

**SB**

**24**


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**Senator Gary Stevens**  
**Alaska State Legislature**

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## Memorandum

**To:** Senator Gene Therriault, Chair  
Senate State Affairs Committee

**From:** Senator Gary Stevens 

**Date:** March 18, 2005

**Re:** Request for a hearing

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I would like to respectfully request that you schedule CS SS SB 24(HES), "An Act relating to Reemployment of Retirees", to be heard at your earliest convenience. Attached is the back up for your packet.

Thank you for your consideration of this request.

# 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.<sup>1</sup> 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This memorandum confirms oral advice that, once the re-employment amendments are repealed, the statutes that previously required reemployed retirees and their employers to contribute to the applicable retirement system and terminate retirement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.

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<sup>1</sup> 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.<sup>2</sup>

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

<sup>2</sup> 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.<sup>3</sup> The

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<sup>3</sup> 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.<sup>4</sup>

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*

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<sup>4</sup> 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).<sup>5</sup> 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

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<sup>5</sup> 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 149<sup>6</sup> 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.

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<sup>6</sup> 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.<sup>7</sup> The referendum was filed before the legislation took effect, but the vote on the referendum occurred after the effective date of the legislation.<sup>8</sup> 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.

<sup>7</sup> 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.'"

<sup>8</sup> 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.<sup>9</sup> 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.

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<sup>9</sup> 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.<sup>10</sup> 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.

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<sup>10</sup> 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

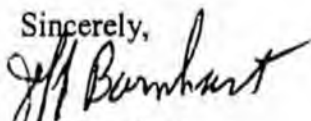
April 6, 2005

Dear Senator Therriault and members of the Senate State Affairs,

I'm writing in opposition of SB24, the retire and rehire bill. I'm encouraging you not to grant "grandfather" rights to those working under the current law. As described in the attached Memorandum of Advice from the state attorney general, it was made crystal clear to everyone who wanted to participate in the double-dipping program, that the law would sunset on July 1, 2005. They all knew it was short term. Any decisions they made were with their eyes wide open. It is discouraging to me, as a state employee, to think that this committee and the legislature would grandfather these people under the existing law. Grandfathering only serves to exacerbate an already bad situation caused by the initial law. We will all be facing a much worse situation 4 years from now if grandfathering is allowed under this bill.

Thank you for the opportunity to comment.

Sincerely,



Jeff Barnhart

11270 BELLS FLATS RD  
KODIAK, AK 99615

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Memorandum Of Advice - Reemployed Retirees

Submitted by: Jennifer Ditcharo/OAG/Law

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Date Modified:

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Memorandum Of Advice - Reemployed Retirees

**Category: Attorney General Opinions**

**Publish Date: 09/30/2004**

**Department: Law**

**Location: Statewide**

**Coastal District: N/A**

**Body of Notice:**

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

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

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

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. The bill specifically included provisions that repeal these amendments on July 1, 2005.

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.

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.

## 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.

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:

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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 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. The 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).

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.

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.

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

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 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). 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.

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.

## 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 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 149 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.

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.

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.

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. The referendum was filed before the legislation took effect, but the vote on the referendum occurred after the effective date of the legislation. 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.

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.

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. 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]

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.

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.

The repeal of the reemployment amendments contained in HB 242 is distinguishable from the referendum that repealed EFORS. The "condition subsequent" of 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. 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. 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

**Revision History:**

09/30/2004 10:40:20 AM by Jennifer Ditchard/OAG/Law/State/Alaska/US  
\$\$WebClient [Anon]

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March 30, 2005

Dear Senator Therriault and members of the Senate State Affairs,

I'm writing in opposition of SB24, the retire and rehire bill. This is a negative piece of legislation for the people of Alaska and state employees. However, there seems to be some support for this bill in the legislature. Perhaps after reading my comments, you might consider making some changes to this bill to improve it.

- **Significantly reduces upward mobility of employees**

By allowing employees, typically those in higher on the ladder, to retire from their jobs and be rehired 30 days later, stops all upward mobility of junior employees. As a result, junior employees are forced to look for work in the private sector or federal government. To maintain good services for the people of this state, we need to continue to train, promote and keep junior employees, not force them from their jobs. They are the future of our state. There are plenty of qualified individuals already working for the state to fill most all vacancies. Inherently, there is something wrong with a law that allows an individual to retire, wait 30 days and then be rehired back into the position they just vacated; and then give them two checks!! Wow!

- **This law has a negative effect on the PERS system.**

Under the current retire and rehire law, rehired employees are double dipping and not contributing to PERS. That is, most receive their retirement check and a paycheck. Neither the employee nor the employer contribute to PERS. As we all know, PERS is in trouble. Every working employee must contribute to PERS. We cannot afford the luxury of having thousands of employees not contributing to PERS. If SB24 becomes law, it is a very likely that the ranks of "retire and rehire employees" will swell, putting further downward pressure on an already crippled PERS system. We cannot afford to stand by and allow this to happen.

- **Illegally rehiring employees at same pay range and step**

Under the current retire and rehire law, employees were supposed to be hired back at the entry-level step. However, many PERS employees were hired back at the same pay range and step as they were at when they retired! For example, if an employee was at range 20, step K when they retired, legally they could only be hired back as a range 20 step A. This may have been followed for the teachers, but it was largely ignored for PERS members. Another abuse! This needs to be corrected. Across the board, all those that were hired back under the current law, need to have an adjustment made so their salary reflects Step A. Secondly, they need to repay the money they illegally took from the state. Somebody has to be accountable! SB24 needs to clearly reflect that rehires will start at step A. Grandfathering this illegal action is not the right thing to do.

- **Cronyism at it's worst.**

The way it works under the current law, if you are in the "good old boys or girls club" you are guaranteed to get your job back after you retire for a minimum of 30 days. However, if you are not a favored son or daughter there is no guarantee that you will be hired back into the job you just vacated. Almost everyone in any given division knows when someone will be hired back into their job after the 30 day wait, and therefore subordinates and others refuse to apply for the position knowing full well they will not be hired.

