

HB

866

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 820
 Title An Act Relating to the Teachers Retirement System
 Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Administration - Division of Retirement and Benefits
 Program Category Affected Retirement and Benefits (TRS)
 Budget Request Unit(s) Affected Teachers' Retirement System

EXPENDITURES (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100 PERSONAL SERVICES		10.2				
200 TRAVEL						
300 CONTRACTUAL		17.5				
400 COMMODITIES						
500 EQUIPMENT		0.8				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.		192.6	211.9	233.1	256.4	282.0
100 BENEFITS		44.4	48.8	53.7	59.1	65.0
TOTAL	-0-	265.5	260.7	286.8	315.5	347.0

FUNDING (Thousands of Dollars)

GENERAL FUND		237.0	260.7	286.8	315.5	347.0
FEDERAL FUNDS						
OTHER (Specify)						
TRS		28.5				

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY		6 mos.				

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

1. Estimate FY 79 covered TRS payroll to be \$214,000,000, with estimated annual increase of 10%.
2. Combined employer contribution rate and State Match now at 13.82% of payroll based on new actuarial assumption adopted by TRS Board.
3. Increase in combined TRS State Match and employer contribution rate would be .18%.
4. Administrative costs as attached.

IV. DATE 4/04/78

PREPARED BY Paul B. Arnoldt
 AGENCY Division of Retirement & Benefits
 PHONE 465-4460

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named) Representative Cowper
 Office of the Governor (Keith Specking)

33-001 (Rev. 12/77)

ATTACHMENT

Bill/Resolution No. HB 820ASSUMPTIONS:

- | | | |
|--|---|---------------|
| 1. Estimated FY79 Payroll (Total System) | = | \$214,000,000 |
| 2. State Contribution Rate to Fund Bill | = | .09 % |
| 3. State TRS Matching Rate to Fund Bill | = | .09 % |
| 4. School District Rate to Fund Bill | = | .09 % |

COST ANALYSIS:

<u>Employer</u>	<u>Payroll</u>		<u>Rate</u>	<u>Cost</u>	<u>Appropriation</u>
1. Department of Education	\$ 5,800,000	X	.09 %	\$ 5,220	To Their Budget
2. University of Alaska	\$ 43,500,000	X	.09 %	\$ 39,150	To Their Budget
				\$ 44,370	
3. State TRS Matching	\$214,000,000	X	.09 %	\$192,600	To TRS Match
4. State TRS Regular Budget:					
Personal Services				\$ 10,190	To Personal Services
Travel				\$	To Travel
Contractual				\$ 17,500	To Contractual
Commodities				\$	To Commodities
Equipment				\$ 800	To Equipment
				<u>\$265,460</u>	
5. All School Districts	\$164,700,000	X	.09 %	\$148,230	
				<u>\$413,690</u>	

REMARKS:

- Personal Services - one temporary Retirement & Benefits Specialist - 6 man months.
Monthly Salary - \$1,551 x 6 = \$ 9,306
Benefits at 9.5% = \$ 884
\$10,190
- Contractual Services - \$17,500 for initial EDP systems design and development of PRPA analysis and calculation programs.
- Equipment - Desk, chair, calculator, etc. = \$ 800

HB 866
Proposed Changes

- ✓Page 5 Line 20 delete (by a school district.)
- ✓Page 7 Line 8 after for add "that"
- Line 29 change by adding after in (a 1), (a 2), (or a 3) of this
- ✓Page 9 Line 21-24 delete all of (b)
- Page 11 line 17 (1) the members mandatory contribution account;
(2) \$100 times the years of membership service;
(3) \$1,000
(4) \$500 if the deceased member is survived by one or more dependent children at the time of death.
- ✓Page 12 Line 29 (pension) to benefits
- ✓Page 13 Line 13 after "children" add under this section will be paid
after "paid" add to those beneficiaries described in Sec.
delete (in accordance with sec.)
- Page 14 Line 22-23 add (d) However benefits under sections 162 and 164 shall be paid to a surviving spouse in addition to those benefits the member is entitled to receive as a result of membership in the retirement system
- ¼ Page 15 Line 27 after system; add or a member who is on leave of absence and is making contributions as provided under A.S. 14.20.345.
- Page 16 Line 25 (8) add after Alaska, (BIA teachers under this section may claim partial years service credit under (40) of this section).
- Page 18 Line 2 ✓ add NEA of Alaska
- Line 13-14 delete (without pay)
- Line 24 ✓ add after "city", R.E.A.A.
- Page 20 Line 4 delete (certificated)
- Line 5 after teacher delete (balance of li)
- Line 6 delete all language up to) in on approved
- Line 16 new language for section 26 "part-time teacher" means a teacher occupying a position requiring teaching on a regular basis for at least 60 percent of the normal work week at a higher education teaching assignment or in grades K thru 12 on a regular basis for part of the normal and customary work period per day or week or month at a particular teaching assignment, excluding teaching as an assistant or graduate assistant, or teaching on a substitute, temporary or per diem basis;
- ✓Page 22 Line 9 add certificated school nurse
- ✓Page 23 Line 20 delete (14.20.205)

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF ADMINISTRATION

DIVISION OF RETIREMENT & BENEFITS

POUCH CR
JUNEAU, ALASKA 99811

April 24, 1978

The Honorable Charles H. Parr
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Parr:

The attached proposed amendments to House Bill No. 866 have been reviewed and mutually agreed upon by members of the National Education Association of Alaska and the Division of Retirement and Benefits, and reviewed by the Legislative Affairs Agency.

Both you and Representative Rudd have also expressed the need to add necessary language which will include part-time teachers at the University of Alaska and its branches under the Teachers' Retirement System. In order to facilitate this change, the following additional amendments are suggested:

Page 18, line 25, subsection (B) amended to read:

"(B) full-time or part-time teaching or full-time administrative positions which require academic standing at the University of Alaska; or"

Page 20, line 17, amended to read:

"tion requiring teaching on a regular basis for at least 50 [60] per cent of"

Page 22, commencing on line 15, subsection (C) amended to read:

"(C) [RESIDENT PERSONNEL IN] Any full-time or part-time teacher [TEACHING POSITIONS] under the University of Alaska and those full-time administrative positions which require academic standing; all administrative positions placed under the system must be approved by the administrator;"

Representative Parr
April 24, 1978
Page 2

Page 25, line 28, add a new section to read:

AS 14.25.220(20)(B) and (38)(C) contained in sec. 22 of this Act take effect immediately in accordance with AS 01.10.070(c) and are retroactive to January 1, 1955 only to the extent that they apply to part-time teaching positions at the University of Alaska.

If you or any member of your committee have any questions regarding the proposed amendments, I will be glad to assist you in any way.

Sincerely,



Paul B. Arnoldt
Director

PBA/ms
Attachment
cc: Representative Rudd
Jim Baldwin
Bob Van Houte

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 866

Page 2, line 21, amended to read:

"reemployed as an [A FULL-TIME OR PART-TIME] active teacher for a period"

Page 5, line 20, amended to read:

"will be transmitted [BY A SCHOOL DISTRICT] to the administrator at the"

Page 7, line 8, amended to read:

"of service in the armed forces under this section if credit for that"

line 29, amended to read:

"completing either of the service requirements in (a)(1), (2) or (3) of this section"

Page 9, delete lines 21, 22, 23 and 24.

line 25, change (c) to (b)

Page 10, line 5, change (d) to (c)

line 10, change (e) to (d)

Page 11, commencing on line 13, Section (b) amended to read:

"(b) Upon the death of an active member who [HAS NOT RECEIVED A RETIREMENT BENEFIT AND] meets the conditions specified in (a) of this section, the amount of the death benefit is the sum of the following offset by any retirement benefit previously received by the member:"

line 18, subsection (3) amended to read:

"(3) \$1,000; and [PLUS]"

Then, new subsection (4) added, to read:

"(4) \$500 if the deceased member is survived by one or more dependent children at the time of death."

Page 12, line 29, amended to read:

"four and the benefits [PENSION] will be decreased accordingly; if a dependent"

Page 13, lines 13 and 14, amended to read:

"guardian or dependent children under this section will be paid to those beneficiaries described in [ACCORDANCE WITH] sec. 160(a) of this chapter;"

Page 14, line 7, amended to read:

"equal to 50 per cent of the amount the member would have received, based on the"

line 15, amended to read:

"paid to those beneficiaries described in [ACCORDANCE WITH] sec. 160(a) of this chapter;"

Page 15, line 27, amended to read:

"is making contributions to the system, [;] or a member making contributions under AS 14.20.345;"

Page 18, line 2, amended to read:

"the National Education Association of Alaska, or the Regional Resource Centers;"

line 7, amended to read:

"(17) 'full-time teacher' means a person [TEACHER] occupying a posi-"

line 14, amended to read:

"member who is on leave of absence and not making contributions under AS 14.20.345 [WITHOUT PAY];"

line 24, amended to read:

"any city, regional educational attendance area or borough school district;"

line 25, sub-section (B) amended to read:

"(B) full time or part-time teaching or full time administrative positions which require academic standing at the University of Alaska; or"

Page 19, line 29, amended to read:

"teacher or a certificated full-time person in a position requiring a teach-"

Page 20, line 5, amended to read:

"teacher or certificated full-time person in a position requiring a teach-"

lines 9 and 10, amended to read:

"(C) a full-time teacher [PERSON OCCUPYING A FULL-TIME POSITION REQUIRING ACADEMIC STANDING] in an out-of-state institution of higher learn-"

line 17, amended to read:

"tion requiring teaching on a regular basis for at least 50 [60] per cent of"

Page 22, line 9, amended to read:

"or secondary teacher, a certificated school nurse or a certificated person in a position"

line 15, subsection (C) amended to read:

"(C) [RESIDENT PERSONNEL IN] Any full-time or part-time teacher [TEACHING POSITIONS] under the University of Alaska and those full-time administrative positions which require academic standing; all administrative positions placed under the system must be approved by the administrator;"

Page 23, line 22, amended to read:

"and 14.25.140 [, 14.25.169, AND 14.25.205] are repealed."

Page 25, line 23, add a new section which amends AS 39.35.680(4) to read:

"(4) "average monthly compensation" means the result obtained by dividing the compensation earned by an employee during a considered period by the number of months, including fractional months, for which compensation was earned; the considered period consists of the three consecutive calendar years during the period of credited service which yields the highest average, or if the employee does not have three consecutive calendar years, his period of credited service; an employee must have at least 115 [120] days of credited service in the last calendar year in order to be used as part of the three consecutive calendar years;"

line 28, add a new section to read:

"AS 14.25.220(20)(B) and (38)(C) contained in sec. 22 of this Act take effect immediately in accordance with AS 01.10.070(c) and are retroactive to January 1, 1955 only to the extent that they apply to part-time teaching positions at the University of Alaska."

Box 1813
Anchorage, AK 99510

April 25, 1978

The Honorable Charles H. Parr
Chairman - House HESS Committee
Alaska State Legislature

Dear Representative Parr:

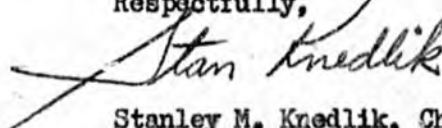
Enclosed are two letters of information which state the
position of the Alaska State Retired Teachers Association
RE:

1. HB 820 ASRTA Supports

2. HB 866 ASRTA Opposes

Our intent is to provide these positions and information
for the HESS Committee Members' consideration in connection
with the Committee's Hearing, scheduled for April 27, 1978.

Respectfully,



Stanley M. Knedlik, Chairman
Legislative Committee

Alaska State Retired Teachers Association

April 25, 1978

House HESS Committee Members
Alaska State Legislature

RE: ASRTA Opposition
to HB 866

Dear Mr. Parr, Chairman:

Our membership's immediate concern and opposition to HB 866 stems from the objectionable features or sections which appear to alter and/or change the original, existing statutes related to the following areas:

1. The "scheduled time" when all 4 categories of Retirement Benefits are to be payable--inclusive of (1) retirement benefit, (2) disability benefit, (3) survivors' allowance, and (4) spouse's pension.
2. The nature and essence of the retirement benefit as an annuity.
3. The basis for calculating the normal retirement benefit following a period of disability (membership) service.

RE: #1: HB 866 alters the established schedule, whereby each and all (4) such benefit payments would now become payable on the last day of the (a) initial month and (b) each succeeding month of eligibility--noting that in the case of each retiree, the monthly benefit was and now is scheduled by the existing statutes to be payable on the 1st day of the month; this preferred schedule and procedure was originally intended and ordered for good and sufficient reasons--in keeping with the circumstances which should continue to prevail. No fundamentally acceptable reason has been given to justify altering this schedule.

See
HB 866
Page # 9
Line 4

To the contrary, there are reasons why the original schedule of payments should be met and continued.

Only by assuring every retiree that the retirement benefit will be payable on the 1st day of the month can every retiree be assured of a proper civil and social right to have received during the month of his eventual demise his final benefit check which he could ^(personally) actually receive, endorse, and disburse--rather than given to an estate.

RE: (#2, X#3,) & (#4) above: (disability benefit/survivors' allowance/spouse's pension)

HB 866
Page # 10
Lines 13 & 14

Page # 13
Lines 17 & 18

Page # 14
Lines 19 & 20

...it also seems equally clear that the original and existing statutes (provisions), which provide that all such benefit payments are to be payable on the 1st day of the month, best and most properly meet the needs of those persons (beneficiaries) eligible for those benefits. Eg., . . . the proper entitlement of the disabled teacher to the disability benefit payable on the 1st day of the month is already established and acknowledged by the State in the case of a Fairbanks TRS retiree (Orval Holmes)--but even more importantly, the immediate economic needs of all such beneficiaries and especially the surviving spouse/wife and dependent children are best met only by assuring that the initial benefit payment (and with succeeding payments) is scheduled to be made on the 1st day of the month.

We are convinced that this was and should be the continued intent of the original and existing statutes.

HB 866
Page # 8
Line 27 & 28

Page # 10
Lines 10 & 11

Page # 13
Lines 17 & 18

Page # 14
Lines 18

RE: #2: In addition, HB 866 alters to some degree the nature and essence of the "retirement benefit" concept--i.e., it tends to disregard the retirement benefit as a form of annuity already earned and entitled, automatically geared and scheduled to be payable (in a disconnected series of separate, discrete, consecutive monthly intervals of time) on the 1st day of the initial month of entitlement and the 1st day of each succeeding month thereafter, "ad infinitum," subject only to the demise of the retiree.

In contrast with this original intent and purpose, HB 866 interposes the term "accrue"--which in this altered context suggests/indicates that the consideration involved (benefit) may be in a state of being or becoming earned--i.e., increasingly, accumulatively, or possibly even prorated; it surely implies that that which was already earned is payable only after and at the end of an interval of time--which when coupled with the economic needs of retirees and beneficiaries is detrimental!

