

MINUTES
SENATE FINANCE COMMITTEE
March 22, 2007
9:01 a.m.

CALL TO ORDER

Co-Chair Bert Stedman convened the meeting at approximately [9:01:06 AM](#).

PRESENT

Senator Lyman Hoffman, Co-Chair
Senator Bert Stedman, Co-Chair
Senator Charlie Huggins, Vice Chair
Senator Kim Elton
Senator Fred Dyson
Senator Donny Olson

Also Attending: CHARLENE MORRISON, Chief Financial Officer, Division of Retirement and Benefits, Department of Administration; MELANIE MILLHORN, Director, Division of Retirement and Benefits, Department of Administration; KATHY LEA, Retirement Manager, Division of Retirement and Benefits, Department of Administration.

Attending via Teleconference: There were no teleconference participants.

SUMMARY INFORMATION

SB 123-PUBLIC EMP./TEACHERS/JUDGES EMP. BENEFITS

The Committee heard from the Department of Administration. The bill was held in Committee.

#sb123

[9:02:40 AM](#)

SENATE BILL NO. 123

"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."

This was the third hearing for this bill in the Senate Finance Committee.

[9:03:20 AM](#)

Co-Chair Stedman announced that the opportunity for public testimony would be available throughout the meeting.

[9:04:33 AM](#)

Co-Chair Stedman asked regarding the surplus assets described in Section 12 of the sectional analysis [copy on file].

[9:06:05 AM](#)

CHARLENE MORRISON, Chief Financial Officer, Division of Retirement and Benefits, Department of Administration explained that Section 12 addressed termination of the plan as a whole by the employer. If at the time of termination there were assets in the system in excess of the actuarially calculated liabilities, those excess assets would revert to the employer. This provision is required by the Internal Revenue Code (IRC).

Co-Chair Stedman asked the technical modifications to SB 123 that would be necessary if the Committee adopted a cost share "concept".

[9:07:21 AM](#)

Ms. Morrison responded that if both SB 123 and SB 125, the "cost share bill", were passed by the Committee, reconciliations between the two bills would be necessary.

Co-Chair Stedman, assuming both bills would be reported from the Committee, asked if the Department had recommendations as to the order of passage of the bills.

Ms. Morrison assumed that the "technical" bill, SB 123, would be passed first, with any required amendments made to the "cost share" bill, SB 125. She allowed that either bill could be passed, with changes made to the other to "reconcile" any discrepancies.

[9:08:47 AM](#)

Senator Elton referred to Section 13, line 23 of the bill which set forth: "The amount of benefits is not subject to employer discretion." He asked if that pertained specifically to correctional officers negotiating benefits.

MELANIE MILLHORN, Director, Division of Retirement and Benefits, Department of Administration, replied that the language quoted did not speak to the issue of collective bargaining negotiations.

Senator Elton furthered, asking what the provision was designed accomplish.

[9:10:01 AM](#)

Ms. Millhorn explained that current statute specifies that benefits are established for the "exclusive benefit of the members". If the plan was terminated by the employer, the administrator of that plan must satisfy financial obligations to the employees first. After those obligations were met, any remaining funds in the retirement system revert to that employer. A recent decision regarding rights to negotiate retirement benefits through the collective bargaining process was issued by the Alaska Labor Relations Agency, and ruled that retirement benefits are non-negotiable.

[9:11:07 AM](#)

Co-Chair Stedman understood that if the Defined Benefits (DB) retirement plan was terminated in its entirety, the Internal Revenue Service (IRS) would utilize the lower "bond market returns" to assess the "present value of the assets" required to ensure that employees receive the benefits they were entitled to. The rate used by the IRS would have the effect of increasing the total funds necessary to close the DB plan.

[9:12:11 AM](#)

Ms. Morrison had not discussed the possibility of terminating the entire plan with the Division's tax counsel, and thus could not respond.

Co-Chair Stedman understood the Pension Benefit Guarantee Corporation to function in that manner in the private sector, and assumed that a public retirement system would operate under the same principles.

[9:12:49 AM](#)

Co-Chair Stedman asked the Administration's rationale for establishing an authority to intercept funds.

Ms. Morrison informed that the Division currently has no legal authority to intercept funds from an employer that is past due on its contributions. The Department of Law recommended such a provision, and the Division considered it a method to "protect" the plan. Under a cost share scenario, if an employer failed to make its contributions, other employers in the plan would be liable for that funding.

Co-Chair Stedman asked for verification that "interception of funds" referred to intercepting State assistance to communities, rather than Federal dollars or other funds.