One way to even the playing field would be to increase the minimum 30-day wait to 360 days. So, if someone retired they would have to wait a year before reapplying for a state job. That would allow junior employees a fair opportunity to apply for and possibly obtain, a promotion that they would not otherwise have a chance at getting.

- **Widespread abused of the current law.**

Instead of applying the retire and rehire law to just a few isolated cases where recruitment may be difficult, it has been applied widely and has become **standard operating procedure** in state government. Even clerks have been hired back! There is absolutely no way to safeguard against this. There are just too many ways around it. Currently SB24 is very vague in addressing this issue.

- **Double-dipping is very bad PR**

I've had people stop me at the grocery store to ask how state employees are permitted to retire and be hired back into the position they just vacated. They were very upset and called the employees "double-dippers" among other terms.

### **Summary**

In summary, I'm encouraging you to vote against this legislation. If you decided in favor of the bill, perhaps you will consider my comments for improving it. In case you are wondering, yes, I'm in a position to retire and be rehired, so if passed, this bill could potentially benefit me. However, I'm opposed to the bill because it leads us down a path of keeping older, more expensive employees, who are not contributing to PERS, while at the same time, precluding junior employees from becoming more experienced and advancing their careers.

Under the current retire and rehire law, the state was given 3 more years to train employees to fill potential vacancies, the law sun-setting this year. Extending the sunset clause, via SB24, only serves to exacerbate an already bad situation caused by the initial bill (law). We will all be facing a much worse situation 4 years from now if this bill passes into law. The current retire and rehire law has caused junior employees, who have

been trained for many years, to depart from state service and many more have begun the process of looking for alternative employment. Our children will not stay in the state unless they can find jobs. If we continue to keep the "dead wood" at the top, those jobs will not be available to our children.

Under the current retire and rehire law, the sunset date was very clear as was the fact that these folks could no longer double-dip (collect 2 paychecks) as of the sunset date. Everyone was made aware of those facts by the state prior to making their decision. Let's not grandfather these select individuals into the program! If those who returned to work under the current retire and rehire law, want to continue to work after the sunset date, they should be allowed to do so. However, they would be treated as regular employees, contributing to PERS and accruing service time. They would not be allowed to collect a retirement check in addition to their paycheck. This seems like a fair compromise.

Thank you,



Jeff Barnhart

11276 Bells Flat Road  
Kodiak, AK 99615

*Info From Div Retirement & Benefits*

# MEMORANDUM

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

*SB 24*

**To:** Kathy Lea  
Retirement Manager  
Division of Retirement and Benefits  
Department of Administration

**Date:** April 8, 2005

**Thru:** Danielle Groghan  
Regional Counselor  
Division of Retirement and Benefits  
Department of Administration

**Phone:** 465-4460

**From:** Linda Weed  
Retirement Specialist  
Division of Retirement and Benefits  
Department of Administration

**Subject:** Rehired Retirees  
State of Alaska

Per your request, the following is a report on rehired retirees that have come back to work with the State of Alaska since the inception of HB 242. The State has re-employed 196 retirees under HB 242. Of this total, 143 retirees are still employed, and 53 have since separated from employment. The breakdown by department is as follows:

**Office of the Governor has hired a total of 2 retirees:**

- 1 Deputy Director (still employed)
- 1 Director (no longer employed)

**Department of Administration has hired 6 retirees:**

- 1 Administrative Clerk (no longer employed)
- 1 Attorney (still employed)
- 1 Human Resource Manager (no longer employed)
- 1 Motor Vehicle Representative (still employed)
- 1 Retirement Technician (no longer employed)
- 1 Systems Programmer (still employed)

**Department of Law has hired 5 retirees:**

- 4 Attorneys (all still employed)
- 1 Law Office Assistant (still employed)

**Department of Revenue has hired 4 retirees:**

- 2 Administrative Clerks (both still employed)
- 1 Director (still employed)
- 1 Investigator (no longer employed)

**Department of Education and Early Development has hired 5 retirees:**

- 1 Accounting Technician (still employed)
- 1 Grants Administrator (still employed)
- 1 Museum Security Clerk (still employed)
- 1 Program Coordinator (still employed)
- 1 Secretary (still employed)

**The Department of Health and Social Services has hired 22 retirees:**

- 1 Accountant (still employed)
- 3 Administrative Clerks (all still employed)
- 1 Administrative Manager (no longer employed)
- 1 Certified Nurses Aide (no longer employed)
- 1 Children's Services Manager (still employed)
- 2 Eligibility Technicians (still employed)
- 1 Facilities Manager (no longer employed)
- 2 H&SS Planners (both still employed)
- 1 Investigator (no longer employed)
- 1 Maintenance Worker (still employed)
- 1 Mental Health Clinician (no longer employed)
- 1 Nurse (still employed)
- 1 Pioneer's Home Administrator (still employed)
- 1 Program Coordinator (still employed)
- 2 Research Analysts (1 still employed, 1 no longer employed)
- 1 Social Worker (still employed)
- 1 Staff Physician (still employed)

**Department of Labor has hired 5 retirees:**

- 3 Analyst Programmers (1 still employed, 2 no longer employed)
- 2 Community Development Specialists (no longer employed)

**Department of Commerce, Community, and Economic Development has hired 4 retirees:**

- 1 Investigator (no longer employed)
- 1 Local Government Specialist (no longer employed)
- 1 Utility Financial Analyst (still employed)
- 1 Warehouse Manager (still working)

**Department of Military and Veterans Affairs has hired 2 retirees:**

- 1 Deputy Commissioner (still employed)
- 1 Security Guard (no longer employed)