RE: #3(above): Our attention is being drawn to an increasing number of Fairbanks-area TRS retirees who believe that their normal retirement benefit calculations were adversely and unfairly affected by prior periods of disability--thru what may be termed "contested" or "specious" interpretations rendered

by the Division of Retirement & Benefits. In addition to the Orval Holmes/^{Case}there tentatively appear to be as many as five (5) other similar cases (names available on request), involving disability periods prior to normal retirement eligibility in which the retirees' eventual normal retirement benefit calculations were adversely affected by the Division's/Administration's specious rulings which were rendered in disregard of logical and literal interpretations of the original TRS statutes, as well as the clearly-related and supportive TRS Handbook explanations--all of which lent credence to the retirees' contention that such disability periods need not and should not adversely affect the eventual calculations of normal retirement benefits.

See
HB 866
Page #8
Line 4
Page #16
Lines 11,
12, & 13

The cruz of the retirees' concern for this objectionable feature rests with two sections in HB 866's content--namely (1) page # 8, line 4 in which the existing statute's 10 years' framework (within which the 3 highest salary years are to be selected and averaged) is deleted--to become any 3 years--and (2) HB 866's page #16, lines 11, 12, & 13 by which a year of disability is to be disqualified from the calculations for determining the eventual normal retirement benefit amount.

Overall, this change of existing statute provisions is unduly restrictive to the detriment of a number of unfortunately disabled members--noting in particular that by statute definition, a year of disability does qualify as a bona fide "membership year"! It would seem prudent and thoughtful to heed to the expressed retiree opposition to this alteration which so clearly coincides with a contested area of benefit concern.

For these particular statute provisions (1) to have stood in effect for 18 or 20 years, (2) to have been supported by seemingly literal and logical interpretations, and (3) with the clearly supportive TRS Handbook (over time thru 1974) paragraphs of description and explanation--all of these circumstances seem to prompt an objective awareness that there is actually a benefit problem needing further attention and evaluation--pror to change!

Adequate investigation and study of the noted, persisting concerns have not run their course. And it seems inappropriate and unwise, meanwhile, to suggest that clarifying, clean-up, and/or housekeeping needs will justify such alterations as proposed in the midst of this unsettled situation.

In conclusion, while noting there are some commendable areas of change in HB 866, because of the sensitive areas which are objectionable as noted herein, our position is one of opposition to HB 866 in its original form. I respectfully suggest ^{approval} ~~that~~ of HB 866 in its original form is not warranted unless the Committee is fully satisfied that the retirees' objections are either (1) baseless or (2) satisfied and/or dispelled.

I also suggest that unless these sections which cause valid concerns among TRS retirees can be satisfactorily resolved, then possibly this measure might well be postponed for future consideration, perhaps in 1979, when further and better conclusions can be achieved. Meanwhile, I thank you for having given your attention and consideration to these expressions which represent the ASRTA Membership's position on the issues related to HB 866.

Respectfully,

Stanley M. Knedlik, Chairman - Legislative Committees

cc Mary Carle, President
ASRTA
Catherine Larson, President
CARTA

Alaska State Retired Teachers Association
Central Alaska Retired Teachers Association

HB 866
Proposed Changes

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- Page 7 Line 8 after for add "that"
- Line 29 change by adding after in (a 1), (a 2), (or a 3) of this
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(4) \$500 if the deceased member is survived by one or more dependent children at the time of death.
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- Line 16 new language for section 26 "part-time teacher" means a teacher occupying a position requiring teaching on a regular basis for at least 60 percent of the normal work week at a higher education teaching assignment or in grades K thru 12 on a regular basis for part of the normal and customary work period per day or week or month at a particular teaching assignment, excluding teaching as an assistant or graduate assistant, or teaching on a substitute, temporary or per diem basis;
- Page 22 Line 9 add certificated school nurse
- Page 23 Line 20 delete (14.20.205)

Copies to members

ALASKA STATE RETIRED TEACHERS ASSOCIATION

1038 Beech Lane
Anchorage, Alaska, 99501
April 14, 1978

Commissioner B. B. Allen
Department of Administration
Pouch C
Juneau, Alaska 99811

Dear Commissioner Allen:

Legislation has been introduced (HB 866) which would change the current TRS statute with respect to the accrual and payment of teacher pensions, disability benefits, survivor's benefits, and spouse's pensions.

Current law states that these payments are PAYABLE the first day of the month commencing with the month that the person is appointed (becomes eligible) for the payment. As you probably are aware, this practice has not been followed at any time (to my knowledge) in the past. One person sued the state and was upheld in his contention that he had been behind in a payment of a disability benefit, and the state was forced to make up one payment with interest.

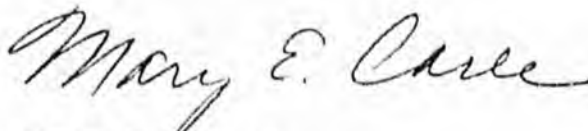
We believe it is in the best interests of all retirees, disabled teachers, survivors and spouses of deceased members that the law NOT be changed, but that instead the practice of paying at the end of the month be discontinued.

In order to accomplish this, we respectfully propose that the initial payment which should have been received on the first day of the first month of retirement (or as soon as was practicable after the eligibility was established) be paid to all persons eligible. Then each person would be brought up to date, and the payroll method with the warrants dated for the first of the month could be continued as in the past.

The question has arisen as to interest on the obligation which the state had in delaying the initial payment for its own convenience. A good case might be argued that one month interest only is the maximum amount that any retiree (or other eligible person) is entitled to. No one wants to advocate a policy which would place an undue burden on the TRS system.

The members of this organization urge that you consider this change in administration of the TRS to bring practice into conformity with the law. It is our belief that the lawful method is one which relieves possible hardships (in the case of disability and survivor's benefits) and also makes possible the disposal of one's last pension check before his death, instead of by the administrator of the estate of the deceased member.

Very truly yours,



CC: B. Van Houte
Charles Parr,
Charles Jones

Mary E. Carle
President

Copies to members files



NATIONAL
RETIRED
TEACHERS
ASSOCIATION

AMERICAN
ASSOCIATION
OF RETIRED
PERSONS

ALASKA JOINT STATE LEGISLATIVE COMMITTEE

CHAIRMAN
Mr. Charles H. Jones
P.O. Box 668
Douglas, AK 99824
(907) 364-2335

VICE CHAIRMAN
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1038 Beach Lane
Anchorage, AK 99501
(907) 272-9667

SECRETARY
Mr. John Poling
Box 578
Nome, AK 99762
(907) 443-2459

April 10, 1978

Rep. Charlie Parr, Chairman
HESS Committee
c/o House of Representatives, Pouch V
Juneau, Alaska, 99811

Dear Representative Parr:

It is my understanding that hearings on HB 660, 636, 723, 820, 828, 831, and 866 are being scheduled for April 11 and 13. I would like to testify in the deliberations on those bills, and because I cannot be physically present in Juneau, would you please consider these remarks as part of the record in those hearings?

We support both HB 660 and 636.

Two other bills in particular demand comment. HB 820 we would hope would be a means to provide the necessary amounts to assist the system to provide post retirement pension adjustments when the cost of living warrants it. In lieu of any better plan, and because of the repeated problems for funding this necessary adjustment, we support HB 820 and we urge your committee to do so.

HB 866 contains 23 sections in as many pages which apply to the Teachers Retirement System. While some of it may be clarification, there is a great deal of material in this bill which we feel needs further study and review before it is enacted into law.

In particular we take issue with Section 13(h)(Page 7-9), in which the apparent purpose of the change in the law is to cause it to conform to current practices. The law under which we currently operate states that the pension payments are payable on the first day of the month, and we take that to mean due at that time. This practice has not been followed by the administration and we believe it is time that we request that the department conform to the law already on the books and pay our pensions in that manner. No doubt the original intent of the law as written was to make it possible for the pensioner to survive economically for another month and to receive his final payment before his demise. Remarks about pension payments also apply to provisions for disability benefits, survivors benefits and spouses' pension. The current law states that they are payable on the first of the month in which the person becomes eligible.

Dr. J. Cloyd Miller
President, NRTA

Alice VanLandingham
President, AARP

Cyril F. Brickfield
Executive Director



NATIONAL
RETIRED
TEACHERS
ASSOCIATION



AMERICAN
ASSOCIATION
OF RETIRED
PERSONS

ALASKA JOINT STATE LEGISLATIVE COMMITTEE

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SECRETARY

Mr. John Poling
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(907) 443-2459

(cont) Subject HB 866

We intend to request the department of administration to modify their current practice and adopt the lawful one. The problems noted in the preceding paragraph are of importance to most of the retirees, but other problems we find in this law relate to "survivor's allowances" to be payable only after a 5 years required contribution (previously one year) and the method of computing the normal retirement when a person reaches the required age for it after he or she has been on a disability pension. The purpose of this bill is to codify the existing practice, which we believe unfairly penalizes the person who has been forced into disability retirement.

Unless the sections which refer to these problems are omitted or changed substantially we would oppose the passage of HB 866.

I am writing as a member of the Teachers Retirement System, a member of the Joint State NRTA-AARP Legislative Board and as the President of the Alaska State Retired Teachers Association.

Respectfully yours,

Mary E. Carle
Vice-Chairman
Alaska Joint State Legislative Committee

File

April 6, 1978

Legislative Board of Retirement Benefits analysis and recommendations on:

House Bill No. 866

The board endorses the attached fiscal note as its fiscal analysis of HB 866.

Three members of the board recommend that HB 866 do pass; two members recommend that it do not pass; and two members were absent.

The two members who recommended "do not pass" did so because of their concern with what they perceived as substantive changes in the areas of payment dates and survivors allowance eligibility requirements.

-
Omnibus retirement
bill - member file

Route 6, Box 6147
Juneau, Alaska
March 29, 1978

Mr. Paul Arnoldt
Director, Teachers Retirement System
Juneau, Alaska
Dear Sir:

As you perhaps know, Orvel Holmes and I are old friends and teaching associates. I have seen the letter, March 16, he received from you in reply to his letter to Commissioner Allen, February 27.

Are you now saying that "since the results of the Holmes vs State case have become so well known by word of mouth as was feared, will now come out into the open with the whole thing"?

What excuse do you have for not paying me and others for the extra month? Circumstances of retiring were the same for me as for Holmes. That part of the above mentioned court case you

last.

I certainly agree with the Judge that disability compensation precludes the use of a base the teacher might have earned except for his disability.

Regardless of your department's insistence on calling it a "calculated base", an "extrapolated base", a "future salary", etc. to cloud the issue, you only quoted a small part of the court order. The Judge ruled on a point that wasn't sued for, and that judgment is not proper for you to use as a cover.

You say very openly now that this paragraph "the base salary used in computing the service retirement will be the same salary used in computing the disability benefit" is misleading if not totally incorrect. This is a new excuse and has legal ramifications of its own.

If rules and regulations

are now contained in the actual text of the law, do they not become law and cease to be so-called rules and regulations?

Do Teachers Retirement System spokesmen have the authority to say that the rules and regulations set forth by the Commissioner of Administration are misleading and totally incorrect?

I hope I get a reply from you to make clear the state's position on the points I've mentioned.

Sincerely,
Iris B. Whitbeck

C.C. to:

Hon. B.B. Allen, Comm. of Administration
Rep's. Charles Parr

Steve Cowser

Sally Smith

Senators Glen Hackney

John Huber

Mike Colletta

Jalmar Kerttula
Chancy Croft

Orral W. Holmes

Frank Flavin, Ombudsman

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. HB 866
 Title AN ACT RELATING TO TEACHERS' AND PUBLIC EMPLOYEES' RETIREMENT
 Requested by _____ Date _____

II. FISCAL DETAIL
 Agency Affected Administration - Division of Retirement and Benefits
 Program Category Affected Retirement and Benefits (TRS)
 Budget Request Unit(s) Affected Teachers' Retirement System

EXPENDITURES (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.		21.4	23.5	25.9	28.5	31.3
100 BENEFITS		4.9	5.4	5.9	6.5	7.2
TOTAL	-0-	26.3	28.9	31.8	35.0	38.5

FUNDING (Thousands of Dollars)

GENERAL FUND		26.3	28.9	31.8	35.0	38.5
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS NONE

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

- Fiscal impact on the Teachers' Retirement System due to the following:
 - Removes the "55 years old" age requirement before a spouse's pension can be paid. 14.25.164(b).
 - Provides a benefit for a surviving spouse with minor children whose spouse was on deferred vested status. 14.25.162(a).
 - Increases from 75% to 100% the benefit for the beneficiary of a teacher receiving a disability benefit who dies. 14.25.162(d).
- Increase in combined TRS State match and district contribution rate would be .02% of covered payroll each year based on an estimated FY79 covered TRS payroll of \$214,000,000 increasing at 10% annually.
- Administrative costs as attached.

IV. DATE March 30, 1978 PREPARED BY Paul B. Arnoldt
 AGENCY Division of Retirement and Benefits
 PHONE 465-4460

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named) Rules Committee by Request of the Governor
 Office of the Governor (Keith Specking)
 33-001 (Rev. 12/77)

ATTACHMENT

Bill/Resolution No. HB 856ASSUMPTIONS:

1. Estimated FY79 Payroll (Total System) = \$214,000,000
2. State Contribution Rate to Fund Bill = .01%
3. State TRS Matching Rate to Fund Bill = .01%
4. School District Rate to Fund Bill = .01%

COST ANALYSIS:

<u>Employer</u>	<u>Payroll</u>		<u>Rate</u>	<u>Cost</u>	<u>Appropriation</u>
1. Department of Education	\$ 5,800,000	X	.01%	\$ 580	To Their Budget
2. University of Alaska	\$ 43,500,000	X	.01%	\$ 4,350	To Their Budget
				\$ 4,930	
3. State TRS Matching	\$214,000,000	X	.01%	\$ 21,400	To TRS Match
4. State TRS Regular Budget:					
Personal Services				\$ -0-	To Personal Services
Travel				\$ -0-	To Travel
Contractual				\$ -0-	To Contractual
Equipment				\$ -0-	To Equipment
				<u>\$ 26,330</u>	
5. All School Districts	\$164,700,000	X	.01%	\$ 16,470	
				<u>\$ 42,800</u>	

REMARKS:

SECTION-BY-SECTION ANALYSIS - HB 866

Section 1. PURPOSE AND EFFECTIVE DATE. - (New section added)

Section 2. ADMINISTRATOR. (New section added) Designates the director of retirement and benefits as eligible to serve as administrator of TRS.

Section 3. DUTIES OF THE ADMINISTRATOR. (Existing section amended) Inserts the term "benefits" in place of the term "salary." Adds the duty to serve as secretary to the Teacher's Retirement Board (but does not specify whether the administrator is a voting member).

Section 4. TEACHER'S RETIREMENT BOARD. (Existing section amended) Provides that an employer, member, or annuitant (retired person) may request hearings to appeal decisions of the administrator.

