



ALASKA LEGISLATURE COMMITTEE FILED 1905-1900 00/2

4381

SSTA ✓

HB 237

1200

Hon. Mitch Abood, Chairman
Senate State Affairs Committee
Re: CSHB 237(Rls), retirement bill

April 15, 1986
Page #2

The committee has also instructed that language be added to the committee substitute to provide that a spouse has "veto power" only over 50 percent of the benefits. This instruction was given after a discussion about the right of a vested member to withdraw the member's contribution account upon termination of employment. However, under this bill, the spouse has other "veto" rights, including the rights to withhold consent to payment of a benefit in a form other than a joint and survivor option and to withhold consent to designation of a person other than the spouse as beneficiary for survivors' benefits.

A. Contribution account. The bill currently provides that, when a vested member terminates employment, he or she may receive a refund of the contribution account only with consent of the spouse and other persons entitled under a QDRO. Allowing "veto power" over only 50 percent of the refund of the contribution account could be accomplished in several ways, none of which is supported by both the Alaska Women's Commission and the division of retirement and benefits. Therefore, the committee must determine which, if any, option it wants to include in the committee substitute, after considering the problems each option presents.

First, if a member has no former spouse or dependents entitled under a QDRO and if the spouse does not consent to withdrawal of the contribution account, the contribution account can be paid out in two checks, one to the member, and one to the spouse. This option is strongly opposed by the Women's Commission. Under the state's retirement systems, the value of the benefits that may be received upon retirement, including the monthly benefit and medical benefits for a member's spouse and dependents, is much greater than the value of the contribution account. The main purpose of this bill is to acknowledge and protect the interest of a spouse in those benefits.

Second, if there are persons entitled under a QDRO, those persons can be paid a portion of the contribution account proportionate to their interest in benefits established by the order. The remainder of the contribution account can be paid to the member or, if the member has a new spouse, half of the remainder can be paid to the member and half to the spouse. In addition to the objections set out for the first option, this option is objectionable due to the fact that it would be very difficult for the division of retirement and benefits to administer. Furthermore, if marital property is divided under a QDRO based on an assumption that a member will receive benefits from a state retirement system, a portion of which will be paid to persons entitled under the QDRO, the member should not be permitted

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to forfeit the benefits by withdrawing the contribution account without the consent of the persons entitled under the order.

Third, if the member has no former spouse or dependents entitled under a QDRO and if the present spouse does not consent to withdrawal of the contribution account, the bill could provide that one-half of the account would be paid to the member and one-half must remain in the system to provide the spouse with a benefit. New sections would have to be enacted to define what benefit the spouse will receive. Will the benefit be one-half of what the former member's benefit would have been, based on a normal or early retirement benefit or a joint and survivor option? When is the benefit payable to the spouse? Can the spouse select a joint and survivor option? If the member becomes reemployed by the state and wants to reinstate the service credit, can the member reinstate all of the service credit under his or her own account, or only half of the service credit, with the spouse remaining entitled to a separate benefit? If the member and the spouse divorce, is the spouse's benefit subject to a qualified domestic relations order?

Fourth, if there are persons entitled under a QDRO, the bill could provide that an amount proportionate to the share of the member's benefit that is due those persons must remain in the contribution account. The remainder would be refunded to the member or, if the member has a new spouse, one-half of the remainder would be paid to the member and one-half would remain in the system to provide the spouse with a benefit. Again, new sections would have to be enacted to define the benefit the spouse would receive and the questions raised in option three must be resolved. In addition, it could be extremely difficult, administratively, for the division of retirement and benefits to determine what proportion of the contribution account must remain in the system to result in payment of benefits required under a QDRO.

The division of retirement and benefits has indicated that it is strongly opposed to options 2, 3 and 4, due to the extraordinary difficulties it anticipates will occur in administration of those options. The division has further noted that the instances of a vested member even wanting a refund of the contribution account has become quite rare, due to the value of the benefits payable under the state's retirement systems. Because of the division's increased counselling efforts encouraging terminated vested members to leave their contributions in the system, it is expected that even fewer vested members will request refunds of their contribution accounts in the future.

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We also note that, because the federal Retirement Equity Act of 1984 applies to our supplemental benefits system (SBS) plan, a married employee who terminates state employment may not receive his or her SBS account in a lump sum payment without consent of the spouse. Furthermore, the only form of payment that can be received under SBS without consent of the spouse is a joint and survivor option. This requirement of the federal Retirement Equity Act also applies to private pension plans.