**Department of Natural Resources has hired 11 retirees:**

- 1 Administrative Clerk (still employed)
- 1 Deputy Commissioner (still employed)
- 1 Habitat Biologist (no longer employed)
- 4 Natural Resource Managers (all still employed)
- 1 Operations Manager (still employed)
- 1 Project Coordinator (still employed)
- 1 Recorder (still employed)
- 1 Special Assistant to the Commissioner (still employed)

**Department of Fish and Game has hired 50 retirees:**

- 3 Administrative Clerks (2 still employed, 1 no longer employed)
- 2 Aircraft Pilots (both still employed)
- 1 Analyst Programmer (no longer employed)
- 1 Program Coordinator (still employed)
- 2 Assistant Directors (1 still employed, 1 no longer employed)
- 4 Biometricians (all still employed)
- 1 Commissioner (still employed)
- 1 Criminal Justice Planner (no longer employed)
- 1 Deputy Commissioner (still employed)
- 1 Director (still employed)
- 4 Fish and Wildlife Technicians (2 still employed, 2 no longer employed)
- 20 Fisheries Biologists (17 still employed, 3 no longer employed)
- 2 Fisheries Scientists (both still employed)
- 1 Fisheries Technician (still employed)
- 1 Program Coordinator (still employed)
- 1 Publications Technician (still employed)
- 1 Regional Supervisor (still employed)
- 1 Second Mate (still employed)
- 1 Secretary (still employed)
- 1 Wildlife Biologist (no longer employed)

**Department of Public Safety has hired 21 retirees:**

- 1 Building Plans Examiner (still employed)
- 3 Public Safety Captains (all still employed)
- 1 Commissioner (still employed)
- 1 Public Safety Corporal (no longer employed)
- 1 Deputy Commissioner (still employed)
- 1 Engineer (still employed)
- 3 Investigators (2 still employed, 1 no longer employed)
- 2 Public Safety Lieutenants (1 still employed, 1 no longer employed)
- 1 Public Safety Major (no longer employed)
- 1 Risk Management Officer (still employed)
- 6 Troopers (all still employed)
- 1 Public Safety Technician (still employed)

**Department of Environmental Conservation has hired 2 retirees:**

- 1 Chief of Environmental Health Labs (no longer employed)
- 1 Environmental Specialist (still employed)

**Department of Corrections has hired 13 retirees:**

- 2 Administrative Clerks (1 still employed, 1 no longer employed)
- 1 Administrative Managers (still employed)
- 1 Analyst Programmer (still employed)
- 3 Correctional Officers (all still employed)
- 1 Correctional Superintendent (still employed)
- 1 Maintenance Specialist (no longer employed)

**Department of Corrections (continued)**

- 1 Medical Records Assistant (no longer employed)
- 1 Mental Health Clinician (no longer employed)
- 1 Probation Officer (no longer employed)
- 1 Procurement Specialist (still employed)

**Department of Transportation and Public Facilities has hired 31 retirees:**

- 1 Accountant (still employed)
- 1 Airport Safety Officer (still employed)
- 4 Airport Screening Officers (2 still employed, 2 no longer employed)
- 1 Analyst Programmer (no longer employed)
- 1 Assistant Commissioner (still employed)
- 6 Engineers (5 still employed, 1 no longer employed)
- 1 Engineering Associate (no longer employed)
- 1 Engineering Assistant (still employed)
- 1 Environmental Services (still employed)
- 2 Equipment Operators (1 still employed, 1 no longer employed)
- 1 Leasing Officer (no longer employed)
- 1 Oiler (still employed)
- 1 Regional Director/Assistant Director (no longer employed)
- 1 Right of Way Agent (still employed)
- 1 Special Assistant to the Commissioner (still employed)
- 1 Survey Lead (no longer employed)
- 1 Technical Engineer (still employed)
- 2 Third Mates (1 still employed, 1 no longer employed)
- 1 Transportation Maintenance Superintendent (still employed)
- 1 Transportation Planner (still employed)
- 1 Vessel Scheduling Coordinator (still employed)

**Alaska Court System has hired 13 retirees:**

- 1 Administrative Assistant (still employed)
- 1 Assistant CMS Project Manager (still employed)
- 1 Bailiff (still employed)
- 4 Deputy Clerks (3 still employed, 1 no longer employed)
- 1 Facilities Manager (still employed)
- 1 Legal Technician (no longer employed)
- 1 Rural Court Training Assistant (no longer employed)
- 1 Special Projects Manager (still employed)
- 1 State Law Librarian (still employed)

# STATE OF ALASKA

## DEPARTMENT OF ADMINISTRATION

DIVISION OF RETIREMENT AND BENEFITS

FRANK H. MURKOWSKI, GOVERNOR

PO BOX 110203  
JUNEAU, AK 99811-0203  
TDD: (907) 465-2805  
FAX: (907) 465-3086  
PHONE: (907) 465-4460  
TOLL-FREE 1-800-821-2251

March 3, 2005

The Honorable Gene Therriault  
Senate State Affairs Chair  
Alaska Legislature  
State Capitol Room 119  
Juneau, AK 99801-1182

Re: Retiree Return to Work  
Program

Dear Senator Therriault:

During a recent presentation to the Senate State Affairs Committee on the effects of HB 242, Retiree Return to Work Program, additional information was requested by the committee.

The Division has prepared a response, which you will find enclosed with this cover letter. If you have any further questions, or if we can provide additional assistance in this matter, please let me know.

Sincerely,



Melanie Millhorn  
Director

MM/KSL/ksl  
Enclosure

cc: Senator Wagoner  
Senator Huggins  
Senator Davis  
Senator Elton

**Senate State Affairs Committee  
HB 242 Follow-Up  
March 3, 2005**

**Question: What were the calculated savings for employers who rehired retired members under HB 242?**

Since rehired retirees waived participation in the retirement systems, payroll information was not reported to the retirement systems. However, the State of Alaska has provided the attached spreadsheet showing \$1,091,720 in savings as a representation of the potential savings experienced.

