

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON WAYS AND MEANS

April 4, 2007

7:08 a.m.

MEMBERS PRESENT

Representative Mike Hawker, Chair
Representative Anna Fairclough, Vice Chair
Representative Bob Roses
Representative Paul Seaton
Representative Peggy Wilson
Representative Sharon Cissna
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 204

"An Act relating to the public employees' and teachers' defined benefit retirement plans; relating to the public employees' and teachers' defined contribution retirement plans; relating to the judicial retirement system; relating to the health reimbursement arrangement plan for certain teachers and public employees; relating to the supplemental employee benefit program; relating to the public employees' deferred compensation program; relating to group insurance for public employees and retirees; making conforming amendments; and providing for an effective date."

- MOVED CSHB 204 (W&M) OUT OF COMMITTEE

HOUSE BILL NO. 206

"An Act relating to the accounting and payment of contributions under the defined benefit plan of the Public Employees' Retirement System of Alaska, to calculations of contributions under that defined benefit plan, and to participation in, and termination of and amendments to participation in, that defined benefit plan; making conforming amendments; and providing for an effective date."

- HEARD AND HELD

HOUSE JOINT RESOLUTION NO. 5

Proposing amendments to the Constitution of the State of Alaska limiting appropriations from certain mineral revenue, relating to the balanced budget account, and relating to an appropriation limit.

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HB 204

SHORT TITLE: PUBLIC EMP./TEACHERS/JUDGES EMP. BENEFITS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

03/16/07	(H)	READ THE FIRST TIME - REFERRALS
03/16/07	(H)	W&M, FIN
03/28/07	(H)	W&M AT 7:00 AM HOUSE FINANCE 519
03/28/07	(H)	Heard & Held
03/28/07	(H)	MINUTE(W&M)
03/30/07	(H)	W&M AT 7:00 AM HOUSE FINANCE 519
03/30/07	(H)	Heard & Held
03/30/07	(H)	MINUTE(W&M)
04/02/07	(H)	W&M AT 7:00 AM HOUSE FINANCE 519
04/02/07	(H)	Heard & Held
04/02/07	(H)	MINUTE(W&M)
04/04/07	(H)	W&M AT 7:00 AM HOUSE FINANCE 519

BILL: HB 206

SHORT TITLE: PERS CONTRIBUTIONS; UNFUNDED LIABILITY

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

03/16/07	(H)	READ THE FIRST TIME - REFERRALS
03/16/07	(H)	W&M, FIN
03/28/07	(H)	W&M AT 7:00 AM HOUSE FINANCE 519
03/28/07	(H)	Scheduled But Not Heard
03/30/07	(H)	W&M AT 7:00 AM HOUSE FINANCE 519
03/30/07	(H)	Heard & Held
03/30/07	(H)	MINUTE(W&M)
04/02/07	(H)	W&M AT 7:00 AM HOUSE FINANCE 519
04/02/07	(H)	Heard & Held
04/02/07	(H)	MINUTE(W&M)
04/04/07	(H)	W&M AT 7:00 AM HOUSE FINANCE 519

WITNESS REGISTER

KATHLEEN LEA, Acting Director

Retirement Manager

Division of Retirement and Benefits (DRB)

Department of Administration (DOA)

Juneau, Alaska

POSITION STATEMENT: Responded to questions pertaining to HB 204 and HB 206.

VIRGINIA RAGLE, Senior Assistant Attorney General

Labor and State Affairs Section

Department of Law (DOL)

Juneau, Alaska

POSITION STATEMENT: Responded to questions on HB 204, HB 206, and employment issues.

ANNETTE KREITZER, Commissioner Designee

Department of Administration

Juneau, Alaska

POSITION STATEMENT: Responded to questions pertaining to HB 204 and HB 206.

KEVIN BROOKS, Deputy Commissioner

Department of Administration

Juneau, Alaska

POSITION STATEMENT: Responded to questions from committee members.

MICHAEL E. LAMB, CPA, CGFM, Chief Financial Officer

Fairbanks North Star Borough

Co-Chair Finance Committee

Alaska Municipal League (AML)

POSITION STATEMENT: Testified regarding concerns with HB 206 and responded to committee questions.

ACTION NARRATIVE

CHAIR MIKE HAWKER called the House Special Committee on Ways and Means meeting to order at [7:08:28 AM](#). Present at the call to order were Representatives Hawker, Fairclough, Wilson, Seaton, and Roses. Representatives Cissna and Gruenberg arrived as the meeting was in progress.

[7:09:05 AM](#)

HB 204-PUBLIC EMP./TEACHERS/JUDGES EMP. BENEFITS

CHAIR HAWKER announced that the first order of business would be HOUSE BILL NO. 204, "An Act relating to the public employees' and teachers' defined benefit retirement plans; relating to the public employees' and teachers' defined contribution retirement

plans; relating to the judicial retirement system; relating to the health reimbursement arrangement plan for certain teachers and public employees; relating to the supplemental employee benefit program; relating to the public employees' deferred compensation program; relating to group insurance for public employees and retirees; making conforming amendments; and providing for an effective date."