Section 5. REEMPLOYMENT OF RETIRED MEMBERS. (New section added) A retired teacher who becomes reemployed as a teacher is ineligible to receive retirement payments during that period of reemployment. The ineligibility continues throughout the entire school year even though the previously retired teacher worked part-time.

Section 6. AS 14.25.060(a) is amended by inserting the term "credited" in place of "creditable."

Section 7. AS 14.25.060(b) same amendment as in section 6 above.

Section 8. AS 14.25.061(a) is amended by inserting the word "retroactive" in place of the word "creditable." The bill does not contain a definition of the resulting new term, "retroactive service." It would be clearer if the word "creditable" appearing on p. 4, lines 13, 17 and 18 was changed to read "credited" instead of deleted. Now, it could possibly be argued that retroactive service includes noncredited service.

Section 9. AS 14.25.061(b) is amended by deleting the term "creditable" and inserting the term "retroactive." This amendment seems inappropriate. The proper amendment would be to insert the term "credited" in place of the term "creditable."

Section 10. PAYMENT OF INDEBTEDNESS. (New section added) (a) Provides that a member may repay an indebtedness due to the system for past service for which contributions were not made only if he has a balance in his retirement account or if he is reemployed by a covered employer. His payments are first credited against interest due and upon repayment of interest, then upon principal due.

(b) If a member has an indebtedness to the system at the time he applies for retirement, he must select an optional plan to pay back the indebtedness.

Option 1. (This option is revocable.) Withhold retirement benefits until the amount of indebtedness equals the amount of withheld benefits. (HB 866 unclear whether the withheld benefits are to

be computed on the basis of credited service for which an indebtedness is owing or only on "paid-up" credited service.); or

Option 2. (This option is irrevocable.) Cancel the indebtedness and accept a monthly retirement benefit reduced by an amount necessary to repay the benefit over the expected life of the retired member.

Section 11. TRANSMITTAL OF CONTRIBUTIONS. (Existing section amended) Adds a penalty for an employer's (school district) failure to send its contribution to the system within 15 days after pay day. Under existing law, delinquent employer contributions are deducted from funds under the control of the Department of Education and allocated for payment to the employer. This set-off against public funds would still be available after enactment of HB 866 but as an alternate remedy only. The penalty apparently does not apply to delinquent employer contributions owed by the University of Alaska but the Department of Administration may withhold appropriated funds designated for allocation to the University and disburse them to the administrator for payment into the system. Under existing law, this set-off remedy against the University is mandatory; however, after enactment of HB 866, the remedy may be used at the discretion of the Commissioner of Administration.

Section 12. CREDIT FOR SERVICE. (Existing section amended) Provides that credit may not be given under TRS for military service already credited under PERS. Limits the total amount of military service that may become credited service for a retiree who is entitled to benefits under PERS and TRS to five years. (To achieve clarity, I recommend the insertion of the word "that" on P. 7, line 8 after the word "for.")

Section 13. RETIREMENT BENEFITS. (Existing section repealed and re-enacted) (a) Normal retirement vesting. Existing law is restated without a change in substance.

(b) Early retirement vesting. Either a broadening of the situations which permit early retirement is intended or the drafters of HB 866 have committed a typographical error appearing on p. 7, line 29. Under HB 866, as drafted, early retirement may occur when the member attains 50 years of age and has:

(1) at least 15 years of credited service, the last five of which have been membership service, for a member first hired before July 1, 1975, and has attained the age of 55 years;

(2) at least eight years of membership service and has attained the age of 55 years;

(3) at least five years of membership service and at least three years of Alaska BIA service and has attained the age of 55;

(4) at least 25 years of credited service, the last five of which have been membership service;

(5) at least 20 years of membership service; or

(6) at least 20 years of combined membership service and Alaska BIA service, the last five of which have been membership service.

Under existing law, early retirement may occur when the member attains 50 years of age and has met the requirements stated in either (1), (2) or (3) above. (See AS 14.25.220(24)). In addition, the definition of "early retirement" contained in the bill (see p. 17, line 19 - HB 866) restates existing law. A conflict exists in HB 866 and should be resolved by the committee.

(c) Sets the rate of accrual of benefits for retired members (2 per cent of average base salary per year of credited service) but includes two changes in existing law:

(1) Under existing law the average base salary is computed by taking the highest 3 of the last 10 years of membership service. Under HB 866, a member may average the highest of any three years of membership service to arrive at his average base salary.

(2) For early retirement at age 50, under existing law the amount of normal retirement benefits are reduced by a formula ($\frac{1}{2}\%$ x months younger than 55 x amount of benefits due at age 55). Under HB 866, benefits payable at early retirement are "actuarially adjusted" rather than reduced by application of the above-mentioned formula.

The intent is to adjust the benefits to equal the difference in pay-out caused by a member electing to retire 5 years earlier. Contributions, benefits, income of the system, and age of retirees are all considered by actuaries in determining what benefits should be payable upon early retirement.

(d) Inserts new language which purports to limit the computation of benefits to the accrual rate set by law at the time of a member's retirement. This subsection should have crossreferences to sec. 177 which would permit an increase in accrual rates enacted by a later legislature if the law enacted is made specifically applicable to persons who have retired before the effective date of the legislation.

(e) - (h) Existing law is restated.

Section 14. DISABILITY BENEFITS. (Existing section amended) Restates and consolidates existing law using new terms proposed in HB 866. The requirement that a member seeking disability benefits submit an application is added. (See p. 9, line 15 of HB 866) This application requirement may delay the initial receipt of disability benefits if the disabled member is legally incompetent to execute an application, in which case guardianship proceedings may be necessary before an application can be submitted on behalf of an incompetent.

Section 15. POST RETIREMENT PENSION ADJUSTMENT. (Existing section amended) Restates existing law using new terms proposed in HB 866. The term "survivor's benefits" is created as a result of the amendment of this section and should be defined. A failure to define this term creates uncertainty in my mind as to whether both survivor's allowances and spouse's pension are covered by this section.

Section 16. DEATH BENEFITS. (Existing section repealed and reenacted) Restates existing law except that the amount of death benefit for a disabled member who has not made supplemental contributions or made those contributions for at least one year is computed differently. Upon the death of that disabled member, the death benefit would be an amount equal to the sum of:

- (1) his accumulated contributions, and (2) \$1,000, plus \$100 multiplied by the number of completed school years of membership service, plus an additional sum of \$500 if the deceased teacher is survived by one or more minor children at the time of his death. (The amount payable under (2) may not exceed \$3,000).

Under existing law, the aforementioned sum must be reduced by the amount of any retirement salary previously paid to him. (Usually this amount is "zero" since disabled teachers usually have not been earlier retired.)

Section 17. SURVIVOR'S ALLOWANCE. (Existing section repealed and reenacted) (a) Adds a requirement that retired or deferred vested members pay supplemental contributions for 5 years before qualifying for coverage under survivor's allowance provisions while active or disabled members must pay those contributions for at least one year. Under existing law, active members, retired members and disabled members are required to pay supplemental contributions for at least one year. (Deferred vested members are not mentioned under existing law and presumably a beneficiary of that person would not be an eligible recipient.)

(b) In this subsection, existing law is restated. The use of the word "pension" on p. 12, line 29 confuses the directions given there for reduction of allowances; the word used is inconsistent with other terms used in the section. I feel that (b)(3) appearing on p. 13, lines 10 - 14 of HB 866 is poorly drafted and needs the following revisions:

Page 13, line 13: after "children" insert "under this section" and after "paid" insert "to those beneficiaries described in sec. 160(a) of this chapter." Delete the remainder of the sentence.

Adds language which prohibits payment of survivor's allowances if a spouse's pension is being paid.

Section 18. SPOUSE'S PENSION. (Existing section repealed and reenacted) (a) Existing law is restated without a change in substance.

(b)(1) The amount of spouse's pension is increased. Under existing law a spouse is entitled to 50 per cent of the retirement salary that the deceased spouse was receiving or would have received at the time of death. Under HB 866 the spouse of a retiree receives 50 per cent of the deceased's retirement salary but if the spouse dies before retirement and is eligible for normal retirement benefits at the date of death, the surviving spouse would receive 100 per cent of the amount of retirement salary that the deceased spouse would have been eligible to receive had he retired on the date of his death.

(b)(2) Restates existing law -- but that paragraph could be redrafted to permit easier comprehension by deleting at page 14, line 15 (HB 866) the words "in accordance with" and inserting after the word "paid" the following: "to a beneficiary or beneficiaries described in."

(c) Restates existing law.

*This section as reenacted does not include a reference to AS 14.-25.142 - Cost of Living Allowance. Under existing law, AS 14.25.164(c) specifically provides that a spouse's pension may be increased when the cost of living increases. It is also unclear whether a post-retirement pension adjustment under AS 14.25.143 would apply to a spouse's pension. (See comment to section 15 above.)

Section 19. EFFECT OF AMENDMENTS. (Existing section repealed and reenacted) (a) Provides that all amendments enacted apply only to future retirees unless the amendatory legislation specifically states that it has retroactive effect.

(b) Designates the law applicable at the date of retirement for determining monthly benefits payable. Similar language also appears in AS 14.25.110(d) contained in section 13 of HB 866. The intent of this section is difficult to determine since (a) of this section permits retroactive amendments but (b) seems to prohibit retroactive amendments which would affect the amount of monthly retirement benefits payable.

Section 20. EXEMPTION FROM TAXATION AND PROCESS. Existing law is restated using new terms proposed in HB 866.

Section 21. TIME LIMIT FOR APPLICATION. Inactive members must apply by July 1, following age 75 or within 50 years after the person was last an active member or lose contributions or benefits payable under the system.

Section 22. DEFINITIONS. (Existing section repealed and reenacted)

(1) "active member" (new definition added) defined as

- (a) a "member";
- (b) receives compensation on a full or part-time basis; and
- (c) makes contributions.

(2) "actuarial adjustment" (new definition added) This definition attempts to explain what factors are considered when early retirement

benefits are recomputed according to actuarial tables designed to account for the increased life expectancy and interest payable upon an early retirement as differentiated from a normal retirement (age 50 vice age 55). The definition presented in HB 866 is confusing and should be redrafted. A definition should be drafted so that the words used can be substituted for the term wherever it is used in the sections enacted.

(3) "administrator" (existing definition amended) Under the existing definition, the administrator is the Commissioner of Administration. Under HB 866, the administrator will be an appointee of the Commissioner who may be the director of the division of retirement.

(4) "annuitant" (new definition added) Means a retired or disabled member who is receiving benefits.

(5) "average base salary" (existing definition amended) Restates the existing definition of that term but allows a retiree to take any three of his highest paid years of service instead of any three out of the last ten years as currently required.

(6) "base salary" (existing definition amended) Existing definition restated to only include remuneration paid for a full year of service.

(7) "beneficiary" (new definition added).

(8) "BIA service" (existing definition reenacted).

(9) "compensation" (new definition added) This definition and the definition for "base salary" in (6) above are combined under the definition of "base salary" in existing law (see AS 14.35.330(2)).

(10) "credited service" (existing definition redesignated and expanded) This definition limits credit granted for outside service (discussed below), military and BIA service to 15 years with military and outside services limited to 10 years.

(11) "deferred vested member" (new definition added) A deferred vested member is an inactive member who has served long enough to become entitled to receive benefits from the system.

(12) "dependent child" (new definition added) The definition restates existing law.

(13) "disabled member" (new definition added) Restates existing law.

(14) "early retirement" (existing definition reenacted) Please refer back to comments concerning section 13 contained in this analysis.

(15) "employer" (existing definition amended) Adds two entities as participating employers in the system. These are the National Education

Association and the Regional Resource Centers. Under existing law, service credit could be obtained for employment with NEA-Alaska.

(16) "former member" (new definition added) A former member is a person who has resigned or been terminated and who has withdrawn his contributions.

(17) "full-time teacher" (new definition added) A full-time teacher is defined as a teacher who works full days and is a regular, permanent member of the teaching staff.

(18) "inactive teacher or member" (new definition added) A member who is terminated and has not received a refund of his contributions.

(19) "mandatory contribution account" (new definition added) An account that contains member contributions and interest on those contributions.

(20) "membership service" (existing definition amended) Under existing law, service as a teacher who is employed by the University of Alaska on a full or part-time basis is membership service. Under HB 866, only full-time teaching for the University of Alaska qualifies as membership service.

(21) "military service" (existing definition amended) U.S. military service rendered at any time can be used as credited service in TRS if the requirements of AS 14.25.100 are met.

(22) "non-public school" (existing definition amended) Under the definition contained in HB 866, a teacher who serves at a non-public school that does not offer grades "K" through 12 may receive credited service for that employment. Under the existing definition, service can only be credited when the non-public school offers instructions in grades "K" through 12.

(23) "non-vested member" A member who has not served long enough to become entitled to receive benefits from the system.

(24) "normal retirement" (existing definition restated) No change in substance from existing law.

(25) "outside service" (existing definition amended) The following new types of service are included in this definition:

(a) service by certificated persons who are not teaching but must be certificated as a condition of employment. (It is not clear whether these persons can claim credit for part-time employment.)

(b) service as a teacher at a federally supported public or non-public school located outside the U.S.

(c) full-time positions with out-of-state colleges and universities if that position requires "academic standing" (an undefined term). Under existing law, a full-time teacher at an out-of-state college or university could receive outside service credit.

(26) "part-time teacher" (existing definition amended) This definition specifies the percentage of time necessary to qualify as a part-time teacher (at least 60 per cent of the normal work week). Under existing law, regularity of service is required (i.e., a permanent position) but no minimum amount of service per week or month is specified.

(27) "permanent disability" (existing definition reenacted) No change in substance from existing law.

(28) "prescribed rate of interest" (new definition added) No change in substantive law is effected.

(29) "public school" (existing definition reenacted).

(30) "retired teacher or member"*

(31) "retirement"*

(32) "retirement benefit"*

(33) "retirement fund"*

(34) "retirement system of 1945"*

(35) "school year"*

(36) "supplemental contribution account"*

(37) "system"*

*Paragraphs 30 - 37 are all new definitions added by HB 866 which do not alter existing law.

(38) "teacher or member" (existing definition amended) The amendment of this definition has the following effect:

(a) Certified school nurses can no longer be members of the system.

(b) Principals, supervisors and superintendents who are not certificated would not be members of the system; and

(c) Administrative positions with the University of Alaska that do not require academic standing would not be covered under the TRS.

(39) "vested member or teacher" (new definition added) This definition sets out the length and type of service required before a member is irrevocably entitled to receive benefits from the system.

(40) "year of service" (existing definition amended) This definition remains the same as existing law except that the system will now function on a July through June year for purposes of computing years of service. Under existing law, a year of service is a school year as that period is determined by each school district thereby making the task of accounting for service more complicated.

Section 23. Sections repealed:

(a) AS 14.25.120 Manner of computing service retirement salary. Reenacted in sec. 13 of HB 866.

