

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 2005-2006 2965

Employer
Political Subdivision

Position

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

State of Alaska
Academic Counselor
Accountant
Accounting Clerk
Administrative Assistant
Administrative Assistant to Director

Employer
State of Alaska

Position

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

Employer
State of Alaska

Position

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

PERS Rehired Retiree Job Class Summary

Job Class	Waivers Received
Academic Counselor	1
Accountant	3
Accounting Clerk	1
Accounting Technician	1
Accts. Payable Clerk	1
Admin Asst.	8
Admin Clerk	9
Admin Manager	1
Admin Officer	2
Adult Educator	1
Aide Secondary Teacher	1
Aircraft Pilot	2
Airport Safety Officer	1
Airport Screening Officer	4
AMHS Third Mate	2
Analyst Programmer	8
Appraisal Analyst	1
Addiction Recovery Aide	1
Army Instructor	1
Asst. CMS Project Mgr.	1
Asst. Commissioner	1
Asst. Director	1
Attorney (varying levels)	6
Bailiff	1
Biologist (various)	19
Biometrician (varying levels)	3
Building Plans Examiner	2
Business Mgr.	1
Captain	1
Cert. Nurses Aide I	1
Chief Environ. Health Labs	1
Chief of Police	3
City Administration	4
City Clerk	1
Commissioner	2
Community Dev. Spec	2
Community Jail Officer	1
Construction Inspector	1
Controller	1
Correctional Officer	2
Criminal Justice Planner	1
Cust.Serv. Rep. (Medical)	1
CST/ORT (Medical)	1
Deputy Clerk	2
Deputy Commissioner	4
Deputy Director	1
Operations Supervisor	1

Job Class	Waivers Received
Detective	2
Diet Aide	1
Directors, various	10
Dispatcher	1
Economic Developer/Planner	1
Electrical Projects	1
Superintendent	1
Eligibility Technician	2
Engineer (Varying types)	16
Environmental Services	1
Environmental Specialist	1
Equipment Operator	1
Evidence Technician	1
Facilities Mgr.	2
Financial Manager	1
Fire Captain	2
Fire Chief	1
Fish & Wildlife Tech	5
Food Prep./Bldg. & Groundskeeper	1
Foreign Language Teacher	1
General Foreman	1
Grants Accountant	1
Grants Administrator	1
H&SS Planner	1
Harbor Officer	1
Health & Safety Officer	1
Heavy Equip. Operator	1
Indian Education Inst.	1
Inst. Systems Tech.	1
Investigator (varying levels)	5
Leasing Officer	1
Librarian, Asst.	3
Lieutenant	2
Local Gov't Spec	1
Maintenance	4
Major	1
Manager (various types)	13
Medical Records Asst.	1
Mental Health Clinician	2
Motor Vehicle Rep.	1
Museum Curator	1
Museum Security Clerk	1
Natural Resources Specialist	1
Nuclear Medicine Tech	1
Nurse	6
Oilor	1
Operations Mgr.	1

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

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

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

Summary

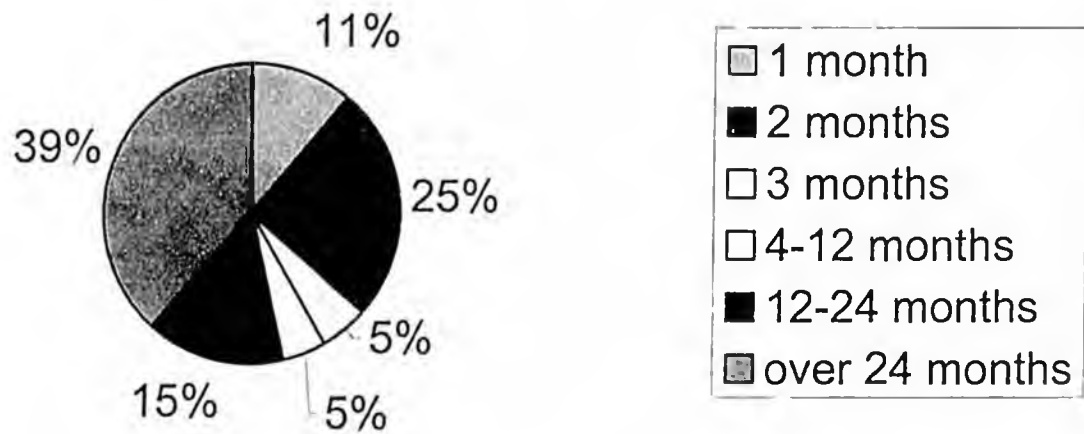
The following information summarizes the activity reported by employers to the division from July 1, 2001 through November 30, 2004.