[7:09:51 AM](#)

REPRESENTATIVE FAIRCLOUGH offered Amendment 2 which read [original punctuation provided]:

. Page 36, following line 16, insert:

"* **Sec. 83.** AS 39.35 is amended by adding a new section to read:

Sec. 39.35.725. Participation of elected officials of political subdivisions. An elected official of a political subdivision of the state that participates in both the plan and the defined benefit plan of AS 39.35.095 - 39.35.680 is a member of the plan if the political subdivision covers elected officials under AS 39.35.550 - 39.35.650 and has designated elected officials under AS 39.35.957 as a classification of employees entitled to participate in the plan and if the elected official receives compensation from the political subdivision for services as an elected official in the amount of at least \$2,001 per month. An elected official of a political subdivision of the state that participates in the plan but not the defined benefit plan of AS 39.35.095 - 39.35.680 is a member of the plan if the political subdivision has designated elected officials under AS 39.35.957 as a classification of employees entitled to participate in the plan and if the elected official receives compensation from the political subdivision for services as an elected official in the amount of at least \$2,001 per month. An elected official entitled to participate under (a) of this section may file a waiver of participation in the plan with the administrator within 30 days after the later of the effective date of this section or the date that the elected official's term of office begins. A waiver is irrevocable for the remainder of the term, or consecutive terms, of office of the elected official."

Renumber the following bill sections accordingly.

REPRESENTATIVE HAWKER objected for purpose of discussion.

7:10:27 AM

REPRESENTATIVE FAIRCLOUGH suggested that while she is not entirely comfortable with Amendment 2, she opined that it is fair for elected officials who are compensated at the same rate as the legislature to also be able to participate in the Public Employees' Retirement System (PERS). She noted that the amendment requires compensation of at least \$2001 per month and queried about the number of persons that might qualify for participation in the plan.

7:10:51 AM

KATHLEEN LEA, Acting Director, Retirement Manager, Division of Retirement and Benefits (DRB), Department of Administration (DOA) explained that allowing elected officials to participate in PERS would require employers to amend their participation agreements to add elected officials, which would have the effect of picking up defined benefit elected officials as well as defined contribution elected officials. Amendment 2 would require employers to include defined benefit officials within the defined benefit portions of the plan if that official had prior defined benefit employment.

CHAIR HAWKER clarified that a previously qualified employee cannot be denied benefits that applied to him or her at the time that employee first became employed.

7:14:14 AM

REPRESENTATIVE WILSON offered her understanding that some communities pay their elected school board members generously and asked how many persons might be "picked up" if elected officials were included in PERS.

MS. LEA relayed that DRB contacted the state's larger municipalities and did a "spot check" of some smaller communities and did not find any community outside of Anchorage that paid what looks like "a regular wage." She said that most communities contacted are paying their elected officials anywhere between \$50 and \$150 a meeting.

REPRESENTATIVE WILSON offered that she would like to confirm whether the information she has received that some communities pay "quite a bit" is correct.

[7:16:04 AM](#)

CHAIR HAWKER stated some concern that qualification for medical benefits by persons who receive a stipend becomes a very large liability, but noted that there is an equity issue when larger municipalities have elected officials who are full-time professional employees.

REPRESENTATIVE FAIRCLOUGH stated the salary floor was intended to conform to federal law as well as address equity issues for those who receive a comparable wage for their work as an elected official.

[7:18:34 AM](#)

REPRESENTATIVE SEATON said he believes the floor amount in Amendment 2 is a important component, and is based on a comparison with what legislators are paid. He asked if other expenses received by legislators, such as moving expenses, are included in salary determinations.

MS. LEA said that under PERS compensation is defined as "services rendered" so allowances for moving are not included as compensation even if included as taxable income under Internal Revenue Service (IRS) provisions.

REPRESENTATIVE SEATON asked whether there is another method besides an income floor by which persons in higher paid elected positions can be treated as employees.

MS. LEA opined that the employee status of elected officials is somewhat unclear, although the IRS has established they can be employees under certain circumstances. She went on to say that PERS has many types of elected and appointed officials who are not covered, and to begin making exceptions for certain groups becomes problematic. She opined that an income floor identifies an intended group of elected officials and clarifies the status of a full-time elected mayor.

[7:21:57 AM](#)

REPRESENTATIVE SEATON asked if there is a method through which a municipality could classify a person as an employee for the purposes of PERS participation.

MS. LEA replied that would be an issue for the division's legal counsel to address.