(b) AS 14.25.130(b) Eligibility for disability retirement. This repealer is in error since on page 9 at lines 21 - 25 of HB 866, sec. 130(b) is amended.

(c) AS 14.25.135 Deferred retirement benefit repealed and not reenacted. It appears that the essential terms of sec. 135 are incorporated in sec. 13 of HB 866.

(d) AS 14.25.137 Deferred vested retirement benefit -- reenacted in Sec. 22 (definitions) of HB 866.

(e) AS 14.25.138 Notification of intent to retire -- not reenacted in HB 866.

(f) AS 14.25.140 Manner of computing disability retirement salary -- reenacted in sec. 14 of HB 866.

(g) AS 14.25.169 Duplicate benefits -- not reenacted in HB 866.

(h) AS 14.25.205 Time limit for application -- reenacted in sec. 21 of HB 866.

Amendments to PERS

Section 24. PURPOSE CLAUSE. (Existing section amended) No substantial change in existing law.

Section 25. ADMINISTRATOR. (Existing section amended) An appointed administrator shall be in charge of the detailed affairs of the system; that person may be the director of the division of retirement.

Section 26. POWERS AND DUTIES OF THE ADMINISTRATOR. (Existing section amended) The administrator is empowered to act as the secretary of the retirement board.

Section 27. EMPLOYMENT WITH THE STATE. Inserts language designed to make it clear that employment with the University of Alaska is not credited service under PERS. Also provides that there is no portability of service credit between TRS and PERS.

Section 28. MILITARY SERVICE. (Existing section amended) Housekeeping amendments only.

Section 29. MILITARY SERVICE. Limits to five years the amount of service credit for military service that can be claimed by one person under both PERS and TRS.

Section 30. OCCUPATIONAL DISABILITY PENSIONS. (Existing section amended) Housekeeping amendment.

Section 31. OCCUPATIONAL DEATH BENEFITS. (Existing section repealed and reenacted) This section restates existing law and corrects minor drafting errors contained in existing law.

Section 32. TIME LIMIT FOR APPLICATION. Same comment as contained in sec. 21 of this analysis.

Section 33. EFFECT OF AMENDMENTS. Same comment as contained in sec. 19 of this analysis.

Section 34. REPEALER. AS 39.55.050(b) -- This section specified that the administrator serves as secretary to the PERS retirement board. The section was repealed due to redundancy.

Proposed Changes

Page 7 line 8 after for add "that"

line 29 change by adding after "in" (a 1), (a 2), or a 3) of this

Page 9 line 21-24

delete all of (b)

Page 11 line 17

(1) the members's mandatory contribution account;

(2) \$100 times the years of membership service;

(3) \$1000;

(4) \$500 if the deceased member is survived by one or more dependent children at the time of death.

Page 12 line 29 (pension) to benefits

Page 13 line 13 after "children"

add under this section will be paid

after "paid" add to those beneficiaries described in Sec.

delete (in accordance with sec.)

Page 14

prev ac

line 22-23 add (d) However benefits under sections 162 and 164 shall be paid to a surviving spouse in addition to those benefits the member is entitled to receive as a result of membership in the retirement system

Page 18 line 2 add NEA of Alaska

line 13-14 delete

(without pay)

line 24 add after "city", R.E.A.A.

Page 20 line 4 delete (certificated)

line 5 after teacher delete (balance of line)

line 6 delete all language up to) in an approved

line 18 new language for section 26 "part-time teacher" means a teacher occupying a position requiring teaching on a regular basis for at least 60 per cent of the normal work week at a higher education teaching assignment, or in grades K thru 12 on a regular basis for part of the normal and customary work period per day or week or month at a particular teaching assignment, excluding teaching as an assistant or graduate assistant, or teaching on a substitute, temporary or per diem basis;

50%

Page 22 line 9 add certificated school nurse

*Page 16 line 25 (8) add after Alaska, TEIA teachers under this section may claim partial years service credit under (40) of this section

Hess

March 8, 1978

Legislative Board of Retirement Benefits analysis and recommendations on:

House Bill No. 441

The board endorses the attached fiscal note as its fiscal analysis of HB 441.

The board unanimously recommends that HB 441 do pass; one member was absent.

SUMMARY OF HOUSE BILL NO. 441

Retirement system affected: Teacher's Retirement System

Permits a teacher who obtained benefits under previous law allowing credit for military service which delayed entry into teaching profession to have cost of the credit computed under that law or under present law. Entitles such a teacher to a refund of any excess paid over what would have been due under the method elected.

650/940

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. HB 441
 Title An Act Relating to teachers' retirement
 Requested by _____ Date _____

II. FISCAL DETAIL
 Agency Affected Administration - Division of Retirement and Benefits
 Program Category Affected Retirement and Benefits (TRS)
 Budget Request Unit(s) Affected teachers' Retirement System

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES			4.5			
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
800 BENEFITS						
TOTAL	-0-	-0-	4.5	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						
TRS			4.5			

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY			3-mos.			

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

1. Assume all teachers retiring with military service under AS 14.25.100(d) prior to 6/30/76 would be entitled to refunds by claiming such service under AS 14.25.100(a) as amended.
2. Benefit costs are onetime only for approximately \$20,000 in refunds.
3. Personal services - one temporary Accountant I (range 12) for 3 mos. - to compute and coordinate refunds - salary and benefits at 6% above FY 78.

FY 79 monthly salary $\$1,371 \times 3 = \$4,113$
 Plus benefits at 9.5% $= \$391$
 $\$4,504$

Paul B. Arnoldt

IV. DATE 1/24/78 PREPARED BY Paul B. Arnoldt
 AGENCY Division of Retirement and Benefits
 PHONE 465-4460

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named) Representative Malone
 Office of the Governor (Keith Spoecking)

OK B4

Hess

March 8, 1978

Legislative Board of Retirement Benefits analysis and recommendations on:

House Bill No. 820

It is not possible to accurately assess the fiscal impact of this bill on the basis of data currently available. The impact would be felt when, under favorable conditions, the state's contribution rate would not be allowed to fall below 7 percent as it would otherwise. In addition, at some point in the not-too-distant future, funds in the account which is created will no longer be available, and either another source of funding will have to be found or the cost-of-living increases will have to be rolled back.

A majority of the board recommends that HB 820 do pass; two members recommend that it do not pass; and one member was absent.

The board recognizes that this bill is an interim measure which does not take the place of a permanent, funded, automatic post-retirement pension adjustment. The board considers this to be a top priority and recommends that the administration and the legislature act upon it in the near future. It is recognized that the costs are considerable but that the benefit warrants the expenditure.

SUMMARY OF HOUSE BILL NO. 820

Retirement system affected: TRS

Designates a floor for the state and employer contributions to the fund. The floor amount for employer and state contributions is seven per cent of teacher salaries for each. Any surplus generated when the amount of employee, employer and state contributions exceed the amount necessary to provide TRS benefits is reserved in a bonus payment account. The Teacher's Retirement Board is given authority to declare the payment of bonuses to retired teachers when the cost of living index increases. A bonus may not exceed four per cent of the recipient's retirement salary. The amount of the bonuses is to be paid from the account and the administrator of the system is required to maintain a reasonable amount of money available for payment of bonuses. A formula is provided for the payment of bonuses in a year when the account is not funded adequately to pay all bonuses.

The Act would be effective July 1, 1978.

Retirement system affected: TRS

Hess

This bill is identical to SB 73 introduced January 27, 1977 in the first session of the Tenth Legislature (summary attached), except that no more than 180 days of unused sick leave may be converted to creditable service under TRS.

The Act takes effect July 1, 1978.

March 8, 1978

Legislative Board of Retirement Benefits analysis and recommendations
on:

House Bill No. 828

The board endorses the attached fiscal note prepared for SB 73 as its fiscal analysis of HB 828, given the assumptions in the analysis section and noting that the costs might be slightly reduced by the 180 day limit. The assumption that sick leave balances will increase by 20 percent is speculative and none of the possible cost offsets have been taken into account; however, the fiscal impact will be substantial in any case.

Two members of the board recommend that SB 73 do pass; two members recommend that it do not pass; two members have no recommendation; and one member was absent.

March 8, 1978

Hess

Legislative Board of Retirement Benefits analysis and recommendations on:

House Bill No. 831

The fiscal impact of this measure would be minimal. No detailed analysis is possible at this time.

A majority of the board recommends that HB 831 do not pass; one member recommends that it do pass; and one member was absent.

A majority of the board is persuaded that this information function, which is important, is already being adequately performed.

SUMMARY OF HOUSE BILL NO. 831

Retirement systems affected: TRS and PERS

This bill requires that in the Teachers' Retirement System and the Public Employees' Retirement System when a person becomes entitled to a refund of his contribution on leaving service that division of retirement and benefits shall provide the person a written explanation of his options. The options must be clearly and simply stated to provide the person with sufficient information to intelligently decide whether to remain in the system or withdraw from it and receive the refund.

Hess

March 8, 1978

Legislative Board of Retirement Benefits analysis and recommendations
on:

House Bill No. 866

The fiscal impact of HB 866 will be minimal.

A majority of the board recommends that HB 866 do pass; one member recommends that it do not pass; and one member was absent.

The board recommends that HB 866 do pass pending further review. Time has not permitted the thorough review that such a long and complex bill deserves. The board supports the continuity and clarification which this bill appears to lend to the chapter.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

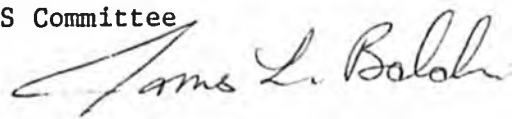
MEMORANDUM

March 29, 1978

SUBJECT: Sectional Analysis of HB 866

TO: Representative Charles H. Parr
Chairman, House HESS Committee

FROM: James L. Baldwin
Legislative Counsel



You will find attached a section-by-section analysis of HB 866. The analysis contains specific discussion of changes in existing law effected by HB 866.

I hope that the attached analysis presents the substantive changes in easy-to-understand terminology. Please call me if I can further assist the committee.

JLB:jpd

Attachment

SECTION-BY-SECTION ANALYSIS - HB 866

Section 1. PURPOSE AND EFFECTIVE DATE. - (New section added)

Section 2. ADMINISTRATOR. (New section added) Designates the director of retirement and benefits as eligible to serve as administrator of TRS.

Section 3. DUTIES OF THE ADMINISTRATOR. (Existing section amended) Inserts the term "benefits" in place of the term "salary." Adds the duty to serve as secretary to the Teacher's Retirement Board (but does not specify whether the administrator is a voting member).

Section 4. TEACHER'S RETIREMENT BOARD. (Existing section amended) Provides that an employer, member, or annuitant (retired person) may request hearings to appeal decisions of the administrator.

Section 5. REEMPLOYMENT OF RETIRED MEMBERS. (New section added) A retired teacher who becomes reemployed as a teacher is ineligible to receive retirement payments during that period of reemployment. The ineligibility continues throughout the entire school year even though the previously retired teacher worked part-time.

Section 6. AS 14.25.060(a) is amended by inserting the term "credited" in place of "creditable."

Section 7. AS 14.25.060(b) same amendment as in section 6 above.

Section 8. AS 14.25.061(a) is amended by inserting the word "retroactive" in place of the word "creditable." The bill does not contain a definition of the resulting new term, "retroactive service." It would be clearer if the word "creditable" appearing on p. 4, lines 13, 17 and 18 was changed to read "credited" instead of deleted. Now, it could possibly be argued that retroactive service includes noncredited service.

Section 9. AS 14.25.061(b) is amended by deleting the term "creditable" and inserting the term "retroactive." This amendment seems inappropriate. The proper amendment would be to insert the term "credited" in place of the term "creditable."

Section 10. PAYMENT OF INDEBTEDNESS. (New section added) (a) Provides that a member may repay an indebtedness due to the system for past service for which contributions were not made only if he has a balance in his retirement account or if he is reemployed by a covered employer. His payments are first credited against interest due and upon repayment of interest, then upon principal due.

(b) If a member has an indebtedness to the system at the time he applies for retirement, he must select an optional plan to pay back the indebtedness.

Option 1. (This option is revocable.) Withhold retirement benefits until the amount of indebtedness equals the amount of withheld benefits. (HB 866 is unclear whether the withheld benefits are to

be computed on the basis of credited service for which an indebtedness is owing or only on "paid-up" credited service.); or

Option 2. (This option is irrevocable.) Cancel the indebtedness and accept a monthly retirement benefit reduced by an amount necessary to repay the benefit over the expected life of the retired member.

Section 11. TRANSMITTAL OF CONTRIBUTIONS. (Existing section amended) Adds a penalty for an employer's (school district) failure to send its contribution to the system within 15 days after pay day. Under existing law, delinquent employer contributions are deducted from funds under the control of the Department of Education and allocated for payment to the employer. This set-off against public funds would still be available after enactment of HB 866 but as an alternate remedy only. The penalty apparently does not apply to delinquent employer contributions owed by the University of Alaska but the Department of Administration may withhold appropriated funds designated for allocation to the University and disburse them to the administrator for payment into the system. Under existing law, this set-off remedy against the University is mandatory; however, after enactment of HB 866, the remedy may be used at the discretion of the Commissioner of Administration.

Section 12. CREDIT FOR SERVICE. (Existing section amended) Provides that credit may not be given under TRS for military service already credited under PERS. Limits the total amount of military service that may become credited service for a retiree who is entitled to benefits under PERS and TRS to five years. (To achieve clarity, I recommend the insertion of the word "that" on P. 7, line 8 after the word "for.")

Section 13. RETIREMENT BENEFITS. (Existing section repealed and re-enacted) (a) Normal retirement vesting. Existing law is restated without a change in substance.

(b) Early retirement vesting. Either a broadening of the situations which permit early retirement is intended or the drafters of HB 866 have committed a typographical error appearing on p. 7, line 29. Under HB 866, as drafted, early retirement may occur when the member attains 50 years of age and has:

(1) at least 15 years of credited service, the last five of which have been membership service, for a member first hired before July 1, 1975, and has attained the age of 55 years;

(2) at least eight years of membership service and has attained the age of 55 years;

(3) at least five years of membership service and at least three years of Alaska BIA service and has attained the age of 55;

(4) at least 25 years of credited service, the last five of which have been membership service;

(5) at least 20 years of membership service; or

(6) at least 20 years of combined membership service and Alaska BIA service, the last five of which have been membership service.

Under existing law, early retirement may occur when the member attains 50 years of age and has met the requirements stated in either (1), (2) or (3) above. (See AS 14.25.220(24)). In addition, the definition of "early retirement" contained in the bill (see p. 17, line 19 - HB 866) restates existing law. A conflict exists in HB 866 and should be resolved by the committee.

(c) Sets the rate of accrual of benefits for retired members (2 per cent of average base salary per year of credited service) but includes two changes in existing law:

(1) Under existing law the average base salary is computed by taking the highest 3 of the last 10 years of membership service. Under HB 866, a member may average the highest of any three years of membership service to arrive at his average base salary.

