



Offered: 2/20/85  
Referred: Finance

Original sponsors: Taylor, Gruenberg  
and Jenkins

1 IN THE HOUSE  
2  
3 CS FOR HOUSE BILL NO. 83 (HESS)  
4 IN THE LEGISLATURE OF THE STATE OF ALASKA  
5 FOURTEENTH LEGISLATURE - FIRST SESSION  
6 A BILL  
7 For an Act entitled: "An Act relating to employee benefits under the  
8 Public Employees' Retirement System and the Teachers'  
9 Retirement System; and providing for an effective  
10 date."  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
12 \* Section 1. AS 14.25.043 is repealed and reenacted to read:  
13 Sec. 14.25.043. REEMPLOYMENT OF RETIRED MEMBERS. (a) If a  
14 retired member subsequently becomes an active member, benefit payments  
15 may not be made during the period of reemployment. The retirement  
16 benefit shall be suspended for the entire school year if the member is  
17 reemployed as an active member for a period equivalent to a year of  
18 service. During the period of reemployment, deductions from the  
19 member's salary shall be made in accordance with AS 14.25.050. Upon  
20 subsequent retirement, the retired member's original benefit payments  
21 shall resume and the member shall receive an additional pension cal-  
22 culated under (b) of this section.  
23 (b) An additional pension for periods of reemployment after  
24 retirement is equal to the formula benefit for the member's total  
25 credited service, including the period of reemployment, less the  
26 formula benefit for credited service before the period of reemploy-  
27 ment, including any post-retirement pension adjustments that may have  
28 been granted under AS 14.25.143, plus, in the case of a member who  
29 retires and is reemployed before the normal retirement age, an actu-  
arially determined increase to reflect the effect of the cessation of

1 benefits during the period of reemployment.

2 (c) An actuarial adjustment to an additional pension under (b) of  
3 this section shall be made in the case of an early retirement.

4 (d) In this section, "formula benefit" means a retirement bene-  
5 fit computed under AS 14.25.110(d) without adjustment for early re-  
6 tirement.

7 \* Sec. 2. AS 14.25.167(e) is amended to read:

8 (e) If either the member or contingent beneficiary dies before  
9 the member is appointed to retirement, the election becomes inopera-  
10 tive. Once the member is appointed to retirement, the election is  
11 irrevocable, even if the retired member is reemployed. Any additional  
12 retirement benefit to which the reemployed member may become entitled  
13 will be paid in accordance with AS 14.25.043 [THE INITIAL ELECTION  
14 MADE UNDER THIS SECTION, UNLESS THE CONTINGENT BENEFICIARY IS DE-  
15 CEASED. IF THE CONTINGENT BENEFICIARY IS DECEASED, THE BENEFITS  
16 EARNED DURING THE PERIOD OF REEMPLOYMENT ARE SUBJECT TO AS 14.25.110,]  
17 or this section [IF ANOTHER CONTINGENT BENEFICIARY WAS DESIGNATED  
18 DURING THE PERIOD OF REEMPLOYMENT]. All other benefits earned during  
19 previous periods of employment are subject to the election at the time  
20 the member was appointed to retirement. If death occurs during the  
21 period of reemployment and the proximate cause of death is not a  
22 bodily injury sustained or hazard undergone while in the performance  
23 and within the scope of the member's duties of employment, those  
24 benefits earned while reemployed are subject to AS 14.25.155(c). [ALL  
25 OTHER BENEFITS EARNED DURING PREVIOUS PERIODS OF EMPLOYMENT ARE SUB-  
26 JECT TO THE ELECTION AT THE TIME THE MEMBER WAS APPOINTED TO RETIRE-  
27 MENT.] If death occurs during the period of reemployment and the  
28 proximate cause of death is a bodily injury sustained or hazard under-  
29 gone while in the performance and within the scope of the member's

1 duties of employment and the injury or hazard is not the proximate  
2 result of wilful negligence on the part of the member, all benefits  
3 earned during all periods of employment are subject to AS 14.25.157.