[9:14:20 AM](#)

Ms. Morrison explained that federal monies had not been discussed, and the provision would apply only to State funds not appropriated for a specific purpose. She spoke to a provision in the Teachers Retirement System (TRS) that allowed TRS to approach the Department of Education and Early Development to collect past due TRS contributions.

[9:14:53 AM](#)

Ms. Millhorn added that without this provision, the only recourse available to an administrator to collect past-due retirement contributions from an employer would be to initiate a legal proceeding. Litigation is a costly and time consuming process that this provision would provide an alternative to.

[9:15:48 AM](#)

Senator Elton referred to Section 1, page 2, line 10 of the bill that authorized "the intercept". He asked if the specification that funds allowed to be intercepted were "not restricted by statute or appropriation to a specific purpose" precluded foundation formula education funding from interception.

Ms. Millhorn agreed that foundation formula funds were dedicated to a specific purpose, and thus could not be intercepted.

Senator Elton continued, assuming that bond proceeds would also be exempt from the interception provision, as bonds were issued for an explicit purpose. The municipal share of the raw fish tax, however, could be intercepted.

Ms. Millhorn concurred.

[9:17:01 AM](#)

Co-Chair Stedman requested clarification regarding retirement benefits for elected officials, and for assurance that the bill would not create a new benefit. In the past, local governments had the option to participate in the PERS system.

[9:17:47 AM](#)

KATHY LEA, Retirement Manager, Division of Retirement and Benefits, Department of Administration informed that the bill would extend to only elected State officials, and be limited to the Governor, Lieutenant Governor, and members of the legislature. It would not include elected municipal officials, due to the high cost of providing benefits.

[9:18:24 AM](#)

Co-Chair Hoffman asked the location of that provision.

AT EASE [9:18:38 AM](#)/[9:20:43 AM](#)

Co-Chair Stedman located the language on page 52 of the bill, and asked for clarification of the section.

Ms. Lea told that Section 110 would define a "member or employee" to include the aforementioned elected officials, and

would exclude positions within the Department of Education and Early Development that require a teaching certificate. Elected municipal officials would not be included, for those positions receive a stipend rather than a salary.

[9:22:13 AM](#)

Co-Chair Hoffman assumed this exclusion would apply only to future elected officials at the municipal level, and that those already in the PERS system would receive the benefits as anticipated.

[9:22:32 AM](#)

Ms. Lea replied that any elected municipal employee working for a PERS participating employer who was elected prior to July 1, 2006 would remain in the DB retirement plan. All municipal officers elected after July 1, 2006 would not be benefit eligible.

Co-Chair Hoffman inquired regarding an official elected prior to July 1, 2006 and ran for reelection after that date.

Ms. Lea answered that the Division considers the date a person first enters the PERS system to determine their tier and eligibility. Thus, if an individual was elected prior to July 1, 2006, they would remain in the benefit tier as initially established.

Co-Chair Hoffman furthered his line of questioning, asking if a person would remain eligible if they had left public service for an extended period of time and then returned.

[9:23:43 AM](#)

Ms. Lea affirmed, qualifying that an official could return to a PERS participating position and qualify for benefits under the original tier, provided that that person had not refunded their employee contributions.

Co-Chair Hoffman asked if this provision would also apply to school board members.

Ms. Lea affirmed, informing that school board members are considered elected officials and participate in PERS.

[9:24:20 AM](#)

Senator Elton asked why Village Public Safety Officers (VPSOs) were excluded in Section 111 of the bill, which defined "peace officer" or "fire fighter" eligibility.

Ms. Millhorn responded that a "private letter ruling" from the IRS prohibited VPSO participation in the DB plan.

Senator Elton returned to Section 1 of the bill to correct the record. He had assumed during a previous line of questioning that foundation formula funding could not be intercepted to pay retirement system obligations, as they were funds dedicated to a "specific purpose". Line 4 of page 2, however, provided that those funds could be "claimed by the administrator".

Ms. Millhorn conceded.

[9:26:07 AM](#)

Co-Chair Stedman opined that the interception of education funding would not meet the approval of the legislature.

Senator Elton agreed, and suggested an amendment could address that issue.

Co-Chair Stedman explained that the bill would receive a through hearing in Committee, and Members would have the opportunity to offer amendments at a later date.

[9:26:40 AM](#)

Senator Huggins asked if this bill contained the "2010 provision".

Ms. Millhorn identified two provisions in the bill that referenced the date of July 1, 2010. This date functions as a reinstatement deadline for "conditional service benefits" for former PERS and TRS employees, as well as the deadline to reestablish indebtedness under PERS for the public service benefit. After the date of July 1, 2010, employees would forfeit any conditional service or public service benefits.

Senator Huggins asked the location of those dates in the bill.