**Question: What were the age demographics of HB 242 retirees who participated in the rehire program?**

Teachers' Retirement System (TRS)

Age at Retirement	40-44	45-49	50-54	55-59	60-64	65+
No. Retirees	7	45	63	65	14	5

Public Employees' Retirement System (PERS)

Age at Retirement	40-44	45-49	50-54	55-59	60-64	65+
No. Retirees	15	50	46	172	41	16

**Question: Can you proactively determine who was advised in what manner.**

In general, we can state that Retirement personnel counseled about twenty of the participating employers regarding our understanding of the bill provisions. We also believe we actively counseled in person, by letter and by phone about 175 individuals who are participating in the program. A spot search of 20 PERS and TRS member microfiche records has not indicated any letters to members specifically about this issue. However, our understanding of this provision has been part of our Retirement Process seminars for both PERS and TRS for the duration of the legislation and we estimate we have distributed the rehire information to approximately 2,000 members.

**Question: What is the percent of employees who were enrolled in the program who have then left.**

System	Total Waivers Filed	Total Active Waivers	% Retirees Leaving the Program
PERS	297	211	30%
TRS	187	124	34%

**Question: What was the total number of teachers aides and where were they located?**

There were 7 teachers aides hired. The majority were with Northwest Arctic School District and the Kenai Peninsula Borough School District. There were 3 hired by the Anchorage School District, 2 in Special Education and 1 in Indian Education.



Frank H. Murkowski  
GOVERNOR

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

March 08, 2005

## ADMINISTRATIVE ORDER NO. 225

### FINDINGS

I, Frank H. Murkowski, Governor of the State of Alaska, make the following findings:

1. Provisions of ch. 57, SLA 2001, commonly known as the retiree rehire provisions of HB 242, permit certain retirees who return to work in positions normally covered by the public employees' and teachers' retirement systems to waive active coverage under the retirement systems and continue to receive state retirement benefits while working.

2. The purpose of the retiree rehire provisions of HB 242 is to provide a management tool to help address existing and anticipated recruitment problems faced by public employers who participate in the retirement systems. The executive branch of state government is currently facing demonstrated recruitment difficulties in a variety of job classes, particularly those job classes that require specific education or that require a strong professional work history that is usually gained over a period of time working in a professional field.

3. Consistent application of the retiree rehire program of HB 242 is especially important for recruitment for positions in the classified service to ensure that the principles of collective bargaining are consistently met. Furthermore, it is essential that managers in all state agencies anticipate and plan for the eventuality of retirement of the state's seasoned workforce in the classified service in a manner that does not undermine the state's workforce or create morale problems among less experienced staff who are preparing for promotional opportunities created by retirement of their coworkers.

4. The retiree rehire provisions of HB 242 sunset on July 1, 2005, and legislation extending the use of this valuable management tool and addressing participation by current rehired retirees is unlikely to pass and be enacted into law unless the retiree rehire program is properly managed to meet the Legislature's original intent.

### ORDER

Under the authority of art. III, secs. 1 and 24, of the Alaska Constitution, I, Frank H. Murkowski, Governor of the State of Alaska, order the following regarding appointment of rehired retirees to positions in the classified service of the executive branch of state government:

1. The hiring authority shall use the following competitive process for recruitment:

- A. an applicant must be recruited through a competitive process before an appointment is made;
  - B. the recruitment must have been posted on Workplace Alaska for at least 15 days before an appointment is made;
  - C. the hiring authority must consider all applicants before making the appointment; and
  - D. if the selected applicant would be appointed using the retiree rehire provisions of HB 242, the applicant must have been separated from state service for at least 30 days.
2. Before a position is offered to an applicant using the retiree rehire provisions of HB 242:
  - A. the recruitment described in (1) of this Order must have resulted in an applicant pool of fewer than five qualified, eligible, and available applicants;
  - B. the hiring authority must demonstrate why no other applicant will have the knowledge, skills, or ability to perform the duties of the positions after the full probationary period; and
  - C. the approval for the hire must have been secured in writing from the director of personnel in the Department of Administration.
3. Within 60 days after receipt of the director of personnel's approval under (2)(C) of this Order and the acceptance of the position by the person under the retiree rehire provisions of HB 242, the hiring authority shall work with the division of personnel in the Department of Administration to develop a plan that addresses:
  - A. the critical components of the position;
  - B. the knowledge, skills, and abilities that need to be developed in the workplace to assure that the work can be accomplished when the rehired retiree leaves state service; and
  - C. a development plan for accomplishing the transfer of knowledge.
4. Step placement for the salary of an appointee under the retiree rehire program of HB 242 shall be determined by the hiring authority in accordance with applicable statutes, personnel rules, collective bargaining agreements, and enforceable policies and procedures.
5. State agencies are encouraged to develop a strategic view of human resource needs, including the development of a workforce plan, with the assistance of the division of personnel, to address the future needs of the state agency.

## DEFINITION

In this Order, "state agency" means a department, office, or other organizational unit of the executive branch of state government; "state agency" includes a state board, commission, authority, or independent state agency assigned to a department for administrative purposes.

## APPLICABILITY

This Order applies to all appointments made to the classified service of the executive branch of state government on or after the effective date of this Order.

This Order takes effect immediately.

DATED at Juneau, Alaska, this 8th day of March, 2005.