REPRESENTATIVE SEATON relayed his understanding that the purpose of the income floor is to provide a way to define who is included in PERS, but suggested that there may be another method besides setting forth a specific dollar amount in statute. He suggested that since the dollar amount in Amendment 2 is based on the legislative salary, the income floor for PERS participation could be determined by reference to the legislative salary statutory provisions, or other such language to clarify that the intent is to allow PERS participation for those whose earnings are the same or similar to that of the legislature.

[7:24:11 AM](#)

REPRESENTATIVE FAIRCLOUGH suggested there could be problems with that approach because changes could cause a "nightmare" of accounting issues for the retirement system and confusion over who qualifies for inclusion in PERS. Her approach establishes a "bright line" by setting forth a fixed dollar amount.

CHAIR HAWKER opined that a fixed dollar amount is more appropriate than one that can change. He asked whether one approach could be to insert language requiring that the elected officials be "full-time employees" of the political subdivision.

REPRESENTATIVE FAIRCLOUGH offered her belief that elected municipal employees, such as the Anchorage assembly or school board members, do not acquire vacation benefits. She suggested that is the "defining difference" between employees and compared elected officials.

[7:27:34 AM](#)

VIRGINIA RAGLE, Senior Assistant Attorney General, Labor and State Affairs Section, Department of Law (DOL), responded to a question as to whether municipalities, by ordinance, could designate their elected officials as employees. She opined that the problematic result of this approach could be that any political subdivision could designate persons who receive a small stipend as an employee. She noted that there are other

factors which determine whether a person is an employee, such as a probationary period. Since elected officials have no probationary period, it argues against them being classified as an employee. She relayed it may be possible to craft a statutory provision to treat full- or part-time elected officials as employees, noting that some persons who work 15 hours a week can participate in PERS.

CHAIR HAWKER relayed it may be within the legislature's policy making scope to define when an elected official is considered an employee.

REPRESENTATIVE FAIRCLOUGH expressed her opinion that any approach which may attempt to define a certain workload will be problematic. She suggested that Amendment 2 is designed to address an equity issue since Anchorage assembly members make the same amount as members of the legislature, and since the PERS system allows legislators to participate, it should allow those who make the same amount to also participate.

CHAIR HAWKER summarized his understanding that Representative Fairclough preferred to maintain a "bright line" approach to determining what level of employment income would qualify for PERS participation.

[7:32:11 AM](#)

REPRESENTATIVE SEATON suggested one approach is for municipalities to establish 401(k) plans for their elected officials. He opined that the problematic portion is the medical costs portion. He noted that some elected officials will be under the defined benefit plans, while others will qualify under the defined contribution plan. He put forth the possibility that the differing liabilities associated with each plan could sway electorate decision-making since a person qualified to participate in the defined benefits plan may carry more potential liability.

CHAIR HAWKER suggested that the aforementioned concern argues in favor of a cost share structure for the state's retirement and benefit plans as it would help to level costs between employers.

[7:34:24 AM](#)

ANNETTE KREITZER, Commissioner Designee, Department of Administration (DOA), stated that she has some concerns about

Amendment 2, and would like to hear from DOA tax counsel regarding its advice as to the effect of Amendment 2.

CHAIR HAWKER suggested that issues could continue to be examined in the next committee of referral.

COMMISSIONER DESIGNEE KREITZER stated that further understanding of the effect of Amendment 2 may result in a request that the amendment be removed from the bill.

REPRESENTATIVE FAIRCLOUGH stated she was willing to continue working with the administration to determine the possible ramifications of Amendment 2.

[7:36:16 AM](#)

REPRESENTATIVE SEATON asked if a PERS employer can establish a separate 401(k) plan for its elected officials.

MS. RAGLE opined that she believes there are ways for a municipality to establish a benefit plan, although she does not think it would be a 401(k) plan.

REPRESENTATIVE SEATON asked if elected officials would be covered under an active plan for medical costs within a municipality.

MS. RAGLE replied that every municipality has its own medical plan, if they have a medical plan at all for their employees.

REPRESENTATIVE SEATON asked if there was anything that would disallow a municipality from including its elected employees in its medical plan.

MS. RAGLE stated she was not aware of any prohibition which would disallow municipalities from including their elected officials in their medical plans.

REPRESENTATIVE FAIRCLOUGH reminded the committee that there have been 40 elected officials in Anchorage since the late 1970s and that those persons have received wages comparable to those paid to members of the legislature.

REPRESENTATIVE SEATON stated he has some discomfort with the amendment due to its possible effect on future elections, but noted his concern may be somewhat alleviated if state moves to a cost share system.

REPRESENTATIVE WILSON stated she does not have a problem with Amendment 2 overall, but indicated she has some unease with it.

[7:41:11 AM](#)

CHAIR HAWKER withdrew his objection, and there being no further objection, Amendment 2 was adopted.