4 \* Sec. 3. AS 39.35.150 is repealed and reenacted to read:

5 Sec. 39.35.150. REEMPLOYMENT OF RETIRED EMPLOYEES. (a) If a  
6 retired employee subsequently becomes an active member, benefit pay-  
7 ments may not be made during the period of reemployment. During the  
8 period of reemployment, deductions from the employee's salary shall be  
9 made in accordance with AS 39.35.160. Upon subsequent retirement, the  
10 employee's original benefit payments shall resume and the employee  
11 shall receive an additional pension calculated under (b) of this  
12 section.

13 (b) An additional pension for periods of reemployment after  
14 retirement is equal to the formula benefit for the employee's total  
15 credited service, including the period of reemployment, less the  
16 formula benefit for credited service before the period of reemploy-  
17 ment, including any post-retirement pension adjustments that may have  
18 been granted under AS 39.35.475, plus, in the case of an employee who  
19 retires and is reemployed before the normal retirement age or an  
20 employee who selects a level income option under AS 39.35.460 and is  
21 reemployed before age 65, an actuarially determined increase to re-  
22 flect the effect of the cessation of benefits during the period of  
23 reemployment.

24 (c) An actuarial adjustment to an additional pension under (b) of  
25 this section shall be made in the case of an early retirement.

26 (d) In this section, "formula benefit" means a retirement bene-  
27 fit computed under AS 39.35.370(c) without adjustment for early re-  
28 tirement.

29 \* Sec. 4. AS 39.35.450(e) is amended to read:

1           (e) If either the employee or contingent beneficiary dies before  
2 the employee is appointed to retirement, the election becomes inopera-  
3 tive. Once the employee is appointed to retirement, the election is  
4 irrevocable. If a retired employee is reemployed and is subsequently  
5 reappointed to retirement, those benefits earned during the period of  
6 reemployment are subject to AS 39.35.150 [THE INITIAL ELECTION MADE  
7 UNDER THIS SECTION, UNLESS THE CONTINGENT BENEFICIARY IS DECEASED. IF  
8 THE CONTINGENT BENEFICIARY IS DECEASED, THE BENEFITS EARNED DURING THE  
9 PERIOD OF REEMPLOYMENT ARE SUBJECT TO AS 39.35.370] or this section  
10 [IF ANOTHER CONTINGENT BENEFICIARY WAS ELECTED DURING THE PERIOD OF  
11 REEMPLOYMENT]. All other benefits earned during prior periods of  
12 employment are subject to the election at the time the employee was  
13 appointed to retirement. If death occurs from nonoccupational causes  
14 during the period of reemployment, those benefits earned while reem-  
15 ployed are subject to AS 39.35.420(b). [ALL OTHER BENEFITS EARNED  
16 DURING PRIOR PERIODS OF EMPLOYMENT ARE SUBJECT TO THE ELECTION AT THE  
17 TIME THE EMPLOYEE WAS APPOINTED TO RETIREMENT.] If death occurs from  
18 occupational causes during the period of reemployment, all benefits  
19 earned during all periods of employment are subject to AS 39.35.430(b)  
20 and (c).

21 \* Sec. 5. Sections 1 - 4 of this Act are retroactive to January 1,  
22 1985.

23 \* Sec. 6. This Act takes effect immediately in accordance with AS 01.-  
24 10.070(c).

HB 83

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

Page 1 of 2

REQUEST

Bill/Resolution No. OS HB 83 (HRS)  
 Title: An Act Relating to the Public Employees and Teachers' Ret.  
 Sponsor: Taylor  
 Requestor: Hurley  
 Date of Request: 1/30/86

FISCAL DETAIL

Agency Affected: All State Agencies  
 Program Category Affected: PERS, TRS System  
 BRU, Program or Subprogram(s) Affected: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
Operating						
100 Personal Svcs		451.4	487.5	526.5	568.6	614.1
100 Rtmnt & Bnfts						
200 Travel						
300 Contractual						
400 Supplies						
500 Equipment						
600 Land & Struct						
700 Grants, Claims						
700 TRS Match		208.1	224.8	242.8	262.2	283.2
TOTAL OPERATING	-0-	659.5	712.3	769.3	830.8	897.3

