

433

HHESS

HB 635

0072

session was SCS CSHB 343 (Finance) am S, which became ch. 128, SLA 1977. This incorporated many of the provisions of the bills listed above and changed many sections of the retirement laws which these bills would amend. It also changed part of the vocabulary of the PERS laws. It is not practical, therefore, to consider these bills without amendments which bring them up to date. In some cases the suggested amendments delete virtually everything in the original bill. A good example of this is HB 267. As introduced, this was a 30 page bill. When amended to compensate for legislative changes of the past session, it will be only a single page. Since some of you may not be familiar with the amendment process, let us consider the suggested amendment to HB 267 as an example of how amendments work. (Please refer to this part of the enclosed materials.)

Amendments to bills are designed to give mechanical, and highly literal, direction to the person who will prepare the bill in final form. The first directive in the suggested amendment to HB 267 is:

"Page 1, line 9 - page 30, line 9:

delete all material and insert the following in its place: \* \* \* \*"

This means that, starting with page 1, line 9 (immediately after the enacting clause) and continuing through page 30, line 9 (the last line of the bill), everything is deleted and replaced with the material you see set forth in the amendment. Essentially the material in the amendment is substituted for the original bill. Sec. 1, which amends AS 39.35.330(b), is derived from sec. 14 of the original bill. All of the changes sought to be made by sec. 14 of the original bill were enacted as part of ch. 128, SLA 1977 except that ch. 128 allows credited service for leaves of absence without pay of up to 10 days in a year, while HB 267 would allow no credited service for any leave of absence without pay. Hence, sec. 1 would amend the law (as it exists now) to remove the phrase "which exceeds 10 working days in any calendar year." This is done by setting out AS 39.35.330(b) (as it exists now) and placing the phrase to be deleted in all-capital letters, surrounded by brackets. Secs. 2 and 3 derive from sec. 32 of the original bill. All of the changes sought to be made by sec. 32 of the original bill were enacted as part of ch. 128, SLA 1977 except that ch. 128 allows a person to be absent from the state for up to 60 days without suspending his entitlement to a cost-of-living allowance, while HB 267 would permit only a 30 day period of absence from the state. Hence, AS 39.35.480(b) and (d) are set out (as they exist now) with the number "60" placed in brackets (to show it is to be deleted) and the number "30" underlined

and placed in front of the bracketed material (to show it is to be inserted).

Not all of the suggested amendments take the form of deleting the entire bill and substituting new material. It is important to read the amendment carefully, and perform mentally the operations it directs on the bill, in order to understand a bill in amended form. Jim McKenzie would be happy to answer, by phone or letter, any questions about the suggested amendments to any bill.

In general, when the original bill contains a date, that date has been advanced one year in the suggested amendment. A bill which does not have an amendment stapled to it does not appear to require amending to compensate for legislative changes of the past session.

3. **Summaries.** The enclosed summaries of the bills listed above assume that the suggested amendments have been adopted and, hence, are summaries of the bills in amended form. A summary is intended to present the salient features of the bill it describes, but should not be considered a substitute for reading the bill itself (as amended). Jim McKenzie would be happy to explain further any particular bill which causes confusion. It is expected that the actuary's analyses will

provide some enlightenment as to the fiscal consequences of these bills.

4. Retirement Chapters. The enclosed retirement chapters are from the Alaska Statutes. The Cumulative Supplements should be referred to for up-to-date versions of the sections which appear therein. The supplements are not yet available in final form; please ignore the extraneous marks on these proof copies.

KH/JM:jm  
Enclosures

cc: Hon. Mike Miller  
Hon. Steve Cowper  
Hon. Robert Ziegler

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

December 5, 1977

Representative Charles H. Parr  
St. Rt. 50599  
Fairbanks, Alaska 99701

Dear Representative Parr:

This opinion is based on the following fact situation, as related to me by Earl Wischmeier, Division of Retirement and Benefits, Department of Administration.

Facts

Bus drivers and food service employees of the Anchorage school district are covered by the Public Employees' Retirement System of Alaska (PERS) rather than the Teachers' Retirement System (TRS). They work only during the school term (roughly nine months a year). If they were members of TRS they would receive one year's service credit in that system for working one school term; however, since they are members of PERS they are only entitled to credited service for the fraction of the calendar year actually worked (roughly three-quarters of a year for a school term). For a number of years the Anchorage school district reported one year's credited service for its bus drivers and food service employees for each school term they worked. In November 1975, Mr. Wischmeier informed the school district that this practice was not permitted under the PERS laws and should be corrected. Some 18 months later the school district began reporting credited service in compliance with PERS requirements and made retroactive reductions in the credited service of its bus drivers and food service employees which had previously been over-reported.

Opinion

You have inquired whether the action of the Anchorage school district in retroactively reducing the credited service of

its bus drivers and food service employees, as set forth above, is prohibited by the constitutional injunction against diminishing or impairing accrued retirement benefits. In my opinion, the answer is "no."

#### Discussion

Article XII, sec. 7, Constitution of the State of Alaska says: "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." The key to answering the question you have posed is whether the service erroneously reported by the Anchorage school district is an "accrued benefit." Under the PERS laws (AS 39.35) employees covered by the system are entitled to credited service for "periods of employment." Unless a leave of absence with pay has been granted, there is no statutory authority for reporting a full year's credited service to PERS when, in fact, the period of employment was nine months. Neither the Anchorage school district nor the bus drivers and food service employees made contributions to PERS to cover the additional benefits the employees would receive for the unearned credited service that was reported. AS 39.35.520 reads:

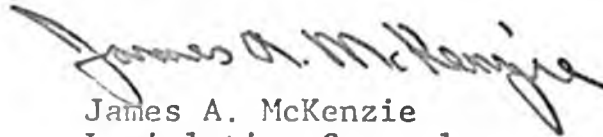
Sec. 39.35.520. Adjustments. When a change or error is made in the records maintained by the system, or an error is made in computing a benefit, and as a result an employee or beneficiary receives from the system more or less than he would have been entitled to receive had the records been correct or had the error not been made, (1) the records or error shall be corrected and (2) as far as practicable, future payments shall be adjusted so that the actuarial equivalent of the pension or benefit to which the employee or beneficiary was correctly entitled shall be paid. If no future payment is due, a person who was paid any amount to which he was not entitled is liable for repayment of that amount, and a person who was not paid the full amount to which he was entitled shall be paid the balance of that amount.