/s/Frank H. Murkowski  
Governor

**WWW.GOV.STATE.AK.US**

[Administrative Orders 201-present](#) | [Contact the Governor](#) | [Webmaster](#) | [State of Alaska](#)

SESSION ADDRESS:  
Alaska State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-4925  
Fax: (907) 465-3517  
Toll Free: 1-800-821-4925

# Senator Gary Stevens

## Alaska State Legislature

INTERIM ADDRESS:  
112 Mill Bay Road  
Kodiak, Alaska 99615  
(907) 486-4925  
Fax: (907) 486-5261



### *Sponsor Statement* **CS SS SB 24(HES)**

*"An Act relating to reemployment of and benefits for retired teachers and public employees and to teachers or employees who participated in retirement incentive programs and are subsequently reemployed as a commissioner; repealing secs. 5, 7, and 9, ch. 58, SLA 2001; providing for an effective date by amending the delayed effective date for secs. 3, 5, 9 and 12, ch. 57, SLA 2001, and repealing sec. 13, ch. 58, SLA 2001, which is the delayed effective date for secs. 5, 7, and 9, ch. 58, SLA 2001; and providing for an effective date."*

CS SS SB 24 (HES) would extend a program that was established in 2001 that allows retired teachers and public employees that retired under normal retirement or those individuals that retired under the Retirement Incentive Program (RIP) and are subsequently reemployed as a commissioner; to return to the workforce without foregoing their retirement benefit payments during their period of return. However, in order to keep this program cost-neutral, an employee selecting this option would not accrue additional retirement credit while being reemployed. In addition, an employer that utilizes this program will be required to pay any increase in unfunded liability that results to the retirement system as a result of employing a retiree.

To ensure that abuses to the program do not occur, a provision has been added to the bill that will require a governing body of a political subdivision or public organization that anticipates using this program, to adopt a policy, by resolution, that permits employment of a retiree when they can show that a true shortage of qualified applicants exist. This provision already exists for the reemployment of TERS employees.

In an effort to do the same thing for state government, Governor Murkowski signed Administrative Order No. 225 on March 8<sup>th</sup> requiring state agencies to adopt a strict competitive process for recruitment and get approval from the Director of Personnel in order to use this program.

This legislation will provide a management tool to assist Alaska's public employers who are having difficulty filling vacancies. It will also enable employers to develop plans that address the knowledge, skills, and abilities that need to be transferred or developed to assure the work can be accomplished when the reemployment provisions sunset on July 1, 2009.

I urge you to support this legislation.

Updated 3/17/05

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSSSB 24(HES)  
 (S) Publish Date: 3/18/2005

Revision Date/Time (Note if correction): n: \_\_\_\_\_ Dept. Affected: Statewide  
 Title An act relating to reemployment of retired RDU Statewide  
teachers and public employees... Component Statewide  
 Sponsor Sen. Gary Stevens  
 Requester Senate HES Component No. \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill will extend the Retiree Return to Work Program (HB 242 2001) for teachers and public employees scheduled to sunset on July 1, 2005. SB 24 would extend this program to continue until to July 1, 2009.

For the Public Employees' Retirement System, the actuarial consultant has computed this legislation to have no effect on employer contribution rates until the number of members electing the waiver reaches 500. For the Teacher's Retirement System, our actuarial consultant has computed this legislation to increase TRS employer contribution rate with only 100 participants. A detailed analysis is attached.

Prepared by: Melanie Millhorn, Director  
 Division: Retirement and Benefits  
 Approved by: Mike Tibbles, Deputy Commissioner  
 Agency: Department of Administration

Phone: 465-4408  
 Date/Time: 3/7/05 12:57 PM  
 Date: 3/7/2005

FISCAL NOTE # 1

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

BILL NO. CSSSSB 24(HES)

ANALYSIS CONTINUATION

Examples of impact on PERS and TRS employers are as follows:

Number of Members Electing the Waiver	Increase in Average PERS Employer Contribution Rate	PERS Members Currently On Waiver	Increase in Average TRS Employer Contribution Rate	TRS Members Currently On Waiver
100	negligible	211	0.02%	124
500	0.01%		0.10%	
1,000	0.02%		0.20%	

Note: The fiscal amount noted below represents the number of retirees presently enrolled for the period of 2001 to November 30, 2004. Should the membership levels increase the fiscal cost would increase based on the table shown above.

PERS	Salaries (in 000's)	rate increase %	Annual cost (in 000's)
State of Alaska	732,429.5	0.00%	0.00
Juneau Borough and School District	50,947.0	0.00%	0.00
Anchorage Municipality and School District	194,930.9	0.00%	0.00
University of Alaska	113,096.2	0.00%	0.00
Fairbanks Borough and School District	44,610.4	0.00%	0.00
North Slope Borough and School District	58,321.6	0.00%	0.00
Mat-Su Borough and School District	27,578.6	0.00%	0.00
All other PERS employers	238,256.3	0.00%	0.00
Total	\$ 1,460,170.5		0.00

Reflects membership of 211 which results in a negligible cost.

TRS	Salaries (in 000's)	rate increase %	Annual cost (in 000's)
All School Districts TRS salaries	525,614.0	0.02%	105.12
State of Alaska TRS salaries	7,015.9	0.02%	1.40
Total			<u>106.53</u>

Reflects membership of 124 which results in a .02% increase in employer rates.

**Total Annual Cost to PERS and TRS** 106.53

AS 24.08.036 FISCAL NOTES ON BILLS AFFECTING STATE RETIREMENT SYSTEMS, requires an additional analysis of the long term and short term costs to the state if a bill is adopted, as well as the impact of the bill on the actuarial soundness of the funds. The annual cost is as indicated above.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 17, 2005

**SUBJECT:** CSSSSB 24(HES) (Work Order No. 24-LS0211\Y)

**TO:** Senator Fred Dyson  
Attn: Jason Hooley

**FROM:** Barbara R. Craver   
Legislative Counsel

Attached is the HES committee substitute as amended by the conceptual amendment you provided. I would like to call your attention to the scope of the changes made in the amendment. Please be aware that the amendment in this version only relates to shortages for Alaska Public Employees' Retirement System (PERS) employers who are political subdivisions or public corporations. The requirement of a prior finding of employee shortages, a 30 day separation and a competitive hiring process will only apply to members of political subdivisions or public corporations that participate in PERS.