[7:41:38 AM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 1, labeled 25-GH1004\A.1, Chenoweth, 4/3/07, which read [original punctuation provided]:

Page 2, lines 3 - 7:

Delete "In addition, the amount of [THE] contributions and interest due may be claimed by the administrator from [DEDUCTED BY] the Department of Education and Early Development from the state funds due the school district [AND THE AMOUNT SO DEDUCTED TRANSMITTED TO THE PLAN FOR DEPOSIT IN THE RETIREMENT FUND]."

Insert "[IN ADDITION, THE AMOUNT OF THE CONTRIBUTIONS AND INTEREST MAY BE DEDUCTED BY THE DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT FROM THE STATE FUNDS DUE THE SCHOOL DISTRICT AND THE AMOUNT SO DEDUCTED TRANSMITTED TO THE PLAN FOR DEPOSIT IN THE RETIREMENT FUND.]"

Page 11, lines 14 - 17:

Delete "In addition, the amount of contributions and interest due may be claimed by the administrator from the Department of Education and Early Development from the state funds due the school district."

CHAIR HAWKER objected for purposes of discussion.

[7:42:27 AM](#)

COMMISSIONER DESIGNEE KREITZER noted that a similar amendment was adopted in the Senate, and that she would not oppose it, although she recognizes it is a departure from current practice and a significant decision to not be able to intercept foundation formula funding monies.

REPRESENTATIVE GRUENBERG noted that this is a serious issue that requires legislative examination at a level not covered by a technical bill, therefore it is appropriate to remove these education funds from the intercept ability of the state.

[7:43:32 AM](#)

REPRESENTATIVE ROSES asked how this would affect school districts that have no tax base and receive all their funding through the foundation formula funds.

COMMISSIONER DESIGNEE KREITZER stated that her understanding is that the state would be taking over those school districts.

REPRESENTATIVE ROSES agreed that was his understanding also. He clarified that under Amendment 1, no foundation formula funds whatsoever can be used to buy into or contribute any funds to pay down retirement and benefit liabilities.

COMMISSIONER DESIGNEE KREITZER clarified that her understanding is that Amendment 1 works to disallow the state from intercepting any foundation formula funds for payment of pension plan liabilities.

REPRESENTATIVE GRUENBERG summarized Amendment 1 as "simply an intercept" provision.

REPRESENTATIVE SEATON asked whether this amendment will affect the current mechanism by which the state allocates foundation formula funding for paying PERS liabilities.

COMMISSIONER DESIGNEE KREITZER replied that she does not believe so. She responded to a question by clarifying that the effect of Amendment 1 is to not allow the state to intercept foundation formula funds for payment of delinquent PERS contributions.

[7:46:57 AM](#)

REPRESENTATIVE WILSON asked whether the state could intercept local contributions to school districts.

MS. RAGLE opined that the statute currently allows DRB to go to the Department of Education and Early Development (DEED) and intercept foundation formula funds, which does include both PERS and TRS contributions for school employees. The approach in HB 204 is to allow the state to intercept "that kind of money" and any other unrestricted funds available to the school district

from any other state or municipal agency. She opined that federal funds could be intercepted only if there was no restriction on the usage of that money by the federal government.

REPRESENTATIVE WILSON expressed concern with possible unfairness resulting from Amendment 1, noting that some municipalities "do not have to pay the full formulas" while other municipalities do. She asked what would happen if a school district decided to use its funding for purposes other than payment of retirement benefits.

MS. RAGLE replied that schools would still be liable for their unfunded pension plan liabilities. She explained that nothing restricts the plan administrator from suing districts for delinquent contributions, and that the amendment and the bill in general does not allow the plan administrator to demand payment of the funds owed without first filing a lawsuit.

REPRESENTATIVE GRUENBERG agreed that the intent of Amendment 1 is to not allow the state to intercept funds prior to transmission to the district. The normal legal remedies would still be available to provide due process, he opined.

[7:52:35 AM](#)

REPRESENTATIVE ROSES reminded the committee that in HB 206 participants can opt out of the PERS system. Employers who choose that option are liable for their past liabilities, and may work out a payment plan. He offered that in that situation, the state may have to litigate to receive past delinquent contributions.

[7:53:42 AM](#)

REPRESENTATIVE GRUENBERG told the committee that courts tend to narrowly construe summary forfeiture proceedings as those proceedings tend not to allow adequate constitutional due process.

REPRESENTATIVE SEATON reminded the committee that there are other school funds besides foundation formula funding, such as grants and other infusions of state funds outside the foundation formula. He offered that his understanding of Amendment 1 is that interception of these funds would also be disallowed by the amendment.

MS. RAGLE said she is not clear whether the amendment, which deletes the language allowing the administrator to seek money from DEED, would preclude the interception of any funds from DEED, not just the foundation formula funding. She said:

It may mean what you say, that any other money in the Department of Education cannot be attached by the administrator. The remaining language of the bill - the new amendments to the bill - allow ... the administrator to get money from any other state agency ... or political subdivision might also encompass the Department of Education. I think you are establishing legislative history here that the committees considering this amendment do not want foundation formula money to be involved. I don't know ... I can't tell you the exact effect of this amendment in combination with the other amendments allowing the administrator to go after money from other agencies.