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		616.2	665.5	718.7	776.2	838.3
FEDERAL FUNDS		20.8	22.5	24.3	26.2	28.3
OTHER		22.5	24.3	26.3	28.4	30.7
TOTAL	-0-	659.5	712.3	769.3	830.8	897.3

POSITIONS:                    -0-                    -0-                    -0-                    -0-                    -0-                    -0-

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared By: J.K. Humphreys, Director *JKH* Phone: 465-4470  
 Division: Retirement & Benefits Date: 1/31/85

Approved by Commissioner: Lisa Rudd *LJR* Date: 2/3/85  
 Agency: Department of Administration

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

House Bill 83  
Fiscal Note Analysis  
Prepared by Division of Retirement & Benefits  
Department of Administration

January 31, 1985

IV Analysis:

Passage of this bill would allow retirees in the Public Employees' Retirement System (PERS) and the Teachers' Retirement System (TRS) to be reemployed with a participating employer and use the highest salaries over their entire period of service under the PERS or the TRS respectively for calculating their additional benefit. We have estimated that approximately 2½% of all retirees would exercise this option and that it would result in an average increase of 20% in their benefit.

This is estimated to result in a .0764% increase in the PERS employer contribution rate and a .1% increase in the TRS employer contribution rate. The PERS state salaries for FY 86 are estimated to be \$544,046,592.00 and the TRS state salaries for FY 86 are estimated to be \$71,490,744.00. The FY 86 TRS State Match salaries are estimated to be \$416,297,654.00

This would result in an increase in Political Subdivision contributions of the following.

<u>FY 86</u>	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u>	<u>FY 90</u>
\$499.9	\$539.9	\$583.0	\$629.7	\$680.1

The present value of the cost of this bill in PERS is \$2,750,000.00 resulting in a .22% decrease in the funding ratio. The present value of the cost of this bill in TRS is \$1,800,000.00 resulting in a .26% decrease in the funding ratio.

Offered: 2/20/85  
Referred: Finance

Original sponsors: Taylor, Gruenberg  
and Jenkins

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2

CS FOR HOUSE BILL NO. 83 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to employee benefits under the  
7 Public Employees' Retirement System and the Teachers'  
8 Retirement System; and providing for an effective  
9 date."

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

11 \* Section 1. AS 14.25.043 is repealed and reenacted to read:

12

Sec. 14.25.043. REEMPLOYMENT OF RETIRED MEMBERS. (a) If a  
13 retired member subsequently becomes an active member, benefit payments  
14 may not be made during the period of reemployment. The retirement  
15 benefit shall be suspended for the entire school year if the member is  
16 reemployed as an active member for a period equivalent to a year of  
17 service. During the period of reemployment, deductions from the  
18 member's salary shall be made in accordance with AS 14.25.050. Upon  
19 subsequent retirement, the retired member's original benefit payments  
20 shall resume and the member shall receive an additional pension cal-  
21 culated under (b) of this section.

22

(b) An additional pension for periods of reemployment after  
23 retirement is equal to the formula benefit for the member's total  
24 credited service, including the period of reemployment, less the  
25 formula benefit for credited service before the period of reemploy-  
26 ment, including any post-retirement pension adjustments that may have  
27 been granted under AS 14.25.143, plus, in the case of a member who  
28 retires and is reemployed before the normal retirement age, an actu-  
29 arially determined increase to reflect the effect of the cessation of

1 benefits during the period of reemployment.

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3 this section shall be made in the case of an early retirement.

4 (d) In this section, "formula benefit" means a retirement bene-  
5 fit computed under AS 14.25.110(d) without adjustment for early re-  
6 tirement.