(2) For early retirement at age 50, under existing law the amount of normal retirement benefits are reduced by a formula ($\frac{1}{2}\%$ x months younger than 55 x amount of benefits due at age 55). Under HB 866, benefits payable at early retirement are "actuarially adjusted" rather than reduced by application of the above-mentioned formula.

The intent is to adjust the benefits to equal the difference in pay-out caused by a member electing to retire 5 years earlier. Contributions, benefits, income of the system, and age of retirees are all considered by actuaries in determining what benefits should be payable upon early retirement.

(d) Inserts new language which purports to limit the computation of benefits to the accrual rate set by law at the time of a member's retirement. This subsection should have crossreferences to sec. 177 which would permit an increase in accrual rates enacted by a later legislature if the law enacted is made specifically applicable to persons who have retired before the effective date of the legislation.

(e) - (h) Existing law is restated.

Section 14. DISABILITY BENEFITS. (Existing section amended) Restates and consolidates existing law using new terms proposed in HB 866. The requirement that a member seeking disability benefits submit an application is added. (See p. 9, line 15 of HB 866) This application requirement may delay the initial receipt of disability benefits if the disabled member is legally incompetent to execute an application, in which case guardianship proceedings may be necessary before an application can be submitted on behalf of an incompetent.

Section 15. POST RETIREMENT PENSION ADJUSTMENT. (Existing section amended) Restates existing law using new terms proposed in HB 866. The term "survivor's benefits" is created as a result of the amendment of this section and should be defined. A failure to define this term creates uncertainty in my mind as to whether both survivor's allowances and spouse's pension are covered by this section.

Section 16. DEATH BENEFITS. (Existing section repealed and reenacted) Restates existing law except that the amount of death benefit for a disabled member who has not made supplemental contributions or made those contributions for at least one year is computed differently. Upon the death of that disabled member, the death benefit would be an amount equal to the sum of:

- (1) his accumulated contributions, and (2) \$1,000, plus \$100 multiplied by the number of completed school years of membership service, plus an additional sum of \$500 if the deceased teacher is survived by one or more minor children at the time of his death. (The amount payable under (2) may not exceed \$3,000).

Under existing law, the aforementioned sum must be reduced by the amount of any retirement salary previously paid to him. (Usually this amount is "zero" since disabled teachers usually have not been earlier retired.)

Section 17. SURVIVOR'S ALLOWANCE. (Existing section repealed and reenacted) (a) Adds a requirement that retired or deferred vested members pay supplemental contributions for 5 years before qualifying for coverage under survivor's allowance provisions while active or disabled members must pay those contributions for at least one year. Under existing law, active members, retired members and disabled members are required to pay supplemental contributions for at least one year. (Deferred vested members are not mentioned under existing law and presumably a beneficiary of that person would not be an eligible recipient.)

(b) In this subsection, existing law is restated. The use of the word "pension" on p. 12, line 29 confuses the directions given there for reduction of allowances; the word used is inconsistent with other terms used in the section. I feel that (b)(3) appearing on p. 13, lines 10 - 14 of HB 866 is poorly drafted and needs the following revisions:

Page 13, line 13: after "children" insert "under this section" and after "paid" insert "to those beneficiaries described in sec. 160(a) of this chapter." Delete the remainder of the sentence.

Adds language which prohibits payment of survivor's allowances if a spouse's pension is being paid.

Section 18. SPOUSE'S PENSION. (Existing section repealed and reenacted) (a) Existing law is restated without a change in substance.

(b)(1) The amount of spouse's pension is increased. Under existing law a spouse is entitled to 50 per cent of the retirement salary that the deceased spouse was receiving or would have received at the time of death. Under HB 866 the spouse of a retiree receives 50 per cent of the deceased's retirement salary but if the spouse dies before retirement and is eligible for normal retirement benefits at the date of death, the surviving spouse would receive 100 per cent of the amount of retirement salary that the deceased spouse would have been eligible to receive had he retired on the date of his death.

(b)(2) Restates existing law -- but that paragraph could be redrafted to permit easier comprehension by deleting at page 14, line 15 (HB 866) the words "in accordance with" and inserting after the word "paid" the following: "to a beneficiary or beneficiaries described in."

(c) Restates existing law.

*This section as reenacted does not include a reference to AS 14.-25.142 - Cost of Living Allowance. Under existing law, AS 14.25.164(c) specifically provides that a spouse's pension may be increased when the cost of living increases. It is also unclear whether a post-retirement pension adjustment under AS 14.25.143 would apply to a spouse's pension. (See comment to section 15 above.)

Section 19. EFFECT OF AMENDMENTS. (Existing section repealed and reenacted) (a) Provides that all amendments enacted apply only to future retirees unless the amendatory legislation specifically states that it has retroactive effect.

(b) Designates the law applicable at the date of retirement for determining monthly benefits payable. Similar language also appears in AS 14.25.110(d) contained in section 13 of HB 866. The intent of this section is difficult to determine since (a) of this section permits retroactive amendments but (b) seems to prohibit retroactive amendments which would affect the amount of monthly retirement benefits payable.

Section 20. EXEMPTION FROM TAXATION AND PROCESS. Existing law is restated using new terms proposed in HB 866.

Section 21. TIME LIMIT FOR APPLICATION. Inactive members must apply by July 1, following age 75 or within 50 years after the person was last an active member or lose contributions or benefits payable under the system.

Section 22. DEFINITIONS. (Existing section repealed and reenacted)

(1) "active member" (new definition added) defined as

- (a) a "member";
- (b) receives compensation on a full or part-time basis; and
- (c) makes contributions.

(2) "actuarial adjustment" (new definition added) This definition attempts to explain what factors are considered when early retirement

benefits are recomputed according to actuarial tables designed to account for the increased life expectancy and interest payable upon an early retirement as differentiated from a normal retirement (age 50 vice age 55). The definition presented in HB 866 is confusing and should be redrafted. A definition should be drafted so that the words used can be substituted for the term wherever it is used in the sections enacted.

(3) "administrator" (existing definition amended) Under the existing definition, the administrator is the Commissioner of Administration. Under HB 866, the administrator will be an appointee of the Commissioner who may be the director of the division of retirement.

(4) "annuitant" (new definition added) Means a retired or disabled member who is receiving benefits.

(5) "average base salary" (existing definition amended) Restates the existing definition of that term but allows a retiree to take any three of his highest paid years of service instead of any three out of the last ten years as currently required.

(6) "base salary" (existing definition amended) Existing definition restated to only include remuneration paid for a full year of service.

(7) "beneficiary" (new definition added).

(8) "BIA service" (existing definition reenacted).

(9) "compensation" (new definition added) This definition and the definition for "base salary" in (6) above are combined under the definition of "base salary" in existing law (see AS 14.35.330(2)).

(10) "credited service" (existing definition redesignated and expanded) This definition limits credit granted for outside service (discussed below), military and BIA service to 15 years with military and outside services limited to 10 years.

(11) "deferred vested member" (new definition added) A deferred vested member is an inactive member who has served long enough to become entitled to receive benefits from the system.

(12) "dependent child" (new definition added) The definition restates existing law.

(13) "disabled member" (new definition added) Restates existing law.

(14) "early retirement" (existing definition reenacted) Please refer back to comments concerning section 13 contained in this analysis.

(15) "employer" (existing definition amended) Adds two entities as participating employers in the system. These are the National Education

Association and the Regional Resource Centers. Under existing law, service credit could be obtained for employment with NEA-Alaska.

(16) "former member" (new definition added) A former member is a person who has resigned or been terminated and who has withdrawn his contributions.

(17) "full-time teacher" (new definition added) A full-time teacher is defined as a teacher who works full days and is a regular, permanent member of the teaching staff.

(18) "inactive teacher or member" (new definition added) A member who is terminated and has not received a refund of his contributions.

(19) "mandatory contribution account" (new definition added) An account that contains member contributions and interest on those contributions.

(20) "membership service" (existing definition amended) Under existing law, service as a teacher who is employed by the University of Alaska on a full or part-time basis is membership service. Under HB 866, only full-time teaching for the University of Alaska qualifies as membership service.

(21) "military service" (existing definition amended) U.S. military service rendered at any time can be used as credited service in TRS if the requirements of AS 14.25.100 are met.

(22) "non-public school" (existing definition amended) Under the definition contained in HB 866, a teacher who serves at a non-public school that does not offer grades "K" through 12 may receive credited service for that employment. Under the existing definition, service can only be credited when the non-public school offers instructions in grades "K" through 12.

(23) "non-vested member" A member who has not served long enough to become entitled to receive benefits from the system.

(24) "normal retirement" (existing definition restated) No change in substance from existing law.

(25) "outside service" (existing definition amended) The following new types of service are included in this definition:

(a) service by certificated persons who are not teaching but must be certificated as a condition of employment. (It is not clear whether these persons can claim credit for part-time employment.)

(b) service as a teacher at a federally supported public or non-public school located outside the U.S.

(c) full-time positions with out-of-state colleges and universities if that position requires "academic standing" (an undefined term). Under existing law, a full-time teacher at an out-of-state college or university could receive outside service credit.

(26) "part-time teacher" (existing definition amended) This definition specifies the percentage of time necessary to qualify as a part-time teacher (at least 60 per cent of the normal work week). Under existing law, regularity of service is required (i.e., a permanent position) but no minimum amount of service per week or month is specified.

(27) "permanent disability" (existing definition reenacted) No change in substance from existing law.

(28) "prescribed rate of interest" (new definition added) No change in substantive law is effected.

(29) "public school" (existing definition reenacted).

(30) "retired teacher or member"*

(31) "retirement"*

(32) "retirement benefit"*

(33) "retirement fund"*

(34) "retirement system of 1945"*

(35) "school year"*

(36) "supplemental contribution account"*

(37) "system"*

*Paragraphs 30 - 37 are all new definitions added by HB 866 which do not alter existing law.

(38) "teacher or member" (existing definition amended) The amendment of this definition has the following effect:

(a) Certified school nurses can no longer be members of the system.

(b) Principals, supervisors and superintendents who are not certificated would not be members of the system; and

(c) Administrative positions with the University of Alaska that do not require academic standing would not be covered under the TRS.

(39) "vested member or teacher" (new definition added) This definition sets out the length and type of service required before a member is irrevocably entitled to receive benefits from the system.

(40) "year of service" (existing definition amended) This definition remains the same as existing law except that the system will now function on a July through June year for purposes of computing years of service. Under existing law, a year of service is a school year as that period is determined by each school district thereby making the task of accounting for service more complicated.

Section 23. Sections repealed:

(a) AS 14.25.120 Manner of computing service retirement salary. Reenacted in sec. 13 of HB 866.

(b) AS 14.25.130(b) Eligibility for disability retirement. This repealer is in error since on page 9 at lines 21 - 25 of HB 866, sec. 130(b) is amended.

(c) AS 14.25.135 Deferred retirement benefit repealed and not reenacted. It appears that the essential terms of sec. 135 are incorporated in sec. 13 of HB 866.

(d) AS 14.25.137 Deferred vested retirement benefit -- reenacted in Sec. 22 (definitions) of HB 866.

(e) AS 14.25.138 Notification of intent to retire -- not reenacted in HB 866.

(f) AS 14.25.140 Manner of computing disability retirement salary -- reenacted in sec. 14 of HB 866.

(g) AS 14.25.169 Duplicate benefits -- not reenacted in HB 866.

(h) AS 14.25.205 Time limit for application -- reenacted in sec. 21 of HB 866.

Amendments to PERS

Section 24. PURPOSE CLAUSE. (Existing section amended) No substantial change in existing law.

Section 25. ADMINISTRATOR. (Existing section amended) An appointed administrator shall be in charge of the detailed affairs of the system; that person may be the director of the division of retirement.

Section 26. POWERS AND DUTIES OF THE ADMINISTRATOR. (Existing section amended) The administrator is empowered to act as the secretary of the retirement board.

Section 27. EMPLOYMENT WITH THE STATE. Inserts language designed to make it clear that employment with the University of Alaska is not credited service under PERS. Also provides that there is no portability of service credit between TRS and PERS.

Section 28. MILITARY SERVICE. (Existing section amended) Housekeeping amendments only.

Section 29. MILITARY SERVICE. Limits to five years the amount of service credit for military service that can be claimed by one person under both PERS and TRS.

Section 30. OCCUPATIONAL DISABILITY PENSIONS. (Existing section amended) Housekeeping amendment.

Section 31. OCCUPATIONAL DEATH BENEFITS. (Existing section repealed and reenacted) This section restates existing law and corrects minor drafting errors contained in existing law.

Section 32. TIME LIMIT FOR APPLICATION. Same comment as contained in sec. 21 of this analysis.

Section 33. EFFECT OF AMENDMENTS. Same comment as contained in sec. 19 of this analysis.

Section 34. REPEALER. AS 39.55.050(b) -- This section specified that the administrator serves as secretary to the PERS retirement board. The section was repealed due to redundancy.

Note to Rep Parr 3/26/78.

Enclosed is additional material on my TRS hassle. Please note that the State prevailed on an issue for not sued for, incorrect statements made.

Senate Bill 175 is no good unless its content is already an established Rule and Regulation of the TRS. It would dump too many of us.

Kindest regards,

Cecil M. Holmes

P.S. How long can twisting and misquoting go on before disciplinary action taken?

ORVAL HOLMES
252 E. Tropicana Ave.
Las Vegas - Nevada 89109

March 22, 1978

The Honorable B. B. Allen
Commissioner of Administration
Juneau, Alaska 99801

Dear Commissioner Allen:

Enclosed herein is a cassette tape recording of the case Holmes vs: State of Alaska as you requested in our telephone conversation on March 18, 1978. Also enclosed is a notarized typewritten copy of the trial as taken from the tape. This copy has my initialled remarks in the margin. The letter you read to me has not yet been received.

Discerning readers of Sec.14.25.220 will note that the definitions of terms have a restriction when the context requires otherwise as in my case. Section 14.25.120 (c)1 and (c)8(f) did not say active years of membership service had to be used in the computation of the average. Sec.14.20.345(d) Leave of Absence without pay very definitely supports the idea that a base salary exists without accrued remuneration. Sec. 14.25.220(22) supports a total base salary for the year when only partially earned, and the current meaning of "base salary" which the Department seems to lean heavily on, 14.25.220(2), if it prevailed would seem to deny me rights I already had established before 1966 when base salary simply meant by statute the salary authorized by law. Can you take this away from me? TRS may say some of the above can't be used in the computation. That is their opinion. Some can't be used for attaining tenure or retirement rights only.

Please note the fact that my contracted base salary for the year I was on disability (1972-1973) before I was arbitrarily forced to resign by the TRS, was exactly the same as my last active year (1971-1972) is inconsequential, other than it is used to cause confusion. It does, however, answer the immaterial point mentioned in the trial that one is not then under contract and consequently loses his tenure, accumulated sick leave, right to return to any job in the district upon recovery, and his health insurance plan, just when needed most.

