

**HB**

**331**

# HOUSE COMMITTEE REPORT

(7)  
 Date Referred to Committee: May 21, 2003 FURTHER REFERRALS: Labor and Commerce  
Finance

Date of Committee Action: April 14/2004

The STATE AFFAIRS Committee considered: HB 331

HOUSE BILL NO. 331 RETIREMENT: TEACHERS/JUDGES/PUB EMPLOYEES

"An Act relating to federal requirements for governmental plan and other qualifications for the teachers' retirement system, the public employees' retirement system, and the judicial retirement system; and providing for an effective date."

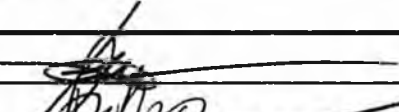
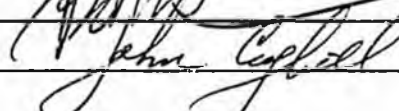
Recommends it be replaced with [ ] HCS or [  ] CS for HB 331 (STA)  
 For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR \_\_\_\_\_ [ ] Same Title [  ] New Title

- [ ] attach amendments
- [ ] add new referral to \_\_\_\_\_ Committee
- [ ] Letter of Intent \_\_\_\_\_ Committee

List of Abbrev for Depts.:  
 ADM  
 CED  
 COR  
 CRT  
 EED  
 DEC  
 DFG  
 GOV  
 HSS  
 LEG  
 LAW  
 LWF  
 MVA  
 DNR  
 DPS  
 REV  
 DOT  
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
<u>ADM</u>				✓

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
<u>ADM</u>	<u>1</u>			✓

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	<u>Lynn</u>	✓			
	<u>Coghlin</u>	X		✓	
Chair: <u>Bloch</u>	<u>Weybrauck</u>	Y			
Chair:					

23-GH1009\D  
Craver  
4/1/04

*Rep Weyrauch*  
*Co-p 102*

**CS FOR HOUSE BILL NO. 331( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to federal tax requirements for and other provisions of the teachers'  
2 retirement system, the public employees' retirement system, and the judicial retirement  
3 system; removing village public safety officers from the public employees' retirement  
4 system; eliminating the public employees' retirement system conditional duty to refund  
5 contributions under \$1,000 to inactive employees; limiting service credit for village  
6 public safety officer service in the public employees' retirement system to five years; and  
7 providing for an effective date."

8 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

9 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
10 to read:

11 **PURPOSE.** The purpose of this Act is to

12 (1) ensure that the teachers' retirement system, the public employees'  
13 retirement system, and the judicial retirement system continue to meet governmental plan

1 qualifications set by the Internal Revenue Service so that those plans may qualify for  
2 favorable federal tax treatment; and

3 (2) implement changes in those retirement systems so that members can take  
4 advantage of changes in federal tax laws and better plan their retirement.

5 \* Sec. 2. AS 14.25.010(b) is amended by adding a new subsection to read:

6 (c) An amendment to this chapter does not provide a person with a vested  
7 right to a benefit if the Internal Revenue Service determines that the amendment will  
8 result in disqualification of the plan under the Internal Revenue Code.

9 \* Sec. 3. AS 14.25.050(a) is amended to read:

10 (a) Except as provided in (c) of this section, beginning January 1, 1991, each  
11 member [TEACHER] shall contribute to the system an amount equal to 8.65 percent  
12 of the member's [TEACHER'S] base salary accrued from July 1 to the following  
13 June 30. The employer shall deduct the contribution from the member's  
14 [TEACHER'S] salary at the end of each payroll period, and the contribution shall be  
15 credited by the system to the member contribution account. The contributions  
16 shall be deducted from employee compensation before the computation of applicable  
17 federal taxes and shall be treated as employer contributions under 26 U.S.C. 414(h)(2).  
18 A member may not have the option of making the payroll deduction directly in cash  
19 instead of having the contribution picked up by the employer.

20 \* Sec. 4. AS 14.25.060(a) is amended to read:

21 (a) If a member first joined the system [SERVICE] before July 1, 1990, and  
22 has military service or Alaska Bureau of Indian Affairs (BIA) service, or if a member  
23 joined the system before July 1, 1978, and has creditable outside service, the member  
24 may claim this service. If the member claims the service, the member is indebted  
25 to the system as follows:

26 (1) at [AT] the time of first becoming a member of the system, the  
27 arrearage indebtedness is seven percent of the base salary multiplied by the total  
28 number of years of creditable outside, military, and Alaska BIA service; the [. THE]  
29 administrator shall add compound interest at the rate prescribed by regulation to the  
30 arrearage indebtedness beginning July 1, 1963, or at the time the member first  
31 becomes eligible to claim the service, whichever is later, to the date of payment or the

1 date of retirement, whichever occurs first; [.]

