

SCOMM

137:21

4.6.05

FURTHER REFERRALS: (HES
State Affairs

HB 161

REEMPLOYMENT OF RETIREES

Recommends it be replaced with ☐ HCS or ☒ CS for House Bill 161 (Edu)
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

[illegible]

Signing with recommendations	Printed Last Name	DP (1)	DNP	NR (5)	AM (1)
<i>[Signature]</i>	Garcia				
<i>Wanda Wilson</i>	Seelmon			✓	
<i>Peggy Wilson</i>	Gatto			✓	
<i>[Signature]</i>	Wilson				✓
<i>[Signature]</i>	Thomas	✓			
<i>[Signature]</i>	Lynn			X	
Chair: <i>[Signature]</i>	Neuman			✓	
Chair:					

ALASKA STATE LEGISLATURE

INTERIM

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Ketchikan, Alaska 99901
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SESSION

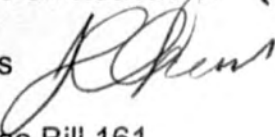
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REPRESENTATIVE JIM ELKINS

MEMORANDUM

February 23, 2005

To: Representative Mark Neuman, Chairman
House Special Committee on Education

From: Representative Jim Elkins 

Subject: Hearing Request for House Bill 161

I respectfully request House Bill 161, extending the sunset date for the rehire of retired PERS and TRS members, be scheduled for a hearing at the earliest possible date.

Attached please find the sponsor statement and a copy of the legislation.

I have requested letters of support from various PERS and TRS employers from within my district.

Thank you.

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REPRESENTATIVE JIM ELKINS

MEMORANDUM

February 24, 2005

To: Representative Mark Neuman, Chairman
House Special Committee on Education

From: Representative Jim Elkins

Subject: House Bill 161

This bill will soon come before your committee and will extend the sunset date for the rehire of retired PERS and TRS members to July 1, 2009.

With the retirement of the "baby boomers", Alaska will face a critical shortage of qualified workers. House Bill 161 provides Human Resource managers with a tool to retain workers for hard-to-fill positions.

I have enclosed a copy of my Sponsor Statement and request your support of this important legislation.

Thank you.



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REPRESENTATIVE ELKINS

Sponsor Statement

House Bill 161 extends the sunset date of legislation enacted by HB 242 (2001) and SB 94 (2003) to **July 1, 2009**. This legislation allows certain PERS and TRS members who retired with a normal retirement to return to work, continue to receive normal retirement benefits, and waive participation in the retirement systems if the employee:

- Is a retired teacher hired under the "teacher shortage" program (AS 14.20.135)
- Is a retired public employee who retired under normal retirement.
- Is an individual who retired under the Retirement Incentive Program and is subsequently re-employed as a commissioner
 - Relieves commissioners of the requirement to refund incentive credit and re-employment indebtedness.

During this period of employment, no contributions are required from the employer or the employee. The current legislation under HB 242 (2001) and SB 94 (2003) is scheduled to sunset on July 1, 2005.

According to a report issued on February 10th by the Department of Administration, Division of Retirement and Benefits entitled **Results of the Retiree Return Program**, the following information was noted:

Testimony in 2001 on HB 242 in the House State Affairs Committee, stated that in the years 2008-2009, a large portion of the "baby boomers" were scheduled to retire en masse, creating a large void in the state work force. Some of the shortages would be critical, such as in education and law enforcement. Other testimony indicated:

- Alaska has needed to recruit 12,000 to 13,000 new teachers each year but at the largest job fair that year there were less than 300 applicants.
- Employers would have the opportunity to offer less salary to returning retirees.
- HB 242 was a component of a workforce development initiative that the state and a number of other employers undertook to address workforce shortages already being experienced.

An analysis of the TRS Rehire Program contained in the report shows that between July 1, 2001 and November 30, 2004 a total of 187 waivers were received, 56% of all TRS employers participated in the program and as of November 30, 2004 a total of 124 retirees were still working.

On the PERS side, between July 1, 2001 and November 30, 2004 a total of 297 waivers were received, 21% of all PERS employers participated in the program and as of November 30, 2004 211 retirees were still working.

Mr. Chairman, as of November 30, 2004 a total of 335 retirees were employed statewide under the current legislation. It provides Human Resources managers with an excellent tool to retain workers for hard to fill positions and we urge passage of this extension.

24-LS0645\G
Craver
4/5/05

CS FOR HOUSE BILL NO. 161(EDU)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON EDUCATION

Offered:

Referred:

Sponsor(s): REPRESENTATIVE ELKINS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to reemployment of and benefits for retired teachers and public
2 employees and to teachers or employees who participated in retirement incentive
3 programs and are subsequently reemployed as a commissioner; repealing secs. 5, 7, and
4 9, ch. 58, SLA 2001; providing for an effective date by amending the delayed effective
5 date for secs. 3, 5, 9, and 12, ch. 57, SLA 2001, and repealing sec. 13, ch. 58, SLA 2001,
6 which is the delayed effective date for secs. 5, 7, and 9, ch. 58, SLA 2001; and providing
7 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 **FINDINGS AND INTENT.** (a) The legislature finds that provisions of ch. 57, SLA
12 2001, ch. 58, SLA 2001, and ch. 15, SLA 2003 that provide for the reemployment of certain
13 retired members of the teachers' and public employees' retirement systems provide a valuable

1 tool for school districts and public employers to manage workforce shortages, especially in
2 teaching positions and job classes that require specialized knowledge and skills.

3 (b) The legislature also finds that school districts and public employers must plan to
4 meet their future workforce needs without reliance on retired workers. In extending the
5 termination date of the reemployment provisions, it is the intent of the legislature to allow
6 school districts and public employers to continue to use this management tool, while
7 developing plans that address the knowledge, skills, and abilities that need to be transferred or
8 developed to assure the work can be accomplished when the reemployment provisions
9 terminate. It is the intent of the legislature that all participation in the retiree reemployment
10 provisions by employers and reemployed retirees will end on July 1, 2009, unless that date is
11 extended by law.

12 (c) It is the intent of the legislature that employers that benefit from the provisions of
13 the retiree reemployment provisions pay any increase in unfunded liability that results to the
14 retirement systems.

15 * Sec. 2. AS 14.25.043(a) is amended to read:

16 (a) If a retired member again becomes an active member, benefit payments
17 may not be made during the period of reemployment [UNLESS THE TEACHER
18 MAKES AN ELECTION UNDER (b) OR (e) OF THIS SECTION]. The retirement
19 benefit must be suspended for the entire school year if the teacher is reemployed as an
20 active teacher for a period equivalent to a year of service. During the period of
21 reemployment, [THE MEMBER IS SUBJECT TO AS 14.25.050, AND] deductions
22 from the member's salary will be made in accordance with AS 14.25.050.

23 * Sec. 3. AS 14.25.070 is amended by adding a new subsection to read:

24 (b) If the administrator determines that reemployment of a retired teacher
25 under the authority of AS 14.20.135 results in an increase in the unfunded liability of
26 the system, the administrator shall include the base salary of the reemployed teacher in
27 the determination of the amount of contributions due from the employer of the
28 reemployed teacher to the extent determined by the administrator as necessary to pay
29 the liability.

30 * Sec. 4. AS 39.35.270 is amended by adding a new subsection to read:

31 (b) If the administrator determines that reemployment of a retired member

1 under AS 39.35.150(b) results in an increase in the unfunded liability of the system,
2 the administrator shall include the base salary of the reemployed member in the
3 determination of the amount of contributions due from the employer of the
4 reemployed member to the extent determined by the administrator as necessary to pay
5 the liability.

6 * **Sec. 5.** Section 12, ch. 57, SLA 2001, as amended by sec. 6, ch. 15, SLA 2003, is
7 amended to read:

8 Sec. 12. AS 14.20.135; AS 14.25.043(b), 14.25.043(e), added by sec. 3, ch.
9 15, SLA 2003 [OF THIS 2003 ACT]; AS 39.35.120(b)(2), 39.35.150(b), as amended
10 by sec. 4, ch. 15, SLA 2003 [OF THIS 2003 ACT], and 39.35.150(c) are repealed
11 July 1, 2009 [2005].

12 * **Sec. 6.** The uncoded law of the State of Alaska enacted in sec. 13, ch. 57, SLA 2001, is
13 amended to read:

14 Sec. 13. REPORT TO LEGISLATURE. Annually, beginning in 2002 and
15 ending in 2010 [2006], the administrator of the teachers' retirement system shall report
16 to the legislature by the 30th day of the regular legislative session concerning the
17 effect of this Act, as amended, on the retirement system.

18 * **Sec. 7.** AS 14.25.070(b) and AS 39.35.270(b) are repealed July 1, 2009.

19 * **Sec. 8.** Sections 5, 7, and 9, ch. 58, SLA 2001, are repealed.

20 * **Sec. 9.** The uncoded law of the State of Alaska is amended by adding a new section to
21 read:

22 **CONDITIONAL RETROACTIVITY.** If secs. 5, 8, and 10 of this Act take effect after
23 July 1, 2005, secs. 5, 8, and 10 of this Act are retroactive to July 1, 2005.

24 * **Sec. 10.** Section 15, ch. 57, SLA 2001, is amended to read:

25 Sec. 15. Sections 3, 5, 9, and 12 of this Act take effect July 1, 2009 [2005].

26 * **Sec. 11.** Section 13, ch. 58, SLA 2001, is repealed.

27 * **Sec. 12.** Section 2 of this Act takes effect July 1, 2009.

28 * **Sec. 13.** Except as provided in sec. 12 of this Act, this Act takes effect immediately under
29 AS 01.10.070(c).

DISTRICT OFFICE
BERING STRAIT SCHOOL DISTRICT

P.O. BOX 225
UNALAKLEET, ALASKA 99684-0225
(907) 624-3611
(907) 624-3099 FAX
<http://www.bssd.org>

11 February 2005

Honorable Governor Frank Murkowski
State Capitol Building
Juneau AK 99811

Re: HB 242 (AS14.20.135) Retired/Rehired

BREVIG MISSION

Dear Governor Murkowski:

DIOMEDE

ELIM

GAMBELL

GOLOVIN

KOYUK

SAINT MICHAEL

SAVOONGA

SHAKTOOLIK

SHISHMAREF

STEBBINS

TELLER

UNALAKLEET

WALES

WHITE MOUNTAIN

HB 242 (retired/rehired) is scheduled to expire at the end of this fiscal year. This provision has allowed Alaskans who have retired the opportunity to continue working in their given profession as "employed retirees". For many years, Alaskans have retired early and sought employment out of state. School districts both large and small as well as other state agencies have used this option to fill needed vacancies. Alaska Association of School Administrators (AASA) firmly believes that Alaska is well served by keeping such experienced professionals in our state.

AASA has two primary concerns with the possible expiration of HB 242. The legislation has been successful in assisting school districts and state agencies in filling important vacancies. HB 242 has worked. Districts have been able to attract and keep capable educators. While the number of persons exercising this option has not been large, those individuals have been important to the organizations that have hired them.

The second issue of concern is that participating employees and districts where initially assured that the status of employees in the program would remain unchanged after HB 242 expired, provided they maintained continuous employment with the same district. Participating employees made life choices and retirement choices based on that information. School districts planned their staffing and budgets based on that information. Recently, the AG's office has written an opinion that states this will not be the case. Without affirmative action to extend HB 242, all current participants would either need to return to retirement or lose their retired/rehired status.

The AASA supports the reauthorization of HB 242 as currently written. HB 242 is one additional tool that schools have to attract talented and experienced Alaskans who have much to contribute. Our hope is that your office will support extending HB 242 indefinitely.

Sincerely,



John A. Davis, Ed.D.
President
Alaska Association of School Administrators

AS14.20.135 THE REHIRED ANNUITANT LAW – A COST SAVINGS MEASURE FOR ALASKA SCHOOLS

AS14.20.135, the **rehired annuitant law**, has some real promise as a **cost cutting measure** for schools. In districts suffering from heavy turnover, lack of qualified applicants, or occasional shortages in hard to fill positions, employees may retire and be hired back by the school system. The hiring only takes place if the school board has passed a resolution declaring a shortage of applicants in that field. The benefit to the school district is the elimination of TRS and perhaps medical insurance. The cost to the district and the employee is FICA or social security. When an employee opts out of the TRS, they must be enrolled in social security. Most PERS employees are already on social security.

