

SB

232

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FILE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSSB 232(STA)
(S) Publish Date: 2/11/04

Revision Date/Time (Note if correction): 2-9-04 11:41 a.m. Dept. Affected: Various
Title An Act relating to federal requirements for governmental plan RDU various
and other qualifications for TRS, PERS, and JRS Component various
Sponsor Rules Committee
Requester Governor Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	-	-	-	-	-	-
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill is required to place into law those changes to the statutes of Public Employees', Teachers', and Judicial Retirement Systems that are required as a result of a review by the Internal Revenue Service. These changes must be implemented so that the plans remain qualified under the Internal Revenue Code.

AS 24.08.036 FISCAL NOTES ON BILLS AFFECTING STATE RETIREMENT SYSTEMS, requires an additional analysis of the long term and short term costs to the state if a bill is adopted, as well as the impact of the bill on the actuarial soundness of the funds. This bill, in the form submitted on the date above indicated will not increase costs to the state if it is adopted in the form submitted. Any modification to the legislation from the form here submitted requires an updated analysis.

Prepared by: Melanie Millhorn Phone 907-465-4408
Division Retirement and Benefits Date/Time 2/9/04 11:47 AM
Approved by: Mike Miller, Commissioner Date _____
Agency Administration

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

DIVISION OF RETIREMENT AND BENEFITS

FRANK H. MURKOWSKI, GOVERNOR

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Sectional Analysis 2004 Session – CSSB 232 (FIN)

This is an Act relating to federal tax requirements for and other provisions of the teachers' retirement system, the public employees' retirement system, and the judicial retirement system; removing village public safety officers from the public employees' retirement system, delete requiring the PERS from refunding accounts under \$1,000 to inactive employees.

The changes introduced with this substitute add the changes requested by the Internal Revenue Service. It also repeals prior legislation (SB 145, 2001 Legislative Session) which would have allowed village public safety officers (VPSO) employed under the village public safety officer program to become members of the public employees' retirement system. The repeal of the inclusion of VPSOs in PERS results directly from a specific negative Private Letter Ruling that does not allow for the inclusion of VPSOs in PERS as specified in SB 145.

Section 1 States that the purpose of this Act is that the retirement systems continue to meet governmental plan qualifications of the Internal Revenue Code. To also make changes so members can take advantage of changes in federal tax laws to better plan retirement.

Sections 2 - 15 relate to the Teachers' Retirement System

Section 2 Provides for a new subsection that states that no amendment to the TRS statutes are meant to provide a vested right to a benefit if the IRS determines that the amendment would result in disqualification of the plan under the Internal Revenue Code.

Section 3 Uses the broader definition of "member or member's" versus the previous use of "teacher or teacher's". A member is more in line with how the IRC refers to plan participants.

(This reference change to "member(s)" versus "teacher(s)" or "employee(s)" is throughout the entire legislation.)

Section 4 Makes the claiming of BIA service optional. The prior language makes the service claim mandatory.

Section 5 Makes the reinstatement of prior service, because of a previous refund of contributions, optional. The prior language makes the reinstatement mandatory.

Section 6 Specifies member(s) rather than teacher(s) in the affected statute.

Section 7 Allows additional sections in TRS to be paid for by pre-tax transfers and contributions, not previously included.

Section 8 Further clarifies the tax law requirements relating to the purchase of service credits through a salary reduction program and conforms the statute to those rules acceptable to the IRS. It adds additional sections where contributions would be acceptable, highlights the fact that the selection is irrevocable, and when contributions must cease.

Section 9 Further clarifies the tax law requirements relating to the purchase of service credit through transfers from other plans, and the coordination required with a salary reduction program.

Section 10 Updates the sections related to purchase of service credits. Conforms this subsection to new additions in other subsections.

Section 11 Conforms the referenced section of the system statute with the IRC date of applicability.

Section 12 Conforms the referenced section of the system statute with the IRC date of applicability.

Section 13 Makes the requirement that the assumptions, factors, and methods that form the basis of actuarial adjustment factors must be specified in regulation.

Section 14 Indicates that "teacher" or "member" is intended to be used interchangeably (the purpose to reduce confusion as to whom a particular section applies to).

Sections 15 - 19 relate to the Judicial Retirement System

Section 15 Further specifies when a Judge or Justice becomes a member in JRS.