7:57:05 AM

REPRESENTATIVE SEATON asked whether Amendment 1 is concerned with foundation formula money, or whether it would also encompass PERS/TRS unfunded liability solutions that the state would be funding. He noted that other funding includes quality school grants.

REPRESENTATIVE GRUENBERG opined the amendment would cover the aforementioned funds, but would not cover federal education dollars earmarked for specific purposes.

7:58:08 AM

REPRESENTATIVE ROSES reminded the committee he is a strong advocate for education, however, he expressed concern that Amendment 1 sets forth an impediment to current efforts to address the large unfunded PERS/TRS liabilities and to level the contribution rates of all employers.

REPRESENTATIVE SEATON expressed discomfort with restrictions on the state's ability to intercept funds appropriated for the purpose of paying down the PERS\TRS liabilities.

REPRESENTATIVE GRUENBERG asked whether the money the state plans on appropriating to pay down the PERS\TRS unfunded liabilities will be appropriated to the DEED.

8:01:42 AM

KEVIN BROOKS, Deputy Commissioner, Department of Administration, explained that in the past, appropriations on a "hold-harmless bailout" have gone directly to the fund on behalf of the individual participants. In this instance, it would likely not be appropriated to the school district to pay back to the state, noting that the legislature has some flexibility in the actual appropriation language.

CHAIR HAWKER referred to Section 1 of HB 204, which refers to an "agency of the state or political subdivision," and noted that would likely include the state itself.

MS. RAGLE said that she does not know of any funds that go to the state as an entity that are not also allocated out to an agency.

CHAIR HAWKER asked if a supplemental appropriation to the TRS system would be protected by the provision on page 2, line 12, that the state cannot intercept funds that are restricted by statute or appropriation.

MS. RAGLE replied that she believes that is the intent of this language.

REPRESENTATIVE GRUENBERG offered that the amendment could be amended to clarify the intent.

8:04:34 AM

CHAIR HAWKER offered that the testimony establishes that the amendment accomplishes Representative Gruenberg's intent. He explained that specific appropriations by the state through an agency are protected by the language in the latter part of proposed Section 1 of HB 204.

8:04:56 AM

REPRESENTATIVE WILSON explained her understanding is that the payments being made by the state to the PERS\TRS systems will be paid outside the education funding formula.

MR. BANKS agreed with the aforementioned point. He went on to say that the foundation formula is provided for schools to use as they wish regardless of whether it is one of many sources of funding for a school, or its only source.

8:07:18 AM

REPRESENTATIVE ROSES reiterated his discomfort with the fact that Amendment 1 makes it more difficult for the state to address the pension fund liabilities.

REPRESENTATIVE GRUENBERG stated that the intent of Amendment 1 is that money appropriated to fund schools goes to that purpose while money that is intended for payment of pension fund liabilities go to that purpose. He stated his belief that the public expects the education foundation formula funding to go to the schools.

8:09:25 AM

A roll call vote was taken. Representatives Seaton, Gruenberg, Wilson, Cissna, and Hawker voted in favor of Amendment 1. Representatives Fairclough and Roses voted against it. Therefore, Amendment 1 was adopted by a vote of 5 to 2.

8:15:27 AM

CHAIR HAWKER moved to adopt a memorandum dated April 3, 2007, written by Jack Chenoweth, Assistant Revisor, and addressed to Representative Mike Hawker as conceptual Amendment 3 which read [original punctuation modified slightly for clarity]:

House Bill 204 is an administration-sponsored bill making a series of changes to laws applicable to employee retirement and benefit matters. As your special committee considers the measure, please give consideration to the following, all of which are suggested and offered principally to conform the measure to the requirements of the Legislative Drafting Manual:

1. Page 6, line 29, through page 7, line 4: the language of the amendment should be revised to read:

however, a portion under this subparagraph may be transferred only to an individual retirement account or annuity described in 26 U.S.C. 408(a) or (b), to a qualified plan described in 26 U.S.C. 401(a) or 403(a), or to an annuity contract described in 26 U.S.C. 403(b), that agrees to separately account for

amounts transferred, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not includable in gross income;

This change also should be made to substantially the same amendment material appearing at

- page 10, lines 24 - 30;
- page 23, lines 20 - 26;
- page 30, lines 7 - 13; and
- page 37, line 28 - page 38, line 3.

2. Page 7, line 23: The reference is to "the commissioner"; no separate definition of "commissioner" is provided for AS 14.25, so the definition for the title as a whole, set out in AS 14.60.010(3), will presumably apply, and that is a reference to "commissioner of education and early development." That appears to me to be an incorrect reference in context and the committee may want, instead, to refer to the "commissioner of administration."