At first look it appears that dropping out of the retirement system would be detrimental to the TRS. **However, according to Deputy Commissioner Brooks of the Dept of Administration, the bill causes only minor costs to the retirement program.**

An average teacher exercising this option could save a school district up to \$15,000 in the first year. With retirement rates rising, the savings would grow each year. Bering Strait School District has over twenty employees eligible next year. If all eligible opted for this provision, the savings would be roughly \$300,000 the first year. With TRS and PERS rates rising, this is an opportunity to mitigate those increased costs.

Bering Strait is only one of many employers who find the statute an **excellent way to retain highly experienced employees** whose talents would otherwise be lost to the state. Over half of the school districts are currently participating in the program.

SSSB24 was introduced in support of the program. We feel that it is an **excellent cost reduction measure**. It is **not a drain on the state or the retirement system**, and it provides a **strong incentive for experienced employees to stay with schools a few extra years**. **We strongly encourage your support for SSSB24.**

Prepared by the Bering Strait School District
P.O. Box 225
Unalakleet, AK 99684
Dr. John A. Davis, Superintendent

Detail of Number of Retirees Rehired by Each TRS Employer

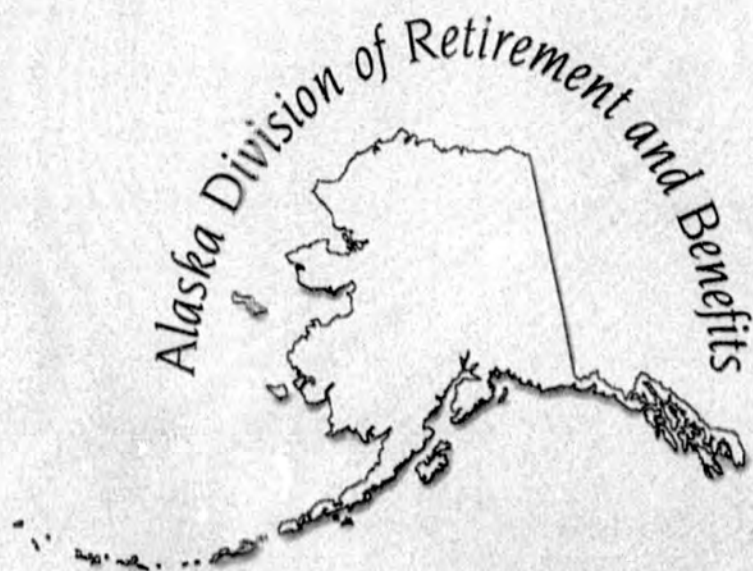
Participating School Districts	Employment Waivers Issued	EE Employed as of 11/30/04
Alaska Gateway	1	1
Aleutian Region	1	1
Anchorage	65	37
Bering Straits	5	7
Bristol Bay	3	3
Copper River	5	1
Craig	1	0
Delta Greely	1	1
Denali Borough	1	1
Dillingham	1	1
Hoonah	2	1
Hydaburg	2	0
Iditarod	5	2
Juneau City and Borough	2	2
Kashunimiut	1	1
Ketchikan Gateway Borough	3	3
Klawock	1	1
Kuspuck	1	1
Lake and Peninsula	3	1
Lower Kuskokwim	45	38
Lower Yukon	2	2
Mat-Su	10	3
Nenana City Schools	1	1
North Slope Borough	8	5
Northwest Arctic Borough	3	3
Pribilof	1	1
Sitka	4	3
St. Mary's	2	1
Southwest Region	1	1
Tanana	1	0
Wrangell	2	1
Yukon Flats	3	0
Yukon -Koyukuk	3	0
	187	124

TWENTY EIGHT RURAL SCHOOL DISTRICTS HAVE USED THE RETIRE / REHIRE PLAN TO HELP MEET STAFFING NEEDS AND BALANCE THEIR BUDGETS.

Alaska Legislative Report

Results of the Retiree Return Program

Enacted by HB 242/SB 149 in 2001 on
The Public Employees' Retirement System and
The Teachers' Retirement System



February 2005

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**ALASKA LEGISLATURE REPORT
RESULTS OF THE RETIREE RETURN PROGRAM
ENACTED BY HB 242/SB 149 IN 2001 ON
THE PUBLIC EMPLOYEES' AND TEACHERS' RETIREMENT SYSTEMS**

HB 242 Background

In 2001 the Twenty-First Legislature enacted HB 242, which, among other things, amended the statutes to allow certain Public Employees' (PERS) and Teachers' Retirement System (TRS) members who retired with a normal retirement to return to work, continue to receive normal retirement benefits, and waive participation in the retirement systems.¹ Once participation was waived, no contributions were required from the employer or the employee. This legislation is scheduled to sunset on July 1, 2005. Prior to the passage of this legislation members who retired and then reemployed in a PERS or TRS participating position would have their retirement benefit stopped during the period of reemployment. The member would accrue an additional pension benefit for the second period of employment.

HB 242 was introduced April 17, 2001 in House State Affairs Committee. In his introduction to the bill, Roger Wortman, Staff to Representative Pete Kott, Alaska State Legislature, noted that baby boomers were about to retire en masse in the years 2008-2009. This would leave a big void in the state work force. Some of those shortages would be critical, such as in education and law enforcement. He explained that HB 242 provided a "carrot" to retain employees after they are eligible to retire.

Other testimony at the hearing indicated:

- HB 242 was a component of a workforce development initiative that the state and a number of other employers undertook in an effort to address workforce shortages already being experienced.
- Employers would have the opportunity to offer less salary to returning retirees.
- The ability to rehire experienced teachers would be a tremendous asset to every school district.
- Alaska has needed to recruit 12,000 to 13,000 new teachers each year but at the largest job fair that year there were fewer than 300 applicants.

Testimony at the House Finance Committee on April 23, 2001 added the following:

- Concern was expressed on the affect on entry-level workforce. New graduating teachers could lose in the choice between experienced retired teachers.
- A 3-year sunset (later amended to 5 years) was proposed to allow assessment of any unintended consequences of the program.
- Alaska is only producing 20-30 percent of the teachers needed to fill its teaching positions. This is not sufficient to meet the need.
- Department of Fish and Game had lost 25 biologists in their commercial fish division within 6 months to jobs with the federal government. The retiree return program would allow them to keep some of these employees.
- The Municipality of Anchorage testified to a "brain drain" as employees leave the municipality and 25% of their police officers were eligible for retirement. Retention of these employees was important to them.

¹ AS 14.25.040; AS 14.25.043; AS 39.35.120; AS 39.35.150

SB 149 Background

A similar bill affecting the Teachers' Retirement System (TRS) was SB 149. Testimony was taken on this bill at a Senate Health, Education and Social Services Committee meeting on April 20, 2001. Besides not including members of the Public Employees' Retirement System (PERS), SB 149 also required an annual report be sent to the Legislature regarding the impact of the reemployment of retired teachers on the retirement programs. A copy of HB 242 and SB 149 is included with this report.

Reporting

This report comprises a summary of the waiver activity since the Retiree Return program became effective on July 1, 2001 to the last reporting period, November 30, 2004 for both the TRS and, although not required, for the PERS.

TRS Results

During the course of the Retiree Return program, 56% of all TRS employers have participated and 187 waivers were filed with the Division of Retirement and Benefits. As of November 30, 2004, there are 124 individuals who remain employed under the waiver provisions. The largest number of retirees rehired within 30-90 days of their termination and retirement (42%). The second largest number of returned retirees were those who had been retired for 24 or more months (38%). The largest number of positions rehired was general teachers with the second highest being Special Education teachers.

Analysis by Mercer Human Resource Consulting, the TRS actuaries, indicate the following impact on the TRS as a result of the 124 returned retirees and the potential effect if more retirees were to return:

Number of Members Electing the Waiver	Increase in Average TRS Employer Contribution Rate
100 Members	.02%
500 Members	.10%
1,000 Members	.20%

Total TRS salaries as of the last valuation on June 30, 2003 was \$532,630,000.00. The liability to the TRS fund would be:

TRS Salaries	Contribution Rate Increase	Liability to the TRS Fund
\$532,630,000.00	.02%	\$106,526.00
\$532,630,000.00	.10%	\$532,630.00
\$532,630,000.00	.20%	\$1,065,260.00

Additional information regarding the employers that have participated in the program and how they have participated is included in the statistical section of this report.

PERS Results

During the period of the retiree return program, 26% of PERS employers have participated in the program with a total of 297 waivers filed with the Division of Retirement and Benefits. As of November 30, 2004, there are 211 retirees still employed under the waiver provision.

The largest number of retirees rehired within 30-90 days of their termination and retirement (46%). The second largest number of returned retirees were those who had been retired for 24 or more months (28%). The largest number of positions rehired was Biologists and the second highest position rehired was Engineers.

Analysis by Mercer Human Resource Consulting, the PERS actuaries, indicate the following impact on the PERS fund as a result of the 211 returned retirees and the potential effect if more retirees were to return:

Number of Members Electing the Waiver	Increase in Average PERS Employer Contribution Rate
100 Members	negligible
500 Members	.01%
1,000 Members	.02%

Total PERS salaries as of the last valuation on June 30, 2003 were \$1,460,783,000.00. The liability to the PERS fund would be:

PERS Salaries	Contribution Rate Increase	Liability to the PERS Fund
\$1,460,783,000.00	negligible	\$--
\$1,460,783,000.00	.01%	\$146,078.30
\$1,460,783,000.00	.02%	\$292,156.60

Additional information regarding the PERS employers that have participated in the program and detailed information regarding the type of positions rehired is included in the statistical section of this report.

Cost Savings

The main cost savings experienced by employers using HB 242 reside in the payment of employer contributions. When a qualified retiree rehires and waives participation in the PERS or TRS, no employer contributions are paid to either the PERS or the TRS. In some cases, municipalities have negotiated with employee unions not to provide health insurance benefits to rehired retirees since they are covered under the AlaskaCare Retiree Health Plan. This results in further savings to employers.

HB 242 did not contain a requirement for employers to report cost savings realized from hiring positions at lower salary level. The State of Alaska Division of Personnel, however, prepared a report that contained some limited information that can be included here.

As of August 17, 2004, the Division of Personnel reported 123 active State of Alaska employees working under the waiver program. Of these, 78 returned to work in a position at a salary lower than the salary they earned prior to their retirement. 22 retirees returned to a position at the same salary and 23 returned to a position at a higher salary. Of the 23 that returned to a position at a higher salary range, all but 2 had been retired between 1 and 4 years.

Sunset Provision

On September 14, 2004 the Division of Retirement and Benefits received an Attorney General Opinion regarding the employment status of returned retirees as of the sunset date of the legislation. The opinion states that once the reemployment amendments to the PERS and TRS statutes sunset on July 1, 2005, reemployed retirees can no longer receive retirement benefits while employed by a PERS or TRS employer. If they continue employment with a PERS or TRS employer, they must begin making contributions to the retirement systems and have their retirement benefits stopped.

A copy of the Attorney General opinion is included in this report.

MERCER

Human Resource Consulting

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Seattle, WA 98101-3137
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www.mercerHR.com

RECEIVED

SEP 07 2004

September 2, 2004

Div. of Ret. & Benefits

Ms. Melanie Millhorn
Director of Retirement and Benefits
State of Alaska
Department of Administration
Division of Retirement and Benefits
P.O. Box 110203
Juneau, AK 99811-0203

Subject:

Retiree Return under HB 242/SB 149

Dear Melanie:

As you described in your August 10 email, the legislation enacted in July of 2001 allows PERS and TRS retirees who retired under the normal retirement provisions to return to covered employment. Such retirees can sign an irrevocable waiver allowing the member to continue to receive his or her retirement benefit. Neither the employer nor the employee makes further contributions to the Retirement System. In your email you asked for an indication of the effect of this election on System funding. The chart that follows might help to illustrate this issue:

Number of Members Electing the Waiver	Increase in Average PERS Employer Contribution Rate	Increase in Average TRS Employer Contribution Rate
100	negligible	0.02%
500	0.01%	0.10%
1,000	0.02%	0.20%

A member who elects the waiver earns no additional benefits from the Retirement System. Therefore, such a member has no "normal cost" and there is no normal cost rate. However, a portion of the employer contribution for each member is needed to amortize the Systems' unfunded past service liability. This portion is referred to as the "past service rate." When a member elects the waiver, the payroll base that can be used to amortize the unfunded liability is reduced. A higher past service rate must be applied to the remaining payroll to arrive at the same payment towards the unfunded liability.