Please note I did not sue to have a base salary used which a teacher may have earned, but for his disability, I did not sue for an estimated base salary and certainly I agree with Judge Taylor that these amounts cannot be used as stated in the Court Order. (A copy of the original Court Order as prepared for the Judge's signature by the Attorney General's office is enclosed. Plaintiff's counsel had to correct Order No. 2

The Honorable B. B. Allen

March 22, 1978

Page two....

therein before Judge Taylor signed a new copy). I also agree with what the Judge voiced in part that "...the year of disability is not a salary year for the purposes of calculating a retirement" as this would be using future undetermined salaries as TRS points out. This doesn't mean, however, that this service year can't have a base as pointed out above.

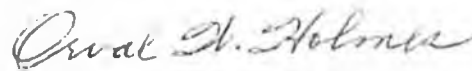
Herein, then, lies the point, the key issue. I'm not asking for a future salary, a salary year, an extrapolated amount, or any of the above, but I am asking that the last active year's base salary be carried forward for each succeeding year one is on disability. Amen! This is a huge difference in what the Department's "razzle dazzle" would have one believe and that ruled on in the Court; and it is in total agreement with the above quoted paragraph, which, in necessity, must have been issued by a Commissioner of Administration as a Rule and Regulation, namely, "The base salary used in computing the service retirement will be the same salary used in computing the disability benefit". Doesn't this prove the base for the year? The same paragraph was paraphrased and touted as late as July 1, 1974 edition, or maybe even later, in the TRS handbook.

There is no reason for assuming the meaning and intent of the paragraph is other than stated, unless the State wishes to "dump" those handicapped retirees who have been on disability ten or more years as the TRS method of computation would do. Can this be denied?

They, the retirees who have been disabled for ten or more continuous years would, however, have to be given the bare minimum rather than zero if the TRS then interpreted the statutes correctly.

Is there no estoppel?

Respectfully yours,



ORVAL W. HOLMES

OWH:lh.t

Enclosures

cc: Mrs. Carle
Senator Colletta
Senator Hackney
Rep. Parr
Rep. Cowper

discernible phrase

JUDGE TAYLOR - Time set for arguments. 75-879. HOLMES v. STATE.
Mr. Downes for the Plaintiff and Mr. Johnson "Yes, Sir", for the State.
These are Cross-Motions for Summary Judgment. The State filed first so
I'll hear from the State first.

MR. JOHNSON - Thanks your Honor. The State at this time, I believe I stipulated from counsel, would like you to put these figures on the board.* If it please the Court, now the pertinent facts which are not in dispute in this case are these. Plaintiff, ORVAL HOLMES was placed on disability retirement July 1, 1972. On May 1, 1973, ORVAL HOLMES turned 60 years of age. The law provides that Plaintiff would get disability retirement benefits calculated at 50% of his gross of the last service year in which he worked until the month in which he turned 60; in other words, from July 1, 1972, until that month in which he turned 60 years of age, ORVAL HOLMES was entitled to receive a payment calculated at 50% of the gross earnings he was getting in his last previous year which would have been the years '71, '72, Your Honor. At the point where MR. HOLMES turned 60 he would start getting normal retirement benefits; rather than getting disability retirement benefits. The issue before this Court are then how much ought ORVAL HOLMES normal disability retirement benefits be. Those benefits which he is entitled to get after age 60 after his disability was terminated and after his normal retirement benefits began? The second issue is how many disability checks during the period of disability ought the Plaintiff ought to get?

Let's talk first about the normal retirement benefits problem. That problem is the question of primary importance to the Division of Retirements and Benefits and it is the issue which in this case certainly involves the greatest amount of liability and money. Normal retirement benefits are calculated at a monthly payment equal to $2\% \times$ the credible years \times the average based salary. Now that is shown on the bottom line of the attached figure and we know of course that 2% is the constant figure, the "credible years" which is a defined term in the Alaska Statutes represents 28 years in this case. That is the number of years in which MR. HOLMES both was on active service - active membership service - and also includes a period of time in which MR. HOLMES was receiving disability benefits. Credible years in this calculation include a period in which MR. HOLMES is receiving disability benefits, that must be emphasized. It is the last factor of this equation which is at issue and that factor involves the average base salary. Now how do we calculate that? The Law provides that that average base salary shall be comprised of an average of three of the last eight years. Eight years was the number of years which was in force at the time that ORVAL HOLMES entered into retirement benefits contract with the State; rather than the 10 years which the State inadvertently included in its Brief; but anyway we're talking about an average of three of any of the last eight years; now which of those years may be included in this calculation? The State has estimated it has taken the last three years of which ORVAL HOLMES was on active service with the State, in which those three years in which he received the highest amount of pay during any of his service time with the State or with the sub-division which was eligible for retirement benefits with the State. Those three years as set forth are '69, '70, '70 and '71 and '71 to '72. The last period - that period represented by '70 to '72 to '73 is the question which is before the Court. How ought we to calculate that period? [That is the period when ORVAL HOLMES was on disability. Plaintiff contends that that, that that year ought to be estimated as an extrapolation of the last year in which ORVAL HOLMES was receiving his actual salary as a teacher - \$16,880.00 The Law provides that a person receiving disability retirement is entitled to an amount equal to 50% of the previous amount. That based on

these calculations, ORVAL HOLMES would be eligible during '72 to '73 to receive \$8,440.00, plus additional amounts for children and so forth. But we're talking about a base amount of approximately \$8,440.00 which ORVAL HOLMES could have received - and possibly did receive - in an amount in this range during the years '72 to '73, that period representing the time he was on disability. Now if we were to use Plaintiff's logic and suggest that we should assume that this amount of money is the one to be calculated in determining disability or normal retirement benefits, then it seems that \$8,440.00 still is not as high as the three other years which are presented. Plaintiff would contend, however, that we should not even use the \$8,440.00 - that we should instead assume that ORVAL HOLMES would have earned the same amount of money during that year in which he was disabled that he would have received during the previous year. Of course, that presumes an extrapolation which is not provided by Statute and is certainly something which is not provided for under Contract Law we have a whole theory of case law coming down from ? vs. Battenville where we cannot presume what somebody is going to make in the future. ORVAL HOLMES may have been fired - he may have decided to resign sometime during '72, '73, he may in fact have decided to go on a deferred retirement compensation plan. The fact remains we don't know what ORVAL HOLMES would have done during that year and there is no reason how we - there is no rationale - for calculating for extrapolating the amount he would have received in the last year. Now in the State's Motion for Summary Judgment, the State set out four figures in its Brief. These four figures are the figures which were set up on the Board there for the years '69 through '72. The last year was set up as a zero base year. Now there seems to be some problem with exactly what is meant by "zero base" year. On the one hand the State could argue - indeed it can argue - that for purposes of calculating normal retirement benefits, that we do have zero dollars for that year in which he was getting disability benefits. On the other hand what we are talking about in this situation is how we are going to treat that amount of money. We know here that ORVAL HOLMES made approximately \$8,440.00 in disability retirement benefits during '72, '73. Is that the amount of money that we are going to include in the average of the three highest years? Well, it's obviously not, so let us treat that for purposes of calculation as zero. I mean it's just not a figure that goes into a determination of what the normal retirement benefits ought to be. The State has taken the highest amount which ORVAL HOLMES did in fact earn - it gave him the benefit of the highest salary which the whole 28 years of membership service of the three years which were averaged together to come up with the normal benefits which ORVAL HOLMES in fact received.

Now it could be in fact be argued that we're talking about a zero base year, in this amount, simply because there would never be a period in a retiree's salary scheme where we could not find three years in which to calculate benefits. For example, it could be argued that the Membership Service which goes into a calculation for normal retirement benefits, have to include a period prior to the last eight or ten years which is provided for in Statutes here. Well, the argument would be that those eight or ten years which we would use in selecting the three highest, all include those years in which the person is actually working and is actually receiving a salary - a contractual salary. Moreover, it is provided by Statute that a person must serve at least five years before he is even eligible for disability retirement. However, that is, those are not the argument that the State is relying upon in this situation, the State is relying upon the fact that the amount of money which ORVAL HOLMES did in fact receive in dollars, we see for purposes of calculating his normal benefits for the year '72 to '73 simply do not provide him with the highest three. If ORVAL HOLMES wishes to

take that year in the amount of money that he makes during that period, it would be to his disadvantage, simply because it was not enough to the high three years. The other argument which, which, which suggests - which would give us reason for selecting only the three years which we're talking about and would preclude an extrapolation of what ORVAL HOLMES may have received in the last year, is the Statutory provision which we are talking about - the last, the amount of money that received during the years - the last years is called the term in which ORVAL HOLMES actually provided service and which he was under contract with the State. During the period in which ORVAL HOLMES was disabled and this is not meant as in any means a hard-nose interpretation of how people on disability are to be treated, are to be treated, we know that during - that that year - that during '72, '73, he was not under contract any more as a teacher and he did not teach any more. The fact remains that he was instead receiving disability retirements and there is no bite (?) by this difference - there is further statutory authority for not extrapolating the figure of \$16,880.00 for the period '72 to '73 as the Plaintiff would contend. The Plaintiff would contend that this \$16,880.00 figure must be extrapolated because it would give him obviously a higher three years in which to choose in which to make up his average salary for purposes of normal retirement. However, that requires an extrapolation which is simply not provided for by Statute nor is it something to assumed under common law principles.

The second argument that we have before us today, Your Honor, concerns the number of disability retirement payments which ORVAL HOLMES did in fact receive. The State paid him ten. The Plaintiff, ORVAL HOLMES contends that he was entitled to eleven. Any premises to the claim for that last check upon an interpretation of what constitutes the last month of the last period - the last time period - in which he was to receive the check. The law provides that a person's pay check which arrives on the 1st of the month in which that person reaches the age of 60, it is to be considered the last disability payment. Now ORVAL HOLMES retired May 1st - reached the age of 60 - on May 1st. The State sent him a check which arrived right around May 1st - first of all that's the check that he received on May 1st, and during the month in which, in which he retired. Secondly, we note that the State when it sends out a check sends out for purposes of payment for either prior services rendered or for a period of time in which it is rendered, so a check which is received on the 1st of a month represents payment for the previous month. For example the check which ORVAL HOLMES received on or about May 1st as set out in the Affidavit of ROBERT GATES in the State's Motion for Summary Judgment and the warrant numbers noted there also, that check was mailed on about April 25 and it represented the disability payments for April. ORVAL HOLMES received his first normal retirement benefit checks shortly after the beginning of June - that represented May. There wasn't a period in which ORVAL HOLMES was not getting paid. So we're talking about when was that last little check to come in. The State contends that it paid the last check that he was due. He reached the age of 60 on May 1st - he had a check right around May 1st. That check represented April and it represented like all other checks which were sent to ORVAL HOLMES, a previous month. He was placed on disability on or about July 1st. He received checks for July, he received checks for each of the months up through May 1st and it is to that amount that Plaintiff, ORVAL HOLMES is entitled. He is statutorily entitled to that amount and no more.

The only other point which must be noted in argument before the Court is that the third major issue presented by the Plaintiff, was in their own motion for summary judgment, dismissed and your Honor what we're talking about is the two issues which was presented to the Court, today - that is, how do we calculate ORVAL HOLMES' normal retirement benefits, and how do we calculate the number of disability retirement payments which he was to get? The State contends that the normal benefits - the normal retirement benefits - which Mr. Holmes was entitled should be premised upon the highest three years of service and those three years are the years '69 to '70 and '71 to '72. 71-71-72. It is not to be based upon extrapolation of the period '72 to '73; moreover, the State contends that it was timely paid and Mr. Holmes was paid all the amounts he was due in disability retirement. Thank you, Your Honor.

JUDGE TAYLOR - Thank you, Mr. Johnson. Mr. Downes.

MR. DOWNES - Thank you, Your Honor. Your Honor, I just wanted to, for the Court's information, wanted to argue on, as quoted by memorandum (actually indistinct) ... the information ... I would just like to present it as part of the record on page 11 and referred only to a certain paragraph which I refer to in my arguments above in the Teacher's Retirement Handbook which is the ... retirement system's own publication. Then I'll mention the section I'm looking to - it's already been referred to. (Secretary - says "marking plaintiff's identification 1".)

JUDGE TAYLOR - Mr. Downes?

MR. DOWNES - Thank you, Your Honor. Your Honor, I think there is something - I think the order that Mr. Johnson took these matters in makes a difference. I have examined the third point and my examination of the third point which we are arguing reveals that I felt Mr. HOLMES did not have a case and I concede that point in ... the government's favor. The government is, I believe, arguing that their own inefficiency should benefit. Their own inefficiency in getting out pay checks and disability retirement checks should benefit. MR. HOLMES became disabled the month of June 1972 and there is a letter attached to Exhibit A buttressing that he was declared disabled in June of '72. He was entitled to a disability retirement salary that was starting on the 1st of July 1972. Now, our argument is based on what the law is regarding that payment. Alaska Statute 14.25.140(a) says "a teacher who becomes disabled shall receive a disability retirement salary payable on the 1st day of each month beginning the month following the disability." The disability was in June of 1972. The check was payable the 1st day of July 1972. In other words, receives a check, the disability retirement check, the 1st day of each month beginning the month following the disability. MR. HOLMES was due a check July 1. It says the payment paid on the 1st day of the month in which the teacher became 60 constitutes the last payment. That's Alaska Statute 14.25.140(b). So the last payment is the payment made on the 1st day of the month in which the teacher attains age 60. The (indistinct) buttress one another and they indicate that payments are made on the first of the month. When is the first one - the month following disability - the 1st of July 1972. When is the last one - the first payment is made on the 1st day of the month in the month that Mr. HOLMES reached the age of 60 was May 1973. Those facts aren't in dispute. Why it is clear, he is entitled to July 1, August, September, October, November, December, January, February, March, April and May. The last payment was that check that was payable on May 1st, 1973. MR. HOLMES received ten checks - he was entitled to eleven. There is no question

what Mr. Johnson is saying is fine, there was no interruption of the payments to MR. HOLMES - I think I concede that point. There is no interruption because what the government is doing is they owe MR. HOLMES a check on July 1. By the time they processed the paper work they paid for that check on August 1. They processed and paid for it on September 1 and on and on and on. MR. JOHNSON said that we are objecting to the last payment date - we're actually objecting to the first payment date; that the government was always behind in a check. They are always behind. So that when they made the payment on May 1 that was actually April's payment, and May 1 payment never got to Mr. HOLMES. Certainly they picked up on June 1 - they picked up with a retirement check - but this is the normal retirement, not a disability check. Remember, we're are talking about two things; disability, retirement and normal retirement. I think the law is clear and I think the Plaintiff's case is clear in respect to that. That is the essence of the argument. I think it is clear (*), I think that controls.