3. Page 8, line 30: The word "to" should be inserted at the beginning of the amendment to maintain parallel construction; if this change is made here, the word "to" would also need to be inserted in the same place in the phrase at page 9, line 6.

4. Page 9, line 7: The word "to" should be inserted at the beginning of the amendment to maintain parallel construction.

5. Page 11, lines 25 - 31: The text of subsection (c) should be drafted in the singular:

(c) An employer is responsible for administrative fees, investment fees, and investment losses charged to accounts established under AS 14.25.340 resulting from contribution adjustments because the employer enrolled a member in the plan before the member was eligible for membership. Contributions made by an employee shall be returned to the employer by reducing future employee contributions

due. Contributions, net of fees and investment losses, made by an employer shall be used to reduce future employer contributions due.

6. Page 12, line 28: The inclusion of "(j)" is a reference to a definition. The committee should verify that "fails to meet the requirements of [a definition]" is accurate.

7. Page 14, line 1: The text of AS 14.25.485(i) earlier refers to "member," as does the text of the later part of the material added in the amendment (page 14, lines 7, 9, and 12, for example), so "member's" should substitute for "employee's" in this line.

8. Page 15, line 5: Is reference to "this chapter" accurate, or should the reference be limited to the defined contributions component of TRS, "AS 14.25.310 - 14.25.590"?

The same question arises as to the reference to "this chapter" at page 17, line 30.

9. Page 17, line 28: Reference to "this section" should probably be to "this subsection".

10. Page 39, line 27: The inclusion of "(l)" is a reference to a definition. The committee should verify that "fails to meet the requirements of [a definition]" is accurate.

11. Page 42, line 20: Is reference to "this chapter" accurate, or should the reference be limited to the defined contributions component of PERS, "AS 39.35.700 - 39.35.990"?

The same question arises as to the reference to "this chapter" at page 45, line 28.

*

In addition to the foregoing, there are punctuation, spelling, grammar, and section catchline corrections that should be made. We would like to have the latitude to make those corrections in the event your special committee requests preparation of a committee substitute.

8:16:31 AM

REPRESENTATIVE GRUENBERG objected for purposes of discussion.

MS. RAGLE referred to Section 1 of conceptual Amendment 3 and explained it concerns tax compliance issues that should not have any substantive change to the meaning of the bill.

CHAIR HAWKER noted that there was no objection, therefore Section 1 of conceptual Amendment 3 was adopted.

CHAIR HAWKER asked whether there were any comments or concerns regarding Section 2 of conceptual Amendment 3 and there being none, Section 2 was adopted.

8:17:55 AM

CHAIR HAWKER asked whether there were any comments or concerns regarding Section 3 of conceptual Amendment 3.

MS. RAGLE said that DOL has identified that Sections 80 and 81 of the bill should also have the word "to" inserted in the same place as indicated by Section 3 of conceptual Amendment 3.

8:18:49 AM

REPRESENTATIVE FAIRCLOUGH moved to amend Section 3 of conceptual Amendment 3 to include conforming amendments to Sections 80 and 81 of HB 204.

There being no objection, Section 3 of conceptual Amendment 3 was adopted as amended.

CHAIR HAWKER asked whether there were any comments or concerns regarding Section 4 of conceptual Amendment 3.

COMMISSIONER DESIGNEE KREITZER suggested that Section 4 have a conforming amendment like that made to Section 3.

[8:19:53 AM](#)

REPRESENTATIVE FAIRCLOUGH moved to amend Section 4 of conceptual Amendment 3 to include conforming amendments to Sections 80 and 81 of HB 204.

There being no objection, Section 4 of conceptual Amendment 3 was adopted as amended.

CHAIR HAWKER asked whether there were any comments or concerns regarding Section 5 of conceptual Amendment 3, and there being none, Section 5 of conceptual Amendment 3 was adopted.

CHAIR HAWKER asked whether there were any comments or concerns regarding Section 6 of conceptual Amendment 3.

[8:20:35 AM](#)

REPRESENTATIVE SEATON asked whether the definition in Section 6 was accurate.

MS. RAGLE confirmed that the amendment is accurate.

REPRESENTATIVE GRUENBERG noted that Section 6 of conceptual Amendment 3 relates to subsection (j) on page 15 of HB 204.

CHAIR HAWKER asked whether there were any comments or concerns regarding Section 7, 8, and 9 of conceptual Amendment 3. There being none, Sections 7, 8 and 9 of conceptual Amendment 3 were adopted.

[8:23:10 AM](#)

CHAIR HAWKER asked whether there were any comments or concerns regarding Section 10 of conceptual Amendment 3.

MS RAGLE verified that Section 10 of conceptual Amendment 3 set forth the meaning intended and refers to page 42, subsection (95) of HB 204.