MERCER

Human Resource Consulting

RECEIVED

SEP 07 2004

Div. of Ret. & Benefits

Page 2

September 2, 2004

Ms. Melanie Millhorn

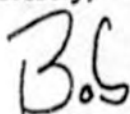
State of Alaska

The waivers have a greater impact on employer rates for TRS than PERS. This is because (1) the total payroll for PERS is higher so the loss of one member's contribution to the unfunded has a smaller impact and (2) the current past service rate for TRS is almost twice as high as PERS. Our analysis is extremely dependent on the current funded status of the Systems. For example, if the Systems were 100 percent funded and remained so, the waiver would have virtually no impact on employer rates.

We based our analysis on actuarial valuation information as of June 30, 2003. We assumed annual earnings for returning retirees of \$46,000 for PERS and \$64,000 for TRS. This is based on the average annual earning of current active PERS and TRS members of ages 55 to 59.

We hope you find this information helpful. Please call if you have any questions.

Sincerely,



Robert M. Reynolds, ASA, MAAA

RMR/CMB/kmp

Copy: Chris Byrnes

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NOTIFICATION SENT TO EMPLOYERS REGARDING SEPTEMBER 14, 2004 AG OPINION

November 3, 2004

«mrms» «fnmi» «ln»«jrsr», «title»
«ltrregion»
«address»
«city», «st» «zip»

PERS / TRS: «crs_code»

Re: HB 242 Rehired Retiree - Employment Waiver

Dear «mrms» «ln»:

In 2001 the Alaska Legislature enacted HB 242, which amended the statutes to allow certain Public Employees' (PERS) and Teachers' Retirement System (TRS) members who retired with a normal retirement to return to work, continue to receive normal retirement benefits, and waive further participation in the retirement systems. Once participation was waived, no contributions were required from the employer or the employee. This legislation is scheduled to sunset on July 1, 2005.

In a written opinion issued September 14, 2004, the State of Alaska Attorney General's (AG) Office explained that, once the legislation sunsets, the members enrolled in the program will no longer be permitted to participate beyond the sunset date of July 1, 2005. The re-employment amendments will be repealed on July 1, 2005, and the statutes that require re-employed retirees and their employers to contribute to the applicable retirement system are in effect.

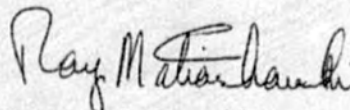
In order to address this matter, the Governor's Office will work with the Legislature on legislation to allow members who are currently covered under the re-employment waiver provision to continue to both work and receive normal retirement benefits after July 1, 2005. However, unless the Legislature approves legislation all retirees who have re-employed under the HB 242 waiver provisions and their employers will be required to contribute once again to the retirement systems. Furthermore, retirement benefits would be stopped for those retirees who continue working after the sunset date of this legislation.

We are providing notice to all employers by this letter and enclosed copy of the opinion. A separate letter is being sent to all affected retirees and that letter and a copy of the AG opinion will be published on the Division of Retirement and Benefits web site at www.state.ak.us/drb,

November 3, 2004

under Headlines. Notice will also be provided in the next edition of the PERS and TRS member newsletters. If you have further questions regarding HB 242 or your retirement benefits, please contact Kathy Lea, Retirement Manager at 465-4460 in Juneau or 1-800-821-2251 if you are outside of Juneau.

Sincerely,



Ray Matiasowski
Commissioner

RM/MM/ksl

Enclosure

G:/mailouts/hb242/november2004/pers employer.doc

cc: All Commissioners

Kevin Brooks, Deputy Commissioner, Department of Administration

Mike Tibbles, Deputy Commissioner, Department of Administration

Melanie Millhorn, Director, Division of Retirement and Benefits

Virginia Ragle, Assistant Attorney General, Department of Law

Toby Steinberger, Assistant Attorney General, Department of Law

PERS Contacts

NOTIFICATION SENT TO REHIRED RETIREES REGARDING SEPTEMBER 14, 2004 AG OPINION

November 3, 2004

«FirstName» «MI» «LastName»
«attn»
«address»
«city», «state» «zip»

Re: HB 242 Rehired Retiree - Employment Waiver

Dear «FirstName» «MI» «LastName»:

In 2001 the Alaska Legislature enacted HB 242, which amended the statutes to allow certain Public Employees' (PERS) and Teachers' Retirement System (TRS) members who retired with a normal retirement to return to work, continue to receive normal retirement benefits, and waive participation in the retirement systems. Once participation was waived, no contributions were required from the employer or the employee. This legislation is scheduled to sunset on July 1, 2005.

The State of Alaska Attorney General's (AG) Office has issued a written opinion dated September 14, 2004, regarding the treatment of employees enrolled under this waiver after June 30, 2005. The Attorney General's Office has determined that the Legislature did not intend to extend this legislation beyond June 30, 2005, and the re-employment amendments are repealed as of July 1, 2005. The statutes that previously required re-employed retirees and their employers to contribute to the applicable retirement system will be in effect as of July 1, 2005.

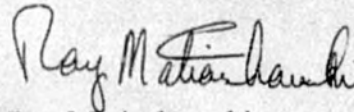
In order to address this matter, the Governor's Office will work with the Legislature on legislation to allow members who are currently covered under the re-employment waiver provision to continue to both work and receive normal retirement benefits after July 1, 2005. However, unless the Legislature approves legislation all retirees who have re-employed under the HB 242 waiver provisions and their employers will be required to contribute once again to the retirement systems. Furthermore, retirement benefits will be stopped for those retirees who continue working after the sunset date of this legislation.

Our records indicate that you have filed a waiver under the HB 242 provisions and have returned to work with a participating employer. The Division wanted to make you aware of this AG opinion, which can be referenced at www.state.ak.us/drb, under Headlines. A separate letter and

November 3, 2004

copy of the opinion is being sent to all affected employers. If you have further questions regarding HB 242 or your retirement benefits, please contact Kathy Lea, Retirement Manager at 465-4460 in Juneau or 1-800-821-2251 if you are outside of Juneau.

Sincerely,



Ray Matiasowski
Commissioner

RM/MM/ksl

G:/mailouts/hb242/november2004/participant.doc

cc: All Commissioners

Kevin Brooks, Deputy Commissioner, Department of Administration

Mike Tibbles, Deputy Commissioner, Department of Administration

Melanie Millhorn, Director, Division of Retirement and Benefits

Virginia Ragle, Assistant Attorney General, Department of Law

Toby Steinberger, Assistant Attorney General, Department of Law

RETIREE RETURN UNDER HB 242/ SB 149

Public Employees' Retirement System			
Number of Members Electing the Waiver	Increase in Average PERS Employer Contribution Rate	Total PERS Salaries as of June 30, 2003	Liability to the PERS Fund
100	negligible	\$ 1,460,783,000.00	\$ -
500	0.01%	\$ 1,460,783,000.00	\$ 146,078.30
1,000	0.02%	\$ 1,460,783,000.00	\$ 292,156.60

Teachers' Retirement System			
Number of Members Electing the Waiver	Increase in Average TRS Employer Contribution Rate	Total TRS Salaries as of June 30, 2003	Liability to the TRS Fund
100	0.02%	\$ 532,630,000.00	\$ 106,526.00
500	0.10%	\$ 532,630,000.00	\$ 532,630.00
1,000	0.20%	\$ 532,630,000.00	\$ 1,065,260.00

P E R S

Statistics

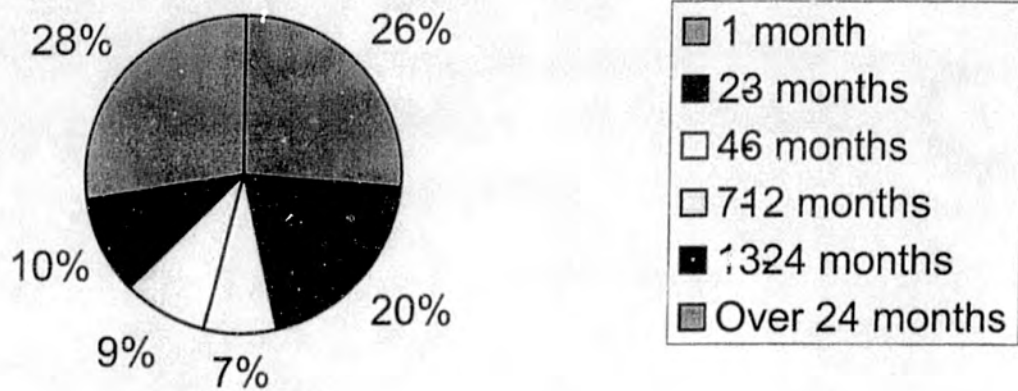
Analysis of Retiree Rehire Program-PERS (HB 242)

Summary

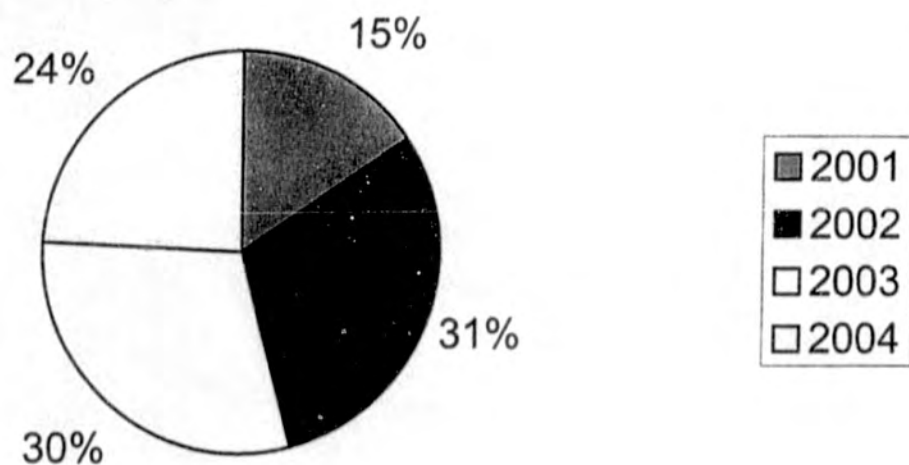
The following information summarizes the activity reported by employers to the division from July 1, 2001 through November 30, 2004.

Total number of PERS employers	160
Total number of PERS employers participating in the retiree rehire program	34
Percentage of total PERS employers participating in the retiree rehire program	21%
Total number of PERS waivers received	297
Total number of waivers received by year:	
July 1, 2001 to December 31, 2001	46
January 1, 2002 to December 31, 2002	90
January 1, 2003 to December 31, 2003	89
January 1, 2004 to November 30, 2004	72
Number of months between termination and rehire	
26% of retirees rehired within 30 days of termination of employment	
20% of retirees rehired within 60-90 days of termination of employment	
26% of retirees rehired between 4 and 24 months from termination of employment	
28% of retirees rehired more than 24 months from termination of employment	
Number of retirees working under a waiver as of November 30, 2004	211

Number of Months Between Termination and Rehire-PERS



PERS Rehired Retirees by Year



Top Ten Job Classes Rehired Under PERS (HB 242)

Job Class	Waivers On File
Biologist (various)	16
Engineer (various)	16
Directors, (various)	10
Peace Officers	10
Admin Clerk	9
Managers, Various	9
Analyst Programmer	8
Admin Asst.	7
Attorney	6
Program or Project Coord.	6
Investigator	5
Secretary	5
Teacher's Aide	5
Airport Screening Officer	4
Biometrician	4
Deputy Commissioner	4
Fish & Wildlife Tech	4
Maintenance	4
Nurses	4
Admin. Managers	3
Accountants	3
Chief of Police	3
City Administration	3
Manager, Natural Resource	3

Detail of Number of Retirees Rehired by Each PERS Employer

Participating Employer	Employment Waivers Issued	EE Employed as of 11/30/04
Alaska Housing Authority	1	1
Alaska Housing Finance	1	1
Aleutian Region School District	1	1
Anchorage School District	17	13
Bartlett Hospital	5	5
Bering Straits School District	1	1
Bristol Bay Borough	2	1
City & Borough of Juneau	8	6
City & Borough of Sitka	2	1
City of Bethel	1	1
City of Delta Junction	1	1
City of Dillingham	1	0
City of Fairbanks	10	7
City of Homer	3	3
City of Kenai	6	6
City of Ketchikan	1	0
City of Klawock	1	0
City of Sand Point	1	1
City of Seward	1	1
City of St. George	1	1
City of St. Mary's	1	1
City of Wasilla	3	1
City of Whittier	1	1
Cook Inlet Housing Authority	1	0
Fairbanks North Star Borough	2	2
Haines Borough	1	0
Iditarod Area School District	1	1
Interior Region Housing Authority	1	0
Juneau School District	1	1
Kenai Peninsula Borough School District	1	0
Ketchikan Gateway Borough School District	2	1
Ketchikan Gateway Borough	1	0
Mat-Su Borough	3	2
Municipality of Anchorage	18	12
North Slope Borough	9	7
Nome School District	1	1
Northwest Arctic School District	1	1
Southeast Regional Resources Center	3	1
Sitka Community Hospital	1	0
State of Alaska	169	123
University of Alaska	11	5
Totals	297	211