Section 16 Further specifies when the administrative director of the Alaska court system becomes a member of JRS.

Section 17 Makes the stipulation that no amendment to the JRS statutes are meant to provide a vested right to a benefit if the IRS determines that the amendment would result in disqualification of the plan under the Internal Revenue Code.

Section 18 Specifies vesting criteria in the event of termination of the JRS plan.

Section 19 Makes the requirement that the assumptions, factors, and methods that form the basis of actuarial adjustment factors must be specified in regulation.

Sections 20 - 30 relate to the Public Employees' Retirement System

Section 20 Makes the stipulation that no amendment to the PERS statutes are meant to provide a vested right to a benefit if the IRS determines that the amendment would result in disqualification of the plan under the Internal Revenue Code.

Section 21 Removes Village Public Safety Officers employed by a nonprofit regional corporation as included PERS members by virtue of their employment status with the nonprofit regional corporation.

Section 22 Further clarifies the tax law requirements relating to the purchase of service credits through a salary reduction program and conforms the statute to those rules acceptable to the IRS. It adds additional sections where contributions would be acceptable, highlights the fact that the selection is irrevocable, and when contributions must cease.

Section 23 Further clarifies the tax law requirements relating to the purchase of service credit through transfers from other plans, and the coordination required with a salary reduction program.

Section 24 Removes the requirement for a member to cash out their account if they have less than five years of service and less than \$1,000 in their refundable balance.

Section 25 Part of the coordinated VPSO changes.

Section 26 Conforms the referenced section of the system statute with the IRC date of applicability.

Section 27 Conforms the referenced section of the system statute with the IRC date of applicability.

Section 28 Makes the requirement that the assumptions, factors, and methods that form the basis of actuarial adjustment factors must be specified in regulation.

Section 29 Part of the coordinated VPSO removal. Removes a nonprofit regional corporation who employs VPSOs as an eligible employer.

Section 30 Part of the coordinated VPSO removal.

Uncodified Law Changes related to indicated plans

Section 31 Stipulates when certain statutes apply to conform them with the Internal Revenue Code.

Section 32 Repeals a prior part of the Uncodified Law that applied to certain contributions that could not take place until the IRS approved them.

Section 33 A reviser's instruction to change section titles in PERS and TRS.

Effective Date

Section 34 Immediate effective date of the Act.

Uniform Issue List Nos.: 402.01-00
414.09-00



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

AUG 13 2003

RECEIVED

AUG 19 2003

Div. of Ret. & Benefits

State of Alaska
PO Box 110203
Juneau, AK 99811-0203

Attn: Melanie A. Millhorn, Director
Public Employees' Retirement System of Alaska

Legend:

State	= State of Alaska
Department B	= Alaska Department of Public Safety
Plan X	= Public Employees' Retirement System of Alaska
Group C Employees	= Employees of the State of Alaska and its political subdivisions, public corporations and public organizations, and employees of other employers whose participation in the Public Employees' Retirement System of Alaska is authorized by Statute D
Statute D	= Alaska Statutes Title 39. Chapter 35. Sections 39.35.010 et seq.
Act E	= The Alaskan Native Claims Settlement Act of 1971, 43 U.S.C. Sections 1601 et seq.
Code F	= Alaska Administrative Code
Manual G	= Village Public Safety Officer Field Manual
Program H	= Village Public Safety Officer Program
Community Officers	= Village Public Safety Officers
Number J	= Eighty-five

K Corporations

= Aleutian Pribilof islands Association,
 Association of Village Council Presidents,
 Bristol Bay Native Association,
 Chugachmiut,
 Kodiak Area Native Association,
 Kawerak,
 Tanana Chiefs Conference,
 Maniilaq Manpower,
 Central Council Tlingit Haida Indian Tribes of
 Alaska

Dear Ms. Millhorn:

This is in response to correspondence dated October 16, 2001, as supplemented by additional correspondence dated February 1, 2002, March 15, 2002, May 16, 2002, November 1, 2002, November 15, 2002, November 27, 2002, December 6, 2002, March 31, 2003 and May 6, 2003, from your authorized representative, in which you request a ruling on whether the status of Plan X, a governmental plan under §414(d) of the Internal Revenue Code ("the Code"), is adversely affected by the inclusion of Community Officers.