[8:24:11 AM](#)

CHAIR HAWKER asked whether there were any comments or concerns regarding Section 11 of conceptual Amendment 3 which substitutes a statutory reference for a reference to "this chapter."

MS. RAGLE stated that it is possibly preferable to make the change as recommended by conceptual Amendment 3.

There being no objection, Section 11 of conceptual Amendment 3 was adopted.

[8:25:18 AM](#)

CHAIR HAWKER asked whether there was any objection to the last paragraph of conceptual Amendment 3 which states [original punctuation provided]:

In addition to the foregoing, there are punctuation, spelling, grammar, and section catchline corrections that should be made. We would like to have the latitude to make those corrections in the event your special committee requests preparation of a committee substitute.

REPRESENTATIVE GRUENBERG removed his objection, and there being no further objections, conceptual Amendment 3, as amended, was adopted.

[8:28:30 AM](#)

REPRESENTATIVE SEATON moved to report HB 204, 25-GH1004\A, as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 204(W&M) was reported out of the House Special Committee on Ways and Means.

HB 206-PERS CONTRIBUTIONS; UNFUNDED LIABILITY

[8:29:34 AM](#)

CHAIR HAWKER announced that the next order of business would be HOUSE BILL NO. 206, "An Act relating to the accounting and payment of contributions under the defined benefit plan of the Public Employees' Retirement System of Alaska, to calculations of contributions under that defined benefit plan, and to participation in, and termination of and amendments to participation in, that defined benefit plan; making conforming amendments; and providing for an effective date."

[8:30:27 AM](#)

COMMISSIONER DESIGNEE KREITZER referred to a document titled "House Ways and Means committee Questions and Responses House Bill 206," dated April 3, 2007. She explained that a "hold harmless" clause covers the difference between an employer's individual fiscal year (FY) 2007 liability and the FY 08 estimated contributions. It is intended to apply only to the increase between FY 07 and 08.

CHAIR HAWKER clarified that the administration's intent is to hold employers harmless from cost increases for one year only.

REPRESENTATIVE WILSON asked how the hold harmless clause will work.

COMMISSIONER DESIGNEE KREITZER said that under the hold harmless approach proposed by the administration, the state will pay the increase that employers would have to pay in FY 08 and the amount necessary to do that is \$82 million. She reminded the committee that at present there are few defined contribution employees, so their salaries do not have much of an effect on the calculations done to compile the Cost Share Exhibits, a copy of which was provided the committee. She also referred to a document which lists employers who have not submitted their payroll records along with the mandatory contributions due.

REPRESENTATIVE FAIRCLOUGH asked about the effect on an individual employee's retirement benefits when an employer fails to submit payroll records.

MS. LEA replied that when no payroll is received, there is no accumulation of service and no salary posted for that employee. She went on to explain that the employee's annual statement will show that employee has not received any service credit.

[8:37:51 AM](#)

REPRESENTATIVE FAIRCLOUGH referred to a letter from Mayor Steven Thompson and dated April 3, 2007 which she said clarifies some prior erroneous information regarding the City of Fairbanks. She paraphrased that a prior utility sale accounting issue caused a perception that the City of Fairbanks was not paying its required employer contributions, however the letter indicates that the City of Fairbanks has been making its payments in a timely manner. In response to a question, she said that it appears there was a difference of opinion as to whether Fairbanks would receive a \$16 million credit related to

the sale of a city utility, and it may have resulted in a greater unfunded liability than expected.

[8:41:10 AM](#)

CHAIR HAWKER clarified that the City of Fairbanks, a separate entity from the Fairbanks North Star Borough, has made its required contributions to the retirement system and its unfunded portion exists due to circumstances it could not control. This clarification does not change the result of the Cost Share Exhibits prepared by DOA and previously provided to the committee. He noted that this issue was only to clarify the record, not to examine the details of the Fairbanks's utility sale in detail.

[8:45:03 AM](#)

MICHAEL E. LAMB, CPA, CGFM, Chief Financial Officer, Fairbanks North Star Borough, Co-Chair Finance committee, Alaska Municipal League (AML), paraphrased from written testimony as follows [original punctuation provided]:

1. Credit needs to be given to the Department of Administration for its work on the PERS issues addressed in this bill, and I am happy to endorse that part of HB 206 that recognizes that legislative language needs to move forward such that our statutes reflect the reality that the State operates PERS as a consolidated blended system.
2. Section 5 contains language that essentially says one rate, which is the combined total of the normal and past service cost rates, should be applied to both DB and DC salaries. I concur with this provision, to do otherwise would at some point lead to discriminatory hiring practices.
3. Section 7, the 65/35 percent allocation of the unfunded liability is a significant disappointment. It is a disastrous proposition that sets future rates at levels that cannot be paid by school districts, the university system, cities, or by boroughs. ... Quoting from a recent AML letter: Any legislation which leaves communities having to pay unaffordable rates for an unfunded liability which was not of our making, and which risks bankrupting communities, is not a concept we can accept. This 65/35 proposal is just that kind of legislation and instead of providing for future

predictability, stability, or affordability, it is a call to fiscally incapacitate member employers in the future and can't be supported.