PERS Rehired Retiree Job Class by Employer

Employer	Position
Political Subdivision	AA Assistant
	Accountant
	Accounting Tech
	Accounts Payable Clerk
	Administrative Assistant
	Adult Educator
	Appraisal Analyst
	Addiction Recovery Aide
	Army Instructor
	Assistant Attorney
	Assistant. Librarian
	Business Manager
	Chief Admin Officer
	Chief of Police
	Chief Regulatory Engineer
	City Administrator
	City Clerk
	Civil Engineer
	Community Jail Officer
	Construction Inspector
	Controller
	Customer Service Representative
	CST/ORT (Medical)
	Detective
	Diet Aide
	Dispatcher
	Economic Developer/Planner
	Electrical Projects Superintendent
	Engineer Associate
	Engineering Technician
	Engineer
	Equipment Operator
	Evidence Technician
	Finance Director
	Financial Manager
	Fire Captain
	Fire Chief
	Food Prep./Bldg. & Groundskeeper
	Foreign Language Teacher
	General Foreman
	Grants Accountant
	Harbor Officer
	Heavy Equipment Operator
	Indian Education
	Inst. Systems Technician
	Labor Manager
	Maintenance

Employer	Position
Political Subdivision	Maintenance Asst
	Museum Curator
	Nuclear Medicine Tech
	Nurse Practitioner
	Operations Supervisor/Firefighter
	Personnel Coordinator
	Personnel Director
	Planning Director
	Plant Manager
	Police Clerk
	Police Corps Director
	Police Detective
	Police Lieutenant
	Police Officer
	Port Director
	Port Manager of Finance & Administration
	Project Management & Engineering Div. Mgr.
	Public Safety Director
	Public Works Director
	Public Works Manager
	Radiology Technician
	Reference Librarian
	Registered Nurse
	Resident Building Manager
	Sanitarian
	Secondary Teacher
	Secretary
	Service Coordinator
	Shop Foreman
	Site Specialist
	Spanish teacher
	Special Administrative Assistant
	Special Assistant
	Special Education Aide
	Senior Admin Officer
	Senior Library Asst.
	Senior Public Health Nurse
	STP Equipment Operator
	Teacher's Aide
	Truck Driver
	Village Coordinator
	Water/Sewer Forman
	World Language Teacher
State of Alaska	Academic Counselor
	Accountant
	Accounting Clerk
	Administrative Assistant
	Administrative Assistant to Director

Employer	Position
State of Alaska	Administrative Clerk
	Administrative Manager
	Aircraft Pilot
	Airport Safety Officer
	Airport Screening Officer
	Analyst Programmer
	Assistant Commissioner
	Assistant Director
	Attorney
	Bailiff
	Biometrician
	Building Plans Examiner
	Captain
	Certified Nurses Aide
	Chief Environmental Health Labs
	Children's Services Manager
	Commissioner
	Community Development Specialist
	Correctional Personnel
	Criminal Justice Planner
	Deputy Clerk
	Deputy Commissioner
	Deputy Director
	Director
	Eligibility Technician
	Engineering (various levels)
	Environmental Services
	Facilities Manager
	Fish & Wildlife Technician
	Fisheries Biologist
	Fisheries Scientist
	Grants Administrator
	H&SS Planner
	Habitat Biologist
	Health & Safety Officer
	Human Resource Manager
	Investigator
	Leasing Officer
	Lieutenant
	Local Government Specialist
	Maintenance
	Major
	Medical Records Asst.
	Mental Health Clinician
	Motor Vehicle Representative
	Museum Security Clerk
	Natural Resource Manager
	Natural Resource Specialist
	Nurse (various types)

Employer	Position
State of Alaska	Oiler
	Operations Manager
	Pioneer Home Administrator
	Probation Officer
	Procurement Specialist
	Program Coordinator
	Programmer Analyst
	Project Coordinator
	Project Manager
	Recorder
	Recruiter
	Regional Supervisor
	Research Analyst
	Research Tech
	Right of Way Agent
	Second Mate
	Secretary
	Security Guard
	Senior Project Engineer
	Social Worker
	Special Projects Manager
	Staff Physician
	State Law Librarian
	State Trooper
	Supervisor
	Survey Lead
	System Programmer
	Systems Programmer
	Technical Engineer
	Technician, Retirement
	Technician, Eligibility
	Third Mate
	Transportation Planner
	Utility Financial Analyst
	Vessel Scheduling Coordinator
	Warehouse Manager
	Wildlife Biologist

PERS Rehired Retiree Job Class Summary

Job Class	Waivers Received	Job Class	Waivers Received
Academic Counselor	1	Detective	2
Accountant	3	Diet Aide	1
Accounting Clerk	1	Directors, various	10
Accounting Technician	1	Dispatcher	1
Accts. Payable Clerk	1	Economic Developer/Planner	1
Admin Asst.	8	Electrical Projects	
Admin Clerk	9	Superintendent	1
Admin Manager	1	Eligibility Technician	2
Admin Officer	2	Engineer (Varying types)	16
Adult Educator	1	Environmental Services	1
Aide Secondary Teacher	1	Environmental Specialist	1
Aircraft Pilot	2	Equipment Operator	1
Airport Safety Officer	1	Evidence Technician	1
Airport Screening Officer	4	Facilities Mgr.	2
AMHS Third Mate	2	Financial Manager	1
Analyst Programmer	8	Fire Captain	2
Appraisal Analyst	1	Fire Chief	1
Addiction Recovery Aide	1	Fish & Wildlife Tech	5
Army Instructor	1	Food Prep./Bldg. &	
Asst. CMS Project Mgr.	1	Groundskeeper	1
Asst. Commissioner	1	Foreign Language Teacher	1
Asst. Director	1	General Foreman	1
Attorney (varying levels)	6	Grants Accountant	1
Bailiff	1	Grants Administrator	1
Biologist (various)	19	H&SS Planner	1
Biometrician (varying levels)	3	Harbor Officer	1
Building Plans Examiner	2	Health & Safety Officer	1
Business Mgr.	1	Heavy Equip. Operator	1
Captain	1	Indian Education Inst.	1
Cert. Nurses Aide I	1	Inst. Systems Tech.	1
Chief Environ. Health Labs	1	Investigator (varying levels)	5
Chief of Police	3	Leasing Officer	1
City Administration	4	Librarian, Asst.	3
City Clerk	1	Lieutenant	2
Commissioner	2	Local Gov't Spec	1
Community Dev. Spec	2	Maintenance	4
Community Jail Officer	1	Major	1
Construction Inspector	1	Manager (various types)	13
Controller	1	Medical Records Asst.	1
Correctional Officer	2	Mental Health Clinician	2
Criminal Justice Planner	1	Motor Vehicle Rep.	1
Cust.Serv. Rep. (Medical)	1	Museum Curator	1
CST/ORT (Medical)	1	Museum Security Clerk	1
Deputy Clerk	2	Natural Resources Specialist	1
Deputy Commissioner	4	Nuclear Medicine Tech	1
Deputy Director	1	Nurse	6
Operations Supervisor	1	Oiler	1
		Operations Mgr.	1

Job Class	Waivers Received
Personnel Coordinator	1
Physician, Staff	1
Pioneer's Home Admin	1
Plant Manager	1
Police Clerk	2
Police Detective	1
Police Lieutenant	4
Police Officer	4
Port Mgr. Of Finance & Administration	1
Probation Officer	1
Procurement Spec	1
Program Coordinator	4
Programmer Analyst	2
Project Coordinator	2
Public Safety Technician	1
Radiology Tech	1
Recorder	2
Recruiter	1
Reference Librarian	2
Regional Supervisor	1
Research Analyst	1
Research Tech	1

Job Class	Waivers Received
Scientist, Fisheries	1
Second Mate	1
Secretary	5
Security Guard	1
Service Coordinator	1
Shop Foreman	1
Site Specialist	1
Social Worker	1
Special Asst.	2
State Trooper	5
STP Operator	1
Superintendent, Corrections	1
Supervisor	1
Survey Lead	1
Teacher, World Language	2
Teacher's Aide	7
Technician, Retirement	1
Transportation Planner	1
Truck Driver	3
Utility Financial Analyst	1
Vessel Scheduling Coordinator	1
Village Coordinator	1

TR S

Statistics

Analysis of Retiree Rehire Program-TRS (HB 242/SB 149)

Summary

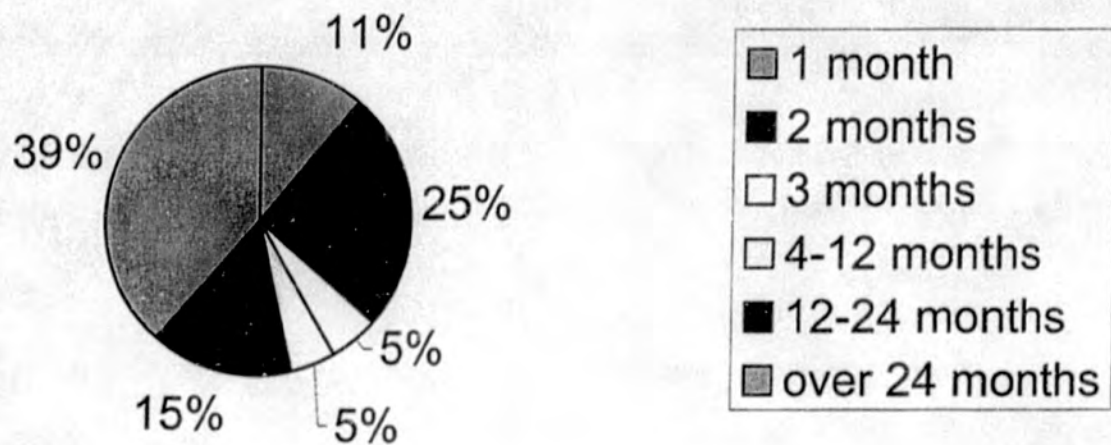
The following information summarizes the activity reported by employers to the division from July 1, 2001 through November 30, 2004.

Total number of TRS employers	57
Total number of TRS employers participating in the retiree rehire program	32
Percentage of total TRS employers participating in the retiree rehire program	56%
Total number of TRS waivers received	187
Total number of waivers received by school year:	
July 1, 2001 to June 30, 2002	21
July 1, 2002 to June 30, 2003	68
July 1, 2003 to June 30, 2004	61
July 1, 2004 to June 30, 2005	37
Number of months between termination and rehire	
11% of retirees rehired within 30 days of termination of employment	
31% of retirees rehired within 60-90 days of termination of employment	
20% of retirees rehired between 4 and 24 months from termination of employment	
38% of retirees rehired more than 24 months from termination of employment	
Number of retirees working under a waiver as of November 30, 2004	124

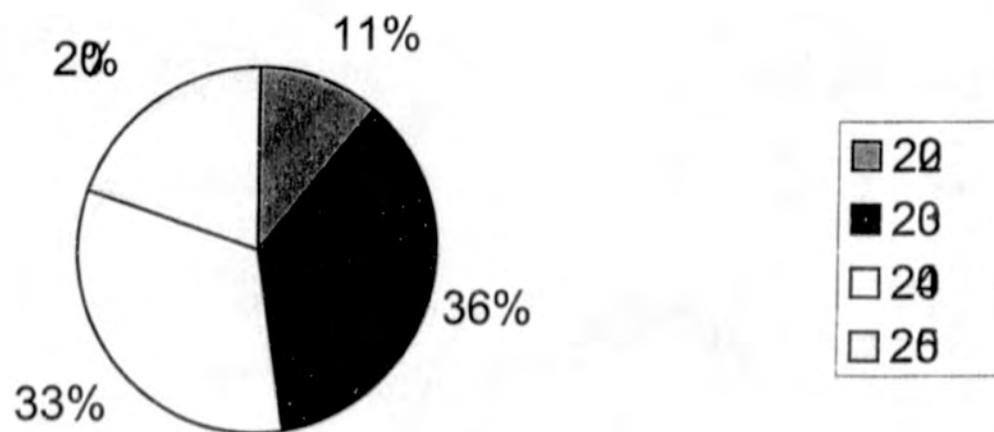
Detail of Number of Retirees Rehired by Each TRS Employer