2 (2) if [IF] a member terminates from the system and is subsequently  
3 reemployed as a member, the arrearage indebtedness to the system for outside,  
4 military, or Alaska BIA service accumulated in the interim is seven percent of the base  
5 salary upon reentering membership service, multiplied by the number of years of  
6 interim outside, military, and Alaska BIA service; compound [. COMPOUND]  
7 interest at the rate prescribed by regulation shall be added to the arrearage  
8 indebtedness beginning July 1, 1963, or the date of reemployment as a member,  
9 whichever is later, to the date of payment or the date of retirement, whichever occurs  
10 first.

11 \* Sec. 5. AS 14.25.062 is amended to read:

12 Sec. 14.25.062. Reinstatement indebtedness. A member [TEACHER] who  
13 has received a refund of contributions in accordance with AS 14.25.150 forfeits  
14 corresponding credited service under this chapter. A member may elect to  
15 reinstate credited service associated with the refund by repaying the total amount  
16 of the refund. If an election is made under this section, an indebtedness [IS  
17 INDEBTED] to the system in the amount of the total refund shall be established.  
18 Compound interest at the rate prescribed by regulation shall be added to the  
19 reinstatement indebtedness from the date of the refund to the date of repayment or the  
20 date of retirement, whichever occurs first.

21 \* Sec. 6. AS 14.25.070 is amended to read:

22 Sec. 14.25.070. Contributions by employer. An employer shall contribute to  
23 the system an amount equal to the percentage, as certified by the administrator, of the  
24 sum total of the base salaries of all members [TEACHERS] that is required in  
25 addition to member [TEACHER] contributions to provide the benefits of this chapter  
26 times the sum total of the base salaries paid to members [TEACHERS], including any  
27 adjustments to contributions required by AS 14.25.173(a), by the employer.

28 \* Sec. 7. AS 14.25.075(a) is amended to read:

29 (a) An employee who is eligible to purchase credited service under  
30 AS 14.25.047 or 14.25.048, a member who is eligible to purchase credited service  
31 under AS 14.25.048, 14.25.050, 14.25.060 [AS 14.25.060], 14.25.061, 14.25.062,

1 [OR] 14.25.100, or 14.25.107, or a teacher who is eligible to purchase credited service  
2 under AS 14.20.345, AS 14.25.050, 14.25.062, or 14.25.105 [IS A MEMBER FOR  
3 PURPOSES OF THIS SECTION. A MEMBER], in lieu of making payments directly  
4 to the system, may elect to have the member's employer make payments as provided  
5 in this section.

6 \* Sec. 8. AS 14.25.075(b) is amended to read:

7 (b) A member may elect to have the employer make payments for all or any  
8 portion of the amounts payable for the member's purchase of credited service through  
9 a salary reduction program as follows:

10 (1) the amounts paid under a salary reduction program are in lieu of  
11 contributions by the member making the election; the electing member's salary or  
12 other compensation shall be reduced by the amount paid by the employer under this  
13 subsection [SECTION];

14 (2) the member shall make an irrevocable election under this  
15 subsection [SECTION] to purchase credited service as permitted in AS 14.20.345,  
16 AS 14.25.047, 14.25.048, 14.25.050, 14.25.060, 14.25.061, AS 14.25.062, 14.25.100,  
17 [OR] 14.25.105, or 14.25.107 before the member's termination of employment; the  
18 irrevocable election must specify the number of payroll periods that deductions will  
19 be made from the member's compensation and the dollar amount of deductions for  
20 each payroll period during the specified number of payroll periods; the deductions  
21 made under this paragraph cease upon the earlier of the member's termination  
22 of employment with the employer or the member's death; amounts paid by an  
23 employer under (f) of this section may not be applied toward the payment of the  
24 dollar amount of the deductions representing the portion of the credited service  
25 that is being purchased by the member through payroll deduction in accordance  
26 with the member's irrevocable election under this paragraph;

27 (3) [A MEMBER WHO MAKES AN ELECTION UNDER THIS  
28 SECTION TO HAVE THE EMPLOYER MAKE PAYMENTS FOR LESS THAN  
29 ALL OF THE AMOUNTS PAYABLE FOR THE MEMBER'S PURCHASE OF  
30 CREDITED SERVICE MAY SUBSEQUENTLY ELECT TO HAVE THE  
31 EMPLOYER MAKE PAYMENTS FOR ALL OR ANY PORTION OF THE