4. After rates get set at levels that can't be paid by member employers in this bill, we get to section 9, a poison pill provision that essentially says that even if a member employer has a legitimate reason not to make a payment, or maybe simply can not because they just don't have the money, the Administrator of the plan will simply go and take funds from any agency of the state or political subdivision that has in its possession funds of the employer that couldn't pay its bill. So, this bill sets rates that will cripple employers and then any life blood funding available can be summarily taken with no due process? I understand the Administration needs a tool to collect from employers that will not pay a legitimate bill. This is the wrong tool. This is instead a heavy handed tool that will only accelerate the bankrupting of employers, then who will be left to pick up their piece of the bar tab that they can no longer pay, in the end it'll be the State.
5. Sections 10 through 15 deals with terminations, scrutiny needs to be given to this language. First off it allows for unlimited termination cost charges, that can then be extracted from an employer using the section 9 language. Scrutiny also needs to be given to the section 15 language that says you only have 90 days after receipt of notice to decide if you want to add or terminate coverage of a department, group, or other classification of employees. First off, 90 days in a public process environment isn't even enough time to deal with an issue as significant as what is contemplated in this section. Secondly, who can predict what makes sense in the future? Why would we want to preclude future changes that may help the system? Though there will be an attrition factor, is it the intent of this language that all existing school board members, council members, or assembly members would have to stay in the system because they couldn't elect out because a 90 day period was missed? This makes no sense. If the administration is trying to fix an abuse, then prevent the abuse, but don't preclude all changes, both good and bad.

If the consolidation and the DB/DC language from HB 206 could used in conjunction with components of other

PERS language in other bills, I think we would be getting very close to a shared solution that municipalities could live with and support. It is clear, and AML has consistently communicated, that its members firmly believe that an 85/15 splitting of the unfunded liability is about as fair as it is going to get. What is critical in this split is that they ended up, using the most current complete set of numbers available, with a rate that was affordable. Let me be clear, I am not saying it isn't a rate that hurts, but at least no member employer would go broke, and though different communities felt the State was responsible for an even higher percentage, the AML member employers agreed as a group to the rate that an 85/15 splitting of the unfunded liability generated, which was an 18.27% rate. It was always known and understood that the unfunded obligation would be going up, and accordingly, the 18.27% rate for FY '08 would likely go up in future years to 19 point something or 20 point something percentage, and then level off. It is I believe a number that everyone is equally unhappy about, but not so unhappy about that they'd seek relief from it. For the Borough, who had a 22 year average rate of 4.17%, this is a huge 400 to 500% increase, but one the Mayor and Assembly were willing to accept to avoid a confrontation with the State.

Mr. Chairman, members of the committee, I sought to be direct and transparent, and to offend no one today, and I most graciously apologize if I did. Many have worked hard on the legislation before this body today, and on the other PERS legislation not specifically discussed today, and I most respectfully acknowledge those efforts, and that work, and I say thank you. But at the end of the day, all of that work will have been for naught if even one member employer ends up fiscally incapacitated because we, and I mean collectively we, failed to get the final legislation right. For my part, I will have failed to have spoken the words necessary to convey not only the Borough's message, but other municipality's message to this body, and put simply, in the end: its about the rate, it's about the rate, and it is about the rate. No one, and I mean no one, is better off if 28 terminated or inactive employers turns into 30, 35, 40, who knows what 28 could grow to. I therefore, respectfully, request that HB 206 be moved forward such that the

components of 206 that are good, and supportable, can be made to work in conjunction with the good components of HB 179, the House Committee Substitute for HB 95/96, and HB 13. ...

[8:51:20 AM](#)

MR. LAMB explained that he appreciates the clarification regarding the City of Fairbanks and stated that in trying to move forward on the issue of unfunded pension liabilities, it is important not to be waylaid by unsubstantiated and incorrect understandings.

CHAIR HAWKER set forth that he has had requests from committee members to further study HB 206 and that he would like those committee members to work with the DOA on their concerns so that the bill can be considered again.

COMMISSIONER DESIGNEE KREITZER opined that the issue of the amount of unfunded liabilities to be borne by the state will likely be determined in the House and Senate Standing Finance Committees. She stated concern for financial well-being of the state's communities as something being considered in conjunction with HB 206.

CHAIR HAWKER announced that HB 206 would be held in committee, and hoped it would move from this committee at its next hearing.

REPRESENTATIVE FAIRCLOUGH agreed that further debate on HB 206 would occur in the House and Senate Standing Finance Committees.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Ways and Means meeting was adjourned at [9:03:45 AM](#).