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

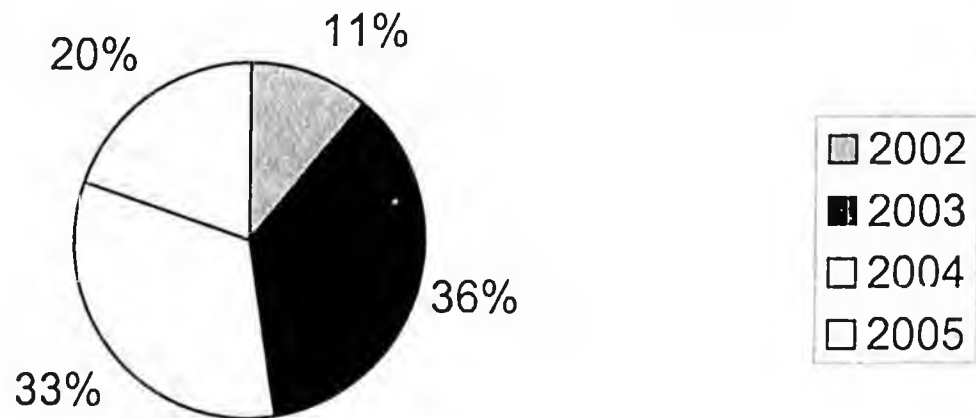
Detail of Number of Retirees Rehired by Each TRS Employer

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

Number of Months Between Termination and Rehire-TRS



TRS Rehired Retirees by School Year



TRS Rehired Retiree Job Class Detail

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

Memorandum

State of Alaska

Department of Law

TO: Melanie Millhorn
Director
Division of Retirement & Benefits

DATE: September 14, 2004

OUR FILE: 661-05-0035

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

TELEPHONE NO: 269-5178

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

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

I. INTRODUCTION

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

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

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

II. BACKGROUND

A. Legislative history

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

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

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

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

AS 39.35.150(a) provided:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There being NO OBJECTION, Amendment 1 was adopted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. PERS/TRS regulations

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

III. DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

625 P.2d at 848.

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

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

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

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

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

Effect of repeals or amendments.

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

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

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

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

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

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

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

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

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

IV. CONCLUSION

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

TNS/VBR/kmh/rea

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/4/01

Referred: Rules

Sponsor(s): SENATORS LEMAN, Davis

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 election under this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SENATE CS FOR CS FOR HOUSE BILL NO. 242(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 5/5/01
Referred: Rules

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

A BILL
FOR AN ACT ENTITLED

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

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

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

7 Sec. 14.20.135. Employment of retired teachers because of shortages. (a)
8 A school district or regional educational attendance area that has or anticipates having
9 a shortage of teachers qualified to teach in a particular discipline or specialty may, by
10 resolution, adopt a policy that permits the employment of retired teachers who are
11 qualified to teach in the discipline or specialty in accordance with this section. The
12 policy must describe the circumstances that constitute the shortage. If a shortage of
13 teachers exists as described in the policy, the district or attendance area shall notify the
14 administrator of the teachers' retirement system (AS 14.25) that it is hiring retired

1 teachers under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (1) elected official;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (A) is a disabled member;

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

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

31 (D) has at least

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

3 (ii) 30 years of credited service under AS 39.35.360 and
4 39.35.370 not as a peace officer.

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

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

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

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

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

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

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

24 (b) Notwithstanding sec. 17 of this Act, the Public Employees' Retirement Board may
25 immediately proceed to adopt regulations necessary to implement changes made by sees. 7, 8,
26 10, and 11 of this Act. The regulations take effect under AS 39.35.042, but not before July 1,
27 2001.

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

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

30 * Sec. 17. Except as provided in sees. 15 and 16 of this Act, this Act takes effect July 1,
31 2001.

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

April 19, 2005

SUBJECT: CSSSSB 24(STA), Reemployment of retired teachers and public employees (Work Order No. 24-LS0211\1)

TO: Senator Gary Stevens
Attn: Katrina Metheny

FROM: Barbara R. Craver *BRC*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. This section amends the section of the 2001 Act which required the Teachers' Retirement System (TRS) administrator to report annually to the legislature on the effect of the rehire program. This section of the bill also requires the Public Employee's Retirement System (PERS) administrator to report to the legislature.

Section 2. This section applies to rehired retired teachers under TRS who chose to "double-dip" as allowed under AS 14.25.043(b) and the employers of those teachers. All three subsections apply during the period of July 1, 2005 through June 30, 2006.

The first subsection, (a), allows teachers who were rehired and who chose to "double-dip" as allowed under AS 14.25.043(b), be allowed to continue to receive retirement pay at the same time the teacher receives compensation for active service until June 30, 2006. Beginning July 1, 2006, a teacher rehired and who made the election under AS 14.25.043(b), would no longer be able to double-dip and the teacher's retirement pay would end while the teacher was in active service.¹

¹ The teacher would then begin to accrue more service credit, and retirement deductions would resume from the teacher's salary. When the teacher retired again, the teacher's retirement would be increased due to the additional service credit.

The second subsection, (b), requires employers of teachers who double-dip to provide those teachers with the same health and medical benefits provided to all other active teachers. The rehired teachers who double-dip are not allowed to receive retiree health care benefits, only retirement pay.

The third subsection, (c), requires the employer of a rehired teacher who is double dipping to make contributions to the system for unfunded liability at the same rate the employer is making contributions for other teachers.

Section 3. This section applies to rehired retired members under PERS who chose to "double-dip" as allowed under AS 14.25.043(b), and the employers of those teachers. All three subsections apply during the period of July 1, 2005 through June 30, 2006.

