARIES BASED ON THE DECEASED MEMBER'S GROSS MONTHLY COMPENSATION AT THE TIME OF OCCUPATIONAL DEATH

(1) TO THE MEMBER'S INDIVIDUAL ACCOUNT UNDER AS 14.25.340, WITHOUT DEDUCTION FROM THE SURVIVOR'S PENSION; AND

(2)] to the appropriate accounts and funds [ON BEHALF OF THE MEMBER] under AS 14.25.350**(b) - (e)**.

*** Sec. 17.** AS 14.25.487(e) is amended to read:

(e) On the date the **member would have first qualified for** normal retirement [OF THE MEMBER WOULD HAVE OCCURRED] if the member had **survived** [LIVED], the retirement benefit shall be determined under the provisions of AS 14.25.420 - 14.25.440, 14.25.470, and 14.25.480. **In addition to payment of the member's individual account, the surviving spouse or, if there is no surviving**

spouse, the surviving dependent children of the member, shall receive an additional benefit in an amount equal to the accumulated contributions that would have been made to the deceased member's individual account under AS 14.25.340(a) and 14.25.350(a), based on the deceased member's gross monthly compensation at the time of the member's occupational death, from the time of the member's death to the date the member would have first qualified for normal retirement if the member had survived. Earnings shall be allocated to the additional benefit calculated under this subsection based on the actual rate of return, net of expenses, of the trust account established under AS 14.25.350(e) over the period that the contributions would have been made. This additional amount shall be paid in the same manner as determined for the member's individual account under AS 14.25.420 – 14.25.460. A member who died and whose survivors receive occupational death benefits under this section shall be considered to have retired directly from the plan on the date the [NORMAL RETIREMENT OF THE] member would have **first qualified for normal retirement** [OCCURRED] if the member had **survived. The period of time during which a survivor's pension is paid under this section constitutes membership service for the purposes of determining vesting in employer contributions under AS 14.25.390(b) and eligibility for retirement and medical benefits under this chapter and AS 39.30.300 - 39.30.495** [LIVED].

*** Sec. 18.** AS 14.25 is amended by adding new sections to read:

Sec. 14.25.488. Survivor's pension adjustment. (a) Once each year, the administrator shall increase payments to a person 60 years of age or older receiving a survivor's pension under AS 14.25.485(i) or 14.25.487(c), and to a person who has received a survivor's pension under AS 14.25.485(i) or 14.25.487(c) for at least eight years if the person is not otherwise eligible for an increase under this section.

(b) The amount of the increase is a percentage of the current survivor's pension equal to the lesser of 50 percent of the increase in the cost of living in the preceding calendar year or six percent.

(c) If a survivor was not receiving a pension during the entire preceding calendar year, the increase in the survivor's pension under this section shall be

adjusted by multiplying it by a fraction, the numerator of which is the number of months for which the pension was received in the preceding calendar year and the denominator of which is 12.

(d) The administrator shall increase the initial survivor's pension paid to a survivor of a member who died while receiving disability benefits by a percentage equal to the total cumulative percentage that has been applied to the member's disability benefit under AS 14.25.486.

(e) An increase in benefit payments under this section is effective July 1 of each year and is based on the percentage increase in the Consumer Price Index for urban wage earners and clerical workers for Anchorage, Alaska, during the previous calendar year, as determined by the United States Department of Labor, Bureau of Labor Statistics.

(f) Pension adjustments under this section shall terminate the last day of the month following the date on which a survivor is no longer receiving a survivor's pension under AS 14.25.485(i) or 14.25.487(c).

Sec. 14.25.489. Premiums for retiree major medical insurance coverage upon termination of disability benefits or survivor's pension. The premium for retiree major medical insurance coverage payable by a member whose disability benefit is terminated under AS 14.25.485(g) or by an eligible survivor whose survivor pension is terminated under AS 14.25.485(i) or 14.25.487(e) when the member would have been eligible for normal retirement if the member had survived shall be determined under AS 14.25.480(g)(2) as if the member or survivor were eligible for Medicare.

*** Sec. 19.** AS 14.25.510 is amended to read:

Sec. 14.25.510. Nonguarantee of returns, rates, or benefit amounts. The plan created by AS 14.25.310 - 14.25.590 is**, with respect to individual accounts, treated as** a defined contribution **plan and** [PLAN,] not **as** a defined benefit plan. The amount of money in the **individual** account of a participant depends on the amount of contributions and the rate of return from investments of the account that varies over time. If benefits are paid in the form of an annuity, the benefit amount payable is dependent on the amount of money in the account and the interest rates applied and

service fees charged by the annuity payor at the time **the annuity is purchased from the carrier and** benefits are first paid. Nothing in this plan guarantees a participant

(1) a rate of return or interest rate other than that actually earned by the account of the participant, less applicable administrative expenses; or

(2) an annuity based on interest rates or service charges other than interest rates available from and service charges by the annuity payor in effect at the time the annuity is paid.

*** Sec. 20.** AS 14.25.540(c) is amended to read:

(c) Each eligible member who elects to participate in the defined contribution retirement plan shall have transferred to a new **individual** account the member contribution account balance held in trust for the member under the defined benefit retirement plan of the teachers' retirement system. A matching employer contribution shall be made on behalf of that employee to the new account. The employer shall make the matching contribution from funds other than the trust funds of the defined benefit retirement plan. **The amount of the matching employer contribution shall be subject to, and may not exceed, the limitation of 26 U.S.C. 415(c) during the applicable limitation year in which the contribution is made.**

*** Sec. 21.** AS 14.25.540(d) is amended to read:

(d) Upon a transfer, all membership service previously earned under the defined benefit retirement plan shall be nullified for purposes of entitlement to a future benefit under the defined benefit retirement plan but shall be credited for purposes of **determining vesting in employer contributions under AS 14.25.390(b) and** eligibility to elect medical benefits under AS 14.25.470. Membership service allowed for credit toward medical benefits does not include any service credit purchased under AS 14.25.075 for employment by an employer who is not a participating employer in this chapter.