This section makes a person liable for benefits that were paid erroneously, either by a reduction in future payments or by repayment of the amount erroneously paid him. It would seem to follow even more strongly that errors in the system's records may be corrected before benefits are paid in the first place. It seems clear, therefore, that the

Representative Charlie Parr  
December 5, 1977  
Page 3

credited service which was over-reported by the Anchorage school district is not an "accrued benefit" within the meaning of Article XII, sec. 7 of the state constitution and may (indeed, should) be reduced retroactively to reflect the period of employment actually worked.

Sincerely,

A handwritten signature in dark ink, appearing to read "James A. McKenzie". The signature is written in a cursive style with a large, sweeping initial "J".

James A. McKenzie  
Legislative Counsel

JAM:hjd

# STATE OF ALASKA

JAY S. HAMMOND, Governor

## DEPARTMENT OF ADMINISTRATION

DIVISION OF RETIREMENT & BENEFITS

POUCH CR  
JUNEAU, ALASKA 99811

January 13, 1978

The Honorable Charles H. Parr  
House of Representatives  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99801

Dear Representative Parr:

I would like to respond to your letter of January 5, 1978, regarding costing of audio, dental and visual coverage for retirees under the Public Employees' and Teachers' Retirement Systems. I have requested that our consultant contact our carrier to secure a cost proposal for these additional benefits. As soon as these proposals are received, I will make these costs available to you.

I have also received the four draft bills which you wish me to review and make sure are technically correct.

1. The draft bill relating to the cost of living allowance provided under the PERS seems to be in compliance with the general structure of the definition section and therefore I would conclude is technically correct.

2. Regarding the draft bill relating to creditable outside service under the Teachers' Retirement System, I would suggest that AS 14.25.220(8)(c) as drafted be changed to read:

"an institution of higher learning accredited by a nationally recognized accrediting agency as listed in the Education Directory; Colleges and Universities by the National Center for Education Statistics, or".

This language is consistent with a cleanup bill which we intend to introduce to clarify what the nationally recognized accrediting agency is and I would think could appropriately be included in your bill.

I would also suggest that 14.25.220(8)(d) as drafted be changed to read:

"an approved and accredited non-public school in Alaska".

This would remove any question that the word "state" means the State of Alaska.

Representative Parr  
January 13, 1978  
Page 2.

I would also recommend that AS 14.25.220(8) as drafted include a section (e) which reads:

"an approved or accredited institution of higher learning in Alaska".

This would allow service in institutions such as Alaska Methodist University and Sheldon Jackson Junior College to be bought in as outside service.

3. Regarding the draft bill relating to creditable service for professional and administrative personnel at the University of Alaska and the Community Colleges, I would suggest that the following format be utilized:

"AS 14.25.220(15), "Teacher or member means a person eligible to participate in the system and who is covered by the system including:

- (a) any certificated full time or part time school teacher, principal, superintendent, or school nurse in a public school in Alaska;
- (b) the commissioner of education, or supervisory positions requiring certification for appointment in the Department of Education;
- (c) resident personnel in full time or part time teaching positions under the University of Alaska and those full time or part time administrative positions which require academic standing; all administrative positions placed under the system must be approved by the administrator."

This proposed language would include part time teachers and part time personnel at the University of Alaska and Community Colleges as proposed in your draft bill. However, in addition it will also provide us with the statutory ability to correct misclassifications at the University which were identified to you at the various meetings held by the interim committee. This particular problem has existed for years at the University and I am attempting to take the necessary action to correct this situation. I have also included similar language in our housekeeping bill, which will be introduced to the legislature shortly.

4. Regarding the draft bill relating to transferability of credited service between the Teachers' Retirement System and the Public Employees' Retirement System, I would sincerely recommend the language in House Bill 284. The language contained in HB 284 represents several months' effort by many individuals within this division to insure that the language properly supports the 56 individuals who would be affected, as well as to administratively minimize the expense to administer this benefit. In addition, the

Representative Parr  
January 13, 1978  
Page 3

language in HB 284 has been reviewed extensively with the System's actuary to insure that an actuarially sound benefit as offered can be established.

I find that from a technical standpoint your proposed draft bill includes many areas that have not been addressed. I recognize the purpose of the bill and feel this same purpose can be achieved by supporting HB 284. The drafting of conditional service or the transferability of credited service is probably one of the hardest bills to draft because of the complexities and unique differences of the two retirement systems. Again, I would recommend that you give favorable approval to my recommendation in this particular area. I am sure that as time goes on you will be able to appreciate this recommendation.

I sincerely appreciate the consideration you have shown me in allowing me to help you with your draft bills. I want to make it perfectly clear that my intent is not to in any way alter the intent of any of your bills and that my purpose is to make the best information available to all parties so that an informed decision can be made. I recognize that the language of the statutes rests primarily with the legislature and I wish to make it my position to make the best information available, even though I may not necessarily agree with the final decision that is taken by the legislature.

Sincerely,



Paul B. Arnoldt  
Director

PBA/ms