The first subsection, (a), allows members who were rehired and who chose to "double-dip" as allowed under AS 39.35.150(b) or (c), be allowed to continue to receive both retirement pay at the same time the member receives compensation for active service until June 30, 2006. Beginning July 1, 2006, a member rehired and who made the election under AS 14.25.043(b), would no longer be able to double-dip and the member's retirement pay would end while the member was in active service.²

The second subsection, (b), requires employers of members who double-dip to provide those members with the same health and medical benefits provided to all other active members. The rehired members who double-dip are not allowed to receive retiree health care benefits, only retirement pay.

The third subsection, (c), requires the employer of a rehired member who is double dipping to make contributions to the system for unfunded liability at the same rate the employer is making contributions for other members.

Section 4. This section provides that if sections 2 and 3 do not take effect on July 1, 2005, they are retroactive to that date.

Section 5. Provides a immediate effective date.

This bill would allow the sunset, or termination on July 1, 2005, of the statutory provisions that allowed TRS and PERS employers to rehire retired employees and offered those employees the choice to double dip while working as active members of the system.³

² The member would then begin to accrue more service credit, and retirement deductions would resume from the member's salary. When the member retired again, the member's retirement would be increased due to the additional service credit.

³ Sections of the 2001 bill, ch. 57, SLA 2001, provided for retired TRS or PERS members rehired in the event of a teacher shortage and offered them a special option of double

Senator Gary Stevens
April 19, 2005
Page 3

If I may be of further assistance, please advise.

BRC:jad
05-221.jad

dipping. Two years later, ch. 25, SLA 2003 allowed PERS employees who had not RIPPed to be rehired and double-dip, and allowed a retired TRS or PERS member rehired as a commissioner who had RIPPed out to double dip. A person rehired as a commissioner who had RIPPed out of TRS or PERS was also relieved of the usual refund of the incentive credit and reemployment indebtedness that occurs when a RIPPed employee is rehired. The sunset date for the double dipping added by the 2003 bill was July 1, 2005, and was done by amending sec. 12, ch. 57, SLA 2001.

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

November 3, 2004

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

Employee Letter

Re: HB 242 Rehired Retiree - Employment Waiver

Dear «FirstName» «MI» «LastName»:

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

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

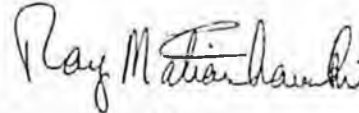
In order to address this matter, the Governor's Office will work with the Legislature on legislation to allow members who are currently covered under the re-employment waiver provision to continue to both work and receive normal retirement benefits after July 1, 2005. However, unless the Legislature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

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

November 3, 2004

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

Sincerely,



Ray Matiashowski
Commissioner

RM/MM/ksl

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

cc: All Commissioners

Kevin Brooks, Deputy Commissioner, Department of Administration

Mike Tibbles, Deputy Commissioner, Department of Administration

Melanie Millhorn, Director, Division of Retirement and Benefits

Virginia Ragle, Assistant Attorney General, Department of Law

Toby Steinberger, Assistant Attorney General, Department of Law

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

November 3, 2004

«MRMS» «FIRST_NAME» «LAST_NAME», «TITLE»
«REGIONLTR»
«ADDRESS»
«CSZ»

TRS: «CRS_CODE»

Re: HB 242 Rehired Retiree - Employment Waiver

Dear «MRMS» «LAST_NAME»:

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

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

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

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

November 3, 2004

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

Sincerely,



Ray Matiashowski
Commissioner

RM/MM/ksl

Enclosure

G:/mail01/hb242/november2004/trs_employer.doc

cc: All Commissioners

Kevin Brooks, Deputy Commissioner, Department of Administration

Mike Tibbles, Deputy Commissioner, Department of Administration

Melanie Millhorn, Director, Division of Retirement and Benefits

Virginia Ragle, Assistant Attorney General, Department of Law

Toby Steinberger, Assistant Attorney General, Department of Law

TRS Contacts

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



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

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

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

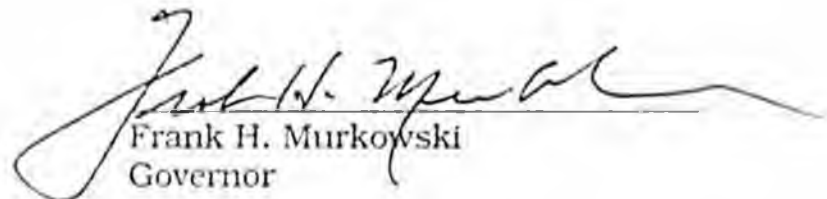
In this Order, "state agency" means a department, office, or other organizational unit of the executive branch of state government; "state agency" includes a state board, commission, authority, or independent state agency assigned to a department for administrative purposes.

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 8 day of March, 2005.