1           REMAINING AMOUNTS PAYABLE FOR THE MEMBER'S PURCHASE OF  
2           CREDITED SERVICE;

3                   (4)] amounts paid by an employer under this subsection [SECTION]  
4           shall be treated as employer contributions for the purpose of determining tax treatment  
5           under 26 U.S.C. (Internal Revenue Code); the amounts paid by the employer under  
6           this section may not be included in the member's gross income for income tax  
7           purposes until those amounts are distributed by refund or retirement benefit payments.

8   \* Sec. 9. AS 14.25.075(f) is amended to read:

9                   (f) The [TO THE EXTENT THAT A PAYMENT UNDER THIS SECTION  
10           DOES NOT ALTER, AMEND, OR REVOKE ANY ONE OR MORE CURRENTLY  
11           EFFECTIVE ELECTIONS MADE BY THE EMPLOYEE, THE] board may accept  
12           rollover [EMPLOYEE] contributions from a member, and direct transfers as  
13           described in the subsection, for the purchase, in whole or in part, of forfeited  
14           credited service under this section for the reinstatement, in whole or in part, of  
15           forfeited credited service under AS 14.25.062. Contributions made under this  
16           subsection may not be applied to purchase service being paid under (b) of this  
17           section. A rollover contribution or transfer as described in this subsection [,  
18           WHICH] shall [ALSO] be treated as employer contributions for the purpose of  
19           determining tax treatment under the Internal Revenue Code and may be made [, FOR  
20           THE PAYMENT FOR CREDITED SERVICE PURCHASES MADE UNDER THIS  
21           SECTION IN WHOLE OR IN PART,] by any one or a combination of the following  
22           methods:

23                   (1) subject to the limitations prescribed in [26 U.S.C. 401(a)(3) AND]  
24           26 U.S.C. 402(c), accepting eligible rollover distributions directly from one or more  
25           retirement programs of another employer that are qualified under 26 U.S.C. 401(a) or  
26           accepting rollovers directly from a member [AN EMPLOYEE];

27                   (2) subject to the limitations prescribed in 26 U.S.C. 408(d)(3)(A)(ii),  
28           accepting from a member [AN EMPLOYEE] conduit rollover contributions that are  
29           received by the member [EMPLOYEE] from one or more conduit rollover individual  
30           retirement accounts previously established by the member [EMPLOYEE];

31                   (3) subject to the limitations prescribed in 26 U.S.C. 403(b)(13),

1 accepting direct trustee-to-trustee transfers of all or a portion of the accounts of the  
2 member [EMPLOYEE], on or [AND] after January 1, 2002, from a tax sheltered  
3 annuity described in 26 U.S.C. 403(b);

4 (4) subject to the limitations prescribed in 26 U.S.C. 457(e)(17),  
5 accepting direct trustee-to-trustee transfers of all or a portion of the accounts of the  
6 member [EMPLOYEE], on or [AND] after January 1, 2002, from an eligible deferred  
7 compensation plan of a tax-exempt organization or a state or local government  
8 described in 26 U.S.C. 457(b);

9 (5) accepting direct trustee-to-trustee transfer from an account  
10 established for the benefit of the member in AS 39.30.150 - 39.30.180 (Alaska  
11 Supplemental Annuity Plan).

12 \* Sec. 10. AS 14.25.075(i) is amended to read:

13 (i) On satisfaction of the eligibility requirements of AS 14.20.345,  
14 AS 14.25.047, 14.25.048, 14.25.050, 14.25.060, 14.25.061, 14.25.062, 14.25.100,  
15 [OR] 14.25.105, or 14.25.107, the requirements of this section, and the administrative  
16 filing requirements specified by the board, the system shall adjust the member's  
17 credited service history and add any additional service credits acquired.

18 \* Sec. 11. AS 14.25.110(k) is amended to read:

19 (k) For system fiscal years beginning after December 31, 1975, and  
20 notwithstanding [NOTWITHSTANDING] any other provision of this chapter, the  
21 projected annual benefit provided by this chapter and the benefit from all other defined  
22 benefit plans required to be aggregated with the benefits from this system under the  
23 provisions of 26 U.S.C. 415 may not increase to an amount in excess of the amount  
24 permitted under 26 U.S.C. 415 at any time. In the event that any projected annual  
25 benefit of a member exceeds the limitation of 26 U.S.C. 415 for a limitation year, the  
26 system shall take any necessary remedial action to correct an excess accrued annual  
27 benefit. The provisions of 26 U.S.C. 415, and the regulations adopted under that  
28 statute, as applied to qualified defined benefit plans of governmental employers are  
29 incorporated as part of the terms and conditions of the system. This subsection applies  
30 to any member of this system.