As to the retirement salary, again I would refer to law and first of all I would like to indicate that the exhibit and I would like to have that marked for purposes of this argument and introduced. In the Brief filed by the Government on page 3 of that memorandum, they show 1972-1973 figure as "zero" not \$8,440.00.

JUDGE TAYLOR - That's the first time I've seen that figure.

MR. DOWNES - I agree that that can be introduced because I would like to have the Government's change in position noted here today from their Brief, and there was that which I contend has always been an argument in the past that the 1972-1973 item was zero - \$8,440.00. Again I refer to the law. The law becomes complex - the reasonable law becomes confused and complex and ambiguous in this case because the Government has allowed it to be complex. It is ambiguous in the sense that as MR. JOHNSON says there is a ten year figure set out - a ten year suspension for computing retirement salary saying you take the - in one of the statutes it says you take the highest per year of the last ten. Another section says you take the highest per year of the last eight - it is conflicting, and they are conflicting. They both have existed together at the same time, I believe, and created a problem. The Government has attempted to correct that problem, it is our position, in the handbook referred to on page 6 of the Plaintiff's memorandum where they have indicated in that handbook on page 11 that the base salary used computing the service retirement, will be the same salary in computing the disability benefit. Now, I think that helps clear up the law and the statement by the Government in the publication (T.R.S.) - Teacher's Retirement System Publishers regarding the retirement benefit that somebody is supposed to get under normal retirement. I address myself to retirement benefits - and that's what I'm talking about at this point.

Alaska Statute 14.25.12 A(1), indicates that the annual retirement salary is 2% of the retired teacher's highest average base salary during any three of the last eight years of membership service, multiplied by those total number of creditable service years. What we're talking about is the highest average based salary during any three of the last eight years of membership service, ... [other voices in background] ... so what the law says (says something which is indiscernible) - ... as we look back the last eight years, on membership service, that we determine after looking back, what is the highest three years of payment, we take those high three years, we add them and divide them by three and then we apply a formula to them. O.K. so what one is determining, what is your membership

service, how, what are the years of membership service, under that law says you take the highest of the last eight years of membership service, we go to the statutes again and look to A.S. 14.25.220 (5) defining membership service. Defining membership service means service as a teacher in a public school - there is left out some extraneous matter - within the State of Alaska, a period in which the teacher is receiving a disability retirement salary or a salary more, more, (?), but the point is that it's considered membership service is a year, membership service is a year in which a teacher is receiving a disability retirement salary. So at least one of the last eight years would be subject to '72-'73 - the year we're talking about - that's the one in dispute. What is the - is there a base salary in '72, '73, that's what the argument is all about. The State says no there isn't, or if it is, now they say, it's the \$8,440.00. We say there is a base salary in 1972-1973 and that \$16,880.00 and that figure should be used together with the '71-'72 or the '70 '71, they should be added - \$16,880, \$16,880 and \$16,724, they should be added, divided by three and that should be the figure which the formula was applied for determining normal retirement. What backs up the position of the Plaintiff? Disability retirement salary is defined in Alaska Statute 14.25.140 (c) the amount of a disability retirement salary - pardon me - the big amount of the disability salary shall be equal to 50% of his - the retired teachers - 50% of his base salary immediately before becoming disabled. That is the benefit - what is it computed on - it's computed on a based salary. What is the benefit? \$8,440.00. What is the base salary? For the '72 '73 year in which he is in membership service, \$16,880.00.

It is said in the Brief that we filed on page 4, that the law contemplates this base salary for the purposes of determining what a disability - pardon me - what a normal retirement benefit is. Now, we argue - because we infer that by asking the Court to make that - I am referring back to my previous reference to the teacher's retirement salary booklet which the Government publishes to clarify this, and if there was any doubt in the interpretation of it, the Government's publication - and this was in 19 - revised 1/1/73 - the first day of January 1973 - is noted in the front of the booklet on page on the left, it's noted that the base salary used in computing the service retirement will be the same salary as in computing the disability benefit. I think that again - it anchors the plaintiff's case as to the logic of his position and the interpretation of the Government. The base salary used in computing the service retirement - what were talking about what base salary should we use in computing the service retirement and it says that the same salary in computing the disability benefit. Now the logic of the Government's position as contained in the Brief and they changed and modified their argument slightly and taken - and have attempted to take this away from the plaintiff. The Government's position basically as seen on this piece of paper up here is that '72-'73 year, even though and it's defined this is a membership service year, the base salary in essence is zero. And that's what's contained in page 5, I think, of their Brief - page 6 of their brief, (*) it is zero. And the inequities that would happen if taking an extrapolating this type of interpretation - the Government wants to put on this, is that a teacher devotes his or her life to teaching, faithfully in our school system, and unfortunately becomes disabled - say disabled when they're 48, and they are disabled for 12 years and at 60 they are eligible for normal retirement and they lose their disability retirement benefit, what are they entitled to? I think by the Government argument I think under the Government's interpretation, nothing. They be totally cut off, a person who is a faithful servant in a particular position would

wind up with nothing because they have been in membership service and you look back on their last eight or ten years of their membership service you'd have no base salary because they are on disability retirement and under the Government's interpretation they have zero. I believe your Honor that I argue very strongly that that again points out the illogic of the Government's position - points out that - or it suggests that - an interpretation by this Court of the law, of the law, as interpreted by the Government's handbook and the law as - what the interpretation of the law logical to presume it to be logical - as a law is supposed to be and to work a benefit for people who is entitled to benefit - in other words the normal retirement benefits are supposed to benefit normally retired teachers. I think that in order to give that meaning, the Court must rule that the plaintiff and must say that the base salary of 1972-1973 year is \$16,880.00 and again the third point we have dropped and thank you very much.

JUDGE TAYLOR - Mr. Johnson, a rebuttal?

MR. JOHNSON - Yes, Your Honor. Referring to the primary issue in this case, Your Honor, that of determining the amount of base salary for determination of normal retirement benefits, counsel for the plaintiff makes a great note of contents of the various handbooks on the retirement system, quoting that the base salary used in computing the disability benefit will be the same salary used in computing normal retirement benefit when age 60 is attained. Throughout plaintiff's counsel appears to be missing a step; by injecting - by asking the Court to require that extrapolation be made in assuming of the base salary. If we look at what the law says in defining the base salary, we find there is no need to make an extrapolation of what a salary would have been. 14.25.220 sub-section 2 states base salary or basic salary means any remuneration accrued under a contract underline contract to a teacher for professional services rendered - underlined "for professional services rendered" during a school year and (skips over wording which obviously is not applicable in this case).....the point is, Your Honor, is we're talking about a definition of how the man's normal retirement benefits are calculated, and they are calculated essentially upon what the, is actually earned. What was accrued under a contract and what was received in remuneration for professional services rendered. Now it is truly unfortunate - there is no question about that, Your Honor - that when a man becomes disabled, he cannot provide for under a contract - he cannot provide professional services as he had previously been doing. However, for purposes solely in calculating retirement benefits when that man does reach the age where he normally retires, then we look towards the statute does in fact say and we find that there is no reason or need for extrapolation such as the plaintiff would contend. Basically there seems to be three choices which can be presented to the Court. One is an argument to be premised upon what was presumably stated and the State's Motion for Summary Judgment; that is that base period for 1972 to 1973 is in fact zero. Now for purposes of determining the actual base salary for MR. HOLMES in this particular case, your Honor, that issue does not have to be addressed. Because what would in fact meant in the State's brief was when we're talking about a zero base year, was the effect upon a determination of a base salary. We're talking about in this situation - since you cannot extrapolate what the man would have made, he would have made presumably \$8,440.00 during '72 '73. That is not one of the three highest years for the years in which MR. HOLMES was receiving money from any source; whether from actual salary or from

disability retirement. The final choice - the third choice, the one the plaintiff contends, and that is that the Court extrapolate and presume under some guise, or how the law, or statutory authority, that Mr. HOLMES would have in fact earned \$16,880.00 during that year. Now MR. HOLMES under statute has a statutory choice to be able to take a deferred compensation. He could have resigned - he could have been fired. We don't know that. So the statute is clear in setting out what it means by base salary, it talks about what was accrued under contract and for services for remuneration received for professional services. There seems in fact to be some kind of confusion as to where base how base salary is accrued when it talks about the city services and how creditable service is determined which is based upon membership. The creditable service which is the second factor in this formula in determining MR. HOLMES' final salary, 28 years certainly picks up the year period in which MR. HOLMES was disabled. He was given that period of time - it was entered into the calculation and if the State were to contend that the man received no right whatsoever while he was disabled, then the State would have allowed him only 27 years. Obviously the Statute provides otherwise. Here he received 28 years creditable service and a period of time which included the disability benefits he was to be, be, receiving. So the quotes from the Retirement Handbook basically only repeat what has been said before in his brief and before the Court today. There is no reason to suggest that those books mean anything other than what they do, that is in fact that you determine base salary, based upon an actual contract and remuneration received for services rendered. The final, in rebuttal to the final point, Your Honor, plaintiff's counsel makes continuous allusions to the fact that the law is clear in setting out how benefit, the number, when payment is to be made for disability retirement. The State would readily admit that the law is indeed clear. Plaintiff would contend that the language saying when the man's first disability retirement check should be sent to him only buttresses the statement of when the last receipted - the last check was to be mailed out. The State would always contend that while they may buttress each other they are not identical in language. The first check that is sent out to a man on his disability is for the month following the disability. The last check is sent out - and the law is indeed clear - the disability retirement payment paid on the 1st day of the month in which the disabled teacher recovered from his disability, dies or attains 60, constitutes the last payment. The first day of the month. The State sent a check for the - to MR. HOLMES on the last, on the 1st of the month, of the month in which he reached the age of 60.

JUDGE TAYLOR - Of May 1, 1973?

JOHNSON - Yes, Your Honor. The State sent a check - it was noted in the Affidavit - of Robert Gates - that receipt was mailed April 25 and received undoubtedly on or about May 1. That check constituted - the check that was received on the 1st day of May. If the State contended that a check received at the end of that month in which the man turned 60, was to be the final check, then the statute would have said first day of the month following the month in which he attains the age of 60. So your Honor for these reasons the State contends that the law ought to be clear that ORVAL HOLMES' normal retirement benefits were properly calculated and that ORVAL HOLMES did in fact receive the number of disability payments to which he was statutorily entitled. Thank you, Your Honor.

MR. DOWNES - Your Honor, may I be entitled to rebuttal since I counter-moved?

JUDGE TAYLOR - How long can this go on?

MR. DOWNES - Well, I imagine that I would have a chance to rebut based on my Motion for Summary Judgment and that's all I'm doing, is a rebuttal, and I will be very brief. On both pages I just want to direct attention to Exhibit "B" and our Memorandum. Mr. Johnson says that we don't know what MR. HOLMES was going to make in '72-'73 and that might be true in some other cases, but not in Mr. Holmes' case because Mr. Holmes was told that he was going to be making his base salary of \$16,880.00 - his salary was \$16,880.00 as far as for services rendered goes, the argument that the base salary, the definition of base salary, for services rendered - that is the remuneration received for services rendered, the law contemplates that the teacher is in membership service even when he is on disability retirement and then we talk about base salary, not remunerative actual remuneration which is again clarified by the handbook and clarified by the law. The last thing regarding the eleventh pay check. When somebody retires they are not earning a check to be paid to them after the end of the month. They have no income. They need money to live on for the month they have no income so they get their check at the beginning of the month, that's what the law says, so they get their monies so they have something to live on and they don't start working and they are not earning anything. They are entitled to the first of the month following the disability retirement and that's all MR. HOLMES is saying; that the payment that was sent out in April and received by him on the 1st of May, 1973, or on or about that time, true he got that check, but it's only that the check was a month late and they should have processed that check in March for April; processed the check in April for May... that's the check he didn't get. They were behind a month, I don't know if the Court understands the logic of what I'm saying, but the Government was behind a month in payment - there was a payment due the 1st of July '72 and the 1st of every month and the last payment should have been on the 1st of the month he attained age 60. There was a check payable to him on May 1st, 1973, which he never got; because he got April's first check which took a month to process and he got that on May 1st; that is the argument that the plaintiff is making and I want to make sure that the Court does understand that. Thank you.

JUDGE TAYLOR - Now the Court has had an opportunity to - in this matter - to read the Briefs, and supporting documents and the Court hearing argument in the matter, and the Court will rule as follows in this matter, and that is with regard to the matter of the payment for the - I agree with Mr. DOWNES that the payment for the month of May, the check that was issued April 25 was not the last check - that's the last check that MR. HOLMES got but he was entitled to one more. The Court agrees with the State on their construction of the matter in regard to the year of disability is not a salary year for purposes of calculating retirement. I don't know what the problem would be if MR. DOWNES presented a proposition or a factual situation of course is not before this Court, a person on disability for ten years and then retired, there would be a zero possibility I would assume a zero calculation. If that purports, proposes to be a real problem I would imagine that that matter should be taken with the Legislature that adopts these rules and regulations. So the Court finds for the State on the matter of the calculating of the retirement benefits and orders MR. HOLMES on a calculation of the disability benefits a lack of payment thereof for one month.

VOICE - No, Your Honor.

JUDGE TAYLOR - If both parties have prevailed to a certain extent - that would require separate judgments in this matter they may submit one.

MR. JOHNSON - Now the State will be more than happy to submit a proposal for both, certainly, Your Honor.

JUDGE TAYLOR - (not discernible)...Mr. Downes for his approval....satisfactory ... content, the Court will (not discernible) ... Yes, Your Honor ...

MR. JOHNSON - Thank you, Your Honor.

MR. DOWNES - Thank you, Your Honor.

JUDGE TAYLOR - Mr. Downes, do you want the document...

MR. DOWNES - Yes, I think it should...

JUDGE TAYLOR - The Clerk will mark that as plaintiff's exhibit. Any objection?

MR. JOHNSON - No objection, Your Honor.

JUDGE TAYLOR - Although the handbook itself hasn't been moved into evidence, any objection to that being part...

MR. JOHNSON - Your Honor, The State would object to that being included into evidence because the salient materials in there were quoted in Plaintiff's brief and there is no reason for any additional material.

VOICE - ... Is that agreed by the State. Certain parts are agreed.. the reason I asked...

JUDGE TAYLOR - Then the Plaintiff's identification I may be returned to MR. DOWNES. The paper on the Board will be marked as Plaintiff's Exhibit "A" and if there is nothing further the Court stands adjourned.

THIS COURT IS ADJOURNED

I HEREBY CERTIFY that I personally listened to the above and foregoing Cassette Tape at the offices of Manpower Services, 314 Las Vegas Boulevard North, Las Vegas, Nevada 89101, and that to the best of my knowledge and my belief the foregoing transcription is true and correct.

DATED this 23rd day of March, 1978.

Orval W. Holmes
ORVAL W. HOLMES

SWORN TO and subscribed before me this 23rd day of March, 1978.