Frank H. Murkowski
Governor



CITY OF KENAI

" Oil Capital of Alaska "

210 FIDALGO AVE., SUITE 200 KENAI, ALASKA 99611-7794
TELEPHONE 907-283-7535
FAX 907-283-3014



January 6, 2005

RECEIVED
JAN 10 2005

Governor Frank Murkowski
State of Alaska
P.O. Box 110001
Juneau, AK 99811-0001

RE: **CITY OF KENAI RESOLUTION NO. 2005-02 - SUPPORTING LEGISLATION TO CONTINUE THE REHIRED RETIREE EMPLOYMENT WAIVER PROGRAM ENACTED BY HB242 IN 2001 FOR THOSE CURRENTLY ENROLLED.**

Dear Governor Murkowski:

Enclosed is a copy of the City of Kenai Resolution No. 2005-02 which was unanimously passed at the January 5, 2005 meeting of the Kenai City Council.

Through their resolution, the Council has stated its concern the interpretation of HB242 has changed since the bill was enacted; the provisions of the bill, through information provided in writing by the Division of Retirement and Benefits, was used as a basis for negotiating agreements by the City of Kenai, its employees, as well as other public employees throughout the state; these negotiations were done in good faith; and, the stated terms and conditions should be honored.

The City of Kenai supports legislation to continue the Rehired Retiree Employment Waiver Program enacted by HB242 in 2001 for those currently enrolled in the program and also supports such legislation to be acted upon early in the 2005 session.

If you have any questions, please contact this office.

CITY OF KENAI

Carol L. Freas
City Clerk

Clf

Enclosure

cc: 24th Alaska State Legislature

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.

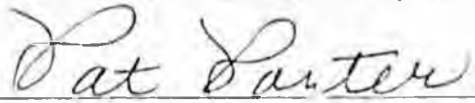
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, that:

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

RECEIVED
FEB 02 2005

BRISTOL BAY BOROUGH SCHOOL DISTRICT

P. O. BOX 169
NAKNEK, ALASKA 99633

KELLY W. CASTLEBERRY
PRINCIPAL
PHONE: (907) 246-4265
FAX: (907) 246-4447
E-MAIL: kcastleberry@nnk.gcis.a.net

RICHARD D. HEBHARDT
SUPERINTENDENT
PHONE: (907) 246-4225
FAX: (907) 246-6057
E-MAIL: rhebhardt@nnk.gcis.a.net

February 2, 2005

The Honorable Lyda Green
State Senate
Alaska State Capitol
Juneau, Alaska 99801-1182

Dear Senator Green:

In 2001 the Alaska Legislature enacted HB 242, which, to date, effectively allows retired TRS and PERS members to return to work and to receive their monthly retirement benefits, provided they waive further participation in the State's retirement system. This legislation is, as you are aware, scheduled to "sunset" on July 1, 2005.

As the current retire-rehire employment waiver program materially benefits Alaska public school districts currently participating in it, in brief, the Legislature is strongly encouraged to reauthorize the current re-employment amendments, thus enabling continuation of the program in its entirety. Simply, if the legislation is not re-enacted, school districts such as ours will be disadvantaged.

The benefits accruing to Alaska public school systems desiring to either continue or establish their participation in this program effective July 1, 2005, briefly, are these:

1. The retire-rehire employment waiver program indeed enables the retention of "highly qualified" staff, particularly during this current period of widespread teacher and administrator shortages and of increased accountability in public education both here in Alaska and nationwide; and

Senate & House Finance Committee Members

SUBJECT: HB 242 Retire/Rehire Re-Employment Waiver Program

Page 2

February 2, 2005

2. The retire-rehire employment waiver program would allow school districts to re-employ experienced personnel in a highly cost-effective manner, in that it would relieve those districts of having to make added (i.e., unnecessary) contributions to the State's retirement system, as well as of having to pay the costs of employee health insurance coverage, as the retirees would be covered under the State's Aetna health insurance plan.

In sum, the Bristol Bay Borough School District trusts that you will give your wholehearted support to legislation allowing TRS and PERS members to participate in a reauthorized re-employment waiver program, for the reasons stated. Should you have any questions of us in the meantime, please do not hesitate to call.

Thank you.

Respectfully yours,



Richard D. Hebardt
Superintendent

RDH

cc: Bristol Bay Borough School District Board of Education
Bristol Bay Borough Assembly
Mike Swain, Sr., Mayor, Bristol Bay Borough
Saul Friedman, Jermain, Dunnagan & Owens, P.C.

Memorandum

State of Alaska

Department of Law

TO: Melanie Millhorn
Director
Division of Retirement & Benefits

DATE: September 14, 2004

OUR FILE: 661-05-0035

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

TELEPHONE NO: 269-5178

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

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

I. INTRODUCTION

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

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

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

Melanie Millhorn, Director, Retirement & Benefits
File No. 661-05-0035

September 14, 2004
Page 2

II. BACKGROUND

A. Legislative history

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

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

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

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

AS 39.35.150(a) provided:

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

Melanie Millhom, Director, Retirement & Benefits
File No. 661-05-0035

September 14, 2004
Page 3

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

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

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

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

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

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

Melanie Millhorn, Director, Retirement & Benefits
File No. 661-05-0035

September 14, 2004
Page 4

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.

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

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

There being NO OBJECTION, Amendment 1 was adopted.

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

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

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

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

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

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

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

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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.