7 \* Sec. 2. AS 14.25.167(e) is amended to read:

8 (e) If either the member or contingent beneficiary dies before  
9 the member is appointed to retirement, the election becomes inopera-  
10 tive. Once the member is appointed to retirement, the election is  
11 irrevocable, even if the retired member is reemployed. Any additional  
12 retirement benefit to which the reemployed member may become entitled  
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24 benefits earned while reemployed are subject to AS 14.25.155(c). [ALL  
25 OTHER BENEFITS EARNED DURING PREVIOUS PERIODS OF EMPLOYMENT ARE SUB-  
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8 period of reemployment, deductions from the employee's salary shall be  
9 made in accordance with AS 39.35.160. Upon subsequent retirement, the  
10 employee's original benefit payments shall resume and the employee  
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18 been granted under AS 39.35.475, plus, in the case of an employee who  
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22 flect the effect of the cessation of benefits during the period of  
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1 (e) If either the employee or contingent beneficiary dies before  
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9 PERIOD OF REEMPLOYMENT ARE SUBJECT TO AS 39.35.370] or this section  
10 [IF ANOTHER CONTINGENT BENEFICIARY WAS ELECTED DURING THE PERIOD OF  
11 REEMPLOYMENT]. All other benefits earned during prior periods of  
12 employment are subject to the election at the time the employee was  
13 appointed to retirement. If death occurs from nonoccupational causes  
14 during the period of reemployment, those benefits earned while reem-  
15 ployed are subject to AS 39.35.420(b). [ALL OTHER BENEFITS EARNED  
16 DURING PRIOR PERIODS OF EMPLOYMENT ARE SUBJECT TO THE ELECTION AT THE  
17 TIME THE EMPLOYEE WAS APPOINTED TO RETIREMENT.] If death occurs from  
18 occupational causes during the period of reemployment, all benefits  
19 earned during all periods of employment are subject to AS 39.35.430(b)  
20 and (c).

21 \* Sec. 5. Sections 1 - 4 of this Act are retroactive to January 1,  
22 1985.

23 \* Sec. 6. This Act takes effect immediately in accordance with AS 01.-  
24 10.070(c).

## Sectional Analysis of HB 83

Section 1 would repeal and reenact AS 14.25.043 to allow a reemployed TRS retiree to take advantage of higher salaries earned during the period of reemployment. The original retirement option selected would be irrevocable, but, in computing the total benefit payable upon reappointment to retirement, the employee's highest earnings would apply to the total period of credited service, not just to the period of reemployment. This would work to further the purpose of the system (AS 14.25.012) by encouraging qualified retirees to return to covered employment. In addition, this section would ensure that retirees who had selected early retirement would not be disadvantaged by becoming reemployed. As is done now, benefit payments would cease and mandatory contributions would resume during the period of reemployment.

Section 2 would amend AS 14.25.167(e) to coincide with the new language in section 1 of this bill. Although options selected at retirement remain irrevocable, employees in all cases would have the freedom to select a different retirement option for the period of reemployment.

Section 3 would repeal and reenact AS 39.35.150 to allow a reemployed PERS retiree to take advantage of higher salaries earned

during the period of reemployment. The original retirement option selected would be irrevocable, but, in computing the total benefit payable upon reappointment to retirement, the employee's highest earnings would apply to the total period of credited service, not just to the period of reemployment. This would work to further the purpose of the system (AS 39.35.010) by encouraging qualified retirees to return to covered employment. In addition, this section would ensure that retirees who had selected early retirement or a level income option would not be disadvantaged by becoming reemployed. As is done now, benefit payments would cease and mandatory contributions would resume during the period of reemployment.

Section 4 would amend AS 39.35.450(e) to coincide with the new language in section 3 of this bill. Although opinions selected at retirement remain irrevocable, employees in all cases would have the freedom to select a different retirement option for the period of reemployment.

Section 5 would make the bill effective July 1, 1985.