*** Sec. 22.** AS 14.25.540(h) is amended to read:

(h) **A member who is eligible to elect transfer to the defined contribution plan must make the election not later than 12 months after the first day of the month following the administrator's receipt of notification that the member's employer consents to transfers of its members under (i) of this section.** The

election to participate in the defined contribution retirement plan must be made in writing on forms and in the manner prescribed by the administrator. Before accepting an election to participate in the defined contribution retirement plan, the administrator must provide the employee planning on making an election to participate in the defined contribution retirement plan with information, including calculations to illustrate the effect of moving the employee's retirement plan from the defined benefit retirement plan to the defined contribution retirement plan as well as other information to clearly inform the employee of the potential consequences of the employee's election. An election made under this subsection to participate in the defined contribution retirement plan is irrevocable. Upon making the election, the participant shall be enrolled as a member of the defined contribution retirement plan, the member's participation in the plan shall be governed by the provisions of AS 14.25.310 - 14.25.590, and the member's participation in the defined benefit retirement plan under AS 14.25.009 - 14.25.220 shall terminate. The participant's enrollment in the defined contribution retirement plan shall be effective the first day of the month after the administrator receives the completed enrollment forms. An election made by an eligible member who is married is not effective unless the election is signed by the individual's spouse.

*** Sec. 23.** AS 14.25.590(7) is amended to read:

(7) "compensation"

(A) means

(i) the total remuneration earned by an employee for personal services rendered, including cost-of-living differentials, as reported on the employee's Federal Income Tax Withholding Statement (Form W-2) from the employer for the calendar year;

(ii) the member contribution to the teachers' retirement system under AS 14.25.340;

(B) does not include retirement benefits, severance pay or other separation bonuses, welfare benefits, per diem, expense allowances, workers' compensation payments, payments for leave not used whether those leave payments are scheduled payments, lump-sum payments, donations, or cash-ins,

any remuneration contributed by the employer for or on account of the employee under this plan or under any other qualified or nonqualified employee benefit plan, **or** any remuneration not specifically included above that would have been excluded under 26 U.S.C. 3121(a) (Internal Revenue Code) if the employer had remained in the Federal Social Security System [, OR ANY REMUNERATION PAID BY THE EMPLOYER IN EXCESS OF THE SOCIAL SECURITY TAXABLE WAGE BASE FOR THE CALENDAR YEAR];

(C) notwithstanding (B) of this paragraph, includes any amount that is contributed by the employer under a salary reduction agreement and that is not includible in the gross income of the employee under 26 U.S.C. 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), or 403(b) (Internal Revenue Code); the annual compensation limitation for the member, which is so taken into account for those purposes, may not exceed $200,000, as adjusted for the cost of living in accordance with 26 U.S.C. 401(a)(17)(B) (Internal Revenue Code), with the limitation for a fiscal year being the limitation in effect for the calendar year within which the fiscal year begins;

*** Sec. 24.** AS 37.10 is amended by adding new sections to read

Article 4A. Teachers' and Public Employees' Retirement System Past Service Cost Liability Accounts.

Sec. 37.10.200. Teachers' retirement system past service cost liability account. (a) There is established in the Department of Revenue the teachers' retirement system past service cost liability account, consisting of appropriations to the account. The commissioner of revenue shall develop and adopt regulations necessary to accomplish the requirements of this section and shall manage the account according to the requirements of AS 37.10.071.

(b) At the end of each fiscal year, after all distributions under (c) of this section are completed, money appropriated for use in that fiscal year reverts to the general fund and all income earned on the money shall be paid to the general fund.

(c) During each fiscal year, the commissioner of revenue shall distribute from the account established in (a) of this section, to each employer other than the state that

is a member of the Teachers' Retirement System of Alaska, a payment that the employer shall pay to the state for that fiscal year toward eliminating the employer's past service cost liability to the Teachers' Retirement System of Alaska.

(d) A payment to an employer under (c) of this section must be based on 80 percent of the payroll on which employer contributions to the Teachers' Retirement System of Alaska were required and that the employer reported to the Department of Administration for the fiscal year preceding by three fiscal years the fiscal year for which a distribution is made under this section, and the past service cost rate of the system for the fiscal year preceding by three fiscal years the fiscal year for which a distribution is made under this section.

(e) For any fiscal year that the money available for distribution from the account is insufficient to pay every eligible employer the amount due under this section, the amount distributed in that fiscal year to every eligible employer shall be decreased pro rata.

(f) An employer who receives an overpayment in excess of a distribution authorized by this section or in excess of the employer's past service cost liability shall immediately return the overpayment to the commissioner of revenue, who shall cause it to be returned to the account.

Sec. 37.10.202. Public employees' retirement system past service cost liability account. (a) There is established in the Department of Revenue the public employees' retirement system past service cost liability account, consisting of appropriations to the account. The commissioner of revenue shall develop and adopt regulations necessary to accomplish the requirements of this section and shall manage the account according to the requirements of AS 37.10.071.

(b) At the end of each fiscal year, after all distributions under (c) and (d) of this section are completed, money appropriated for use in that fiscal year reverts to the general fund and all income earned on the money shall be paid to the general fund.

(c) During each fiscal year, the commissioner of revenue shall distribute from the account established in (a) of this section, to each municipal employer or school district employer member of the Public Employees' Retirement System of Alaska, a payment that the employer shall pay to the state for that fiscal year toward eliminating

the employer's past service cost liability to the Public Employees' Retirement System of Alaska.

(d) A payment to an employer under (c) of this section must be based on the payroll on which employer contributions to the Public Employees' Retirement System of Alaska were required and that the employer reported to the Department of Administration for the fiscal year preceding by three fiscal years the fiscal year for which a distribution is made under (c) of this section and 80 percent of the employer's past service cost rate during the fiscal year that precedes the distribution fiscal year under (c) of this section by three fiscal years.