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

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

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

C. PERS/TRS regulations

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

III. DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

625 P.2d at 848.

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

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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.

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

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

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

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

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

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

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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 19, 2005

Dear Co-Chairs Green and Wilkin , Vice-Chair Bundc and members of the Senate Finance Committee,

Thank you for the opportunity to comment on this bill. I'm writing in opposition of SB 24, the retire and rehire bill. This is a negative piece of legislation for the people of Alaska and state employees.

ASEA, the largest state employee union with over 7,500 members, opposes this retire and rehire legislation and extending Grandfather rights to those working under the current retire and rehire law.

- **Negatively affects recruitment of new employees and retaining junior 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 and affects recruitment of new employees. As a result, junior employees are locked into their jobs, unable to advance and we cannot hire new talent into state service. The current retire and rehire law has already resulted in junior employees departing from state service to take jobs with the federal government because their advancement was blocked by a supervisor retiring and rehiring. For that same reason, others are currently looking to the private sector or federal government for employment. 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, not the deadwood at the top! There are plenty of qualified individuals currently working in state service that would like to advance their careers but cannot due to the current retire and rehire law. Let's not make the situation worse by passing another retire and rehire law.

- **Grandfathering is a bad idea**

I'm encouraging you not to grant "grandfather" rights to those working under the current law. As described in the 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 employment. Any decisions they made were with their "eyes wide open". It is discouraging to me, as a state employee, to think legislators would even consider grandfather these people under the existing law, considering all the problems and abuses that have occurred under the current law. Grandfathering only serves to exacerbate an already had situation. We will all be facing a much worse situation 4 years from now, if Grandfathering is allowed under this bill.

- **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 language is very vague.

- **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.

- **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. Let's not extend Grandfather rights to these people (all retire and rehires) who abused the system!

One way to even the playing field would have been to have a 360-day waiting period between retiring and rehiring. So, if someone retired they would have to wait a year before reapplying for a state job. That would have allowed junior employees a fair opportunity to apply for and possibly obtain, a promotion that they would not otherwise have a chance at getting.

Summary

In summary, I'm encouraging you to vote against this legislation. 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. There is plenty of talent out there to fill most all state jobs!!

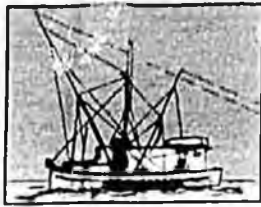
Under the current retire and rehire law, the state was given 3 more years to train employees to fill potential vacancies, the law sun-setting this year. Extending the sunset clause, via this legislation, only serves to exacerbate an already bad situation.

Thank you,



Jeff Barnhart

11276 Bells Flat Road
Kodiak, AK 99615



Alaska Trollers Association

130 Seward St., No. 211
Juneau, Alaska 99801
(907) 586-9400
(907) 586-4473 Fax

April 28, 2005

Senator Lyda Green, Co-Chair
Senator Gary Wilken, Co-Chair
Co-Chairs, Senate Finance
Alaska State Legislature
Juneau, AK 99811

Dear Senators Green and Wilken:

The Alaska Trollers Association (ATA) offers the following comment on SB 24, which speaks to the employee retire/rehire program.

ATA is unfamiliar with all of the ramifications of extending the retire/rehire program and will be silent on whether or not to continue the program for new entrants. However, we are extremely concerned about whether or not the state will lose its current participants on July 1. Loss of these employees will come at a large cost to the state. **ATA strongly supports grandfathering provisions for existing retire/rehired personnel.**

ATA represents hook and line salmon fishermen operating in Southeast Alaska. With over 2600 permit holders, the troll fleet is one of the largest salmon fleets in the state. The fleet is 85% resident and a large number of trollers live in rural communities.

Of particular and direct concern to our members is the situation at ADFG. A number of seasoned fishery professionals are currently employed under this program. Over 32 ADFG staff members rehired under HB 242 and more than 20 of them work for commercial fisheries division. As noted in a November 15, 2004 memo from Commissioner Kevin Duffy to Jim Clark, most of these positions are far beyond entry level. 26 of the jobs are salary range 18 or above and when the positions were posted, most garnered only 1-3 qualified applicants.

Discussions currently revolve around extensions of one to three years. In reality, one year is likely to do no more than encourage a mass exodus by nervous staff. Three years, while better, may not resolve the matter either. **Who is standing in line to replace the rehired personnel? Can existing staff and new hires be trained fast enough to adequately sustain state services? The steep learning curve for ADFG fishery managers could cost the industry and state a significant amount of money.**

As you know, this program arose out of concern for the loss of state employees anticipated as a result of Tier One retirement. **Expanded hire by the federal fisheries service, which offered lucrative wage and benefit packages, further exacerbated the problem for ADFG. Our association and others have, for years, urged the state to bolster agency budgets to attract high caliber talent for the future. To date, there has been no visible move by the legislature to provide ADFG with a state supported budget to enable them to attract the level of personnel required to fill many of the jobs in question.**

I have heard and read many references to "double-dipping" by rehired state employees. Sadly, that term implies wrong-doing and harm to the state, when all that really happened is that the state offered a program and employees signed up. **These folks are simply drawing benefits that they worked hard to accrue. There will be nothing extra in it for them at the end of the day.** The only difference is that their second monthly check is issued by the state, as opposed to another agency or business.