# MEMORANDUM

# State of Alaska

TO Hon. W.R. Hudson, Commissioner  
Department of Administration

DATE: October 24, 1980

ATTN: Paul Arnoldt, Director  
Div. of Retirement & Benefit

FILE NO: J-66-642-80

TELEPHONE NO: 465-3665

FROM: WILSON L. CONDON  
ATTORNEY GENERAL

SUBJECT: Statutory interpretation of AS 39.35.-150 as amended by chapter 128, SLA 1977

By: Laura L. Davis  
Assistant Attorney General

You have asked for an opinion regarding the application of AS 39.35.150 as amended by chapter 128, SLA 1977 to the retirement benefit payable to Walter Kubley, a retiree who was re-employed before the amendment. It is our opinion that this amendment changed the clear meaning of AS 39.35.150, and that your calculation of the benefits payable upon retirement to Mr. Kubley and other persons who were retired and became re-employed prior to July 1, 1977, should be based upon the provisions of AS 39.35.150 prior to this amendment.

### Statutes:

Prior to 1977, AS 39.35.150 read as follows (emphasis added):

(a) If a retired employee is re-employed on a regular full-time basis by an employer, no pension payments may be made during the period of re-employment. During the period of re-employment, deductions from salary may be made at the option of the retired employee for contributions to the retirement fund as provided in § 160 of this chapter. Upon the subsequent retirement of the retired employee, he is entitled to receive a pension based on his credited service and compensation before the date of his previous retirement. If a previously retired employee makes contributions to the fund during his re-employment, his additional credited service and compensation during the period of re-employment shall be included to determine his final retirement benefit.

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(b) In the case of re-employment of an employee who retires under § 370(c) or 380 of this chapter, the pension payable upon the employee's subsequent retirement shall be reduced by the actuarial equivalent of early retirement benefits previously received by the employee.

AS 39.35.150 as amended by chapter 128, SLA 1977, reads as follows:

If a retired employee subsequently becomes an active member, no benefit payments will be made during the period of re-employment. During the period of re-employment, deductions from the employee's salary will be made in accordance with § 160 of this chapter. Upon subsequent retirement, the retired employee is entitled to receive an additional pension based on the credited service and the average monthly compensation earned during the period of re-employment in accordance with § 370 of this chapter.

Facts:

In your request for an opinion on this matter, and in my subsequent conversations with your staff, you have provided the following facts as the basis for this opinion:

- (1) The benefit payable upon retirement to a retiree who is re-employed has always been calculated by the division as provided in AS 39.35.150 as amended in 1977. That is, you have started with the pension benefit paid at the first retirement, and added a second benefit based solely upon the second period of service.
- (2) The 1977 amendment to AS 39.35.150 was intended to clarify the longstanding administrative interpretation of that section.
- (3) You have had no written statement of policy expressing the administrative interpretation of AS 39.35.150.
- (4) Before 1977, AS 39.35.150(b) provided for the adjustment of the pension of a re-employed retiree to

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account for the actuarial equivalent of benefits received before re-employment. The division implemented this provision by the method described in AS 39.35.150 as amended.

(5) The benefit payable upon retirement to a person who was re-employed from a deferred vested status is calculated as a simple pension based upon his or her total years of credited service, with the average monthly compensation based upon the highest paid three consecutive years, as provided in AS 39.35.370.

(6) Walter Kubley terminated his state employment in 1977 with 12 years of credited service. He was a deferred vested member until 1976, when he was appointed to a level income retirement. Since March of 1977, he has been re-employed by the state.

Analysis:

The cardinal rule of statutory interpretation is that the statute is to be read as a whole. 2A Sutherland, STATUTES AND STATUTORY CONSTRUCTION § 46.05 (4th ed. Sands 1973). Applying this rule to the interpretation of AS 39.35.150 prior to the 1977 amendment, it is difficult to understand how the department arrived at its interpretation.

The stated purpose of the Public Employees' Retirement System of Alaska is to "encourage qualified personnel to enter and remain in the service of the State by establishing a system for the payment of retirement disability and death benefits . . . ." AS 39.35.010. We presume that the legislature intended the system to operate equitably in the distribution of benefits to members. Future pension benefits are an incentive to both retired and deferred vested members to re-enter employment with the state.