(e) In addition to the distribution under (c) of this section, an employer that paid to the Public Employees' Retirement System of Alaska in excess of the amount the employer was required to pay for the fiscal year preceding by three fiscal years the fiscal year that a distribution is made under this section shall receive, in unrestricted funds, an incentive distribution from the account in an amount equal to 50 percent of the excess.

(f) For any fiscal year that the money available for distribution from the account is insufficient to pay every eligible employer the amount due under this section, the amount distributed in that fiscal year to every eligible employer shall be decreased pro rata.

(g) An employer who receives an overpayment in excess of a distribution or incentive distribution authorized by this section shall immediately return the overpayment to the commissioner of revenue, who shall cause it to be returned to the account.

Sec. 37.10.204. Definition. In AS 37.10.200 - AS 37.10.204, "past service cost rate" means the annual payment required to eliminate an employer's unfunded liability over the amortization period, divided by the payroll for which employer contributions are required and that is reported by the employer to the Department of Administration for the fiscal year preceding by three fiscal years the fiscal year that a distribution is made under AS 37.10.200 or 37.10.202.

*** Sec. 25.** AS 39.30 is amended by adding a new section to read:

Sec. 39.30.097. Regulations. The administrator may adopt regulations to

administer AS 39.30.090 - 39.30.095. Regulations adopted under this section relate to the internal management of a state agency and are not subject to AS 44.62 (Administrative Procedure Act).

*** Sec. 26.** AS 39.30.154 is amended to read:

Sec. 39.30.154. Powers and duties of the administrator. The administrator has the same powers and duties with regard to the plan as those set out in **AS 14.25.003 and 14.25.004** [AS 14.25.004].

*** Sec. 27.** AS 39.30.160(a) is amended to read:

(a) The Department of Administration shall, in accordance with policies prescribed by regulations **adopted by the commissioner** [OF THE ALASKA RETIREMENT MANAGEMENT BOARD], provide to employees for whom special individual employee benefit accounts are established under AS 39.30.150(c) the following benefit options:

(1) supplemental health benefits;

(2) supplemental death benefits;

(3) supplemental disability benefits; and

(4) supplemental dependent care benefits.

*** Sec. 28.** AS 39.30.160(e) is amended to read:

(e) Regulations adopted by the **commissioner** [BOARD] implementing AS 39.30.150 and this section are not subject to AS 44.62 (Administrative Procedure Act).

*** Sec. 29.** AS 39.30 is amended by adding a new section to read:

Sec. 39.30.165. Appeals. A final decision made under AS 39.30.150 - 39.30.180 is subject to appeal under AS 44.64.

*** Sec. 30.** AS 39.30 is amended by adding a new section to read:

Sec. 39.30.335. Appeals. A final decision made under AS 39.30.300 - 39.30.495 is subject to appeal under AS 44.64.

*** Sec. 31.** AS 39.30.340 is amended to read:

Sec. 39.30.340. Powers and duties of the administrator. The administrator shall establish a teachers' and public employees' retiree health reimbursement arrangement plan trust fund in which the assets of the plan shall be deposited and held.

The administrator has the same powers and duties with regard to the plan and the trust fund as provided in **AS 14.25.003 and 14.25.004** [AS 14.25.004].

*** Sec. 32.** AS 39.30.370 is amended to read:

Sec. 39.30.370. Contributions by employers. For each member of the plan, an employer shall contribute to the teachers' and public employees' retiree health reimbursement arrangement plan trust fund an amount equal to three percent of the **average annual compensation of all employees of employers in the plan** [EMPLOYER'S AVERAGE ANNUAL EMPLOYEE COMPENSATION]. The administrator shall maintain a record for each member to account for employer contributions on behalf of that member. The board shall establish by regulation the rate of interest to be applied annually to the amount in a member's individual account.

*** Sec. 33.** AS 39.35.250 is amended to read:

Sec. 39.35.250. Calculation of employer's contribution rate. (a) An employer shall make contributions to the plan in amounts determined in accordance with this section. For the purposes of this section **and AS 39.35.270**, the [PAST SERVICE DATE FOR EACH EMPLOYER IS THE ENTRY DATE OF THE EMPLOYER OR DECEMBER 31, 1972, WHICHEVER IS LATER. AFTER DECEMBER 31, 1972, IF AMENDMENTS TO AS 39.35.095 - 39.35.680 ARE ENACTED THAT SUBSTANTIALLY AFFECT BENEFITS ACCRUED BEFORE THE EFFECTIVE DATE OF THE AMENDMENT, THE PAST SERVICE DATE WILL BE CHANGED TO DECEMBER 31 OF THE YEAR IMMEDIATELY PRECEDING THAT IN WHICH THE AMENDMENT IS ENACTED. THE] contribution rate is the sum of the consolidated employer **normal cost** rate and the past service rate **as certified by the board**.

(b) In (a) of this section, "consolidated employer **normal cost** rate" means the percentage of compensation of all active **members** [EMPLOYEES] in the plan which, [IF PAID OVER THE PERIOD OF THEIR CREDITED SERVICE AFTER THEIR PAST SERVICE DATE AND] when combined with all employee contributions **to the plan**, is sufficient to provide the benefits earned **during the year beginning after the last valuation date** [AFTER SUCH PAST SERVICE DATES]. This percentage is [UNIFORMLY] determined **at the plan level** for all employers and is applicable to

each employer.

(c) In (a) of this section, "past service rate" means the percentage of compensation of all active **members** [EMPLOYEES] in the **system** [PLAN] necessary to provide the annual amount required to amortize the unfunded obligations of the **plan** [EMPLOYER] for benefits earned **by members in the plan** before the **date of the last actuarial valuation** [EMPLOYER'S PAST SERVICE DATE] over a period not to exceed **the maximum allowed by generally accepted accounting principles of the Governmental Accounting Standards Board** [40 YEARS. THE PERIOD OF AMORTIZATION BEGINS AT THE PAST SERVICE DATE OF EACH EMPLOYER. THE PERCENTAGE IS SEPARATELY DETERMINED FOR EACH EMPLOYER.]