The following facts and representations have been submitted:

Pursuant to Statute D, the State created Plan X (also referred to herein as "the System") in 1961 as a defined benefit pension and retirement system to provide retirement and other benefits for Group C Employees. Plan X is intended to meet the qualification requirements of Code §401(a) to the extent that section applies to a governmental plan within the meaning of §414(d) of the Code.

Effective January 1, 1987, all participating employees are required to contribute a percentage of their compensation to Plan X. No option to receive this amount in cash has ever been permitted. Statute D also allows the State to pick up and pay the mandatory contributions to Plan X pursuant to §414(h) of the Code. As of January 1, 1987, the State has treated the employee contributions in a manner consistent with §414(h)(2).

In 1985, the State established Program H within Department B pursuant to State Statute. Program H was established to assist local governments and villages in protecting life and property in rural areas of the State and to provide probation and parole supervision services. Program H, however, was not designed to be a village or community police force. Under Program H the role of a Community

Officer is more than just law enforcement, and the vast majority of requests for the services of a Community Officer are for non-criminal matters. The Community Officer provides (1) support in the rendering of emergency medical services, (2) search and rescue support, (3) fire safety and prevention support, (4) water and boating safety, and (5) minor law enforcement service to a community, primarily the handling of misdemeanor infractions of the State's criminal code. Community Officers are not obligated to respond to or participate in any type of armed conflict. In accordance with Code F, Community Officers are prohibited under the state funding grants from carrying firearms in the regular course of their duties, except in an emergency.

Community Officers are employed by certain K Corporations established pursuant to Act E. All K Corporations (which may be nonprofit or for profit) employing Community Officers intended to be covered by this ruling are organized under state law as nonprofit corporations and have been in existence prior to the establishment of Program H. Under Act E, Native Indians of the State own the stock in the K Corporations. The State, including Department B, does not participate in the selection of the board of directors for the K Corporations. The involvement of K Corporations in Program H is separable from the other activities and functions of the K Corporations.

Program H is funded through grants issued by Department B. Department B and the K Corporations enter into a written grant agreement detailing the Program responsibilities and duties. Program H sets forth detailed policies and procedures that must be followed in order for a grant to be approved and maintained. In addition, several key personnel positions are required by the Program H enabling legislation to ensure that Program H operates as intended and in accordance with State Statutes. The written agreement between Department B and a K Corporation must also name the K Corporation as the employer, for all purposes, of a Community Officer.

State Troopers are Department B employees. A State Trooper is responsible for making periodic visits to a village or community in which a Community Officer has been assigned, acting as a mentor and as a liaison between the Department and the community or Community Officer, providing on-the-job training to the Community Officer, reviewing the Community Officer's log book, monitoring the Community Officer for compliance with applicable rules and providing the K Corporation with an evaluation of the Community Officer's performance. State Troopers, however, do not supervise the daily activities of Community Officers. The State Trooper is responsible for providing state law enforcement services to a village or community to which a Community Officer is assigned. The

Community Officer is not a police officer, and ultimate responsibility for criminal law enforcement lies with the State Trooper, particularly in regard to crimes more serious in nature than mere misdemeanor violations.

State Trooper superiors participate in the review of certain Program H documentation required to be provided by the K Corporation to Department B. The Program H Coordinator is a Department B position that has responsibility for overseeing the overall operation of the Program. The K Corporation Coordinator is an employee of the K Corporation who has responsibility for evaluating the performance of Community Officers, as well as allocating and distributing the funds supplied by a grant.

The K Corporation may not use grant money to employ a Community Officer for a particular village unless the village, through its governing body, enters into a written agreement with the K Corporation. According to relevant provisions of Code F, the village or community, in its agreement with the K Corporation, sets out the job description for the Community Officer, specifying duties that the community expects the officer to perform. The community also names a local supervisor to assume the daily control of the Community Officer's work and to act as a liaison between the Community Officer and the community. The party responsible for supervision of the daily activities of a Community Officer is identified in Code F as the "governing body" of the village or community. The "governing body" means the elected city council, traditional council, or elders council that the State recognizes as having governmental functions and that the K Corporation accepts as appropriate to supervise the daily activities of a Community Officer. All non-criminal activity (the majority of the work) conducted by the Community Officer is at the direction and priority of the village councils. Currently there are approximately the Number J of villages or communities to which a Community Officer has been assigned.