B. Joint and survivor option. The bill currently requires a married member to choose a joint and survivor option upon retiring, unless the spouse consents to another form of benefit payment. We can think of no way to change this to a 50 percent "veto power."

It should be pointed out that selection of a joint and survivor benefit typically does not result in anything close to a 50 percent reduction in the retirement benefit payable to a member. For example, depending upon which of the three available joint and survivor options is chosen, a member who is age 55 and whose spouse is age 50 could receive as much as 93.466 percent of a normal benefit. Thus, a member does not lose much in terms of benefits paid to the member, but does gain coverage for his or her spouse in the event the member predeceases the spouse.

C. Spouse as designated beneficiary. The bill currently provides that the spouse of a member is automatically the designated beneficiary for survivors' benefits, except to the extent required by a QDRO, unless the spouse consents to designation of some other person as the beneficiary. This could be changed to provide that, notwithstanding the designation of another person as beneficiary and except to the extent required by a QDRO, the spouse is automatically the designated beneficiary entitled to receive one-half of the survivors' benefit that he or she would have been entitled to receive if he or she had been designated the sole beneficiary. Other beneficiaries would receive one-half of what they would otherwise have received. The spouse could consent to designation of someone other than the spouse as beneficiary for 100 percent of the survivors' benefits.

We recommend that the changes suggested in this memorandum to sections 7, 20, and 39 be included in the draft committee substitute. In addition, in accordance with the committee's instruction at a previous hearing on this bill, the word "present" should be inserted on page 5, line 12 of the March 14, 1986 draft, between the words "the" and "spouse." At the hearing on this bill scheduled for April 17, 1986, we will attempt to pro-

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vide proposed language that we believe will implement the options
the committee may choose to add to the bill.

Very truly yours,

HAROLD M. BROWN
ATTORNEY GENERAL

By: *Virginia B. Ragle*
Virginia B. Ragle
Assistant Attorney General

VBR/pjg

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Page 1 of 2

Revision Date: _____

Page 1 of 2

REQUEST

Bill/Resolution No.: 237
 Title: An Act Relating to Pension Reform
 Sponsor: _____
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: All State Agencies
 Program Category Affected: Elementary & Secondary Education, Labor Services
 BRU, Program or Subprogram(s) Affected: PERS, JRS, TRS

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
Operating						
100 Personal Svcs		10.0				
100 Rtmnt & Bnfts						
200 Travel						
300 Contractual						
400 Supplies		5.0				
500 Equipment						
600 Land & Struct						
700 Grants, Claims						
700 TRS Match						
TOTAL OPERATING	-0-	15.0	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		15.0				
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	15.0	-0-	-0-	-0-	-0-

POSITIONS:

	-0-	-0-	-0-	-0-	-0-	-0-
FULL-TIME						
PART-TIME						
TEMPORARY		2.0				

ANALYSIS: (Attach a separate page if necessary)

Prepared By: J.K. Humphreys, Director
 Division: Retirement & Benefits

Phone: 465-4470

Date: 2/20/85

Approved by Commissioner: Lisa Rudd
 Agency: Department of Administration

Date: 2-21-85

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

HB 237

Fiscal Note Analysis

Prepared by Division of Retirement & Benefits

Department of Administration

February 20, 1985

IV Analysis:

Passage of this bill will; 1) require a married member of the Public Employees' (PERS), Teachers' (TRS) and Judicial (JRS) Retirement Systems to select one of the joint and survivor options upon retirement unless the requirement is waived by the spouse and would require that the spouse be the primary beneficiary of death benefits, and 2) would allow any benefit payable from the PERS, TRS and JRS to be subject to attachment to satisfy orders by divorce or dissolution of marriage orders.

The fiscal impact of this will be due to the research and notification efforts by the Division to inform effected members of the legislation.

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

11.15.1-37

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to pension reform. This bill amends statutes pertaining to the state's retirement systems to include provisions similar to those enacted by the U.S. Congress in the Retirement Equity Act of 1984 (P.L. 98-397).

The bill amends a number of sections of the public employees' retirement system and teachers' retirement system statutes to require consent of an employee's spouse before the employee may waive a joint and survivor benefit, obtain a refund of contributions if the employee has a vested interest in benefits, or revoke a designation of the spouse as the employee's beneficiary for various death benefits. Consent of the spouse is also required by this bill for revocation of a designation of the spouse as beneficiary for death benefits under AS 26.05.224. Until consent is obtained, the joint and survivor benefit and designation of the spouse as beneficiary are required. The judicial retirement system statute is amended to allow the spouse of a justice or judge to receive survivors' benefits if the spouse was married to the justice or judge for one year before death, instead of the current two years.