Participating School Districts	Employment Waivers Issued	EE Employed as of 11/30/04
Alaska Gateway	1	1
Aleutian Region	1	1
Anchorage	65	37
Bering Straits	5	7
Bristol Bay	3	3
Copper River	5	1
Craig	1	0
Delta Greely	1	1
Denali Borough	1	1
Dillingham	1	1
Hoonah	2	1
Hydaburg	2	0
Iditarod	5	2
Juneau City and Borough	2	2
Kashunimut	1	1
Ketchikan Gateway Borough	3	3
Klawock	1	1
Kuspuck	1	1
Lake and Peninsula	3	1
Lower Kuskokwim	45	38
Lower Yukon	2	2
Mat-Su	10	3
Nenana City Schools	1	1
North Slope Borough	8	5
Northwest Arctic Borough	3	3
Pribilof	1	1
Sitka	4	3
St. Mary's	2	1
Southwest Region	1	1
Tanana	1	0
Wrangell	2	1
Yukon Flats	3	0
Yukon-Koyukuk	3	0
	187	124

Number of Months Between Termination and Rehire-TRS



TRS Rehired Retirees by School Year



TRS Rehired Retiree Job Class Detail

Job Class	Walters Received
8th Grade Resource Team Leader	1
Admin Asst. For Education	1
Counselor	9
Curriculum Director	2
Dir of Academic Prog.	1
Director of Curriculum	1
Education Program	
Coordinator/Teacher	1
Education Specialist	1
Grants Administrator	1
Interim Principal	1
Itinerant Indian Arts	1
Learning Center Coordinator	1
Librarian	4
Principal	9
Principal/Teacher	3
Psychologist	3
REA Bldg. Spec.	1
School Nurse	2
School Psychologist	6
School-to-Work Proj. Coordinator	1
Site Administrator	5
Site Development Supervisor	1
Special Ed. Supervisor	1
Special Ed. Teacher	26
Speech Therapist	3
Staff Development Spec.	1
Superintendent	9
Teacher, general	67
Teacher, Advanced Science/Math	2
Teacher, English	1
Teacher, ESL	1
Teacher, Math	5
Teacher, Music	4
Teacher, Reading	1
Teacher, Resource	4
Teacher, Science	1
Teacher, Secondary	1
Teacher, Spanish	1
Teacher, Special Ed.	1
Teacher, Title I	1
Teacher, Vocational Education	1

A G

Opinion

Memorandum

State of Alaska

Department of Law

TO: Melanie Millhorn
Director
Division of Retirement & Benefits

DATE: September 14, 2004

OUR FILE: 661-05-0035

FROM: Toby N. Steinberger
Assistant Attorney General
Labor & State Affairs Section
Anchorage

TELEPHONE NO: 269-5178

SUBJECT: Reemployed retirees – effect
of HB 242 (2001) sunset
provision

Virginia B. Ragle
Assistant Attorney General
Labor & State Affairs Section
Juneau

I. INTRODUCTION

You have asked about the effect of the “sunset” provision of HB 242, which was enacted in 2001 (ch. 57, SLA 2001). HB 242 amended Public Employees’ Retirement System (PERS) and Teachers’ Retirement System (TRS) statutes to allow certain retirees who returned to work in positions normally covered by the systems to waive coverage under the systems. Therefore they would not be required to contribute to PERS or TRS and they would not accrue additional service credits. However, the reemployment amendments allowed eligible reemployed retirees to continue to receive their retirement benefits while employed.¹ The bill specifically included provisions that repeal these amendments on July 1, 2005.

This memorandum confirms oral advice that, once the re-employment amendments are repealed, the statutes that previously required reemployed retirees and their employers to contribute to the applicable retirement system and terminate retirement benefit payments upon reemployment will apply. Therefore any member who has been receiving retirement benefits while employed by a TRS or PERS employer would, as of July 1, 2005, no longer receive retirement benefits while employed but would again start accruing additional service credits and making contributions to PERS/TRS.

¹ Prior to the enactment of HB 242, under the Public Employees’ Retirement System and Teachers’ Retirement System statutes, if a retiree member returned to PERS/TRS employment, his/her retirement benefits ceased and the member and his/her employer would resume making contributions to PERS/TRS. The member would accrue additional service credits.

II. BACKGROUND

A. Legislative history

Before July 1, 2001, with limited exceptions, the PERS and TRS statutes required employees of PERS employers and teachers hired by TRS employers to participate in the applicable retirement system. AS 14.25.040; AS 39.35.120. The statutes also prohibited payment of retirement benefits to reemployed retirees during the period of reemployment. AS 14.25.043; AS 39.35.150.²

HB 242 was introduced in the 2001 legislative session. Among other things, the bill amended AS 14.25.043, relating to the reemployment of retired TRS members, and AS 39.35.150, relating to the reemployment of retired PERS members. Sections 4 and 8 of HB 242 amended these statutes to provide that if a retired member of TRS or PERS returns to employment, the member could elect to continue to receive retirement benefits during the period of reemployment but would not continue to accrue credited service. AS 14.25.043(b) and AS 39.35.150(b). In addition, no deductions would be made from the member's salary for contributions to his/her retirement system and the employer would make no contributions on behalf of the member. AS 14.25.043(b) and AS 39.35.150(b). This option would only be available to members who took normal

² Prior to HB 242, AS 14.25.043(a) provided:

If a retired member again becomes an active member, benefit payments may not be made during the period of employment. The retirement benefit must be suspended for the entire school year if the teacher is reemployed as an active teacher for a period equivalent to a year of service. During the period of reemployment, deductions from the member's salary will be made in accordance with AS 14.25.050.

AS 39.35.150(a) provided:

If a retired employee subsequently becomes an active member, benefit payments may not be made during the period of reemployment. During the period of reemployment, deductions from the employee's salary shall be made in accordance with AS 39.35.160. Upon subsequent retirement, the retired employee is entitled to receive an additional pension based on the credited service and the average monthly compensation earned during the period of re-employment in accordance with AS 39.35.370.

retirement; a member who participated in an earlier retirement incentive program or took early retirement would not be eligible to take advantage of these amendments. AS 14.25.043(b) and AS 39.35.150(b). The amendments provided that the election was irrevocable during the period of reemployment. AS 14.25.043(b) and AS 39.35.150(b).

With respect to TRS, at section 1 of the bill, the legislature provided that a teacher could only take advantage of the reemployment amendments if the school district or Rural Educational Attendance Area (REAA) had made a declaration of an anticipated shortage of teachers in particular disciplines. AS 14.20.135.

Section 12 of the bill repealed the reemployment amendments as of July 1, 2005. At section 15 of the bill, the legislature reinstated the law as it existed prior to July 1, 2001. Section 13 of the bill required that the administrator of TRS annually report to the legislature on the effects of the bill on the retirement system.

Guy Bell, Director of the Division of Retirement and Benefits (DR&B), and employers and employee organizations testified in support of the reemployment amendment during committee hearings. That testimony explained that the amendments were meant to provide incentives for PERS and TRS retirees to return to work for school districts, the state, and other PERS employers, in order to alleviate workforce shortages and the "brain drain" resulting from retirement of the baby boom generation, among other causes.

The legislative history of the sunset provision of HB 242 is not extensive. The bill was introduced on April 10, 2001, and was passed less than a month later, on May 8, 2001. House Finance Committee members first raised the suggestion of a sunset provision for the reemployment amendments at a hearing on April 23, 2001.³ The

³ A similar sunset provision was proposed for TRS reemployment provisions included in SB 149, at an April 20, 2001, Senate Health, Education and Social Services' committee hearing. The minutes indicate that Division Director Guy Bell testified that he believed "it is a good idea to include a sunset provision so that the legislature can re-evaluate this program in the future." Vice-Chair Leman "said his intention was to get something into effect that will work this year and next year and then take another look at it." At the Senate Finance committee hearing on April 25, 2001, the staff to Senator Leman testified that SB 149 provided for an annual report to the legislature regarding the impact of the reemployment of retired teachers on the retirement program itself. He further indicated that the legislation has a sunset clause "in the event the teacher shortage situation changes." SB 149 was enacted as chapter 58, SLA 2001. SB 149 included a July 1, 2005 sunset date for the TRS retiree reemployment provisions.

minutes of the hearing indicate that the purpose of the sunset provision was to allow the legislature an opportunity to study the effect of allowing retired members to return to employment as provided in the proposed amendments. The minutes of the April 23, 2001, meeting read in pertinent part:

Representative Whitaker asked if thought had been given on the affect [sic] on the entry-level workforce. He noted that new graduates could lose in the choice between experience-retired teachers.

Representative John Davies echoed concerns of Representative Whitaker and noted that *he would propose a 3-year sunset to allow assessment of unintended consequences* (Emphasis added).

The minutes indicate that later in the hearing the committee continued to discuss the sunset provision:

Representative John Davies MOVED to ADOPT Amendment 1. He reiterated that the amendment would provide a 3-year sunset. He expressed support for the legislation but felt that it would be good legislative policy to review the change.

Representative Kott did not object to the sunset provision. He acknowledged that the sunset would require the legislature to review the issue, but felt that any problems would be discovered in the next few years.

Ms. Elgee testified that the amendment would not have an adverse affect [sic] but questioned if 3 years would be sufficient time to review the program.

Representative John Davies stated that he would not object to a longer period.

Co-Chair Williams questioned if a five-year period would be too long.

Representative Kott observed that sunset would fall before the increase in retiring teachers that is expected in the year 2005.

Representative John Davies stated that he would entertain a motion to change the date to 2006.

Vice-Chair Bunde Moved to Amend Amendment 1 by changing the sunset date to the year 2005. There being NO OBJECTION, it was so ordered.

There being NO OBJECTION, Amendment 1 was adopted.

Although the minutes indicate that a sunset date in 2005 was adopted, the published House Finance Committee substitute included provisions that repealed the reemployment provisions effective July 1, 2006.

The Senate Finance Committee discussed the sunset provision on May 4, 2001. The minutes reflect again that the purpose of the sunset provision was to allow the legislature an opportunity to evaluate the effectiveness of the reemployment amendments. The committee hearing minutes read:

Representative Kott indicated the changes in the committee substitute primarily pertain to the TRS benefits. He stated the committee substitute also changes the repeal date of this legislation from five, to four years. *He explained this change was made based upon projections showing the effectiveness of the program in five years.* (Emphasis added.)

During the Senate Finance Committee hearing, the sunset provision for the reemployment amendments was amended from five to four years, to be effective July 1, 2005. This is the version of the bill that was passed by the legislature, and signed by the governor. The sunset provision, section 12, affects only the reemployment amendments discussed above and not other provisions of the bill.⁴

The Department of Law's review of HB 242 for the governor explained the sunset provision as follows:

Both the TRS and the PERS provisions allowing retired rehires to continue to collect their retirement benefits have sunset dates. The relevant provisions are repealed as of July 1, 2005. *Presumably the legislature included this repealer so that it can examine, after four*

⁴ For example, the enhancements to PERS and TRS medical benefit eligibility and changes to the PERS cost-of-living differential provisions do not sunset.

years, whether these provisions are having their intended effects.
(Emphasis added).

B. Division of Retirement and Benefit's Publications and Forms

Information published by DR&B explains to PERS and TRS members the reemployment options under HB 242. The documents that most clearly indicate to members that the reemployment amendments only cover the periods of employment from July 1, 2001 through June 30, 2005, are the waiver forms that DR&B requires members to sign in order to waive PERS/TRS coverage. The "PERS Waiver Option – Reemployed Retiree" form succinctly informs PERS members that the waiver only covers the reemployment periods from July 1, 2001, to June 30, 2005. The PERS waiver form reads:

This waiver covers reemployment periods from July 1, 2001 to June 30, 2005 . . .

Similarly, the "TRS Waiver Option – Reemployed Retiree" form informs TRS members that the waiver option only applies if the teacher's school district or REAA makes a finding of an anticipated shortage of teachers from July 1, 2001 to June 30, 2005. This TRS form provides:

This waiver is only effective if a school district or Rural Educational Attendance Area (REAA) has made a declaration of a shortage, or an anticipated shortage of qualified teachers in particular disciplines or specialty areas from July 1, 2001 to June 30, 2005. The school district or REAA must pass a written resolution which defines those disciplines or specialty areas. . . .