[9:27:54 AM](#)

Ms. Millhorn pointed to Section 17 of the bill, which would be applicable to TRS, and Section 60 which would relate to PERS. She told that this would align with the indebtedness provisions contained within SB 141, retirement system legislation passed by the 24th Legislature. The conditional service benefit allows a person who is eligible to receive benefits under both the PERS and TRS systems to collect medical and pension benefits from both. There were approximately 2, 000 individuals eligible for conditional service benefits, and this provision would align those people with the deadline provisions of SB 141.

[9:29:42 AM](#)

Co-Chair Hoffman asked if the State was required to provide notification.

Ms. Millhorn replied that upon passage of SB 141, notification was sent to all members who had refunded out of PERS or TRS, and would thus be affected by the legislation. She expected the same notification process to occur if this bill was passed by the legislature.

[9:30:17 AM](#)

Co-Chair Stedman asked the position of an employee that worked under the DB retirement plan, then took employment with an employer that offered only the DCR plan.

Ms. Millhorn informed that a newly established employer would be a member of the DCR plan. If a DB member became an employee of the new employer, that employee would be eligible for benefits under both systems, provided they met service requirements.

[9:31:47 AM](#)

Senator Elton asked if that scenario would apply only to vested employees.

Ms. Millhorn responded that all members, vested or not, would be able to earn retirement benefits under the DB and DCR plans, provided they did not refund out of either system, and met the minimum years of service to secure benefits.

[9:32:49 AM](#)

Co-Chair Stedman asked if a "deferred member" could reestablish their account prior to 2010 without being rehired by an enrolled employer.

Ms. Lea defined a deferred member as a member with contributions still in the system. If that member had refunded any portion of their service, they would have to reinstate that indebtedness prior to July 1, 2010. Due to the fact that a deferred member retains some portion of their contributions in the system, they would remain a DB member, but would forfeit any service that had been refunded if they failed to reinstate.

Co-Chair Stedman understood that if a deferred member forfeited service from the period they were originally hired under, such as Tier 1, their benefit status would be based on the employment that was not refunded, and could be at a different tier.

[9:34:46 AM](#)

Ms. Lea affirmed, adding that service would be considered "totally" forfeited after July 1, 2010, and if the employee reentered PERS or TRS under a different tier, that tier would be applicable to their service.

Co-Chair Stedman assumed that employee notification would enumerate these details, and asked the requirements of the Division's notification.

[9:35:20 AM](#)

Ms. Lea expressed that upon passage of SB 141, the Division advised all employees of reinstatement requirements, and the forfeiture ramification.

[9:35:56 AM](#)

Ms. Lea continued that the Division had purchased a new computer software system that allowed it to locate current addresses for employees in an attempt to facilitate information dissemination.

Co-Chair Stedman commented that several of his friends were notified.

[9:36:45 AM](#)

Senator Huggins was familiar with a "403(b)" account, and inquired as to a "403(a)" account.

Ms. Morrison understood 403(b) accounts to be "annuity type" accounts. The Division administered neither 403(a) nor 403(b) accounts, thus she was unsure.

Senator Huggins recalled 403(b) accounts were established for medical professionals and teachers. He asked regarding the intent of alignment between PERS and TRS in this legislation.

Ms. Morrison interjected that this bill was a technical clarification bill. The cost share legislation would address alignment.

Senator Huggins asked what modifications would be necessary to achieve alignment between PERS and TRS.

[9:38:35 AM](#)

Ms. Millhorn commented that the volume of the bill before the Committee was in part due to the duplication of changes necessary to address both the PERS and TRS systems. If the replicated changes were removed, the length of this bill would be reduced to approximately five pages, representing the Pension Protection Act.

Co-Chair Stedman asked for a definition of "plan qualified status".

Ms. Millhorn defined "plan qualified status" as a plan governed by the IRC regulations, which is able to provide benefits to members on tax deferred basis. The Pension Protection Act (PPA) was enacted in 2006 and included additional requirements to maintain qualified status. Plans must now renew their qualified status with the IRC every 5 years.

[9:41:06 AM](#)

Senator Huggins asked how the underfunding provisions of the PPA would relate to the State.

Ms. Millhorn understood that the PPA required a different structure than the federal Employee Retirement Income Security Act (ERISA), but was not applicable to the State government's plan.

Ms. Morrison agreed that government retirement plans did not fall under ERISA guidelines. She assumed that Senator Huggins was referring to ERISA principles.

[9:42:36 AM](#)

Senator Elton returned to Section 110, and asked if this provision would exclude an elected mayor that received a salary.