Under section 150 as interpreted by the department, re-employed retirees are treated differently than other members for no apparent reason. An individual who worked for 20 years, terminated, and later became re-employed for a period of some years, may receive a substantially lower final pension benefit if he or she were retired during any

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DIVISION OF RETIREMENT

part of the intervening years than if he or she had remained a deferred vested member for that time. This result is required by the clear language of section 150 as amended. However, the language of that section prior to its amendment, may be reasonably interpreted to provide for a similar final pension for either individual, with a reduction to the former related directly to the benefits actually received during the earlier retirement.

A corollary of statutory interpretation is that effect should be given to each portion of the statute. 2A Sutherland, STATUTES AND STATUTORY CONSTRUCTION, § 46.06 (4th ed. Sands 1973). Under the administrative interpretation of AS 39.35.150, no real effect was given to the requirement of paragraph (b) that the pension be reduced by the actuarial equivalent of benefits received under an earlier pension. The administrative practice has been to suspend the earlier pension during re-employment, and re-instate it on retirement in the same amount along with a separate benefit based solely upon the re-employment service. This reduces the final pension benefit of one who was earlier retired. However, the reduction is unrelated to the amount of benefits received in the earlier retirement.

For example, consider a hypothetical employee who works from 1964 to 1974 at a salary of \$1,000 per month, and then terminates. In 1976, he or she is re-employed at a salary of \$1,500 per month and retires in 1980. All pension calculations below are based upon the formula set out in AS 39.35.370:

(a) If the employee retired in 1974, and received a pension until his or her re-employment, the final pension payable according to the administrative interpretation of AS 39.35.150 (before amendment) would be:

$$\begin{array}{rcl} 10 \text{ yrs} \times 2\% \times \$1,000/\text{mo} & = & \$200 \\ + 4 \text{ yrs} \times 2\% \times \$1,500/\text{mo} & = & \underline{120} \\ & & \$320/\text{mo} \end{array}$$

(b) Under the same circumstances, we would interpret AS 39.35.150 (before amendment) as requiring a pension of:

$$14 \text{ yrs} \times 2\% \times \$1,500/\text{mo} = \$420$$

This would be reduced by the actuarial equivalent of the benefits already received.

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DIVISION OF RETIREMENT

(c) If the employee had gone into a deferred vested status and not received a pension or refund from 1974 to 1976, the pension payable on retirement in 1980, would be:

$$14 \text{ yrs} \times 2\% \times \$1,500/\text{mo} = \$420$$

Under our interpretation of AS 39.35.150 in paragraph (b) of the example, the final pension for a previously retired member would be the same as that of a deferred vested member, except for a reduction based actuarially on the benefits earlier received. A person who had been retired for 10 years would have a greater reduction of his or her final pension than would a person who had been retired for a shorter period. The problem with the division's interpretation of AS 39.35.150 in paragraph (a) of the example is that it would not differentiate between a person who had been retired for 10 years, and one who had been a deferred vested member for nine years and retired for one, despite the fact that these two persons received very different amounts of pension benefits before returning to employment.

Ordinarily legislative history is used as a tool for statutory construction only when a reading of a statute as a whole does not resolve an ambiguity. Legislative history of the bill containing this amendment to section 150 (HB 267, incorporated into HB 343) shows that the bill was presented as a housekeeping bill by the Division of Retirement and Benefits. In testimony before the Senate HESS Committee, Bob Gates, then Director of the Division of Retirement and Benefits stated that the only substantive change in the amendment to section 150 was that making the retirement contributions mandatory for re-employed retirees. Previously, a re-employed retiree had the option whether to contribute. He also stated that it was the feeling of the division that the fact that a person had been retired before should be of "no consequence" (to his participation in the retirement system). (May 11, 1977 meeting of Senate HESS Committee hearing on HB 343, on tape at the Legislative Reference Library). He made no reference to the change in method of calculating a re-employed retiree's final pension.