Many people in this country retire from one career, hire on someplace else, and earn income from both. Perhaps that is the case for some of you? The state is deriving significant benefits from highly qualified staff with institutional memory, why should we care if they are getting two paychecks? They earned both.

And, while there are claims that the program is a burden on the state, it has been shown to be revenue neutral, if not positive for some agencies. **Let's be fair, many factors have affected the earnings of the state retirement program, but the impact of rehired employees is almost nil.**

As this debate wages on, the morale of this category of state workers plummets. Compounding the issue is the fact that many were not informed that their job would sunset in five years. **The Department of Administration stated that some were told specifically that the sunset date only applied to the program itself, not to those who chose to participate in it. This misunderstanding more than likely influenced decisions made by employees and their families when deciding whether to retire or continue with state service. One has to wonder whether waiting to retire these past five years has affected the ability of some to gain employment elsewhere.**

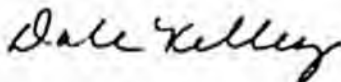
So, now we have a number of fine people, in many agencies, who made decisions to stay with the state, as opposed to retiring or taking positions elsewhere (which are mostly now filled), who have recently discovered that June 30 could mark the end of their career with the state. **Consider all the people you will have to replace on July 1 (the opening date of our summer fishery), which is the busiest time of year for ADFG!**

Given the circumstances, it appears that the proper and intelligent choice would be for the state to make provisions for rehired personnel to continue their employment. Your employees and their families both deserve and need more than a one year fix, to provide security and show commitment to them for jobs well done. If the current program is deemed unworkable and sunsets, so be it. **But grandfathering the existing participants would not harm the state and will give the state and agencies additional time to develop a plan to attract new people and allow existing staff time to grow into new positions.**

Hopefully you agree and will move to create grandfather provisions for retire/rehire participants before you leave Juneau next month.

Please contact me if I can provide additional information or assistance.

Sincerely,



Dale Kelley
Executive Director

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSSSB 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 Component No. _____
Requester: Senate HES

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

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 Phone: 465-4403
Division: Retirement and Benefits Date/Time: 3/7/05 12:57 PM
Approved by: Mike Tibbles, Deputy Commissioner Date: 3/7/2005
Agency: Department of Administration

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	50,547.0	0.02%	0.00
Anchorage Municipality and School District	194,930.9	0.02%	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%	108.10
State of Alaska TRS salaries	7,015.9	0.00%	1.40
Total			109.50

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

Total Annual Cost to PERS and TRS

109.53

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 financial 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

May 1, 2005

SUBJECT: Sectional Summary of CSSSSB 24(FIN)
(Work Order No. 24-0211X)

TO: Senator Lyda Green
Attn: Kim Carnot

FROM: Barbara R. Craver *BRC*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

There are several effective date sections, so in addition to providing a summary of a section initially there is a brief note regarding the effective date of that bill section and the bill section containing the effective date section.

Section 1.

Effective immediately (sec. 20).

Legislative findings and intent section.

Section 2.

Effective immediately (sec. 20), and retroactive to July 1, 2005, if this Act takes effect after July 1, 2005 (sec. 16).

Adds a new subsection to AS 14.20.135. This subsection, (c) provides that an employer must provide the same health and medical benefits to a retired teacher that is rehired and elects to continue to receive retirement benefits under AS 14.25.043(b) (double dips) as that employer provides to other active teachers. This only applies to full-time teachers.

Section 3.

Effective July 1, 2009 (sec. 19).

Amends AS 14.25.043(a) to remove references that will be repealed on July 1, 2009.

provided by Sen. Green

Senator Lyda Green
May 1, 2005
Page 2

Sections 4 and 5.

Effective immediately (sec. 20), and retroactive to July 1, 2005, if this Act takes effect after July 1, 2005 (sec. 16). Will be repealed on July 1, 2009 (secs. 10 and 17).

Sec. 4 amends AS 14.25.043(b) (for teachers) and sec. 5 amends AS 14.25.043(c) (for commissioners who RIPed) to provide the following in regard to teachers and commissioners who are allowed to double dip:

- Makes it explicit that the election to double-dip only lasts as long as the section allowing the waiver exists, when the waiver is repealed, the election to double-dip no longer applies.
- A teacher hired full-time and who double-dips cannot get retirement medical benefits once this section is effective.
- A teacher hired to work less than full-time who double-dips can get retirement medical benefits.

Section 6.

Effective immediately (sec. 20), and retroactive to July 1, 2005, if this Act takes effect after July 1, 2005 (sec. 16). Repealed July 1, 2009 (sec. 12).

Provides that employers of teachers who double-dip must make contributions to the unfunded liability of the retirement system at the same rate as for other teachers.

Section 7.

Effective immediately (sec. 20), and retroactive to July 1, 2005, if this Act takes effect after July 1, 2005 (sec. 16). Will be repealed on July 1, 2009 (secs. 10 and 17).