The amendment, which is found in section 4 of the bill, was made by adding new subsections to AS 39.35.150. The amendment follows the construction of AS 14.20.135 which provides for rehiring retired teachers when there are teacher shortages.<sup>1</sup> Members

---

<sup>1</sup> 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.

Senator Fred Dyson  
March 17, 2005  
Page 2

who retired under AS 39.35.370(a) and who return to work for PERS employers, such as the State of Alaska, may make the election under AS 39.35.150(b) without the member's employer having to find a shortage in the member's job class, and the member will not have to have a separation of at least 30 days or be rehired only after a competitive hiring process.

If you wish to require PERS employers who are not political subdivisions or public corporations to establish a shortage in a job class and other such requirements, AS 39.35.150 will need further changes.

If I may be of further assistance, please advise.

BRC:med  
05-189.med

Enclosure

---

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

# MERCER

Human Resource Consulting

One Union Square  
600 University Street, Suite 3200  
Seattle, WA 98101-3137  
206 808 8800 Fax 206 382 0627  
www.mercerHR.com

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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.



Marph & McLennan Companies

# MERCER

Human Resource Consulting

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SEP 07 2004

Div. of Ret. & Benefits

Page 2

September 2, 2004

Ms. Melanie Millhorn

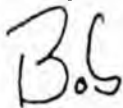
State of Alaska

The waivers have a greater impact on employer rate 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



## UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 110  
Juneau, Alaska 99901-1172  
(907) 586-2620  
(907) 463-2545 Fax  
E-Mail: [ufa@ufa-fish.org](mailto:ufa@ufa-fish.org)  
[www.ufa-fish.org](http://www.ufa-fish.org)

March 8, 2005

Senator Fred Dyson, Chair  
Senate Health, Education & Social Services Committee  
Alaska State Legislature  
State Capitol (Mail Stop 3100)  
Juneau AK 99801-1182

Dear Senator Dyson,

United Fishermen of Alaska (UFA) represents thirty-one Alaska commercial fishing groups and hundreds of individual fishermen, crew members and related businesses. The UFA Board of Directors recently met and discussed SB 24 regarding the retirement and reemployment of certain public employees.

UFA supported House Bill 242 in 2001 as a way for the state to retain qualified biologists and administrative personnel in the Alaska Department of Fish and Game. At that time, the management of subsistence fisheries on federal waters was shifting to federal management and federal pay scales were luring qualified fisheries personnel from Alaska Department of Fish and Game. Alaska's highly regarded fisheries management requires the retention of highly qualified employees with local knowledge.

UFA supports SB 24 to continue this worthwhile program to retain key fishery management personnel.


Respectfully,

Mark D. Vinsel  
Executive Director

#### MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Druggers Association • Alaska Longline Fishermen's Association • Armstrong Keta • At-sea Processors Association  
Bristol Bay Reserve • Concerned Area "M" Fishermen • Cordova District Fishermen United • Douglas Island Pink and Chum  
Fishing Vessel Owners Association • Groundfish Forum • Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association  
North Pacific Fisheries Association • North Pacific Scallop Cooperative • Northern Southeast Regional Aquaculture Association  
Old Harbor Fishermen's Association • Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation  
Purse Se: Vessel Owner Association • Seafood Producers Cooperative • Southeast Alaska Herring Seiners Marketing Association  
Southeast Alaska Fishermen's Alliance • Southeast Alaska Regional Dive Fisheries Association • Southeast Alaska Seiners Association  
Southern Southeast Regional Aquaculture Association • United Catcher Boats • United Salmon Association • United Southeast Alaska Gillnetters  
Valdez Fisheries Development Association • Western Gulf of Alaska Fishermen

P.O.Box 8-2977  
Fairbanks, AK 99708  
31 January, 2005



The Honorable Gary Stevens  
State Senate  
Alaska State Capitol  
Juneau, Alaska 99801-1182

Dear Senator Stevens:

On June 30, 2005, provisions of HB 242 (2001) are scheduled to "sunset". Sometimes referred to as the retire/rehire bill, a portion of this legislation was intended to make State employment an attractive option to recently retired or retiring State employees, at the same time saving the State money and preserving corporate experience. It provided the incentive that returning employees could waive further State and personal contributions to their retirement account, in return for continuing to draw their original retirement pay (just as they would if they went to work for another employer).

For those retirees who were going to continue a working life anyway, their experience would be put to best use directly for the State, offsetting in part the losses due to "brain drain" – losses that are expected to continue for the next several years. In the current issue of the Division of Personnel's "HR Solutions", it says "Over the next five years, 26% of the State employees are eligible to retire based on age, retirement tier, and years of service. In some occupational groups, the retirement rate is as high as 40%."

I'm writing to ask that you support elimination of that sunset provision, or extension of it by another four to five year term. That would carry the State past the current "clump" of retirements, and be long enough to make returning to State employment an attractive option to those intending to retire this year (before the sunset provision takes effect).

There is a second reason for this request. One of the recent staff opinions from the Attorney General's office on this subject interpreted the existing law to not only eliminate selection of the waiver option for retirees returning after June 30<sup>th</sup>, but also to withdraw that option from those retirees who have already returned to State employment under those provisions. This despite the language in the law that election of the waiver option is made irrevocably, "for the term of reemployment". I am one of these, having been rehired through the State's competitive hiring process a year and a half ago.

The original legislation was passed with little or no opposition, and rightfully so – it is a win-win situation for the State and for those employees who choose to make their second career and extension of the first.

Thank you for sponsoring SSSB 24, which would extend the sunset provision by several years. I appreciate your efforts to address this problem, and hope for the sake of those whose retirement is imminent that the proposed legislation can be passed and signed into law quickly.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Gary C. Tyndall". The signature is written in dark ink and is positioned above the printed name.