31 \* Sec. 12. AS 14.25.165(h) is amended to read:

1 (h) Unless otherwise specified, the provisions of this section apply to calendar  
2 years beginning on or after January 1, 1983 [1989].

3 \* Sec. 13. AS 14.25.220(2) is amended to read:

4 (2) "actuarial adjustment" means the adjustment necessary to obtain  
5 equality in value of the aggregate expected payments under two different forms of  
6 pension payments, considering expected mortality and interest earnings on the basis of  
7 assumptions, factors, and methods specified in regulations issued under the  
8 system that are formally adopted under AS 14.25.022 by the board and that  
9 clearly preclude employer discretion in the determination of the amount of any  
10 member's benefit [TABLES REFERRED TO IN THE INFORMATION  
11 HANDBOOK PUBLISHED UNDER AS 14.25.030(5)];

12 \* Sec. 14. AS 14.25.220(42) is amended to read:

13 (42) "teacher" and [OR] "member" are used interchangeably under  
14 this chapter and mean [MEANS] a person eligible to participate in the system and  
15 who is covered by the system, limited to

16 (A) a certificated full-time or part-time elementary or  
17 secondary teacher, a certificated school nurse, or a certificated person in a  
18 position requiring a teaching certificate as a condition of employment in a  
19 public school of the state, the Department of Education and Early  
20 Development, or the Department of Labor and Workforce Development;

21 (B) a full-time or part-time teacher of the University of Alaska  
22 or a person occupying a full-time administrative position at the University of  
23 Alaska that requires academic standing; the approval of the administrator must  
24 be obtained before an administrative position qualifies for membership in the  
25 system; however, a teacher or administrative person at the university who is  
26 participating in the optional university retirement program under AS 14.40.661  
27 - 14.40.799 is not a member under this system;

28 (C) a state legislator who elects membership under  
29 AS 14.25.040(b);

30 \* Sec. 15. AS 22.25.011 is amended to read:

31 **Sec. 22.25.011. Contributions of judges and justices.** Each justice and

1 judge appointed after July 1, 1978, is a member under the judicial retirement  
2 system as of the date of the justice's or judge's appointment and shall contribute  
3 seven percent of the base annual salary received by the justice or judge to the judicial  
4 retirement system. Contributions shall be made for all creditable service under this  
5 chapter up to a maximum of 15 years. This contribution is made in the form of a  
6 deduction from compensation, at the end of each payroll period, and is made even if  
7 the compensation paid in cash to the justice or judge is reduced below the minimum  
8 prescribed by law. The contributions shall be deducted from the justice's or judge's  
9 compensation before the computation of applicable federal taxes and shall be treated  
10 as employer contributions under 26 U.S.C. 414(h)(2). A member may not have the  
11 option of making the payroll deduction directly in cash instead of having the  
12 contribution picked up by the employer. Each justice and judge is considered to  
13 consent to the deduction from compensation. Payment of compensation less the  
14 deduction constitutes a full discharge of all claims and demands for the services  
15 rendered by the justice or judge during the period covered by the payment, except as  
16 to the benefits provided for under this chapter. The contributions shall be credited to  
17 the judicial retirement fund established in accordance with AS 22.25.048.

18 \* Sec. 16. AS 22.25.012(a) is amended to read:

19 (a) An administrative director of the Alaska court system appointed under art.  
20 IV, sec. 16 of the state constitution is a member under the judicial retirement  
21 system as of the date of the administrative director's appointment and is entitled  
22 to retirement benefits under this chapter on the terms and conditions applicable to a  
23 superior court judge appointed after July 1, 1978, except that an administrative  
24 director may receive retirement benefits only with service as administrative director  
25 for 10 or more years.

26 \* Sec. 17. AS 22.25.025 is amended by adding a new subsection to read:

27 (b) An amendment to this chapter does not provide a person with a vested  
28 right to a benefit if the Internal Revenue Service determines that the amendment will  
29 result in disqualification of the plan under the Internal Revenue Code.