Ms. Lea responded that the Division had an "informal opinion" that an elected mayor would be treated as an employee if that position was full time. The Division had eleven requirements used to determine if an individual qualified as an employee or a contractor.

Senator Elton continued, stating that the mayor of Juneau received a salary, but could also be employed elsewhere during his term. He asked if this position would be eligible to participate in the retirement system.

Ms. Lea replied that an elected official would be eligible to participate only if their position was full-time.

[9:44:38 AM](#)

Co-Chair Stedman shared that the current retirement system had "tightened up" the hours required annually for qualification, but the issue was still a local policy decision.

Senator Elton opined it "odd" that mayors who are supervisors of eligible public employees would not themselves be eligible to participate in the retirement system.

Co-Chair Stedman would provide clarification on that point.

[9:45:58 AM](#)

Senator Elton referred to Sections 21 through 31, asking if those provisions constituted a "diminishment of benefits" to DCR

employees hired after July 1, 2006 but before this bill's effective date of July 1, 2010.

Ms. Lea replied that she would provide an overview of those sections, beginning with Section 21, which would update the "rollover" provisions. This section would be an expansion of the benefits provided to employees hired after July 1, 2006, as it included many Individual Retirement Accounts (IRAs) not originally approved for rollover.

[9:47:27 AM](#)

Ms. Lea spoke to Section 22, classifying it as an existing requirement for any plans that accept pre- and post- tax dollars. These funds must be accounted for separately, and this provision codifies a requirement of the PPA.

Ms. Lea told that Section 23 would require that contributions to the plan be deposited in to appropriate plan or trust account and sets a payment deadline. This would also be a codification of existing practice, but must be embedded in statute to conform to the IRC for the plan to receive "qualified" status.

Ms. Lea continued to Section 24, which would allow for interest to be charged on contributions not transmitted to the plan in a "timely" manner. This applied to the DCR plan, and constituted an enhancement.

Ms. Lea informed that Section 25 specified that defined contributions paid to an individual's account would be subject to the limitations under 415(c) of the IRC. This could not be considered a diminishment, as the Division had operated under those principles since the inception of the DCR plan.

[9:49:20 AM](#)

Ms. Lea stated that Section 26 clarified the process for the termination of disability benefits.

Senator Elton understood that Section 26 and other aforementioned sections were justified as a "clarification of a practice," and commented that in the course of clarifying a practice, the legislation may be changing existing law to conform to the practice, thus resulting in a diminishment of benefits to recently hired employees.

[9:50:56 AM](#)

Ms. Lea reported these changes were codifications of the emergency regulations promulgated by the Division the previous year. The Division preferred the provisions be in statute rather than solely in regulation.

Senator Elton commented that regulations must have statutory authority.

[9:51:54 AM](#)

Ms. Lea explained that Section 27 provided that a member who received disability benefits from the plan would be fully vested in all the employer contributions made to the member's individual account, as required by the IRS. This provision would clarify language in SB 141, which could have been construed to deny full vestment of benefits to an employee in permanent disability status.

Ms. Lea set forth that Section 28 clarified the termination of disability benefits at the date that a disabled member first qualified for normal retirement.

[9:53:26 AM](#)

Co-Chair Stedman noted the "considerable discussion" regarding the transition from disability to retirement when SB 141 was drafted.

[9:53:43 AM](#)

Ms. Lea told that Section 29 clarified four issues related to the benefits for a survivor of a disabled member, including: termination of survivor's pension; inaccessibility of the member's individual account while receiving a survivor benefit; normal retirement benefits available to the survivor; and determination that a period of disability benefits and survivor benefits constitute service for eligibility for medical benefits. These items were included in the intent discussion of SB 141, and this section would clarify the intent.

[9:54:39 AM](#)

Ms. Lea continued to Section 30, stating that it defined "occupational disability". She recalled that SB 141 utilized the definition contained within the DB plans, and this provision would allow the DCR plan to clarify the definition for its purposes.

Ms. Lea reviewed Section 31, which required employers to fund the additional benefit for survivors of a disabled member by making contributions to the trust account based on the deceased members' gross monthly wage. The benefits would be provided to the survivor at the time of normal retirement of the member, if that member were alive, and would contain the amount of employer and employee contributions the member would have deposited. The IRC does not allow for additional contributions to a deceased member's account after death, and this provision would provide a tax-qualified method to afford those benefits, as intended by the legislature with the passage of SB 141.

[9:56:18 AM](#)

Co-Chair Stedman asked if Members needed additional clarification.

Senator Elton replied that it would be "helpful", and identified a "fine line" between clarification of practices and changes to the law.

#

ADJOURNMENT

Co-Chair Bert Stedman adjourned the meeting at [9:57:09 AM](#)