Other DR&B publications do not specifically address whether a reemployed member may continue reemployment under the amendments after the sunset date. However, these DR&B publications do set out the sunset date for the new reemployment option. For example, an *Employer Newsletter* sent to PERS and TRS employers in the fall of 2001 describes the waiver option:

"Standard Option" or the new "Retiree Reemployment Waiver Option." The new Retiree Reemployment Waiver Option is a result of HB 242 and Senate Bill 149 – legislation passed and signed this last session and effective July 1, 2001, through June 30, 2005.

DR&B's May 2001 *Newsbreak* sent to PERS members describes the requirements for the new option, and states that the option "expires on July 1, 2005."

A document on DR&B's web site entitled "PERS Working After Retirement" describes the waiver option, and explains that "The law is effective July 1, 2001, and ends June 30, 2005." The web site also explains that "Once you file a PERS Waiver Option – Reemployed Retiree form with the Division of Retirement and Benefits, the election is irrevocable for the period of reemployment covered by the waiver."

With respect to TRS, DR&B's *Newsbreak* of October 2001 has a discussion of HB 242. It provides that no new waivers can be filed after June 30, 2005. A document on DR&B's web site entitled "TRS Working After Retirement" describes the waiver option for TRS members. This brochure provides that "[t]he law is effective July 1, 2001, and ends June 30, 2005" and that "the election is irrevocable for the period of reemployment or July 1 of the school year employed."

C. PERS/TRS regulations

Division of Retirement & Benefits adopted PERS emergency regulations on July 2, 2001, which became permanent on September 17, 2001, and TRS emergency regulations on July 2 and July 5, 2001, which became permanent on October 29, 2001. 2 AAC 35.322 (PERS); 2 AAC 36.236 and 36.237 (TRS).⁵ The regulations set out requirements for electing waiver of PERS and TRS coverage by reemployed retirees. The regulations do not address the eligibility of reemployed retirees to continue to receive retirement benefits after the reemployment provisions are repealed on July 1, 2005.

III. DISCUSSION

- A. **The reemployment provisions and the legislative history of the sunset provision indicate that the legislature did not intend that the reemployment amendments continue to apply to reemployed retirees once the amendments were repealed.**

In our opinion, the repeal of the reemployment provisions and reinstatement of the pre-HB 242 statutory language do not evidence an intent of the legislature to allow continuation of any aspect of the retiree reemployment option after June 30, 2005. The

⁵ These regulations appear in the supplement, rather than the main pamphlet for 2 AAC because they were not published in the Alaska Administrative Code until August 2003.

testimony of the legislators demonstrates that they only intended the amendments to be temporary, until repealed on July 1, 2005, because they wanted to assess the impact of the reemployment amendments on the workforce and on the retirement system. During hearings on the bill, Representative John Davies echoed Representative Whitaker's concern that the reemployment amendments would affect new graduates' ability to enter the workforce and proposed a sunset provision to allow "assessment of unintended consequences." The legislative history of SB 149⁶ similarly indicates that the reemployment amendments were an experiment. DR&B director Guy Bell testified that the sunset provision would allow the legislature an opportunity to evaluate the program. Staff to Senator Leman also testified that the annual report, required for TRS under both HB 242 and SB 149, would allow the legislature to study the impact of the reemployment amendments on the retirement system.

Although the bill had broad support from employers and employee organizations, the reemployment amendments to alleviate workforce shortage problems of PERS and TRS employers were new and untested. What is clear is that the legislature included provisions to sunset the reemployment provisions in order to review the changes and assess their efficacy and consequences. If experience with the changes over time revealed that the reemployment amendments were not needed, did not have the intended effect, or had other unintended consequences, the automatic repeal would terminate the effect of the amendments. It does not stand to reason that the legislature intended a program that proved to be unnecessary, ineffective, or detrimental to be perpetuated by unexpressed "grandfather" rights once the amendments were repealed.

The legislature could have provided reemployed retirees with grandfather rights to both be employed and continue to receive retirement benefits after June 30, 2005, if it had intended to do so. An obvious example of this would be a simple clause exempting retirees who were reemployed under the program on June 30, 2005, from the repeal. Another example is that, instead of repealing the reemployment amendments, the legislature could have specifically established June 30, 2005, as the deadline for reemployment and execution of a waiver of coverage in order for a retiree to participate in the program.

⁶ SB 149 is discussed at fn. 3. SB 149 did not address reemployment of PERS members, but contained the basically the same reemployment amendments for TRS members that were contained in HB 242. SB 149 was enacted as chapter 58, SLA 2001.

B. Article XII, section 7 of the Alaska Constitution does not give reemployed retired employees a contract right to receive retirement benefits while employed with a PERS/TRS employer after June 30, 2005.

A reemployed retiree might argue that he/she has a contract right under the Alaska Constitution, article XII, section 7 to continue reemployment under the amendments after June 30, 2005. We do not believe such an argument would prevail. To the extent the reemployment amendments provide any member with contractual rights under Alaska Constitution, article XII, section 7, the sunset provision constitutes part of the contract, extinguishing any right that a retired member may have had under the reemployment amendments.

Article XII, section 7, of the Alaska Constitution provides that:

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

Hammond v. Allen, 625 P.2d 844 (Alaska 1981), addressed whether the repeal by referendum of the Elected Public Officers' Retirement System ("EPORS") extinguished elected officers' contractual rights under EPORS. Under legislation enacted in 1975, all legislators, the governor, and the lieutenant governor were removed from PERS and placed in the newly-established EPORS, which provided significantly enhanced benefits compared to PERS.⁷ The referendum was filed before the legislation took effect, but the vote on the referendum occurred after the effective date of the legislation.⁸ The state argued that the filing of the referendum constituted an *implicit* condition subsequent in the contract between the state and the participants of EPORS, therefore justifying extinguishing a duty under the contract. 625 P.2d at 848. Therefore, the state argued that public officers serving during the time that EPORS was in effect had no right to retirement benefits under EPORS when they retired after the effective date of the repeal.

⁷ In *Hammond v. Allen*, 625 P.2d 844, 847 (Alaska 1981) the state conceded "that the contractual rights of members of public employee retirement systems are 'vested.'"

⁸ The referendum to repeal EPORS was filed in September 1975. The law became effective January 1, 1976. In August 1976, the entire act was repealed in a referendum election.

The court disagreed. The court stated that any condition subsequent must be expressed or implicit and that it was not certain that EPORS would be repealed.⁹ The court wrote:

The Restatement defines "condition subsequent" as a condition which, if it occurs, "will extinguish a duty to make compensation for breach of contract after the breach has occurred." If the repeal of ch. 205, SLA 1975, operates as such a condition in this case, it would justify the State in breaching the contract we have determined is in existence and extinguish any duties the State would have otherwise had to make payments under that act. Because conditions subsequent have the effect of causing a forfeiture of contract rights that are otherwise due and enforceable, they are not favored by the law. *Generally speaking, "the intent to create a condition subsequent must appear expressly or by clear implication" if such a condition is to be found.* [Citations omitted]

In the present case there is no express condition subsequent contained in the contract between appellees and the State of Alaska. Appellant's position, then, is that such a condition exists "by clear implication." We note first that in Alaska the referendum operates as a repeal, . . . and that for that reason, appellant's argument seems to run directly counter to the provisions of AS 01.10.100(a). Under that statute, "(t)he repeal . . . of any law does not release or extinguish any . . . liability incurred or right accruing or accrued under such law." Further, we share appellees' apprehension that finding a condition subsequent to be implicit in the contract under consideration would undermine article XII, Section 7. *We believe that if the possibility of repeal of a law could function as an implicit condition subsequent to a contract formed under that law, the protection of contract rights afforded by article XII, section 7, would be seriously eroded.*

625 P.2d at 848.

⁹ The court also found that AS 01.10.100, regarding the effect of repealing a statute, did not extinguish the *vested* rights of the elected public officials to their benefits. As discussed *infra*, HB 242 does not provide the reemployed retirees with vested rights.

The repeal of the reemployment amendments contained in HB 242 is distinguishable from the referendum that repealed EPORS. The "condition subsequent" – the repeal of the reemployment amendments and reinstatement of the ban on payment of benefits to persons working for employers covered by PERS or TRS – is expressly provided for in HB 242, which is supported by the committee minutes.

- C. HB 242 does not provide the reemployed retirees with a vested right to continued employment under the terms of the amendments. Therefore the repeal of the reemployment amendments extinguished any rights that reemployed retirees had under those amendments.**

In prior court decisions, the court has held that public employees have a "vested right" to pension benefits that were available to them during their employment. Consequently, reemployed retirees may argue that they have a "vested right" to the reemployment amendments, even after June 30, 2005. However, it is our opinion that they do not have a vested right to take advantage of the reemployment amendments after June 30, 2005.

AS 01.10.100 pertains to the effect of a repeal of a statute on existing rights. AS 01.10.100 provides in pertinent part:

Effect of repeals or amendments.

(a) The repeal or amendment of a law does not release or extinguish any penalty, forfeiture, or liability incurred or right accruing or accrued under that law, unless the repealing or amending act so provides expressly. The law shall be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of the right, penalty, forfeiture, or liability.

(b) The expiration of a temporary law does not release or extinguish a penalty, forfeiture, or liability incurred or right accruing or accrued under that law unless the temporary law so provides expressly, and that law shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of the penalty, forfeiture, or liability or right accruing or accrued.

The court has held that a "right" under AS 01.10.100 means a "vested right" that is protected from state action under the Fourteenth Amendment of the United States Constitution and article I, section 7, of the Alaska Constitution. *Alaska Pub. Util. Comm'n. v. Chugach Elec. Ass'n*, 580 P.2d 687 (Alaska 1978), *overruled on other grounds* by *City & Borough of Juneau v. Thibodeau*, 595 P.2d 626 (Alaska 1979).

Based on the legislative history of HB 242, we conclude that the legislature did not intend to give reemployed retirees a right to continue receiving pension benefits while employed after June 30, 2005. As discussed above, the legislature wanted to reevaluate the effectiveness of the reemployment amendments before it decided to continue the application of those provisions beyond June 30, 2005. Therefore, reemployed retirees should have no expectation that the reemployment amendment would continue to apply to them after June 30, 2005.

Hammond v. Hoffbeck, 627 P.2d 1052 (Alaska 1981) is distinguishable from the situation that HB 242 presents. In *Hammond v. Hoffbeck*, the court ruled that employees have vested rights to pension benefits in PERS on employment and enrollment in PERS.¹⁰ Subsequent amendments to PERS that diminished the benefits of some members could not constitutionally be applied to those members. In the instant case, there is no subsequent amendment; rather, the sunset provisions are part of the same act that established the reemployment program. Since the sunset provisions constitute an integral part of the contractual right, application of the sunset provisions will not diminish benefits. Moreover, after June 30, 2005, reemployed retirees can still receive their pension benefits if they leave employment with a PERS or TRS employer or they can resume membership in PERS and TRS and begin accruing additional rights and benefits.

D. A study should be conducted to assess whether the reemployment of retired members has been effective.

Since the amendments will sunset on July 1, 2005, DR&B may want to conduct a study to determine whether the reemployment amendments have been effective in alleviating workforce shortage, have saved employers money, and have not been a cost burden to PERS or TRS. The DR&B can then make recommendations to the legislature.

¹⁰ As discussed above in footnote 9, in *Hammond v. Allen*, the court also relied on AS 01.10.100. In that case, public officials worked during the period that EPORS was in effect. There was no certainty that it was going to be repealed. Therefore, under the *Hoffbeck* decision, the public officials had a vested retirement benefit and therefore were entitled to benefits under EPORS when they retired.

The legislature will then have an opportunity to decide whether to continue the program after June 30, 2005, to make changes to the program, or to allow it to sunset.

IV. CONCLUSION

In summary, based on the statutory language and legislative history, it is our opinion that once the reemployment amendments sunset on July 1, 2005, reemployed retirees can no longer receive retirement benefits while employed by a PERS or TRS employer. If they continue employment with a PERS or TRS employer, they must begin making contributions. We understand that some reemployed retirees have contacted DR&B inquiring whether they can continue to receive retirement benefits and remain employed with a PERS/TERS employer after June 30, 2005. We recommend that the DR&B provide written notification to all reemployed retirees that, absent legislative action, they no longer will continue to receive retirement benefits from PERS or TRS after June 30, 2005 if they continue employment. We also recommend that the DR&B consider conducting a study on the effectiveness of the amendments and providing a report to the legislature in order that the legislature can decide whether to continue this program.