The written agreement between the K Corporation and the village or community recognizes that the Community Officer is an employee of the K Corporation. In the resolution of any dispute arising under the agreement, including the removal of a Community Officer from the position and the position from the village or community, the President of the K Corporation, or his or her designee, has final and conclusive authority to resolve the dispute.

The State represents that Department B has control over Program H by virtue of the fact the K Corporations and the Community Officers are subject to regulations, policies and procedures that are found in the Program H authorizing legislation, the grant agreement, Code F and Manual G. The State maintains that these rules, policies and procedures that the K Corporations and Community Officers must adhere to are enforceable by Department B by (1) controlling the

grant of authority and funding, (2) monitoring of Community Officers by the State Trooper, and (3) the requirement by authorizing legislation of a State Trooper, K Corporation Coordinator, and a Program H Coordinator to ensure that the program operates as intended.

The State proposes to permit the K Corporations to adopt the System as the retirement benefit plan for persons employed as Community Officers. Based on the foregoing facts and representations, you requested the following rulings:

1. That the adoption of the System by certain K Corporations with respect to Community Officer employees only, will not adversely affect the System's status as a governmental plan within the meaning of Code §414(d).
2. That the mandatory employee contributions paid to the System by the State on behalf of the Community Officer employees, will qualify as "picked-up" contributions within the meaning of §414(h)(2) of the Code.

Section 414(h)(2) of the Code provides that, in the case of any plan established by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, where the contributions of employing units are designated as employee contributions but where any employing unit picks up the contributions, the contributions so picked up will be treated as employer contributions.

Section 414(d) of the Code provides that a governmental plan means a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing.

Revenue Ruling 89-49, 1989-1 C.B. 117, provides that a plan will not be considered a governmental plan merely because the sponsoring organization has a relationship with a governmental unit or some quasi-governmental power. It holds that one of the most important factors to be considered in determining whether an organization is an agency or instrumentality of the United States or any state or political subdivision thereof is the degree of control that the federal or state government has over the organization's everyday operations. Other factors listed in Revenue Ruling 89-49 include: (1) whether there is specific legislation creating the organization; (2) the source of funds for the organization; (3) the manner in which the organization's trustees or operating board are selected; and (4) whether the applicable governmental unit considers the

employees of the organization to be employees of the applicable governmental unit. Although all of the above factors are considered in determining whether an organization is an agency of a government, the mere satisfaction of one or all of the factors is not necessarily determinative.

In the instant case, applying the principles set forth in Revenue Ruling 89-49, we find the degree of control exercised by the State over the daily operations of the Community Officers to be minimal, with control in the hands of the K Corporation and the village or community to which a Community Officer is assigned.

As represented, a Community Officer is subject to monitoring by a State Trooper, an employee of Department B. The State Trooper's superior participates in the review of certain Program H documentation that must be provided by the K Corporation to Department B. The Program H Coordinator is a Department B position that has responsibility for overseeing the overall operation of the Program.

The State has not demonstrated that the aforementioned Departmental positions control or supervise the daily activities of Community Officers. The monitoring provided by the State Trooper consists of periodic visits with Community Officers, mentoring and other administrative duties. There has been no representation that the Program H Coordinator is involved with the daily activities of a Community Officer. In addition, Manual G, a Department B field manual for Community Officers, states that the K Corporation Coordinator, an employee of the K Corporation, is responsible for evaluating the performance of Community Officers. The Manual further provides that in completing the evaluation, the "community representative" responsible for the Community Officer's supervision, the individual Community Officer and the assigned State Trooper are contacted for comment.

Further, the K Corporation may not employ a Community Officer for a particular village unless the village, through its governing body, enters into a written agreement with the K Corporation setting forth the duties that the village or community expects the Community Officer to perform. In Code F, the term "village" is defined to mean a community with a population of less than 1,000 individuals. The community representative responsible for supervision of the daily activities of a Community Officer is identified in Code F as the "governing body" of the village or community. The "governing body" means the elected city council, traditional council, or elders council that the State recognizes as having governmental functions and that the K Corporation accepts as appropriate to supervise the daily activities of a Community Officer.