It is true that the amendment merely conformed the statute to the administrative policy. However, it does

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October 24, 1980

appear that under section 150 as amended, the fact that a person had been previously retired may have a significant consequence on the amount of his final pension. See example on page 4 of this memorandum. The administrative interpretation of a statute will be given consideration by the courts where the meaning of the statute is in doubt. However, we believe that the meaning of section 150 is not in doubt when the statute is read as a whole. The administrative interpretation of section 150 before 1977 does not have the force of law.

It is our conclusion that the 1977 amendment to AS 39.35.150 changed the meaning of that provision. A question arises as to the applicability of AS 39.35.150 as amended. The Alaska Constitution provides in article XII, section 7 as follows:

Membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of these systems shall not be diminished or impaired.

This provision has not yet been construed by the Alaska Supreme Court. The Attorney General has construed this provision twice previously in memoranda. On August 31, 1977, we advised you that an amendment to AS 14.25.130, changing from 60 to 55 the age before which a teacher suffering a permanent disability would be eligible for disability retirement, should be applied only to teachers who became members of the Teachers' Retirement System after the effective date of that legislation. In that memorandum (our file J-66-041-78), we pointed out the possibility that the right to a disability pension up to a certain age might not be a benefit which has "accrued" in the meaning of the constitutional provision to a teacher who is not disabled. However, we suggested that the statutory change in question appears to violate another constitutional provision, that "no law impairing the obligation of contracts . . . shall be passed." Alaska Const., Art. I, § 15. It was therefore unnecessary to decide the question of whether the statute unconstitutionally impaired an accrued benefit.

In a much earlier opinion. April 19, 1963, we reviewed the constitutionality of a statute increasing the interest payable on the refund of contributions received by a

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teacher who later becomes re-employed. In that memorandum, we construe "accrued" narrowly, as meaning benefits purchased by means of salary deductions or payment of arrearages. According to this interpretation, an employee's accrued benefits would be limited to the amount of his or her individual contributions account. In neither of these memoranda did we consider the question of when the right to a pension accrues.

We feel that the meaning of accrued benefits probably goes beyond a right to receive a refund of the amount in an employees retirement contribution account. It includes the right to receive a pension based upon the formula set forth in AS 39.35.370. This right vests after five years of employment, and is an important attribute of job security. AS 39.35.680(10). However, the possibility of a future pension following termination and re-employment is not a meaningful attribute of job security, nor does it vest by statute until the person is re-employed.

In our opinion, the right to receive a pension for years of re-employment accrues when a retired or deferred vested member becomes re-employed. At that time, the right to a pension based on the re-employed years vests. It may not thereafter be constitutionally impaired. Therefore, we advise you to apply AS 39.35.150 as amended in calculating the pension benefits for retired members who became re-employed after the effective date of the amending legislation, July 1, 1977. For retired or deferred vested members who became re-employed before that, we advise you to calculate a single pension based upon the total years of credited service, using the average monthly compensation for the entire period as defined in AS 39.35.680, reduced by the actuarial equivalent of benefits received under an earlier pension, as provided by AS 39.35.150 before the 1977 amendment.

LLD/pjg

*Bob  
Lynn Richardson*

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DIVISION OF RETIREMENT

March 29, 1984

Honorable Don Bennett  
Co-Chairman  
Senate Finance Committee  
Pouch V  
Juneau, AK 99811

Dear Mr. Co-Chairman:

The Public Employees' Retirement Board, at its spring meeting in Juneau on March 28, 1984, unanimously passed a motion in support of CSSB 415 (SA).

The Board believes that this bill will not only further the purpose of the Public Employees' Retirement System (PERS) but will also remove an existing inequity. The bill would remove some of the disincentive for qualified retirees to return to PERS employment by allowing them to apply their highest earnings to the total period of credited service, not just to the reemployment period. It would preserve the irrevocability of retirement options, thereby keeping the cost of joint and survivor options at an affordable level for members, and allow members freedom to select a different retirement option for the period of reemployment. In addition, the bill would remove an existing inequity in the law which disadvantages early retirees who return to employment during the early retirement period and those who have chosen a level income option who return to employment before age 65.