30 \* Sec. 18. AS 22.25.048(i) is amended to read:

31 (i) If the judicial retirement system is terminated,

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(1) a member whose contributions have not been refunded, regardless of the member's employment status at the date of the termination of the system, shall be considered fully vested in the member's adjusted accrued retirement benefits as of the date of the termination of the system; and

(2) if [IF, UPON TERMINATION OF THE SYSTEM,] all liabilities are satisfied, any excess assets arising from erroneous actuarial computation shall revert to the employer.

\* Sec. 19. AS 22.25.900(1) is amended to read:

(1) "actuarial equivalent" means the adjustment necessary to obtain equality in value of the aggregate expected payments under two different forms of pension payments, considering expected mortality and interest earnings on the basis of assumptions, factors and methods specified in regulations issued under the system that are formally adopted under AS 22.25.027 by the commissioner of administration that clearly preclude employer discretion in the determination of the amount of any justice's, judge's, or member's benefit [TABLES REFERRED TO IN THE INFORMATION HANDBOOK PUBLISHED UNDER AS 22.25.025];

\* Sec. 20. AS 39.35.010 is amended by adding a new subsection to read:

(d) An amendment to this chapter does not provide a person with a vested right to a benefit if the Internal Revenue Service determines that the amendment will result in disqualification of the plan under the Internal Revenue Code.

\* Sec. 21. AS 39.35.120 is amended to read:

**Sec. 39.35.120. Commencement of participation.** (a) An employee of the state shall be included in this system upon commencement of employment with the state, or on January 1, 1961, whichever is later. Unless an employee has elected to participate in the optional university retirement program under AS 14.40.661 - 14.40.799, an employee of a political subdivision or public organization that becomes an employer shall be included in the system on the effective date of the employer's participation or the date of the employee's commencement of employment with the employer, whichever is later. [UNLESS THE VILLAGE PUBLIC SAFETY OFFICER WAIVES COVERAGE UNDER AS 39.35.127, A VILLAGE PUBLIC SAFETY OFFICER EMPLOYED UNDER THE VILLAGE PUBLIC SAFETY

1 OFFICER PROGRAM ESTABLISHED IN AS 18.65.670 IS INCLUDED IN THIS  
2 SYSTEM ON THE EFFECTIVE DATE OF THIS BILL SECTION OR UPON THE  
3 OFFICER'S COMMENCEMENT OF EMPLOYMENT WITH THE EMPLOYER,  
4 WHICHEVER IS LATER.]

5 (b) Inclusion in the system is a condition of employment for an employee  
6 except as otherwise provided for

7 (1) an elected official;

8 (2) an employee making an election under AS 39.35.150(b); and

9 (3) an employee of the university who has elected to participate in the  
10 optional university retirement program under AS 14.40.661 - 14.40.799 [; AND

11 (4) A VILLAGE PUBLIC SAFETY OFFICER EMPLOYED BY A  
12 NONPROFIT REGIONAL CORPORATION AS SET OUT IN AS 39.35.127].

13 \* Sec. 22. AS 39.35.165(b) is amended to read:

14 (b) An employee may elect to have the employer make payments for all or any  
15 portion of the amounts payable for the employee's purchase of credited service  
16 through a salary reduction program as follows:

17 (1) the amounts paid under a salary reduction program are in lieu of  
18 contributions by the employee making the election; the electing employee's salary or  
19 other compensation shall be reduced by the amount paid by the employer under this  
20 subsection;

21 (2) the employee shall make an irrevocable election under this section  
22 to purchase credited service as permitted in AS 39.35.310, 39.35.330, 39.35.340,  
23 39.35.342, 39.35.345, 39.35.350, 39.35.360, 39.35.370, 39.35.375, or 39.35.381 and  
24 before the employee's termination of employment; the irrevocable election must  
25 specify the number of payroll periods that deductions will be made from the  
26 employee's compensation and the dollar amount of deductions for each payroll period  
27 during the specified number of payroll periods; the deductions made under this  
28 paragraph cease upon the earlier of the member's termination of employment  
29 with the employer or the member's death; amounts paid by an employer under  
30 (f) of this section may not be applied toward the payment of the dollar amount of  
31 the deductions representing the portion of the credited service that is being

1 purchased by the member through payroll deduction in accordance with the  
2 member's irrevocable election under this subsection;