*** Sec. 34.** AS 39.35.270(a) is amended to read:

(a) The amount of each employer's contributions shall be determined by applying the **consolidated employer normal cost** [EMPLOYER'S CONTRIBUTION] rate [, AS CERTIFIED BY THE BOARD,] to the total compensation paid to the **employer's** active **members** [EMPLOYEES] of the **plan and by applying the employer's past service rate to the total compensation paid to the employer's active members in the system** [EMPLOYER] for each payroll period**,** [AND BY] including any adjustments to contributions required by AS 39.35.520(a). This amount shall be remitted by the employer to the administrator in accordance with AS 39.35.610.

*** Sec. 35.** AS 39.35.375(a) is amended to read:

(a) An active or inactive member who has never been vested in this plan or in the teachers' retirement plan under AS 14.25.009 - 14.25.220, who has at least two years of credited service in this plan, and who has membership service in the teachers' retirement system may claim credited service in this plan in an amount equal to the membership service the member has in the teachers' retirement system. The claimed credited service may be added to service earned under AS 39.35.095 - 39.35.680 to enable the member to qualify for a public service benefit under this section. The member may not claim credited service for membership service for which the member has received a refund under AS 14.25.150 [UNLESS THE MEMBER FULLY PAYS

THE INDEBTEDNESS AS ESTABLISHED UNDER AS 14.25.063]. The member may not claim credited service in this plan based on unused sick leave under AS 14.25.115.

*** Sec. 36.** AS 39.35.385(c) is amended to read:

(c) Credited service for which contributions were refunded is not creditable under this section [UNLESS THE REFUNDED CONTRIBUTIONS HAVE BEEN REPAID. FOR PURPOSES OF (a) AND (b) OF THIS SECTION, A MEMBER OR FORMER MEMBER DOES NOT HAVE TO BE REEMPLOYED UNDER THIS PLAN IN ORDER TO PAY REFUNDED CONTRIBUTIONS. COMPOUND INTEREST AT THE RATE PRESCRIBED BY REGULATION SHALL BE ADDED TO THE REINSTATEMENT INDEBTEDNESS FROM THE DATE OF THE REFUND TO THE DATE OF REPAYMENT].

*** Sec. 37.** AS 39.35.522(d) is amended to read:

(d) **A ruling of the** [THE] commissioner of administration **denying a waiver under this section may be appealed under AS 44.64. The administrative law judge may reverse the ruling of the commissioner and** may impose conditions on the granting of a waiver that **the administrative law judge** [WHICH IT] considers equitable. These conditions may include requiring the member or beneficiary to make additional contributions to the plan.

*** Sec. 38.** AS 39.35.680(3) is amended to read:

(3) "administrator" means [THE PERSON APPOINTED BY] the commissioner of administration **or the commissioner's designee appointed** under **AS 39.35.003** [AS 39.35.050];

*** Sec. 39.** AS 39.35.700 is amended to read:

Sec. 39.35.700. Applicability of AS 39.35.700 - 39.35.990. The provisions of AS 39.35.700 - 39.35.990 apply only to members first hired on or after July 1, 2006, **to members who are employed by employers that do not participate in the retirement benefit plan established under AS 39.35.095 - 39.35.680, to former members as that term is defined under AS 39.35.680,** or to members who transfer into the defined contribution plan under AS 39.35.940.

*** Sec. 40.** AS 39.35.710(c) is amended to read:

(c) The retirement plan established by AS 39.35.700 - 39.35.990 is intended to qualify under 26 U.S.C. 401(a)**,** [AND] 414(d)**, and 414(k)** (Internal Revenue Code) as a qualified retirement plan established and maintained by the state for its employees, for the employees of political subdivisions, public corporations, and public organizations of the state, and for the employees of other employers whose participation is authorized by AS 39.35.700 - 39.35.990 and who participate in the plan set out in AS 39.35.700 - 39.35.990.

*** Sec. 41.** AS 39.35.750(e) is amended to read:

(e) An employer shall make annual contributions to **a trust account in** the plan**, applied as a percentage of each member's compensation from July 1 to the following June 30,** in an amount determined by the board to be actuarially required to fully fund the cost of providing occupational disability and occupational death benefits under **AS 39.35.700 - 39.35.990 and retirement benefits elected by disabled peace officers and fire fighters under AS 39.35.890(h)(2)** [AS 39.35.890 AND 39.35.892]. The contribution required under this subsection for peace officers and fire fighters and the contribution required under this subsection for other employees shall be separately calculated based on the actuarially calculated costs for each group of employees.

*** Sec. 42.** AS 39.35.780 is amended to read:

Sec. 39.35.780. Limitations on contributions and benefits. Notwithstanding any other provisions of this plan, the annual additions to each member's individual account under this plan and under all defined contribution plans of the employer required to be aggregated with the contributions from this plan under the provisions of 26 U.S.C. 415 may not exceed, for any limitation year, the amount permitted under 26 U.S.C. 415**(c)** at any time. If the amount of a member's **individual account** [DEFINED CONTRIBUTION PLAN] contributions exceeds the limitation of 26 U.S.C. 415(c) for any limitation year, the administrator shall take any necessary remedial action to correct an excess contribution. **A fixed benefit provided under this plan may not exceed, for or during a limitation year, the amount permitted under 26 U.S.C. 415(b). If a fixed benefit provided under this plan exceeds, for or during a limitation year, the amount permitted under 26 U.S.C. 415(b), the administrator shall take remedial action necessary to comply with the limits on**

the benefit amount in 26 U.S.C. 415(b). The provisions of 26 U.S.C. 415, and the regulations adopted under that statute, as applied to qualified [DEFINED CONTRIBUTION] plans of governmental employees are incorporated as part of the terms and conditions of the plan.