We respectfully request your support of CSSB 415 (SA) which we believe is beneficial for the members and fiscally responsible for the system.

Thank you.

Sincerely,

*C. R. "Steve" Hafling*  
C.R. "Steve" Hafling, Chairman  
Public Employees' Retirement Board

Board Members:

Ben Humphries  
Marlene Johnson  
Mary Notar  
J.P. "Pat" Wellington

cc: PERS Board Members  
Rob Johnson  
Eleanor Andrews  
Ken Humphreys

STATE OF ALASKA  
THE LEGISLATURE

POUCHY STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 22, 1985

SUBJECT: Employee benefits under PERS and TRS  
(CSHB 83(HESS))

TO: Representative Al Adams  
Chairman, House Finance Committee

FROM: Teresa B. Cramer *TBC*  
Legislative Counsel

You have asked for a sectional analysis of CSHB 83(HESS).

Section 1 repeals and reenacts AS 14.25.043 to allow a re-employed TRS retiree to take advantage of higher salaries earned during the period of reemployment. The bill retains the requirement that the original retirement option selected is irrevocable. However, in computing the total benefit payable on reappointment to retirement, the employee's highest earnings apply to the total period of credited service not merely the period of reemployment. In many instances an employee's highest earnings occur during the period of reemployment. As is the case now, benefit payments cease and mandatory contributions resume during the period of reemployment.

Section 2 amends AS 14.25.167(e) to incorporate the changes made to AS 14.25.043 by section 1 of the bill. Although the options selected at the time of initial retirement remain irrevocable for the initial period of employment, members may select a different retirement option for the benefits based on the period of reemployment.

Section 3 makes the same amendments to the Public Employee's Retirement System that section 1 makes to the Teachers' Retirement System.

Section 4 makes the same amendments to PERS that section 2 makes to TRS.

Representative Al Adams  
April 22, 1985  
Page 2

Section 5 makes the amendments to TRS and PERS retroactive to January 1, 1985.

Section 6 is an immediate effective date.

If I may be of further assistance, please let me know.

TC:ojb  
J14/016

Position Paper

HB 83

The Department of Administration supports this legislation but recommends that cost containment measures be included which will substantially offset the current fiscal impact of this bill. Passage of this bill would improve equity in the system by substantially reducing the current disincentives associated with a retiree returning to work for a covered employer. It provides for an equitable actuarial readjustment of benefits in certain cases involving reemployed early retirees or those who chose a level income option; it would restore part of the reduction for the early retirement or level income to reflect the return to work. This bill would also allow retirees in the Public Employees' Retirement System (PERS) and the Teachers' Retirement System (TRS) to be reemployed with a participating employer and use the highest salaries over their entire period of service under the PERS or the TRS respectively in calculating their benefit upon subsequent retirement.

Passage of this bill would be consistent with the statutory purpose of both retirement systems which is to attract and retain qualified employees. Retired employees who are still ready, willing and able to work are a valuable resource to employers and this bill would remove an impediment to their rehire. By prohibiting military "double dipping" for employees first hired after enactment of this bill, the total cost could be cut by approximately 89%.

J.K. Humphreys  
J.K. Humphreys, Director, Division of Retirement & Benefits

2/15/85  
Date

A. Rudd for  
Lisa Rudd, Commissioner, Department of Administration

2-15-85  
Date

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Alaska Public  
Employees Association **APEA**  
State Headquarters: 340 N. Franklin, Juneau, AK 99801 (907) 586-2334

MEMORANDUM

TO: Representative Katie Hurley, Chairperson  
House State Affairs Committee

FROM: Cherie Shelley, Executive Director  
Alaska Public Employees Association

SUBJECT: HB 83 PERS/TRS Benefits After Reemployment

DATE: February 5, 1985

The Alaska Public Employees Association supports House Bill 83. This legislation will eliminate the penalty imposed upon employees who return to public service after retirement.

This legislation will allow the state and local governments to utilize the experience and abilities of long-term employees without penalizing these employees for an earlier decision to retire.

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