The bill allows former spouses to share in survivor's benefits, to the extent provided in a "qualified domestic relations order," as defined in secs. 16, 18, 23, and 39 of the bill.

Prohibitions against assignment of retirement benefits are removed with respect to assignments of those benefits made to satisfy marital property rights, spousal support, and child support under a qualified domestic relations order.

The commissioner of administration is required to inform retirement system participants and their spouses of the changes accomplished by this bill, and effective dates are established to assure an orderly transition to the provisions of this pension reform bill.

This bill recognizes, as does the federal Retirement Equity Act of 1984, that rights to benefits accrued during a marriage are property rights in which both partners to the marriage have an interest. The bill has been drafted to require the joint and survivor option, and spousal consent for revocation of designation of the spouse as beneficiary for benefits, only if the spouse was married to the employee during a period when rights to those benefits were being accrued.

I note that the state's Supplemental Benefits System (SBS) plan has already been amended to comply with the Retirement Equity Act requirements that the plan require a joint and survivor benefit unless the spouse waives that form of benefit, and that the plan require payment of a preretirement survivor benefit to the spouse unless the spouse waives that form of benefit. These amendments to the SBS were necessary to maintain the plan's tax-deferred status under the Internal Revenue Code.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Sheffield". The signature is fluid and cursive, with a large initial "B" and "S".

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 237
Title: pension reform

FISCAL DETAIL

Agency Affected: Dept. of Administration
Program Category Affected: _____

Sponsor: Governor Sheffield
Requestor: House Finance Committee
Date of Request: 4/22/85

BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONNEL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		0				

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		0				
FEDERAL FUNDS		0				
OTHER		0				
TOTAL		0				

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

The cost of printing new forms and notifying members can be absorbed in the Department's FY 86 budget.

APA

Prepared By: Al Adams, Chair
Division: House Finance Committee

Phone: .465-3706
Date: 4/22/85

Approved by Commissioner: _____
Agency: _____

Date: _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

BILL SHEFFIELD
GOVERNOR



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STATE OF ALASKA
OFFICE OF THE GOVERNOR

ALASKA WOMEN'S COMMISSION
3601 C STREET - SUITE 742
ANCHORAGE, ALASKA 99503

MEMO

RECEIVED
MAR 11 1986

TO: Senator Mitch Abood
Senate State Affairs Committee

FROM: Kathy Marshall *KM*
Executive Director

SUBJECT: HB 237,
an act relating to Pension Reform

DATE: March 7, 1986

HB 237, the Pension Reform bill was heard in Senate Affairs March 5, 1986. During the testimony I referred to a study completed last year which is published in The Divorce Revolution, The Social and Economic Consequences for Women and Children. Senator Fischer asked that I provide the committee with a summary of the book. Attached are copies of an article which appeared in the Anchorage Daily News, which briefly summarizes the book. I have the actual book here in Juneau and would be more than happy to lend it to any member of the Committee. If I can provide you with any additional information, please don't hesitate to contact me.

KM/dn

attachments

No-fault divorce 'disaster' for women, study says

WRENCE
ed Press

NGTON — No-fault divorce in all 50 states July 1, has turned out to be simply an economic disaster for divorced women and their children, a University sociologist says Wednesday. The study has reduced the economic stability and trauma. The study is we haven't seen the economics of divorce. Leonore Weitzman reports on more than a decade of research in a new book, "The Divorce Revolution: Unexpected Social and Economic Consequences for Women and Chil-

dren in America."

"I thought only good could come out of no-fault," Weitzman said in a speech to the Women's Legal Defense Fund. But, she said, analyses of property division, alimony and child support proved her expectations to be overly optimistic.

Based on 2,500 court cases in Los Angeles and San Francisco, Weitzman concluded that women and minor children experienced a 73 percent decline in their standard of living in the first year after a divorce. The divorced men experienced an average increase of 42 percent in the same period, she said.

According to Weitzman, if a man makes \$1,000 a month an average judge will award him \$700 and give \$300 to the ex-wife and two children. She said older women and former wives of middle-class professionals experience the most deprivation and downward mobility compared with their ex-husbands.

"Our aim should be to equalize the standards of living of men and women after divorce," she said. "I don't see how anybody can be unaffected by these statistics. They're so powerful and so devastating."

In addition to examining court cases, Weitzman said

she interviewed divorced men and women; all judges hearing matrimonial cases in Los Angeles and San Francisco; the entire matrimonial bar in San Francisco, and 92 Los Angeles attorneys. She also did a national survey of state laws.