*** Sec. 43.** AS 39.35.890(b) is amended to read:

(b) The occupational disability benefits accrue beginning the first day of the month following termination of employment as a result of the disability and are payable the last day of the month. If a final determination granting the benefit is not made in time to pay the benefit when due, a retroactive payment shall be made to cover the period of deferment. The last payment shall be for the first month in which the disabled employee

(1) dies;

(2) recovers from the disability;

(3) fails to meet the requirements under (f)**, (j),** or **(*l*)** [(j)] of this section; or

(4) reaches normal retirement age.

*** Sec. 44.** AS 39.35.890(d) is amended to read:

(d) The monthly amount of an occupational disability benefit is 40 percent of the disabled employee's gross monthly compensation at the time of termination due to disability. **Notwithstanding AS 39.35.790(b), at the time a member is appointed to disability, the member becomes fully vested in the employer contributions made under AS 39.35.750(a). A disabled member is fully vested in the contributions to the member's individual account made under this subsection. An employee is not entitled to elect distributions from the employee's individual account under AS 39.35.810 while the employee is receiving disability benefits under this section.** While an employee is receiving disability benefits, based on the disabled employee's gross monthly compensation at the time of termination due to disability, the employer shall make contributions

(1) to the employee's individual account under AS 39.35.730 on behalf of the employee, without deduction from the employee's disability payments; and

(2) on behalf of the employee under AS 39.35.750.

*** Sec. 45.** AS 39.35.890(g) is amended to read:

(g) A disabled employee's occupational disability benefit terminates **the last day of the month in which** [WHEN] the disabled employee first **qualifies** [ATTAINS ELIGIBILITY] for normal retirement. At that time, the employee's retirement benefit shall be determined under the provisions of AS 39.35.820 - 39.35.840, 39.35.870, and 39.35.880. An employee **whose occupational disability benefit terminates under this subsection** [RECEIVING DISABILITY BENEFITS UP UNTIL ELIGIBILITY FOR RETIREMENT] shall be considered to have retired directly from the plan.

*** Sec. 46.** AS 39.35.890(h) is amended to read:

(h) Notwithstanding (g) of this section, at the time a peace officer or fire fighter receiving occupational disability benefits under this section first attains eligibility for normal retirement, the employee shall irrevocably elect to receive retirement benefits in the amount calculated as the

(1) employee's retirement benefit calculated under the provisions of AS 39.35.820 - 39.35.840; or

(2) employee's retirement benefit calculated as if the provisions of AS 39.35.370(c) were to apply; however, retirement benefits paid under this paragraph **must be paid first from the peace officer's or fire fighter's individual account, and the remaining benefits must be paid from the trust account established under AS 39.35.750(e); the peace officer or fire fighter may not elect other distributions from the peace officer's or fire fighter's individual account under AS 39.35.810 while receiving retirement benefits under this paragraph** [MAY NOT BE MADE FROM THE TRUST FUND OF THE PUBLIC EMPLOYEES' DEFINED BENEFIT RETIREMENT PLAN].

*** Sec. 47.** AS 39.35.890(k) is amended to read:

(k) Upon the death of a disabled employee who is receiving or is entitled to receive an occupational disability benefit, the administrator shall pay the surviving spouse a surviving spouse's pension, equal to 40 percent of the employee's monthly compensation at the termination of employment because of occupational disability. If there is no surviving spouse, the administrator shall pay the survivor's pension in equal

parts to the dependent children of the employee. **While the monthly survivor's pension is being paid, the survivor is not entitled to elect distributions from the employee's individual account under AS 39.35.810.** The first payment of the surviving spouse's pension or of a dependent child's pension shall accrue from the first day of the month following the employee's death and is payable the last day of the month. The last payment shall be made **the last day of** [FOR] the last month in which there is an eligible surviving spouse or **dependent** child**, or the last day of the month in which the employee would have first qualified for normal retirement if the employee had survived, whichever day comes sooner. A retirement benefit shall be determined under the provisions of AS 39.35.820 - 39.35.840, 39.35.870, and 39.35.880 based on** [. ON] the date the **employee would have first qualified for** normal retirement [OF THE EMPLOYEE WOULD HAVE OCCURRED] if the employee had **survived. In addition to payment of the member's individual account, the surviving spouse or, if there is no surviving spouse, the surviving dependent children of the member, shall receive an additional benefit in an amount equal to the accumulated contributions that would have been made to the deceased member's individual account under AS 39.35.730(a) and 39.35.750(a), based on the deceased member's gross monthly compensation at the time of occupational disability, from the time of the member's death to the date the member would have first qualified for normal retirement if the member had survived. Earnings shall be allocated to the additional benefit calculated under this subsection based on the actual rate of return, net of expenses, of the trust account established under AS 39.35.750(e) over the period that the contributions would have been made. This additional amount shall be paid in the same manner as determined for the member's individual account under AS 39.35.820 – 39.35.860. For the purpose of determining eligibility of an employee's survivor who is receiving a benefit under this subsection for medical benefits under AS 39.35.870 - 39.35.880, an employee** [LIVED, THE RETIREMENT BENEFIT SHALL BE DETERMINED UNDER THE PROVISIONS OF AS 39.35.820 - 39.35.840, 39.35.870, AND 39.35.880. AN EMPLOYEE] who died while receiving disability benefits shall be considered to have retired directly from the plan on the date

the **employee would have first qualified for normal retirement if the employee had survived. The period during which the employee was eligible for a disability benefit and the period during which a survivor's pension is paid to a survivor under this subsection each constitute membership service for the purposes of determining vesting in employer contributions under AS 39.35.790(b) and eligibility for retirement and medical benefits under this chapter and AS 39.30.300 - 39.30.495** [NORMAL RETIREMENT OF THE EMPLOYEE WOULD HAVE OCCURRED IF THE EMPLOYEE HAD LIVED].

*** Sec. 48.** AS 39.35.890(*l*) is repealed and reenacted to read:

(*l*) For the purposes of this section, a condition qualifies an occupational disability if

(1) the condition is a physical or mental condition that the administrator determines presumably permanently prevents an employee from satisfactorily performing the employee's usual duties or the duties of another comparable position or job available to the employee and for which the employee is qualified by training or education; and

(2) the proximate cause of the condition is a bodily injury sustained, or a hazard undergone, while in the performance and within the scope of the employee's duties and not the proximate result of the wilful negligence of the employee.