Sec. 7 amend. AS 39.35.150(b) to provide the following in regard to employees and commissioners who are allowed to double dip:

- Makes it explicit that the election to double-dip only lasts as long as the section allowing the waiver exists, when the waiver is repealed, the election to double-dip no longer applies.
- An employee hired full-time and who double-dips cannot get retirement medical benefits once this section is effective.
- An employee hired to work less than full-time who double-dips can get retirement medical benefits.

Section 8.

Effective immediately (sec. 20), and retroactive to July 1, 2005, if this Act takes effect after July 1, 2005 (sec. 16). Repealed July 1, 2009 (sec. 12).

Senator Lyda Green
May 1, 2005
Page 3

Three subsections are added to AS 39.35.150 to require employers to use a competitive recruitment process before hiring a retired employee back and allowing that employee to double dip.

AS 39.35.150(f) requires political subdivisions and public organizations that participate in PERS to adopt a policy regarding shortages and must certify that the competitive hiring process was used to rehire a retired employee before allowing the rehired employee to double-dip.

AS 39.35.150(g) provides the details of the actions required of employers described in (f) if those employers want to offer rehired employees the option to double-dip. The policy adopted by resolution must be similar to the recruitment process required of the executive branch under (h) of the section.

AS 39.35.150(h) describes the competitive hiring process for executive branch positions that require recruitment.

Section 9.

Effective immediately (sec. 20), and retroactive to July 1, 2005, if this Act takes effect after July 1, 2005 (sec. 16). Repealed July 1, 2009 (sec. 12).

Provides that employers of employees who double-dip must make contributions to the unfunded liability of the retirement system at the same rate as for other employees.

Section 10.

Effective immediately (sec. 20). Will be repealed on July 1, 2009 by this section.

Amends the original 2001 session law, as well as the amendments passed in 2003¹ and the amendments contained in this bill so that the law does not sunset on July 1, 2005, but on July 1, 2009.

Section 11.

Effective immediately.

Amends the 2001 session law to provide that the PERS administrator is also required to report to the legislature and to report "regarding the efforts of employers in the executive branch to address the recruitment difficulties in job classes in which retired members have been rehired."

Section 12.

Repealer section effective on July 1, 2009.

¹ In 2003 commissioners who had RIPPed out in TRS and PERS, as well as PERS employees in general were allowed to double-dip.

Senator Lyda Green
May 1, 2005
Page 4

Repeals the laws enacted in sections 6, 8 and 9.

Section 13.

Effective immediately.

Repeals duplicate sections in a session law from 2001 that contained the same sections affected by this bill so that each section of that law does not have to also be amended.
Technical amendment.

Section 14.

Effective immediately.

Provides that teachers who made the election to double dip prior to November 13, 2004, may continue to double-dip through December 30, 2006, if they continue to work in the same position. Those teachers may also continue to get retirement medical benefits during that period. On January 1, 2007 the "period of reemployment" under which they were originally hired is considered over. On January 1, 2007 those teachers will be able to continue in the same position, but will not be able to double-dip unless the employer complies under the conditions of AS 14.20.135. Regulations may be needed to clarify how this is to be accomplished. Employers however are required to provide medical insurance to these teachers under sec. 2, this section does not waive those obligations on the part of the employer between July 1, 2005 and December 31, 2006.

Section 15.

Effective immediately.

Provides that employees who made the election to double-dip prior to November 13, 2004 may continue to double-dip through December 30, 2006, if they continue to work in the same position. Those employees may also continue to get retirement medical benefits during that period. On January 1, 2007 the "period of reemployment" under which they were originally hired is considered over. An employee may continue in the same position but will not be able to double-dip unless the employer rehires that person after following the recruitment procedures provided in sec. 8.

This waiver for the period of July 1, 2005 - December 30, 2006 does not affect an employer's obligation to provide medical insurance to full-time employees under sec. 2, effective immediately.

Section 16.

Effective immediately.

Provides a conditional retroactive effect in case the bill does not take effect before July 1, 2005, to make sections 2, and 4 - 10 retroactive to July 1, 2005.

Senator Lyda Green
May 1, 2005
Page 5

Section 17.
Effective immediately.

Provides that applicable sections² of the 2001 law will go into effect on July 1, 2009.

Section 18.
Effective immediately.

This repeals the effective date section associated with the duplicate session law also repealed in sec. 13 of this bill.

Section 19.
Effective immediately.

This is the delayed effective date section for sec. 3.

Section 20.
Effective immediately.

Provides an immediate effective date for all bill sections except sec. 19.

If I may be of further assistance, please advise.

BRC:med
05-329.med

² These sections remove references to the sections that are repealed on the sunset date, and also provides the effective date for the repeal of sec. 12 of the 2001 session law as amended in sec. 10 of this Act.

April 19, 2005

Dear Co-Chairs Green and Wilkin, Vice-Chair Bunde and members of the Senate Finance Committee,

Thank you for the opportunity to comment on this bill. I'm writing in opposition of SB 24, the retire and rehire bill. This is a negative piece of legislation for the people of Alaska and state employees.

ASEA, the largest state employee union with over 7,500 members, opposes this retire and rehire legislation and extending Grandfather rights to those working under the current retire and rehire law.