Michael Katz
Notary Public, State of Nevada

My Commission Expires Dec. 8, 1980
Michael Katz
CLARK COUNTY
Notary Public - State of Nevada



252 E. Tropicana
Las Vegas, Nev. 89109
Feb. 27, 1978
Tel. 702-736-0673

Mr. B. B. Allen
Commissioner of Administration
State of Alaska
Juneau, Alaska 99801

Dear Comm. Allen:

Thank you for the telephone call completed minutes ago.
It would be appreciated if Mr. Arnoldt would list the
one reason (not an excuse) just why my retirement benefit
should not be calculated in accordance with the way
a prior Comm. of Adm. directed as outlined in the 1973
Teacher's Retirement System's Information Handbook.

All the evidence, excuses offered to date, rules and regulations,
inter-departmental memoranda, letters, etc. conclusively show that
the TRS administration is in error once again. Please, at your
earliest convenience, inform me, and allow me an opportunity
by telephone, to disprove any new or more explicit excuses
which may surface.

Thank you for your time and interest.

Respectfully yours,
Orval H. Holmes

Holmes
E. Tropicana
Las Vegas, Nev. 89109



Mr. B. B. Allen
Commissioner of Administration
State of Alaska
Juneau, Alaska 99801

encl

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF ADMINISTRATION

DIVISION OF RETIREMENT & BENEFITS

POUCH CR

JUNEAU, ALASKA 99811

March 16, 1978

Mr. Orval W. Holmes
Star Route 5, Box 50918
Fairbanks, Alaska 99701

TRS: 574-01-9441

Dear Mr. Holmes:

In your letter of February 27, 1978 to Commissioner Allen you asked why the calculated salary for the 1972-73 school year, the year in which you received a disability benefit from the TRS, was not used in determining your average base salary in the computation of your normal retirement benefit. You cite as your reference the 1973 revised edition of the Teachers' Retirement System Information Handbook, page 11 which states "The base salary used in computing the service retirement will be the same salary used in computing the disability benefit."

(The above passage is misleading, if not totally incorrect) and I realize that you might be confused if you read the narrative section alone. However, AS 14.25.120(c)(1) and 14.25.220 under Part III - Text of the Law, take precedent. I also refer you to page 33 of the 1973 handbook.

"The following text represents the law as of July 1, 1972, representing the Official Retirement System. If there is any difference of interpretation between other parts of the handbook and the legal text, the language in the following text of the law shall govern."

The legal interpretation to AS 14.25.120 and 14.25.220, which concerns (the use of your salary for the 1972-73 school year) was given June 10, 1976 by the Superior Court of the State of Alaska (Orval W. Holmes vs. State of Alaska). The following decision was rendered:

* "The base salary used in computing the service retirement will be the same salary used in computing the disability benefit," is a rule not contrary to the law and would complete the computation of benefits for disabled retirees.

O.W.H.

Included in
Notes in the
margin on
by C.W.H.

Requested
Not
True
C.W.H.

Appears the
authority of a
prior commission
is not at
take here.
C.W.H.

Rules and
Regulations
are not in
the text.
C.W.H.

Didn't get
a salary
check (72-73)
year.
C.W.H.

Mr. Holmes

(2)

March 16, 1978

*parts in parentheses
& added were
not said
for, but are
true in
summary
D.U. 8/1*

"Pursuant to AS 14.25.120(c)(1) and 14.25.220, computation of average base salary in determining normal retirement benefits precludes use of a base salary which a teacher may have earned but for his disability. Therefore, for purposes of calculating the plaintiff's average base salary, the state properly used the plaintiff's base salary for the three years 1969-1970, 1970-1971, and 1971-1972, and properly excluded an estimated base salary for the period of 1972-1973."

*Focus of the
defect
is not.*

[A legal interpretation, not a department regulation,] has determined the method to be used in the calculation of your retirement benefit. For this reason we have disallowed the use of the 1972-73 estimated salary of \$16,880.00 and have calculated your benefit using your 1969-70 salary of \$13,175.00, your 1970-71 salary of \$16,724.00 and your 1971-72 salary of \$16,880.00.

I hope I have satisfactorily answered your question regarding your retirement benefit.

Sincerely,



Paul B. Arnoldt
Director

PBA/AGW/dm

cc: B.B. Allen
Commissioner of Administration

Mary E. Carle
President
Alaska State Retired Teachers Association

April 25, 1978

The Honorable Charles H. Parr
Chairman - House HESS Committee
Alaska State Legislature

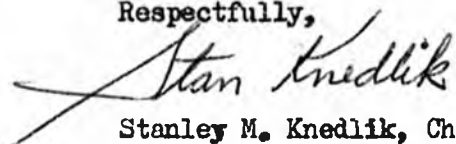
Dear Representative Parr:

Enclosed are two letters of information which state the
position of the Alaska State Retired Teachers Association
RE:

1. HB 820 ASRTA Supports
2. HB 866 ASRTA Opposes

Our intent is to provide these positions and information
for the HESS Committee Members' consideration in connection
with the Committee's Hearing, scheduled for April 27, 1978.

Respectfully,



Stanley M. Knedlik, Chairman
Legislative Committee

Alaska State Retired Teachers Association

April 25, 1978

House HESS Committee Members
Alaska State Legislature

RE: ASETA Support
of HB 820

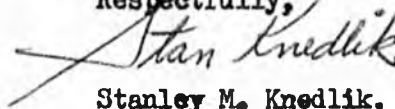
Dear Mr. Farr, Chairman:

I urge the HESS Committee Members to favorably report HB 820 as an immediate and viable means of providing a perennial system of funding post-retirement pension adjustments in step with increases in the cost-of-living for TRS retirees.

The potential of HB 820's proposal can be best illustrated by the funding that would have been provided in 1977, if it had been in operation, when the State's and the Employing School Districts' respective contribution levels were lowered to 6.43 % each. The two combined differentials (below 7 %) of .57 % each, totaling more than 1 %, applied (times) to the TRS Payroll of approximately \$215,000,000 would have provided more than \$2,000,000 for the bonus account fund to be established--an amount substantial enough, with the investment returns, to have paid a 4 % pension adjustment for all TRS retirees for 3 or 4 years.

That is a persuasive possibility, and our membership of the Alaska State Retired Teachers Association strongly supports and urges your favorable consideration of this measure, HB 820.

Respectfully,



Stanley M. Knedlik, Chairman - Legislative
Committees
Alaska State Retired Teachers Association
Central Alaska Retired Teachers Association

April 25, 1978

House HESS Committee Members
Alaska State Legislature

RE: ASRTA Opposition
to HB 866

Dear Mr. Parr, Chairman:

Our membership's immediate concern and opposition to HB 866 stems from the objectionable features or sections which appear to alter and/or change the original, existing statutes related to the following areas:

1. The "scheduled time" when all 4 categories of Retirement Benefits are to be payable--inclusive of (1) retirement benefit, (2) disability benefit, (3) survivors' allowance, and (4) spouse's pension.
2. The nature and essence of the retirement benefit as an annuity.
3. The basis for calculating the normal retirement benefit following a period of disability (membership) service.

RE: #1: HB 866 alters the established schedule, whereby each and all (4) such benefit payments would now become payable on the last day of the (a) initial month and (b) each succeeding month of eligibility--noting that in the case of each retiree, the monthly benefit was and now is scheduled by the existing statutes to be payable on the 1st day of the month; this preferred schedule and procedure was originally intended and ordered for good and sufficient reasons--in keeping with the circumstances which should continue to prevail. No fundamentally acceptable reason has been given to justify altering this schedule.

To the contrary, there are reasons why the original schedule of payments should be met and continued.

Only by assuring every retiree that the retirement benefit will be payable on the 1st day of the month can every retiree be assured of a proper civil and social right to have received during the month of his eventual demise his final benefit check which he could actually ^(personally) receive, endorse, and disburse--rather than given to an estate.

RE: (#2, ~~#3~~,) & (#4) above: (disability benefit/survivors' allowance/spouse's pension)

...it also seems equally clear that the original and existing statutes (provisions), which provide that all such benefit payments are to be payable on the 1st day of the month, best and most properly meet the needs of those persons (beneficiaries) eligible for those benefits. Eg., . . . the proper entitlement of the disabled teacher to the disability benefit payable on the 1st day of the month is already established and acknowledged by the State in the case of a Fairbanks TRS retiree (Orval Holmes)--but even more importantly, the immediate economic needs of all such beneficiaries and especially the surviving spouse/wife and dependent children are best met only by assuring that the initial benefit payment (and with succeeding payments) is scheduled to be made on the 1st day of the month.

We are convinced that this was and should be the continued intent of the original and existing statutes.

RE: #2: In addition, HB 866 alters to some degree the nature and essence of the "retirement benefit" concept--i.e., it tends to disregard the retirement benefit as a form of annuity already earned and entitled, automatically geared and scheduled to be payable (in a disconnected series of separate, discrete, consecutive monthly intervals of time) on the 1st day of the initial month of entitlement and the 1st day of each succeeding month thereafter, "ad infinitum," subject only to the demise of the retiree.

In contrast with this original intent and purpose, HB 866 interposes the term "accrue"--which in this altered context suggests/indicates that the consideration involved (benefit) may be in a state of being or becoming earned--i.e., increasingly, accumulatively, or possibly even prorated; it surely implies that that which was already earned is payable only after and at the end of an interval of time--which when coupled with the economic needs of retirees and beneficiaries is detrimental!

RE: #3(above): Our attention is being drawn to an increasing number of Fairbanks-area TRS retirees who believe that their normal retirement benefit calculations were adversely and unfairly affected by prior periods of disability--thru what may be termed "contested" or "specious" interpretations rendered

See
HB 866
Page # 9
Line 4

HB 866
Page # 10
Lines 13 & 14

Page # 13
Lines 17 & 18

Page # 14
Lines 19 & 20

HB 866
Page # 8
Line 27 & 28

Page # 10
Lines 10 & 11

Page # 15
Lines 17 & 18

Page # 14
Lines 18

by the Division of Retirement & Benefits. In addition to the Orval Holmes/^{Case}there tentatively appear to be as many as five (5) other similar cases (names available on request), involving disability periods prior to normal retirement eligibility in which the retirees' eventual normal retirement benefit calculations were adversely affected by the Division's/Administration's specious rulings which were rendered in disregard of logical and literal interpretations of the original TRS statutes, as well as the clearly-related and supportive TRS Handbook explanations--all of which lent credence to the retirees' contention that such disability periods need not and should not adversely affect the eventual calculations of normal retirement benefits.

See
HB 866
Page #8
Line 4
Page #16
Lines 11,
12, & 13

The crux of the retirees' concern for this objectionable feature rests with two sections in HB 866's content--namely (1) page # 8, line 4 in which the existing statute's 10 years' framework (within which the 3 highest salary years are to be selected and averaged) is deleted--to become any 3 years--and (2) HB 866's page #16, lines 11, 12, & 13 by which a year of disability is to be disqualified from the calculations for determining the eventual normal retirement benefit amount.

Overall, this change of existing statute provisions is unduly restrictive to the detriment of a number of unfortunately disabled members--noting in particular that by statute definition, a year of disability does qualify as a bona fide "membership year"! It would seem prudent and thoughtful to heed to the expressed retiree opposition to this alteration which so clearly coincides with a contested area of benefit concern.

For these particular statute provisions (1) to have stood in effect for 18 or 20 years, (2) to have been supported by seemingly literal and logical interpretations, and (3) with the clearly supportive TRS Handbook (over time thru 1974) paragraphs of description and explanation--all of these circumstances seem to prompt an objective awareness that there is actually a benefit problem needing further attention and evaluation--prior to change!

Adequate investigation and study of the noted, persisting concerns have not run their course. And it seems inappropriate and unwise, meanwhile, to suggest that clarifying, clean-up, and/or housekeeping needs will justify such alterations as proposed in the midst of this unsettled situation.

In conclusion, while noting there are some commendable areas of change in HB 866, because of the sensitive areas which are objectionable as noted herein, our position is one of opposition to HB 866 in its original form. I respectfully suggest ^{approval} ~~that~~ of HB 866 in its original form is not warranted unless the Committee is fully satisfied that the retirees' objections are either (1) baseless or (2) satisfied and/or dispelled.

I also suggest that unless these sections which cause valid concerns among TRS retirees can be satisfactorily resolved, then possibly this measure might well be postponed for future consideration, perhaps in 1979, when further and better conclusions can be achieved. Meanwhile, I thank you for having given your attention and consideration to these expressions which represent the ASRTA Membership's position on the issues related to HB 866.

Respectfully,

Stanley M. Knedlik, Chairman - Legislative Committees

cc Mary Carle, President
ASRTA
Catherine Larson, President
CARTA

Alaska State Retired Teachers Association
Central Alaska Retired Teachers Association

HB 866 file

May 9, 1978

Charles H. Parr, Chairman
House BESS Committee
Alaska State Legislature

RE: ASRTA Opposition
to HB 866

Dear Representative Parr:

Summary points of the retired teachers' (ASRTA) opposition^{to}/objectionable features in HB 866, follow:

1. HB 866 alters longstanding, existing statutes which clearly designate that all retirement benefit payments (4 categories) shall be payable on the 1st day of the month.
2. HB 866 changes the concept of benefits whereby these would "accrue" hereafter to become payable on the last day of the month.
3. The two (2) foregoing changes circumvent retirees' and beneficiaries' needs and rights to receive benefits payable when entitled and most needed—on the 1st day of the month.
4. Existing statutes, rules, and regulations which firmly describe literal, logical relationships between disability and eventual normal retirement eligibility would be deleted and rewritten midst controversy.
5. The basis for such above changes proposed in HB 866 is largely a matter of administrative expedience.

This contrasts unfavorably with an alleged need to "clarify" provisions of the Teachers' Retirement System--particularly when such changes alter and rewrite existing statutes on the expressed basis. . . "that this is what we've (Division/Administration) already been doing--so we want the law changed to conform with our established practice"

To resolve an administrative predicament, legislatively, by proposing to modify the law is neither satisfactory nor the only alternative. Consider the propriety of the following oft-repeated claims by the Division-Administration to explain an erroneous schedule of payments:

1. that retirement eligibility which commences in/on/with the 1st month of retirement does not really begin in/on/with the 1st or initial month of retirement.
2. that the 2nd month of retirement is really the 1st month of retirement.
3. that an effective date (eg., June 30) for terminating employment in conjunction with a retirement date (eg., July 1) does not constitute an actual state of retirement--'til one month later!

In the Committee's further consideration of HB 866 we urge that any action taken (or not taken) be based on what is in the continued best interests of TRS retirees. To continue with existing statutes meanwhile will provide the Division of Retirement & Benefits with further opportunity to evolve other, better solutions.

Yours truly,
Stanley M. Knedlik
Stanley M. Knedlik, Chairman
Legislative Committee
Alaska State Retired Teachers Assoc.
c/o Box 1813