*** Sec. 49.** AS 39.35 is amended by adding a new section to read:

Sec. 39.35.891. Disability benefit and disabled peace officer or fire fighter retirement benefit adjustment. (a) Once each year, the administrator shall increase disability benefits and retirement benefits elected by disabled peace officers or fire fighters under AS 39.35.890(h)(2). The amount of the increase is a percentage of the current disability benefit or retirement benefit equal to the lesser of 75 percent of the increase in the cost of living in the preceding calendar year or nine percent.

(b) If a disabled member was not receiving a benefit during the entire preceding calendar year, the increase in the benefit under this section shall be adjusted by multiplying it by a fraction, the numerator of which is the number of months for which the benefit was received in the preceding calendar year and the denominator of which is 12.

(c) If a disabled peace officer or fire fighter elects to receive a retirement benefit in the amount calculated under AS 39.35.890(h)(2), the administrator shall, at the time the disabled peace officer or fire fighter is appointed to retirement, increase the retirement benefit by a percentage equal to the total cumulative percentage that has been applied to the disabled peace officer's or fire fighter's disability benefit under this section.

(d) An increase in benefit payments under this section is effective July 1 of each year and is based on the percentage increase in the Consumer Price Index for urban wage earners and clerical workers for Anchorage, Alaska, during the previous calendar year, as determined by the United States Department of Labor, Bureau of Labor Statistics.

(e) Benefit adjustments under this section shall terminate the last day of the month following the date on which a disabled member is no longer receiving a disability benefit under AS 39.35.890, unless the member is a disabled peace officer or fire fighter and has chosen a retirement benefit under AS 39.35.890(h)(2).

*** Sec. 50.** AS 39.35.892(b) is amended to read:

(b) The first payment of the surviving spouse's pension or of a dependent child's pension shall be made for the month following the month in which the employee dies**. Payments** [, AND PAYMENT] shall cease **on the last day of the month in which there is no longer an eligible spouse or eligible dependent child, or the last day of the month following the earliest date** [TO BE MADE BEGINNING WITH THE MONTH IN WHICH] the employee would have first qualified for **normal** retirement **if the employee had survived, whichever day is earlier**.

*** Sec. 51.** AS 39.35.892(c) is amended to read:

(c) The monthly survivor's pension in (b) of this section for survivors of employees who were not peace officers or fire fighters is 40 percent of the employee's monthly compensation in the month in which the employee dies. The monthly survivor's pension in (b) of this section for survivors of employees who were peace officers or fire fighters is 50 percent of the monthly compensation in the month in which the employee dies. **While the monthly survivor's pension is being paid, the**

survivor is not entitled to elect distributions from the employee's individual contribution account under AS 39.35.810, except as required by AS 39.35.840. While the monthly survivor's pension is being paid, the employer shall make contributions on behalf of the employee's **surviving spouse and employee's surviving dependent children** [BENEFICIARIES BASED ON THE DECEASED EMPLOYEE'S GROSS MONTHLY COMPENSATION AT THE TIME OF OCCUPATIONAL DEATH

(1) TO THE EMPLOYEE'S INDIVIDUAL ACCOUNT UNDER AS 39.35.730, WITHOUT DEDUCTION FROM THE SURVIVOR'S PENSION; AND

(2)] to the appropriate accounts and funds under AS 39.35.750**(b) - (e)**.

*** Sec. 52.** AS 39.35.892(e) is amended to read:

(e) On the date the **employee would have first qualified for** normal retirement [OF THE EMPLOYEE WOULD HAVE OCCURRED] if the employee had **survived** [LIVED], the retirement benefit shall be determined under the provisions of AS 39.35.820 - 39.35.840, 39.35.870, and 39.35.880. **In addition to payment of the member's individual account, the surviving spouse or, if there is no surviving spouse, the surviving dependent children of the member, shall receive an additional benefit in an amount equal to the accumulated contributions that would have been made to the deceased member's individual account under AS 39.35.730(a) and 39.35.750(a), based on the deceased member's gross monthly compensation at the time of occupational death, from the time of the member's death to the date the member would have first qualified for normal retirement if the member had survived. Earnings shall be allocated to the additional benefit calculated under this subsection based on the actual rate of return, net of expenses, of the trust account established under AS 39.35.750(e) over the period that such contributions would have been made. This additional amount shall be paid in the same manner as determined for the member's individual account under AS 39.35.820 – 39.35.860.** An employee who died and whose survivors receive occupational death benefits under this section shall be considered to have retired directly from the plan on the date the [NORMAL

RETIREMENT OF THE] employee would have **first qualified for normal retirement** [OCCURRED] if the employee had **survived. The period of time during which a survivor's pension is paid under this section constitutes membership service for the purposes of determining vesting in employer contributions under AS 39.35.790(b) and eligibility for retirement and medical benefits under this chapter and AS 39.30.300 - 39.30.495** [LIVED].

*** Sec. 53.** AS 39.35 is amended by adding new sections to read:

Sec. 39.35.893. Survivor's pension adjustment. (a) Once each year, the administrator shall increase payments to a person 60 years of age or older receiving a survivor's pension under AS 39.35.890(k) or 39.35.892(c), and to a person who has received a survivor's pension under AS 39.35.890(k) or 39.35.892(c) for at least five years if the person who is not otherwise eligible for an increase under this section.

(b) The amount of the increase is a percentage of the current survivor's pension equal to the lesser of 50 percent of the increase in the cost of living in the preceding calendar year or six percent.

(c) If a survivor was not receiving a pension during the entire preceding calendar year, the increase in the survivor's pension under this section shall be adjusted by multiplying it by a fraction, the numerator of which is the number of months for which the pension was received in the preceding calendar year and the denominator of which is 12.