3 (3) [AN EMPLOYEE WHO MAKES AN ELECTION UNDER THIS  
4 SECTION TO HAVE THE EMPLOYER MAKE PAYMENTS FOR LESS THAN  
5 ALL OF THE AMOUNTS PAYABLE FOR THE EMPLOYEE'S PURCHASE OF  
6 CREDITED SERVICE MAY SUBSEQUENTLY ELECT TO HAVE THE  
7 EMPLOYER MAKE PAYMENTS FOR ALL OR ANY PORTION OF THE  
8 REMAINING AMOUNTS PAYABLE FOR THE EMPLOYEE'S PURCHASE OF  
9 CREDITED SERVICE;

10 (4) amounts paid by an employer under this subsection [SECTION]  
11 shall be treated as employer contributions for the purpose of determining tax treatment  
12 under the Internal Revenue Code; the amounts paid by the employer under this section  
13 may not be included in the member's gross income for income tax purposes until those  
14 amounts are distributed by refund or retirement benefit payments.

15 \* Sec. 23. AS 39.35.165(f) is amended to read:

16 (f) The [TO THE EXTENT THAT A PAYMENT UNDER THIS SECTION  
17 DOES NOT ALTER, AMEND, OR REVOKE ANY ONE OR MORE CURRENTLY  
18 EFFECTIVE ELECTIONS MADE BY THE EMPLOYEE, THE] board may accept  
19 rollover [EMPLOYEE] contributions from a member and direct transfers, as  
20 described in this subsection, for the purchase, in whole or in part, of credited  
21 service for the reinstatement, in whole or in part, of forfeited credited service  
22 under AS 39.35.350. A rollover contribution or transfer as described in this  
23 subsection [, WHICH] shall also be treated as employer contributions for the purpose  
24 of determining tax treatment under the Internal Revenue Code and may be made [,  
25 FOR THE PAYMENT FOR CREDITED SERVICE PURCHASES MADE UNDER  
26 THIS SECTION IN WHOLE OR IN PART,] by any one or a combination of the  
27 following methods:

28 (1) subject to the limitations prescribed in 26 U.S.C. 401(a)(3) and 26  
29 U.S.C. 402(c), accepting eligible rollover distributions directly from one or more  
30 retirement programs of another employer that are qualified under 26 U.S.C. 401(a) or  
31 accepting rollovers directly from a member [AN EMPLOYEE];

1 (2) subject to the limitations prescribed in 26 U.S.C. 408(d)(3)(A)(ii),  
2 accepting from a member [AN EMPLOYEE] conduit rollover contributions that are  
3 received by the employee from one or more conduit rollover individual retirement  
4 accounts previously established by the member [EMPLOYEE];

5 (3) subject to the limitations prescribed in 26 U.S.C. 403(b)(13),  
6 accepting direct trustee-to-trustee transfers of all or a portion of the accounts of the  
7 member [EMPLOYEE], on or [AND] after January 1, 2002, from a tax sheltered  
8 annuity described in 26 U.S.C. 403(b);

9 (4) subject to the limitations prescribed in 26 U.S.C. 457(e)(17),  
10 accepting direct trustee-to-trustee transfers of all or a portion of the accounts of the  
11 member [EMPLOYEE], on or [AND] after January 1, 2002, from an eligible deferred  
12 compensation plan of a tax-exempt organization or a state or local government  
13 described in 26 U.S.C. 457(b);

14 (5) accepting direct trustee-to-trustee transfer from an account  
15 established for the benefit of the member in AS 39.30.150 - 39.30.180 (Alaska  
16 Supplemental Annuity Plan).

17 \* Sec. 24. AS 39.35.200(b) is amended to read:

18 (b) [IF, UPON TERMINATION OF EMPLOYMENT, AN EMPLOYEE  
19 HAS CREDITED SERVICE OF LESS THAN FIVE YEARS AND HAS LESS  
20 THAN \$1,000 IN THE EMPLOYEE CONTRIBUTION ACCOUNT, A REFUND OF  
21 THE EMPLOYEE CONTRIBUTION ACCOUNT MUST BE MADE UNLESS THE  
22 EMPLOYEE INDICATES IN WRITING THAT FUTURE RETIREMENT IS  
23 INTENDED AND CONTRIBUTIONS SHOULD NOT BE REFUNDED.] An  
24 employee who is reemployed with an employer and whose contributions have not  
25 been refunded before reemployment is not eligible for a refund.