TNS/VBR/kmh/rca

HOUSE CS FOR CS FOR SS FOR SENATE BILL NO. 149(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/4/01

Referred: Rules

Sponsor(s): SENATORS LEMAN, Davis

REPRESENTATIVES Wilson, Stevens, Dyson, James, Green, Crawford

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to reemployment of retired teachers, to eligibility for major medical
2 insurance coverage for beneficiaries of the teachers' retirement system, and to teacher
3 certificates; and providing for an effective date."

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

5 * Section 1. AS 14.20.010 is amended to read:

6 **Sec. 14.20.010. Teacher certificate required.** A person may not be
7 employed as a teacher in the public schools of the state unless that person possesses a
8 valid teacher certificate except that a person who has made application to the
9 department for a teacher certificate, including a preliminary teacher certificate
10 under AS 14.20.015, or renewal of a teacher certificate that has not been acted upon
11 by the department may be employed as a teacher in the public schools of the state until
12 the department has taken action on the application, but in no case may employment
13 without a certificate last longer than three months.

14 * Sec. 2. AS 14.20 is amended by adding new sections to read:

Bills

1 **Sec. 14.20.015. Recognition of certificates of out-of-state teachers.** (a) The
2 department shall issue a preliminary teacher certificate to an out-of-state teacher who
3 meets the requirements of this section. To be eligible for a preliminary teacher
4 certificate, a person shall

5 (1) have received at least a baccalaureate degree from an institution of
6 higher education accredited by a recognized regional accrediting association or
7 approved by the commissioner;

8 (2) hold a valid teacher certificate issued by another state;

9 (3) have submitted fingerprints to the department to be used for a
10 criminal history background check and been found by the department to be suitable for
11 employment as a teacher under AS 14.20.020(f);

12 (4) have paid the fee required by the department under
13 AS 14.20.020(c).

14 (b) An out-of-state teacher who has been issued a preliminary teacher
15 certificate under this section shall pass the competency examination designated by the
16 board under AS 14.20.020(i) within one year after the date the preliminary teacher
17 certificate was issued. If the teacher does not pass the examination, the department
18 shall immediately revoke the teacher's preliminary teacher certificate.

19 (c) The preliminary teacher certificate issued under this section must contain
20 the same endorsements as those on the current valid teacher certificate issued by the
21 other state.

22 (d) A teacher holding a preliminary teacher certificate issued under this
23 section may be employed to provide instructional services for a school district or
24 regional educational attendance area only if the teacher certificate issued by the other
25 state is valid at the time the teacher commences to provide instructional services for
26 the school district or regional educational attendance area.

27 (e) Employment under a preliminary teacher certificate shall be considered in
28 determining whether a teacher qualifies for tenure under AS 14.20.150. However, a
29 teacher may not be granted tenure unless the teacher holds a teacher certificate issued
30 under AS 14.20.020.

31 (f) A preliminary teacher certificate and any endorsements issued under this

1 section are valid for three years and may not be renewed. The department may not
2 issue a provisional certificate or a temporary certificate to a teacher who has held a
3 preliminary teacher certificate.

4 **Sec. 14.20.017. Grace period for issuance of regular teacher certificates to**
5 **previously certificated teachers.** (a) The department shall issue a teacher certificate
6 as described in AS 14.20.020, subject to revocation, to a teacher who meets the
7 requirements of this section. To be eligible for a revocable teacher certificate under
8 this section, a person shall

9 (1) have held a valid teacher certificate issued under AS 14.20.020 that
10 expired more than 12 months before the teacher applied for a certificate under this
11 section;

12 (2) have paid the fee required by the department under
13 AS 14.20.020(c).

14 (b) A revocable teacher certificate issued under this section is valid for one
15 year, during which the teacher shall complete any requirements for the issuance of a
16 regular teacher certificate under AS 14.20.020 that the teacher has not already met.
17 The department shall expedite the procedures required of teachers holding revocable
18 teacher certificates who are seeking certification under AS 14.20.020.

19 (c) A teacher holding a revocable teacher certificate under this section who
20 previously passed the competency examination designated by the board under
21 AS 14.20.020(i) is not required to retake the examination before being eligible for a
22 regular certificate under AS 14.20.020. A teacher holding a revocable teacher
23 certificate who did not previously take or pass the competency examination shall take
24 and pass the examination within one year after the date the revocable teacher
25 certificate was issued. If the teacher does not pass the examination, the department
26 shall immediately revoke the revocable teacher certificate.

27 (d) A teacher holding a revocable teacher certificate under this section may
28 not receive a teacher certificate issued under AS 14.20.020 until the teacher submits
29 fingerprints to the department to be used for a criminal history background check and
30 the teacher has been found by the department to be suitable for employment as a
31 teacher under AS 14.20.020(f).

(e) The revocable teacher certificate issued under this section must contain the same endorsements as those on the teacher's expired teacher certificate.

(f) Employment on the basis of a revocable teacher certificate issued under this section shall be considered in determining whether a teacher qualifies for tenure under AS 14.20.150.

(g) A revocable teacher certificate and any endorsements issued under this section are valid for one year and may not be renewed under this section. The department may not issue a provisional certificate or a temporary certificate to a teacher who has held a teacher certificate issued under this section.

* Sec. 3. AS 14.20 is amended by adding a new section to read:

Sec. 14.20.135. Employment of retired teachers because of shortages. (a)

A school district or regional educational attendance area that has or anticipates having a shortage of teachers qualified to teach in a particular discipline or specialty may, by resolution, adopt a policy that permits the employment of retired teachers who are qualified to teach in the discipline or specialty in accordance with this section. The policy must describe the circumstances that constitute the shortage. If a shortage of teachers exists as described in the policy, the district or attendance area shall notify the administrator of the teachers' retirement system (AS 14.25) that it is hiring retired teachers under this section.

(b) A teacher who retired under AS 14.25.110(a) and is subsequently reemployed under this section may, within 30 days after the date of reemployment, elect to continue receiving retirement benefit payments under AS 14.25 during the period of reemployment by filing a waiver of coverage as set out in AS 14.25.043(b).

(c) A school district or regional educational attendance area may not employ a teacher, principal, or administrator who participated in a retirement incentive program under ch. 26, SLA 1986, ch. 89, SLA 1989, ch. 65, SLA 1996, ch. 4, FSSLA 1996, or ch. 92, SLA 1997, under this section.

(d) A retired teacher employed under this section is not eligible to acquire, maintain, or reacquire tenure under AS 14.20.150.

* Sec. 4. AS 14.25.040(a) is amended to read:

(a) Unless a teacher or member has elected to participate in the optional

1 university retirement program under AS 14.40.661 - 14.40.799 or has filed an
 2 election under AS 14.25.043(b), a teacher or member contracting for service with a
 3 participating employer is subject to this chapter.

4 * Sec. 5. AS 14.25.040(a) is amended to read:

5 (a) Unless a teacher or member has elected to participate in the optional
 6 university retirement program under AS 14.40.661 - 14.40.799 [OR HAS FILED AN
 7 ELECTION UNDER AS 14.25.043(b)], a teacher or member contracting for service
 8 with a participating employer is subject to this chapter.

9 * Sec. 6. AS 14.25.043 is amended to read:

10 **Sec. 14.25.043. Reemployment of retired members.** (a) If a retired member
 11 again becomes an active member, benefit payments may not be made during the
 12 period of reemployment unless the teacher makes an election under (b) of this
 13 section. The retirement benefit must be suspended for the entire school year if the
 14 teacher is reemployed as an active teacher for a period equivalent to a year of service.
 15 During the period of reemployment, the member is subject to AS 14.25.050 and
 16 deductions from the member's salary will be made in accordance with AS 14.25.050.

17 (b) A school district or regional educational attendance area that has
 18 adopted a policy that permits the employment of retired teachers in accordance
 19 with AS 14.20.135 shall notify the administrator that it is hiring retired teachers
 20 under AS 14.20.135. A teacher who retired under AS 14.25.110(a) and
 21 subsequently becomes an active member under a policy adopted in accordance
 22 with AS 14.20.135 may, within 30 days of the date of reemployment, elect to
 23 continue receiving benefit payments during the period of reemployment by filing
 24 a waiver of coverage with the administrator on a form provided by the
 25 administrator. An election under this subsection waives coverage for the period
 26 of reemployment and is irrevocable during the period of reemployment.
 27 Deductions from the member's salary may not be made under AS 14.25.050
 28 during the period of reemployment, and the member may not receive credited
 29 service for the period of reemployment. A member who participated in a
 30 retirement incentive program under ch. 26, SLA 1986, ch. 89, SLA 1989, ch. 65,
 31 SLA 1996, ch. 4, FSSLA 1996, or ch. 92, SLA 1997, is not eligible to make an

1 **election under this subsection.**

2 (c) Upon subsequent retirement, the retired member is entitled to receive an
3 additional benefit based on the credited service and the average base salary during the
4 period of reemployment in accordance with AS 14.25.110. If the initial benefit
5 payments to which the retired member is eligible have been actuarially reduced
6 because the member retired early under AS 14.25.110(b), the member shall also
7 receive an incremental benefit based on the amount of the actuarial reduction imposed
8 by AS 14.25.110(j) on the first benefit and the length of time that the employee was
9 reemployed and not receiving retirement benefits. The amount of the incremental
10 benefit is equal to the difference between the normal retirement benefit to which the
11 member would have been entitled had the member taken a normal retirement and the
12 early retirement benefit that the member has been receiving based on the member's
13 initial period of employment multiplied by the total number of months that the
14 member did not receive retirement benefits because of reemployment and that amount
15 actuarially adjusted to be paid over the expected lifetime of the member.

16 * Sec. 7. AS 14.25.043(a) is amended to read:

17 (a) If a retired member again becomes an active member, benefit payments
18 may not be made during the period of reemployment [UNLESS THE TEACHER
19 MAKES AN ELECTION UNDER (b) OF THIS SECTION]. The retirement benefit
20 must be suspended for the entire school year if the teacher is reemployed as an active
21 teacher for a period equivalent to a year of service. During the period of
22 reemployment, [THE MEMBER IS SUBJECT TO AS 14.25.050 AND] deductions
23 from the member's salary will be made in accordance with AS 14.25.050.

24 * Sec. 8. AS 14.25.168(d) is amended to read:

25 (d) A benefit recipient may elect major medical insurance coverage in
26 accordance with regulations and under the following conditions:

27 (1) a person who has less than 25 years of membership service and
28 who is younger than 60 years of age must pay an amount equal to the full monthly
29 group premium for retiree major medical insurance coverage;

30 (2) [A PERSON WHO IS AT LEAST 60 YEARS OF AGE BUT IS
31 YOUNGER THAN 65 YEARS OF AGE MUST PAY AN AMOUNT EQUAL TO

1 ONE-HALF OF THE FULL MONTHLY GROUP PREMIUM FOR RETIREE
2 MAJOR MEDICAL INSURANCE COVERAGE;

3 (3)] a disabled member, a disabled member who is appointed to
4 normal retirement, [OR] a person 60 [65] years of age or older, or a person who has
5 at least 25 years of membership service is not required to make premium payments.

6 * Sec. 9. AS 14.20.135 and AS 14.25.043(b) are repealed July 1, 2005.

7 * Sec. 10. The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 REPORT TO LEGISLATURE. Annually, beginning in 2002 and ending in 2006, the
10 administrator of the teachers' retirement system shall report to the legislature by the 30th day
11 of the regular legislative session concerning the effect of this Act on the retirement system.

12 * Sec. 11. The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 REGULATIONS FOR RETIRED TEACHERS. Notwithstanding sec. 14 of this Act,
15 the Alaska Teachers' Retirement Board may immediately proceed to adopt regulations
16 necessary to implement changes made by secs. 4, 6, and 8 of this Act. The regulations take
17 effect under AS 14.25.022, but not before July 1, 2001.

18 * Sec. 12. Section 11 of this Act takes effect immediately under AS 01.10.070(c).

19 * Sec. 13. Sections 5, 7, and 9 of this Act take effect July 1, 2005.

20 * Sec. 14. Except as provided in secs. 12 and 13 of this Act, this Act takes effect July 1,
21 2001.