- **Negatively affects recruitment of new employees and retaining junior 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 and affects recruitment of new employees. As a result, junior employees are locked into their jobs, unable to advance and we cannot hire new talent into state service. The current retire and rehire law has already resulted in junior employees departing from state service to take jobs with the federal government because their advancement was blocked by a supervisor retiring and rehiring. For that same reason, others are currently looking to the private sector or federal government for employment. 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, not the deadwood at the top! There are plenty of qualified individuals currently working in state service that would like to advance their careers but cannot due to the current retire and rehire law. Let's not make the situation worse by passing another retire and rehire law.

- **Grandfathering is a bad idea**

I'm encouraging you not to grant "grandfather" rights to those working under the current law. As described in the 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 employment. Any decisions they made were with their "eyes wide open". It is discouraging to me, as a state employee, to think legislators would even consider grandfather these people under the existing law, considering all the problems and abuses that have occurred under the current law. Grandfathering only serves to exacerbate an already bad situation. We will all be facing a much worse situation 4 years from now, if Grandfathering is allowed under this bill.

- **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 language is very vague.

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services
Department of Education & Early Development
State of Alaska

April 19, 2005

Dear Co-Chairs Green and Wilkin, Vice-Chair Bunde and members of the Senate Finance Committee,

Thank you for the opportunity to comment on this bill. I'm writing in opposition of SB 24, the retire and rehire bill. This is a negative piece of legislation for the people of Alaska and state employees.

ASEA, the largest state employee union with over 7,500 members, opposes this retire and rehire legislation and extending Grandfather rights to those working under the current retire and rehire law.

- **Negatively affects recruitment of new employees and retaining junior 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 and affects recruitment of new employees. As a result, junior employees are locked into their jobs, unable to advance and we cannot hire new talent into state service. The current retire and rehire law has already resulted in junior employees departing from state service to take jobs with the federal government because their advancement was blocked by a supervisor retiring and rehiring. For that same reason, others are currently looking to the private sector or federal government for employment. 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, not the deadwood at the top! There are plenty of qualified individuals currently working in state service that would like to advance their careers but cannot due to the current retire and rehire law. Let's not make the situation worse by passing another retire and rehire law.

- **Grandfathering is a bad idea**

I'm encouraging you not to grant "grandfather" rights to those working under the current law. As described in the 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 employment. Any decisions they made were with their "eyes wide open". It is discouraging to me, as a state employee, to think legislators would even consider grandfather these people under the existing law, considering all the problems and abuses that have occurred under the current law. Grandfathering only serves to exacerbate an already bad situation. We will all be facing a much worse situation 4 years from now, if Grandfathering is allowed under this bill.

- **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 language is very vague.

- **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.

- **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. Let's not extend Grandfather rights to these people (all retire and rehires) who abused the system!

One way to even the playing field would have been to have a 360-day waiting period between retiring and rehiring. So, if someone retired they would have to wait a year before reapplying for a state job. That would have allowed junior employees a fair opportunity to apply for and possibly obtain, a promotion that they would not otherwise have a chance at getting.

Summary

In summary, I'm encouraging you to vote against this legislation. 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. There is plenty of talent out there to fill most all state jobs!!

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 this legislation, only serves to exacerbate an already bad situation.

Thank you,



Jeff Barnhart
11276 Bells Flat Road
Kodiak, AK 99615

SENATE COMMITTEE REPORT

DATE: 3/18/05

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 4/15/05

State Affairs Committee considered SPONSOR SUBSTITUTE FOR SENATE BILL NO. 24

SB 24 REEMPLOYMENT OF RETIREES

"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."

and recommends:

- be replaced with _____ CS SSSB 24 (STA)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:	
<input type="checkbox"/>	Same Title
<input checked="" type="checkbox"/>	New Title
SCS House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
<u>DDA</u>	<u>4/15</u>			<input checked="" type="checkbox"/>	<u>1</u>

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<u>[Signature]</u>				<input checked="" type="checkbox"/>
<u>[Signature]</u>			<input checked="" type="checkbox"/>	
<u>[Signature]</u>			<input checked="" type="checkbox"/>	
CHAIR: <u>[Signature]</u>			<input checked="" type="checkbox"/>	

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Hug
12/05

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**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 1/26/05

FURTHER: State Affairs
Finance

Date of 5-Day Notice: 3/3/05
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 3.17.05

Health, Education and Social Services Committee considered SPONSOR SUBSTITUTE FOR SENATE BILL NO. 24
SB 24 REEMPLOYMENT OF RETIREES

"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."

and recommends:

- be replaced with _____ CS for SS for SB 24 (HES)
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:	
<input type="checkbox"/>	Same Title
<input checked="" type="checkbox"/>	New Title
House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
ADM	3/7			✓	1

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:		Do PASS	Do NOT PASS	NO REC	AMEND
Willson	<i>Gregory Willson</i>			✓	
Elton	<i>K. Elton</i>	✓			
Green	<i>Debra Green</i>				✓
Olson	<i>Charles Olson</i>			✓	
Oyson	CHAIR: <i>Paul Oyson</i>			✓	

SB

42

HFIN

FILE