26 \* Sec. 25. AS 39.35.342(a) is amended to read:

27 (a) A [EXCEPT FOR EMPLOYMENT FOR WHICH THE EMPLOYEE  
28 WAIVED COVERAGE UNDER AS 39.35.127, A] vested employee is entitled to  
29 credited service for employment as a village public safety officer under the program  
30 established under AS 18.65.670 for which the employee has not otherwise received  
31 credited service under this system. An employee is not entitled to credited service for

1 employment as a village public safety officer unless the employee was employed as a  
2 village public safety officer for at least one year. The credited service claimed  
3 under this section may not exceed five years. Benefits are not payable on credited  
4 service for village public safety officer service under this section unless the employee  
5 makes retroactive contributions to the system for the period of time that service credit  
6 is claimed.

7 \* Sec. 26. AS 39.35.370(i) is amended to read:

8 (i) For system fiscal years beginning after December 31, 1975, and  
9 notwithstanding [NOTWITHSTANDING] any other provision of this chapter, the  
10 projected annual benefit provided by this chapter and the benefit from all other defined  
11 benefit plans required to be aggregated with the benefits from this system under the  
12 provisions of 26 U.S.C. 415 may not increase to an amount in excess of the amount  
13 permitted under 26 U.S.C. 415 at any time. In the event that any projected annual  
14 benefit of a member exceeds the limitation of 26 U.S.C. 415(g) for a limitation year,  
15 the system shall take any necessary remedial action to correct an excess accrued  
16 annual benefit. The provisions of 26 U.S.C. 415, and the regulations adopted under  
17 that statute, as applied to qualified defined benefit plans of governmental employers  
18 are incorporated as part of the terms and conditions of the system. This subsection  
19 applies to any member of this system.

20 \* Sec. 27. AS 39.35.371(h) is amended to read:

21 (h) Unless otherwise specified, the provisions of this section apply to calendar  
22 years beginning on or after January 1, 1983 [1989].

23 \* Sec. 28. AS 39.35.680(2) is amended to read:

24 (2) "actuarial adjustment" means the adjustment necessary to obtain  
25 equality in value of the aggregate expected payments under two different forms of  
26 pension payments, considering expected mortality and interest earnings on the basis of  
27 assumptions, factors and methods specified in regulations issued under this  
28 system that are formally adopted under AS 39.35.042 by the board that clearly  
29 preclude employer discretion in the determination of the amount of any  
30 member's benefit [TABLES REFERRED TO IN THE INFORMATION  
31 HANDBOOK PUBLISHED UNDER AS 39.35.060(8)];

1 \* Sec. 29. AS 39.35.680(17) is amended to read:

2 (17) "employer" means

3 (A) the State of Alaska; or

4 (B) [A NONPROFIT REGIONAL CORPORATION, BUT  
5 ONLY WITH RESPECT TO VILLAGE PUBLIC SAFETY OFFICERS  
6 EMPLOYED BY THE CORPORATION UNDER AS 18.65.670 WHO HAVE  
7 NOT TERMINATED PARTICIPATION IN THE SYSTEM UNDER  
8 AS 39.35.127; OR

9 (C)] a political subdivision or public organization of the state  
10 that participates in the system;

11 \* Sec. 30. AS 18.65.670(d); AS 39.35.127, and 39.35.285 are repealed.

12 \* Sec. 31. The uncodified law of the State of Alaska enacted in sec. 49, ch. 59, SLA 2002,  
13 is amended by adding a new subsection to read:

14 (f) Notwithstanding AS 14.25.177 and AS 39.35.547, the following provisions  
15 of this Act are retroactive to January 1, 1993:

16 (1) AS 14.25.163, enacted by sec. 9 of this Act;

17 (2) AS 22.25.022, enacted by sec. 19 of this Act;

18 (3) AS 39.35.195, enacted by sec. 32 of this Act.

19 \* Sec. 32. Section 48, ch. 59, SLA 2002, is repealed.

20 \* Sec. 33. The uncodified law of the State of Alaska is amended by adding a new section to  
21 read:

22 REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the  
23 catchline for

24 (1) AS 14.25.050 from "Contributions by teachers" to "Contributions of  
25 members";

26 (2) AS 39.35.546 from "Tax exemption" to "State and federal taxation of  
27 benefits."

28 \* Sec. 34. This Act takes effect immediately under AS 01.10.070(c).