SENATE CS FOR CS FOR HOUSE BILL NO. 242(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 5/5/01
Referred: Rules

Sponsor(s): REPRESENTATIVES KOTT, Stevens, Hayes, Dyson, Cissna, Crawford, Guess

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to reemployment of and medical benefits for retired members of the
2 teachers' retirement system and public employees' retirement system; relating to the
3 inclusion of cost-of-living differentials on compensation and benefits under the public
4 employees' retirement system; and providing for an effective date."

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

6 * **Section 1.** AS 14.20 is amended by adding a new section to read:

7 **Sec. 14.20.135. Employment of retired teachers because of shortages.** (a)

8 A school district or regional educational attendance area that has or anticipates having
9 a shortage of teachers qualified to teach in a particular discipline or specialty may, by
10 resolution, adopt a policy that permits the employment of retired teachers who are
11 qualified to teach in the discipline or specialty in accordance with this section. The
12 policy must describe the circumstances that constitute the shortage. If a shortage of
13 teachers exists as described in the policy, the district or attendance area shall notify the
14 administrator of the teachers' retirement system (AS 14.25) that it is hiring retired

1 teachers under this section.

2 (b) A teacher who retired under AS 14.25.110(a) and is subsequently
3 reemployed under this section may, within 30 days after the date of reemployment,
4 elect to continue receiving retirement benefit payments under AS 14.25 during the
5 period of reemployment by filing a waiver of coverage as set out in AS 14.25.043(b).

6 (c) A school district or regional educational attendance area may not employ a
7 teacher, principal, or administrator who participated in a retirement incentive program
8 under ch. 26, SLA 1986; ch. 89, SLA 1989; ch. 65, SLA 1996; ch. 4, FSSLA 1996; or
9 ch. 92, SLA 1997, under this section.

10 (d) A retired teacher employed under this section is not eligible to acquire,
11 maintain, or reacquire tenure under AS 14.20.150.

12 * Sec. 2. AS 14.25.040(a) is amended to read:

13 (a) Unless a teacher or member has elected to participate in the optional
14 university retirement program under AS 14.40.661 - 14.40.799 or has filed an
15 election under AS 14.25.043(b), a teacher or member contracting for service with a
16 participating employer is subject to this chapter.

17 * Sec. 3. AS 14.25.040(a) is amended to read:

18 (a) Unless a teacher or member has elected to participate in the optional
19 university retirement program under AS 14.40.661 - 14.40.799 [OR HAS FILED AN
20 ELECTION UNDER AS 14.25.043(b)], a teacher or member contracting for service
21 with a participating employer is subject to this chapter.

22 * Sec. 4. AS 14.25.043 is amended to read:

23 **Sec. 14.25.043. Reemployment of retired members.** (a) If a retired member
24 again becomes an active member, benefit payments may not be made during the
25 period of reemployment unless the teacher makes an election under (b) of this
26 section. The retirement benefit must be suspended for the entire school year if the
27 teacher is reemployed as an active teacher for a period equivalent to a year of service.
28 During the period of reemployment, the member is subject to AS 14.25.050 and
29 deductions from the member's salary will be made in accordance with AS 14.25.050.

30 (b) A school district or regional educational attendance area that has
31 adopted a policy that permits the employment of retired teachers in accordance

1 with AS 14.20.135 shall notify the administrator that it is hiring retired teachers
 2 under AS 14.20.135. A teacher who retired under AS 14.25.110(a) and
 3 subsequently becomes an active member under a policy adopted in accordance
 4 with AS 14.20.135 may, within 30 days of the date of reemployment, elect to
 5 continue receiving benefit payments during the period of reemployment by filing
 6 a waiver of coverage with the administrator on a form provided by the
 7 administrator. An election under this subsection waives coverage for the period
 8 of reemployment and is irrevocable during the period of reemployment.
 9 Deductions from the member's salary may not be made under AS 14.25.050
 10 during the period of reemployment, and the member may not receive credited
 11 service for the period of reemployment. A member who participated in a
 12 retirement incentive program under ch. 26, SLA 1986; ch. 89, SLA 1989; ch. 65,
 13 SLA 1996; ch. 4, FSSLA 1996; or ch. 92, SLA 1997, is not eligible to make an
 14 election under this subsection.

15 (c) Upon subsequent retirement, the retired member is entitled to receive an
 16 additional benefit based on the credited service and the average base salary during the
 17 period of reemployment in accordance with AS 14.25.110. If the initial benefit
 18 payments to which the retired member is eligible have been actuarially reduced
 19 because the member retired early under AS 14.25.110(b), the member shall also
 20 receive an incremental benefit based on the amount of the actuarial reduction imposed
 21 by AS 14.25.110(j) on the first benefit and the length of time that the employee was
 22 reemployed and not receiving retirement benefits. The amount of the incremental
 23 benefit is equal to the difference between the normal retirement benefit to which the
 24 member would have been entitled had the member taken a normal retirement and the
 25 early retirement benefit that the member has been receiving based on the member's
 26 initial period of employment multiplied by the total number of months that the
 27 member did not receive retirement benefits because of reemployment and that amount
 28 actuarially adjusted to be paid over the expected lifetime of the member.

29 * Sec. 5. AS 14.25.043(a) is amended to read:

30 (a) If a retired member again becomes an active member, benefit payments
 31 may not be made during the period of reemployment [UNLESS THE TEACHER

1 MAKES AN ELECTION UNDER (b) OF THIS SECTION]. The retirement benefit
 2 must be suspended for the entire school year if the teacher is reemployed as an active
 3 teacher for a period equivalent to a year of service. During the period of
 4 reemployment, [THE MEMBER IS SUBJECT TO AS 14.25.050 AND] deductions
 5 from the member's salary will be made in accordance with AS 14.25.050.

6 * Sec. 6. AS 14.25.168(d) is amended to read:

7 (d) A benefit recipient may elect major medical insurance coverage in
 8 accordance with regulations and under the following conditions:

9 (1) a person who has less than 25 years of membership service and
 10 who is younger than 60 years of age must pay an amount equal to the full monthly
 11 group premium for retiree major medical insurance coverage;

12 (2) [A PERSON WHO IS AT LEAST 60 YEARS OF AGE BUT IS
 13 YOUNGER THAN 65 YEARS OF AGE MUST PAY AN AMOUNT EQUAL TO
 14 ONE-HALF OF THE FULL MONTHLY GROUP PREMIUM FOR RETIREE
 15 MAJOR MEDICAL INSURANCE COVERAGE;

16 (3)] a disabled member, a disabled member who is appointed to
 17 normal retirement, [OR] a person 60 [65] years of age or older, or a person who has
 18 at least 25 years of membership service is not required to make premium payments.

19 * Sec. 7. AS 39.35.120(b) is amended to read:

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

22 (1) elected official;

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

24 (3) [FOR AN] employee of the university who has elected to
 25 participate in the optional university retirement program under AS 14.40.661 -
 26 14.40.799.

27 * Sec. 8. AS 39.35.150 is amended to read:

28 Sec. 39.35.150. Re-employment of retired employees. (a) If a retired
 29 employee subsequently becomes an active member, benefit payments may not be
 30 made during the period of re-employment unless the member makes an election
 31 under (b) of this section. During the period of re-employment, deductions from the

1 employee's salary shall be made in accordance with AS 39.35.160. Upon subsequent
2 retirement, the retired employee is entitled to receive an additional pension based on
3 the credited service and the average monthly compensation earned during the period
4 of re-employment in accordance with AS 39.35.370.

5 (b) A member who retired under AS 39.35.370(a) and subsequently
6 becomes an active member may, within 30 days of the date of reemployment,
7 elect to continue receiving benefit payments during the period of reemployment
8 by filing an election with the administrator on a form provided by the
9 administrator. An election under this subsection waives coverage for the period
10 of reemployment and is irrevocable during the period of reemployment. During
11 the period of reemployment, deductions from the member's salary may not be
12 made under AS 39.35.160 and the member may not receive credited service. A
13 member who participated in a retirement incentive program under ch. 26, SLA
14 1986; ch. 89, SLA 1989; ch. 65, SLA 1996; ch. 4, FSSLA 1996; or ch. 92, SLA
15 1997, is not eligible to make an election under this subsection.

16 (c) A member who has not made an election under (b) of this section is
17 subject to AS 39.35.120 and 39.35.160.

18 (d) If the initial benefit payments to which the retired member is eligible have
19 been reduced because the member retired early under AS 39.35.370(b) or increased
20 because the member elected to receive a level income option benefit under former
21 AS 39.35.460, the member shall also receive an incremental benefit based on the
22 amount of the reduction imposed by AS 39.35.370(b) or the increase under former
23 AS 39.35.460 on the first benefit and the length of time that the employee was
24 reemployed and not receiving retirement benefits. The amount of the incremental
25 benefit is equal to the difference between the normal retirement benefit to which the
26 member would have been entitled had the member taken a normal retirement and the
27 early retirement benefit or benefit under the level income option that the member has
28 been receiving based on the member's initial period of employment multiplied by the
29 total number of months that the member did not receive retirement benefits because of
30 reemployment and that amount actuarially adjusted to be paid over the expected
31 lifetime of the member. In the case of a member who selected benefits under the level

1 income option, the total number of months may not include any month in which the
2 member was 65 years of age or older.

3 * Sec. 9. AS 39.35.150(a) is amended to read:

4 (a) If a retired employee subsequently becomes an active member, benefit
5 payments may not be made during the period of re-employment [UNLESS THE
6 MEMBER MAKES AN ELECTION UNDER (b) OF THIS SECTION]. During the
7 period of re-employment, deductions from the employee's salary shall be made in
8 accordance with AS 39.35.160. Upon subsequent retirement, the retired employee is
9 entitled to receive an additional pension based on the credited service and the average
10 monthly compensation earned during the period of re-employment in accordance with
11 AS 39.35.370.

12 * Sec. 10. AS 39.35.535(c) is repealed and reenacted to read:

13 (c) A benefit recipient may elect major medical insurance coverage in
14 accordance with regulations and under the following conditions:

15 (1) a person, other than a disabled member or a disabled member who
16 is appointed to normal retirement, must pay an amount equal to the full monthly group
17 premium for retiree major medical insurance coverage if the person is

18 (A) younger than 60 years of age and has less than

19 (i) 25 years of credited service as a peace officer under
20 AS 39.35.360 and 39.35.370; or

21 (ii) 30 years of credited service under AS 39.35.360 and
22 39.35.370 that is not service as a peace officer; or

23 (B) of any age and has less than 10 years of credited service;

24 (2) a person is not required to make premium payments for retiree
25 major medical coverage if the person

26 (A) is a disabled member;

27 (B) is a disabled member who is appointed to normal
28 retirement;

29 (C) is 60 years of age or older and has at least 10 years of
30 credited service; or

31 (D) has at least

(i) 25 years of credited service as a peace officer under AS 39.35.360 and 39.35.370; or

(ii) 30 years of credited service under AS 39.35.360 and 39.35.370 not as a peace officer.

* **Sec. 11.** AS 39.35.675(b) is amended to read:

(b) The amount of a cost-of-living differential may not be included in the employee's compensation for purposes of calculating benefits paid under this chapter unless the employee has received a cost-of-living differential [IN A COMPARABLE AMOUNT OR OF AT LEAST THAT MANY STEPS] for at least 50 percent of the employee's credited service.

* **Sec. 12.** AS 14.20.135; AS 14.25.043(b); AS 39.35.120(b)(2), 39.35.150(b), and 39.35.150(c) are repealed July 1, 2005.

* **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to read:

REPORT TO LEGISLATURE. Annually, beginning in 2002 and ending in 2006, the administrator of the teachers' retirement system shall report to the legislature by the 30th day of the regular legislative session concerning the effect of this Act on the retirement system.

* **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. (a) Notwithstanding sec. 17 of this Act, the Alaska Teachers' Retirement Board may immediately proceed to adopt regulations necessary to implement changes made by secs. 2, 4, and 6 of this Act. The regulations take effect under AS 14.25.022, but not before July 1, 2001.

(b) Notwithstanding sec. 17 of this Act, the Public Employees' Retirement Board may immediately proceed to adopt regulations necessary to implement changes made by secs. 7, 8, 10, and 11 of this Act. The regulations take effect under AS 39.35.042, but not before July 1, 2001.

* **Sec. 15.** Sections 3, 5, 9, and 12 of this Act take effect July 1, 2005.

* **Sec. 16.** Section 14 of this Act takes effect immediately under AS 01.10.070(c).

* **Sec. 17.** Except as provided in secs. 15 and 16 of this Act, this Act takes effect July 1, 2001.