Gary C. Tyndall

Suggested by: Administration

City of Kenai

**RESOLUTION NO. 2005-02**

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA SUPPORTING LEGISLATION TO CONTINUE THE REHIRED RETIREE - EMPLOYMENT WAIVER PROVISION OF HB242 FOR THOSE MEMBERS CURRENTLY ENROLLED UNDER THIS PROVISION.

WHEREAS, in 2001 the State Legislature enacted HB242 which provided that retired PERS members could be rehired by PERS employers and continue to receive normal retirement benefits; and,

WHEREAS, the July 1, 2005 sunset provision in the bill was interpreted by the Alaska Division of Retirement and Benefits to be the final date to be reemployed under this program; and,

WHEREAS, the Division of Retirement and Benefits further stated in writing that "a member who is participating in the program and continues employment after July 1, 2005 will be allowed to continue participating in the plan"; and,

WHEREAS, the City and its eligible members relied upon the information provided by the Division of Retirement and Benefits; and,

WHEREAS, agreements with employees were negotiated in good faith and the stated terms and conditions should be honored.

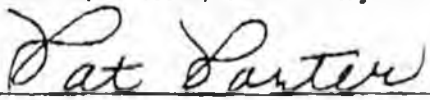
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, that:

Section 1: The City Council of the City of Kenai supports legislation that will continue the Rehired Retiree - Employment Waiver program enacted by HB242 in 2001, for those members currently enrolled in that program.

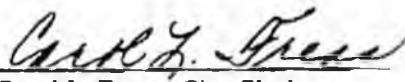
Section 2: That such legislation will be acted on early in the 2005 session.


Section 3: That this resolution be sent to Governor Murkowski and all members of the Alaska State Legislature.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this fifth day of January, 2005.

  
PAT PORTER, MAYOR

ATTEST:

  
Carol L. Freas, City Clerk

Approved by Finance:   
(12/21/2004) hl



Frank H. Murkowski  
GOVERNOR

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

March 08, 2005

## ADMINISTRATIVE ORDER NO. 225

### FINDINGS

I, Frank H. Murkowski, Governor of the State of Alaska, make the following findings:

1. Provisions of ch. 57, SLA 2001, commonly known as the retiree rehire provisions of HB 242, permit certain retirees who return to work in positions normally covered by the public employees' and teachers' retirement systems to waive active coverage under the retirement systems and continue to receive state retirement benefits while working.
2. The purpose of the retiree rehire provisions of HB 242 is to provide a management tool to help address existing and anticipated recruitment problems faced by public employers who participate in the retirement systems. The executive branch of state government is currently facing demonstrated recruitment difficulties in a variety of job classes, particularly those job classes that require specific education or that require a strong professional work history that is usually gained over a period of time working in a professional field.
3. Consistent application of the retiree rehire program of HB 242 is especially important for recruitment for positions in the classified service to ensure that the principles of collective bargaining are consistently met. Furthermore, it is essential that managers in all state agencies anticipate and plan for the eventuality of retirement of the state's seasoned workforce in the classified service in a manner that does not undermine the state's workforce or create morale problems among less experienced staff who are preparing for promotional opportunities created by retirement of their coworkers.
4. The retiree rehire provisions of HB 242 sunset on July 1, 2005, and legislation extending the use of this valuable management tool and addressing participation by current rehired retirees is unlikely to pass and be enacted into law unless the retiree rehire program is properly managed to meet the Legislature's original intent.

### ORDER

Under the authority of art. III, secs. 1 and 24, of the Alaska Constitution, I, Frank H. Murkowski, Governor of the State of Alaska, order the following regarding appointment of rehired retirees to positions in the classified service of the executive branch of state government:

1. The hiring authority shall use the following competitive process for recruitment:

- A. an applicant must be recruited through a competitive process before an appointment is made;
  - B. the recruitment must have been posted on Workplace Alaska for at least 15 days before an appointment is made;
  - C. the hiring authority must consider all applicants before making the appointment; and
  - D. if the selected applicant would be appointed using the retiree rehire provisions of HB 242, the applicant must have been separated from state service for at least 30 days.
2. Before a position is offered to an applicant using the retiree rehire provisions of HB 242:
  - A. the recruitment described in (1) of this Order must have resulted in an applicant pool of fewer than five qualified, eligible, and available applicants;
  - B. the hiring authority must demonstrate why no other applicant will have the knowledge, skills, or ability to perform the duties of the positions after the full probationary period, and
  - C. the approval for the hire must have been secured in writing from the director of personnel in the Department of Administration.
3. Within 60 days after receipt of the director of personnel's approval under (2)(C) of this Order and the acceptance of the position by the person under the retiree rehire provisions of HB 242, the hiring authority shall work with the division of personnel in the Department of Administration to develop a plan that addresses:
  - A. the critical components of the position;
  - B. the knowledge, skills, and abilities that need to be developed in the workplace to assure that the work can be accomplished when the rehired retiree leaves state service; and
  - C. a development plan for accomplishing the transfer of knowledge.
4. Step placement for the salary of an appointee under the retiree rehire program of HB 242 shall be determined by the hiring authority in accordance with applicable statutes, personnel rules, collective bargaining agreements, and enforceable policies and procedures.
5. State agencies are encouraged to develop a strategic view of human resource needs, including the development of a workforce plan, with the assistance of the division of personnel, to address the future needs of the state agency.

### DEFINITION

In this Order, "state agency" means a department, office, or other organizational unit of the executive branch of state government; "state agency" includes a state board, commission, authority, or independent state agency assigned to a department for administrative purposes.

### APPLICABILITY

This Order applies to all appointments made to the classified service of the executive branch of state government on or after the effective date of this Order.

This Order takes effect immediately.

DATED at Juneau, Alaska, this 8th day of March, 2005.