Studies and statistics from other states indicate the California findings are typical of the national situation, Weitzman said. She said her research provides the first data on what has happened under no-fault.

In the area of property, Weitzman said a 1970 California law requiring equal division of property "seemed like

a feminist dream come true." Prior to that, she said, when judges had full discretion, women usually received one-third of the property and men two-thirds.

But she said women have been hurt by the equal division law. Before 1970, she said, only one out of 10 homes was sold as a result of a divorce proceeding and women typically received the house. Two years after the law was passed, she said, one out of three homes was being sold to meet the equal division requirement — disrupting the family at a time when stability was most needed.

In addition, Weitzman said,

courts do not generally take into account new kinds of property that she calls career assets — future earnings ability based on education and skills, pensions and retirement funds.

Alimony is largely a myth in America, Weitzman said. She said 85 percent of divorced women "don't receive a penny" although lawyers believe 75 percent are awarded alimony and judges put the figure at 50 percent.

Even in longer marriages, she said, alimony is awarded to less than half the women and only to one of three who had never had careers outside the home.

No-fault divorce law fails short

Continued from Page D-1

continues. "Standards that seem appropriate for a young woman of 25 who has a career and has no children are suddenly being applied to women of 55 who have never had a career and have spent their lives raising children. That seems totally unfair. This has to be in part a backlash. The evidence is just inescapable that some lawyers and judges are saying, 'Well, if women want equality, we'll give them equality.'"

These technical attempts at equality are misguided, Weitzman believes, because of the economic inequalities that marriage creates and the economic inequalities between men and women in the larger society.

"I don't see us in the near future getting the kind of equality among women that would allow the premise of the current law, which is that men and women can be equal — equally responsible for supporting themselves after a divorce," she says. "That's because I assume we're still going to have children in most families. Women are still much more

likely to be the primary caretakers. That always disadvantages that spouse's career."

Even in two-paycheck marriages, she notes, the husband's career is usually the center of the marriage. Citing a study of two-career PhD couples, she indicates that 80 percent of the women let the husband take the initiative in the job market. "Even when a woman has invested in a PhD, probably six years of her life in a professional education, she's still moving so he can take the first job. So I don't see this great egalitarian revolution in internal family patterns."

Alleviating some of the injustices in the current system, she says, requires a redefinition of marital property. Instead of counting only tangible assets such as the family home, furnishings, cars, and investments, courts must also consider career assets. These include pensions, health insurance, education, and professional licenses. To exclude these from divorce settlements, she notes, is "like promising to divide the family jewels equally but allowing the husbands to keep all of the diamonds."

Alaska State Legislature

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Senator Mitch Abood
CHAIRMAN

Senate Committee on State Affairs

3/14/86

SUMMARY OF AMENDMENTS MADE TO CSHB 237 (RULES)

1. Page 2, line 24. After "members" insert "present".
2. Page 22, lines 22-28. New Section 44. Amends EPORS (Elected Public Employees Retirement System). Eligibility for survivor benefits has been amended from two years to one year.
3. Page 23, line 8. Effective date has been changed to 1987..

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

March 12, 1986

Honorable Mitch Abood, Chairman
Senate State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: CSHB 237(Rls), retirement bill

Dear Senator Abood:

You have requested a section-by-section analysis of CSHB 237(Rls), relating to the rights of spouses to be beneficiaries under the state's pension systems. The sections of that bill provide:

Sec. 1. Amends AS 14.25.110(a). Makes eligibility for a normal teacher's retirement benefit subject to the requirements of amended AS 14.25.167. See secs. 13-15.

Sec. 2. Amends AS 14.25.110(b). Makes eligibility for an early teacher's retirement benefit subject to the requirements of amended AS 14.25.167. See secs. 13-15.

Sec. 3. Amends AS 14.25.125(a). Makes a teacher's eligibility for a normal conditional service retirement benefit subject to the requirements of amended AS 14.25.167. See secs. 13-15.

Sec. 4. Amends AS 14.25.125(b). Makes a teacher's eligibility for an early conditional service retirement benefit subject to the requirements of amended AS 14.25.167. See secs. 13-15.

Sec. 5. Amends AS 14.25.150. Makes current provisions into subsection (a); makes terminated teacher's entitlement to refund of contribution account subject to provisions of new AS 14.25.150(b). See sec. 6.