Considering the other factors set forth in Rev. Rul. 89-49, the enabling legislation for Program H did not establish the K Corporations or specify that the K Corporations would be the vehicle or medium to implement Program H. The K Corporations were already in place throughout the State when Program H was established.

Funding for Program H is provided entirely by Department B through grants to the K Corporations. The State maintains that it controls the K Corporations due to the fact that Department B, in its discretion, may terminate a grant if the K Corporation or a participating village or community is not complying with all the Program policies and procedures. However, the State's argument that it controls the K Corporations and the Program, through funding, is diminished by the fact that the K Corporation Coordinator, a K Corporation employee, has responsibility for the allocation and distribution of funds supplied by the state grant. The K Corporations formally employ the Community Officers, enter into contracts specifying the terms of Program H and pay officers' salaries with the funds granted by the State. Although Program H is supported by State funds, we do not find this factor to be determinative of agency or instrumentality status in this case because the K Corporations possess the authority to allocate the funds. No funded Community Officer position can be assigned to a requesting village or community unless the K Corporation, not the State, enters into a written agreement with the village or community.

The State, including Department B, does not participate in the selection of the board of directors for the K Corporations. Pursuant to Act E, the management of the K Corporation is vested in a board of directors, all of whom shall be stockholders over the age of eighteen (the stockholders of the K Corporations are Native Indians of the State). Due to the fact that the State does not participate in the selection process, the board of directors is not controlled by the State. Thus, the State does not possess the requisite degree of control over the K Corporation decision-making process in the day to day implementation of Program H (i.e., through lack of control over key personnel such as the K Corporation Coordinator).

Finally, Community Officers are not employees of the State or a political subdivision thereof. State Statute requires that Department B and the K Corporation enter into an agreement in which, among other requirements, there must be a provision that names the K Corporation as the employer, for all purposes, of a Community Officer. The K Corporation may not use grant money to employ a Community Officer to serve in a particular village or community unless the village or community, through its governing body, enters into a written agreement with the K Corporation. The written agreement between the K

Corporation and the village or community recognizes that the Community Officer is an employee of the K Corporation, and that in the resolution of any dispute arising under the agreement, including the removal of a Community Officer from the position, the President of the K Corporation, or his or her designee, has final and conclusive authority to resolve the dispute.

The State has represented that the villages or communities to which a Community Officer has been assigned, as incorporated municipalities or unincorporated villages, are political subdivisions of the State. Although we find that the village or community may exert a significant degree of supervision over the daily activities of a Community Officer, we must conclude that the Community Officer is an employee of the K Corporation and that the K Corporation exerts the ultimate degree of control over a Community Officer's employment.

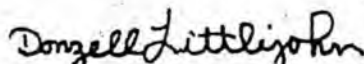
Thus, we conclude that the K Corporation(s) is not an agency or instrumentality of the State or a political subdivision thereof. Accordingly, as for the first ruling requested, we find that the inclusion in Plan X of Community Officers, who are employees of a K Corporation which does not qualify as an agency or instrumentality of the State or a political subdivision of the State, will adversely affect the status of Plan X as a governmental plan under §414(d) of the Code.

Similarly, because we have determined in accordance with Revenue Ruling 89-49, that a K Corporation does not qualify as an agency or instrumentality of the State or a political subdivision thereof, it is concluded with respect to ruling request two that the applicability of the provisions of §414(h)(2) of the Code to Plan X will be adversely affected by including as members therein the Community Officer employees of the K Corporations, and that the mandatory contributions of such employees to Plan X which may be assumed and paid by the State will not qualify as "picked-up" contributions within the meaning of §414(h)(2) of the Code.

This ruling is directed only to the taxpayer that requested it. Section 6110(k) of the Code provides that it may not be used or cited by others as precedent.

A copy of this ruling is being sent to your authorized representative pursuant to a power of attorney on file in this office. Should you have any questions pertaining to this ruling, you may contact Denise Y. Bowen (ID # 50-21343) of this office at (202) 283-9580.

Sincerely yours,


Donzell H. Littlejohn Acting Manager,
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of the Ruling
Notice of Intention to Disclose, Notice 437

cc: Thomas M. Mayer
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Minneapolis, MN 55402

EP Area Manager Pacific Coast Area, STOP 7000
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Los Angeles, CA 90012-3335