/s/Frank H. Murkowski  
Governor

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Dear Alaska Legislator:

1-27-2005

As you know, PERS/TRS funding problems are hot legislative issues. Help save PERS/TRS and also stop an unethical hiring practice by allowing HB242 (2001) clauses to sunset in 2005. The following explanation addresses the unfairness of the hiring practice and how stopping the practice will save PERS/TRS dollars.

HB242 of 2001 made it possible for some State, Borough and City employees to retire and then rehire with full pay plus full retirement benefits. The original intent of the bill was to keep a few irreplaceable bush school teachers from retiring. However, since adoption of HB242, a number of "irreplaceable" Borough, City and State employees have also taken advantage of the program to retire and rehire, often into their same jobs—often literally to the same desk. HB242 clauses that allow this practice will sunset July 1, 2005 unless re-authorized. Aside from considering the publicly reprehensible issue of same-job double dipping, please consider the sunset of HB242 in light of the following 4 points. I believe each of these points to be an unintended consequence of HB242.

1. First a very basic question: Were most of the rehired folks truly irreplaceable? Re-authorization of HB242 retire/rehire clauses should be examined for conformance with original intentions of the bill. I challenge legislators to determine if a significant percentage of HB242 rehires were actually "irreplaceable" by the common definition of the word. From my research, especially as it applies to State employees, a high percentage of the rehires were mid to upper level supervisors. Do supervisors as a group tend to form an irreplaceable class? I have not been able to identify non-exempt or non-supervisory union people who have been allowed to take part in this program. Identifiable classes of individuals not offered HB242 rehiring can consider legal actions against various Alaska government entities based on discrimination and favoritism. Besides, isn't it healthy for the government systems to encourage "new blood" to step into the supervisory class, with their new ideas, enthusiasm, etc.? I believe so.

2. Employees nearing 30 years of service (most State jobs for example) are being lured into retiring and rehiring with the perception of a giant raise. Why would anyone continue to work an additional 2, 3, or 5 years after retirement eligibility if they can begin collecting the "big bucks" at 30 years almost automatically? Through HB242 rehiring, department heads can retain good (but not necessarily irreplaceable) supervisory employees by offering them a huge "raise." The department head thinks this is wonderful because the raise does not come from their protected departmental funds—no—the raise comes from PERS/TRS. Also, enticement to retire and rehire must negatively impact the PERS/TRS actuarial calculations since employees, especially upper level employees, often remained on the job several years after full retirement eligibility.

3. Non-public employee citizens of Alaska do not want to see any one individual receiving an excessively large total amount of money from State, Borough, or City coffers. How large? For example, take a range 24, Tier I supervisor at say \$80,000/year retiring from DOT&PF after 30 years. That retiree will collect about 72 percent of his/her salary from PERS (includes the 10% COLA). Therefore, after rehiring, that individual receives from combined State coffers: about \$57,000 in PERS retirement + \$80,000 in job pay + health coverage + Alaska's continued payment into an SBS account for the individual. In total, the State of Alaska shells out somewhere around \$150,000/year to this individual until the individual decides to re-retire. The employee has now returned to the job with no incentive to E V E R retire permanently. In terms of total expenditure, State/Borough/City governments might find it much less expensive to offer the retirement-eligible employee an extravagant pay increase NOT to retire. In this example, a huge pay increase (say 20% = \$16,000/year) would pale compared to the \$57,000 per year that this individual drains from PERS/TRS after their HB242 rehiring. Would such a raise seem silly? You bet!

4. Those rehired through HB242 return to high-paying positions, but they make no further contributions to the PERS/TRS! How does this look to the public? How does this look to most fellow employees who must continue to pay into PERS/TRS while a boss or co-worker doesn't have to pay? This is a sweet deal for the rehired individual. It is obviously a bad thing for retirement systems that must depend on continuing and perhaps much increased PERS/TRS contributions from all active employees.

Remember that the PERS/TRS were intended as true retirement systems, not as a supervisor's income supplement or "raise." Departments that need to keep long-term employees should seek legitimate funding for raises and not raid PERS/TRS. Try to find private businesses that rehire their own retirees with retirement pay. SB24 and SB31 of 2005 attempt to prevent the sunset of 2001's HB242. Please help defeat SB24 and SB31.

Sincerely,  
Robert L. McHattie [rmchattie@att.net](mailto:rmchattie@att.net), 456-7485

P.O. Box 71130  
Fairbanks, Ak 99707-1130

Dear Mr.,

My name is Don P. Johnson and I work for the City of Fairbanks Police. I have proudly served for nearly 27 years. It has always been my intention to serve for at least 30 years.

In 2001 when I heard about HB242, I thought it was too good to be true. I was told at that time by PERS that HB242 would be in effect for 5 years. After that time period a decision would be made whether or not to continue letting employees into the program. Those employees who were in the program would continue in effect.

I consulted an attorney and we at the police department negotiated a letter of agreement which benefited both the City and the police department. Four years later I am notified by PERS that an Attorney General reinterpreted the initial wording to mean something different. In July I will have to quit receiving my retirement benefit or leave the job I love.

The City of Fairbanks has saved money by allowing me and other police employees to retire and continue working. The City no longer pays my PERS contributions or my medical insurance. The City agreed to pay \$4.00 per hour into a 401A plan in lieu of the savings but they have since reneged on that written agreement and stopped payments.

As previously stated, my intent has always been to continue working for the Police for at least 30 years. Whether or not HB242 is abolished, my intent is to work for at least 3 ½ more years. If HB242 does cease to exist, I will be forced to work at least 7 more years to make up the difference. My retirement goals were based upon good faith information received in 2001. Had I known this was a program open to interpretation, I certainly would not have opted to take advantage of HB242.

I shall continue doing the job I love regardless of the vote by the legislature. I sincerely hope that you will vote for keeping those of us already in HB242 in place.

Sincerely,

Don P. Johnson  
907-457-6071  
168 Shenandoah Drive  
Fairbanks, AK. 99712