(d) The administrator shall increase the initial survivor's pension paid to a survivor of a member who died while receiving disability benefits by a percentage equal to the total cumulative percentage that has been applied to the member's disability benefit under AS 39.35.891.

(e) An increase in benefit payments under this section is effective July 1 of each year and is based on the percentage increase in the Consumer Price Index for urban wage earners and clerical workers for Anchorage, Alaska, during the previous calendar year, as determined by the United States Department of Labor, Bureau of Labor Statistics.

(f) Pension adjustments under this section shall terminate the last day of the month following the date on which a survivor is no longer receiving a survivor's

pension under AS 39.35.890(k) or 39.35.892(c).

Sec. 39.35.894. Premiums for retiree major medical insurance coverage upon termination of disability benefits or survivor's pension. The premium for retiree major medical insurance coverage payable by an employee or survivor shall be determined under AS 39.35.880(g)(2) as if the employee or survivor were eligible for Medicare

(1) if the employee's disability benefit is terminated under AS 39.35.890(g);

(2) if the survivor pension paid to an eligible survivor under AS 39.35.892(e) is terminated;

(3) if the survivor pension paid to an eligible survivor is terminated under AS 39.35.890(k).

*** Sec. 54.** AS 39.35.910 is amended to read:

Sec. 39.35.910. Nonguarantee of returns, rates, or benefit amounts. The plan created by AS 39.35.700 - 39.35.990 is**, with respect to individual accounts, treated as** a defined contribution **plan and** [PLAN,] not a defined benefit plan. The amount of money in the **individual** account of a participant depends on the amount of contributions and the rate of return from investments of the account that varies over time. If benefits are paid in the form of an annuity, the benefit amount payable is dependent on the amount of money in the account and the interest rates applied and service fees charged by the annuity payor at the time **the annuity is purchased from the carrier and** benefits are first paid. Nothing in this plan guarantees a participant

(1) a rate of return or interest rate other than that actually earned by the account of the participant, less applicable administrative expenses; or

(2) an annuity based on interest rates or service charges other than interest rates available from and service charges by the annuity payor in effect at the time the annuity is paid.

*** Sec. 55.** AS 39.35.940(c) is amended to read:

(c) Each eligible member who elects to participate in the defined contribution retirement plan shall have transferred to a new account the employee contribution account balance held in trust for the member under the defined benefit retirement plan

of the public employees' retirement system. A matching employer contribution shall be made on behalf of that employee to the new account. The employer shall make the matching contribution from funds other than the trust funds of the defined benefit retirement plan established under AS 39.35.095 - 39.35.680. **The amount of the matching employer contribution shall be subject to, and may not exceed, the limitation of 26 U.S.C. 415(c) during the applicable limitation year.**

*** Sec. 56.** AS 39.35.940(d) is amended to read:

(d) Upon a transfer, all membership service previously earned under the defined benefit retirement plan shall be nullified for purposes of entitlement to a future benefit under the defined benefit retirement plan but shall be credited for purposes of **determining vesting in employer contributions under AS 39.35.790(b) and** eligibility to elect medical benefits under AS 39.35.870. Membership service allowed for credit toward medical benefits does not include any service credit purchased for employment by an employer who is not a participating employer in this chapter.

*** Sec. 57.** AS 39.35.940(h) is amended to read:

(h) **An employee who is eligible to elect transfer to the defined contribution plan must make the election not later than 12 months after the first day of the month that follows the administrators receipt of the notification that the employee's employer consents to transfers of its employees under (i) of this section.** The election to participate in the defined contribution retirement plan must be made in writing on forms and in the manner prescribed by the administrator. Before accepting an election to participate in the defined contribution retirement plan, the administrator must provide the employee planning on making an election to participate in the defined contribution retirement plan with information, including calculations to illustrate the effect of moving the employee's retirement plan from the defined benefit retirement plan to the defined contribution retirement plan as well as other information to clearly inform the employee of the potential consequences of the employee's election. An election made under this subsection to participate in the defined contribution retirement plan is irrevocable. Upon making the election, the participant shall be enrolled as a member of the defined contribution retirement plan, the member's participation in the plan shall be governed by the provisions of

AS 39.35.700 - 39.35.990, and the member's participation in the defined benefit retirement plan under AS 39.35.115 shall terminate. The participant's enrollment in the defined contribution retirement plan shall be effective the first day of the month after the administrator receives the completed enrollment forms. An election made by an eligible member who is married is not effective unless the election is signed by the individual's spouse.

*** Sec. 58.** AS 39.35 is amended by adding new sections to read:

Sec. 39.35.957. **Designation of eligible employees, agreement to contribute, and amendment of participation**. (a) A political subdivision or public organization participating in the defined contribution retirement plan under AS 39.35.700 - 39.35.990 shall designate the departments, groups, or other classifications of employees eligible to participate in the plan and, by participating, shall legally be presumed to have agreed to make contributions each year in the amounts required for members of the plan under AS 39.35.750.

(b) If the employer does not participate in the defined benefit retirement plan under AS 39.35.095 - 39.35.680, an employee who is eligible under (a) of this section and who is a member of the defined benefit retirement plan under AS 39.35.095 – 39.35.680 does not accrue credited service or make contributions under that defined benefit retirement plan, but shall be a member of the defined contribution retirement plan under AS 39.35.700 - 39.35.990 and make contributions under that plan.

(c) An employer may request to amend its participation in the plan to add or exclude departments, groups, or other classifications of employees by filing a resolution as provided by AS 39.35.950 or 39.35.955 with the administrator.

Sec. 39.35.958. Termination of participation in the plan. (a) A political subdivision or public organization may request that its participation in the plan be terminated. The request may be made only after adoption of a resolution by the legislative body of the political subdivision and approval of the resolution by the person required by law to approve the resolution, or, in the case of a public organization, after adoption of a resolution by the governing body of that public organization. A certified copy of the resolution shall be filed with the administrator.

(b) If contributions are not transmitted to the plan within the prescribed time

limit, the commissioner of administration may grant an extension and shall assess interest on the outstanding contributions at the rate established under AS 39.35.610. If the political subdivision or public organization is in default at the end of the extension, participation in the plan is terminated, and it shall be sent notice of termination.