# STATE OF ALASKA

## DEPARTMENT OF ADMINISTRATION

### DIVISION OF RETIREMENT AND BENEFITS

FRANK H. MURKOWSKI, GOVERNOR

PO BOX 110203  
JUNEAU, AK 99811-0203  
TDD: (907) 465-2805  
FAX: (907) 465-3086  
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March 29, 2004

The Honorable Bruce Weyhrauch  
House State Affairs Committee  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

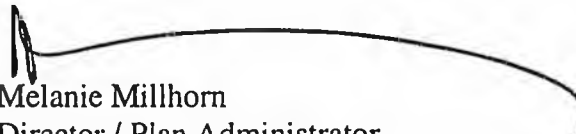
RE: Committee Substitute for House Bill 331  
Federal requirements related to retirement system plan qualification

Dear Mr. Chair:

The Committee Substitute for House Bill No. 331 places into law those changes to the statutes of the Alaska Public Employees' System, Alaska Teachers' Retirement System, and the Alaska Judicial Retirement System that are required as result of a detailed review of each plan by the Internal Revenue Service. These changes must be implemented so that all three plans remain proper qualified plans under the Internal Revenue Code.

The changes in the original bill and this Committee Substitute do not add new benefits that have not been provided for previously. It also does not increase costs to the state, political subdivisions, and school districts, if the legislation is adopted in the form submitted.

Sincerely,

  
Melanie Millhorn  
Director / Plan Administrator

MAM/mm

#### Attachments

Fiscal Note CSHB 331  
Sectional Analysis  
CS for House Bill No. 331 (STA)

cc: Ray Matiashowski  
Deputy Commissioner

Kevin Jardell  
Assistant Commissioner

Anselm Staack  
Chief Financial Officer

Sectional Analysis  
2004 Session Committee Substitute for HB 331 – CSHB 331 ( )

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.

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSHB 331  
 ( ) Publish Date: \_\_\_\_\_

Committee Substitute for HB 331  
 Revision Date/Time (Note if correction): 3/28/2004 08:00 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**CAPITAL EXPENDITURES**

**CHANGE IN REVENUES ( )**

**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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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**

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.

**IMPORTANT NOTE:** The present version of HB 331, dated 5/21/03, requires certain revisions and additions to include IRS changes that were received after the date of the bill's initial introduction. Such changes were expected.

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, Director / Anselm Staack, CFO Phone 465-4408  
 Division Retirement and Benefits Date/Time 4/2/04 1:49 PM  
 Approved by: Ray Matashowski, Deputy Commissioner Date 4/2/2004  
 Agency Administration

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 331  
 (H) Publish Date: 5/21/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title An Act relating to federal require- BRU Centralized Admin Services  
ments for governmental plan qualification... Component Retirement & Benefits  
 Sponsor Rules  
 Requester Governor Component No. 64

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 This bill makes technical corrections to the Public Employees', Teachers', and Judicial Retirement Systems to bring them into compliance with provisions of the Internal Revenue Code. The bill has no fiscal impact on the State of Alaska or any other employer participating in these systems.

Prepared by: Guy Bell Phone \_\_\_\_\_  
 Division Retirement & Benefits Date/Time May 20, 2003  
 Approved by: Mike Miller Date May 20, 2003  
 Agency Department of Administration

FRANK H. MURKOWSKI  
GOVERNOR  
GOVERNOR@GOV.STATE.AK.US



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

HB331  
P.O. Box 110001  
JUNEAU, ALASKA 99811-0001  
(907) 465-3500  
FAX (907) 465-3532  
WWW.GOV.STATE.AK.US

May 20, 2003

The Honorable Pete Kott  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, AK 99801-1182

Dear Speaker Kott:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to federal requirements for governmental plan qualifications for the teachers' retirement system, the public employees' retirement system, and the judicial retirement system, as required by the federal Internal Revenue Service.

This bill also would further implement changes that allow retirement system members to selectively transfer pre-tax money, or make additional contributions, to repay indebtedness and to purchase permissible service credits in the Alaska retirement systems. These changes would allow members to better plan their retirement and to make their financial future more secure. Taking advantage of such tax law provisions would strengthen the retirement systems in a cost-effective manner.

Sincerely,

A handwritten signature in cursive script that reads "Frank H. Murkowski".

Frank H. Murkowski  
Governor

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

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

RECEIVED

AUG 19 2003

Div. of Ret. & Benefits

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 as a governmental plan under §414(d) of the Internal Revenue Code ("the Code") will be 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.

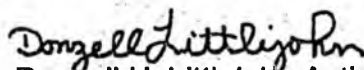
Thus, we conclude that the K Corporation(s) is not an agency or instrumentality of the State or a political subdivision thereof. Accordingly, as for the first ruling requested, we find that the inclusion in Plan X of Community Officers, who are employees of a K Corporation which does not qualify as an 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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