(c) When an employer's participation in the plan is terminated, or when an employer terminates coverage of a department, group, or other classification of employees under AS 39.35.957(c), the administrator shall assess the employer an amount that the administrator determines is actuarially required to fully fund the costs to the plan for employees whose coverage is terminated, including the cost of providing the employer's share of retiree health benefits under AS 39.35.880, occupational disability and occupational death benefits under AS 39.35.890 and 39.35.892, and retirement benefits elected under AS 39.35.890(h)(2).

(d) An employee whose coverage under the plan is terminated as a result of termination of an employer's participation under this section or amendment of the employer's agreement under AS 39.35.957(c) shall be considered fully vested in employer contributions under AS 39.35.790(b) and in the individual account established for the employee under AS 39.30.370. If the employee is later employed with a participating employer, the employee's membership service earned under the plan during employment with a terminated employer shall be credited for purposes of determining vesting in employer contributions under AS 39.35.790(b) and eligibility for retirement and medical benefits under this chapter and AS 39.30.300 - 39.30.495.

*** Sec. 59.** AS 39.35.990(7) is amended to read:

(7) "compensation"

(A) means

(i) the total remuneration earned by an employee for personal services rendered, including cost-of-living differentials, as reported on the employee's Federal Income Tax Withholding Statement (Form W-2) from the employer for the calendar year;

(ii) the member contribution to the public employees' retirement system under AS 39.35.730, employee deferrals under AS 39.45.010, the wage reduction amount contributed to the Alaska

Supplemental Annuity Plan under AS 39.30.150(a), and the wage reduction amount contributed to the Alaska Supplemental Benefit Plan under AS 39.30.150(c), as those statutes may be amended from time to time;

(B) does not include retirement benefits, severance pay or other separation bonuses, welfare benefits, per diem, expense allowances, workers' compensation payments, payments for leave not used whether those leave payments are scheduled payments, lump-sum payments, donations, or cash-ins, any remuneration contributed by the employer for or on account of the employee under this plan or under any other qualified or nonqualified employee benefit plan, **or** any remuneration not specifically included above which would have been excluded under 26 U.S.C. 3121(a) (Internal Revenue Code) if the employer had remained in the Federal Social Security System [, OR ANY REMUNERATION PAID BY THE EMPLOYER IN EXCESS OF THE SOCIAL SECURITY TAXABLE WAGE BASE FOR THE CALENDAR YEAR];

(C) notwithstanding (B) of this paragraph, includes any amount that is contributed by the employer under a salary reduction agreement and that is not includible in the gross income of the employee under 26 U.S.C. 125, 132(f)(4), 402(e)(3), 402(h)(1)(B)**,** or 403(b) (Internal Revenue Code); the annual compensation limitation for the member, which is so taken into account for those purposes, may not exceed $200,000, as adjusted for the cost of living in accordance with 26 U.S.C. 401(a)(17)(B) (Internal Revenue Code), with the limitation for a fiscal year being the limitation in effect for the calendar year within which the fiscal year begins;

*** Sec. 60.** AS 39.35.990(16) is amended to read:

(16) "member" **or "employee"** means **a person who is eligible to participate in the plan and who is covered by** [AN EMPLOYEE OF AN EMPLOYER OR FORMER EMPLOYEE OF AN EMPLOYER WHO RETAINS A RIGHT TO BENEFITS UNDER] the plan, **including the governor, the lieutenant governor, or a member of the legislature,** but does not include full-time or part-time

instructors of the Department of Labor and Workforce Development **and the Department of Education and Early Development in positions that require a teaching certificate**;

*** Sec. 61.** AS 39.35.990(20) is amended to read:

(20) "peace officer" or "fire fighter" **means an employee occupying a position as a peace officer, chief of police, regional public safety officer, correctional officer, correctional superintendent, fire fighter, fire chief, or probation officer, but does not include a village public safety officer employed by a village public safety officer program established under AS 18.65.670** [HAS THE MEANING GIVEN IN AS 39.35.680];

*** Sec. 62.** AS 39.45.020(a) is amended to read:

(a) The administration of the deferred compensation program for state employees is under the direction of the Department of Administration**, and the administrator has the same powers and duties with regard to the plan and the program as those set out in AS 14.25.003.** A political subdivision coming under the provisions of this chapter shall designate the office or official to **manage** [ADMINISTER] its program.

*** Sec. 63.** AS 39.45.020(c) is amended to read:

(c) The **manager** [ADMINISTRATOR] of a deferred compensation program may contract with a private person for providing consolidated billing and other administrative services [. THE ADMINISTRATOR] may contract with an insurance carrier to reimburse the state or political subdivision of the state for the cost of administering the [DEFERRED COMPENSATION] program.

*** Sec. 64.** AS 39.45 is amended by adding a new section to read:

Sec. 39.45.055. Appeals. A final decision made under AS 39.45.010 - 39.45.060 is subject to appeal under AS 44.64.

*** Sec. 65.** AS 44.64.030(a) is amended by adding new paragraphs to read:

(35) AS 14.25.175 (waiver of adjustments under teachers' defined benefit plan);

(36) AS 39.30.165 (supplemental benefits system);

(37) AS 39.30.335 (teachers' and public employees' health

reimbursement arrangement plan);

(38) AS 39.35.522 (waiver of adjustments under public employees' defined benefit plan);

(39) AS 39.45.055 (public employees' deferred compensation program).

*** Sec. 66.** AS 14.25.045, 14.25.340(b), 14.25.570; AS 39.35.050(a), 39.35.375(f), and 39.35.730(b) are repealed.

*** Sec. 67.** Section 107, ch. 9, FSSLA 2005, is repealed.

*** Sec. 68.** Sections 3, 35, and 36 of this Act take effect July 1, 2010.

*** Sec. 69.** Except as provided in sec. 68 of this Act, this Act takes effect July 1, 2007.