Sec. 6. Amends AS 14.25.150. Adds new subsection (b) that makes terminated teacher's entitlement to refund of contribution account subject to consent of the teacher's spouse and of each person entitled to benefits under a "qualified domestic re-

lations order" if the teacher is vested, deferred vested, or entitled to a conditional service retirement benefit. Consent of the spouse may be waived by the administrator if the teacher was not married to the spouse during the teacher's employment with an employer; if the spouse has no rights to benefits under AS 14.25 because of the terms of a qualified domestic relations order (see sec. 17); if the spouse cannot be located; or for other reasons established by regulation.

Sec. 7. Amends AS 14.25. Adds a new section 14.25.153 which establishes a person's priority of rights to benefits of under a qualified domestic relations order over rights of a spouse, surviving spouse or dependent child. Establishes right of a person to be treated as a spouse or surviving spouse to the extent required by a qualified domestic relations order. See sec. 17. Provides that the person's rights do not take effect until the order is filed with the administrator.

Sec. 8. Amends AS 14.25.155(c). Makes teacher's designation of person other than spouse as beneficiary for nonoccupational death benefits subject to requirements of amended AS 14.25.166. See secs. 10-12.

Sec. 9. Amends AS 14.25.157(a). Makes teacher's designation of person other than spouse as beneficiary for occupational death benefits subject to requirements of amended AS 14.25.166. See secs. 10-12.

Sec. 10. Amends AS 14.25.166(a). Makes teacher's spouse at time of death automatically the teacher's designated beneficiary for death benefits, unless the spouse was not married to the teacher during a period of the teacher's employment with an employer. The spouse is the automatic designated beneficiary except to the extent that a qualified domestic relations order requires payment to a former spouse or dependent of the teacher. The designation of the spouse as beneficiary can be revoked if the spouse consents in writing to revocation. A person's entitlement under a qualified domestic relations order can be revoked if the person consents in writing to revocation.

Sec. 11. Amends AS 14.25.166(b). Makes teacher's right to revoke beneficiary subject to requirements of amended AS 14.25.166(a). See sec. 10.

Sec. 12. Amends AS 14.25.166. Adds new subsection (d) that requires persons who claim entitlement to death benefits under AS 14.25 to provide the administrator with evidence of entitlement, such as a marriage certificate, divorce or dissolution

judgment, or other evidence. Marriage certificates and divorce or dissolution decrees may be filed with the administrator immediately after the teacher is married or divorced. A person who claims entitlement to death benefits under AS 14.25 is not entitled to receive from the division of retirement and benefits any death benefits already paid by the administrator if the administrator does not receive notification of a claim before 10 days after the teacher's death.

Sec. 13. AS 14.25.167(a) is repealed and reenacted. The new provisions of AS 14.25.167(a) require a teacher who retires or who becomes eligible for retirement under AS 14.25.130-(e) to designate his or her spouse at the time of appointment to retirement as the contingent beneficiary for a joint and survivor benefit, unless the designation is revoked under AS 14.25.167(c). See sec. 14. If the designation is revoked, the teacher may choose normal or early retirement benefits under AS 14.25.110 or 14.25.125.

Sec. 14. Amends AS 14.25.167(c). Permits a teacher to revoke a joint and survivor option only by filing a revocation and a written consent to the revocation signed by the teacher's spouse and each person entitled to benefits under a qualified domestic relations order. See sec. 17. The administrator may waive the requirement of written consent from a person entitled under a qualified domestic relations order if the person cannot be located or for other reasons established by regulation. The administrator may waive the requirement that the teacher file written consent to a revocation signed by the teacher's spouse if the teacher is not married, if the teacher was not married to the spouse during any period of the teacher's employment with an employer, if the spouse has no right to be contingent beneficiary because of the terms of a qualified domestic relations order, if the spouse cannot be located, or for other reasons established by regulation.

Sec. 15. Amends AS 14.25.167. Adds a new subsection (f) which requires the teacher and any person who claims to be a contingent beneficiary to file with the administrator evidence necessary to determine the identity of any contingent beneficiary. New subsection (g) limits the liability of the Teachers' Retirement System if the administrator determines that a teacher may choose a benefit other than a joint and survivor option and no contrary evidence is presented to the administrator within 60 days after the teacher's retirement. Under those circumstances, no claim of a spouse or former spouse may be paid if payment would result in an increase in actuarial liability to the system. Under new subsection (h), if the teacher fails to specify which

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Senate State Affairs Committee
Alaska State Legislature

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of the three joint and survivor options is elected, the 50 percent option provided in AS 14.25.167(a)(2) is considered elected.

Sec. 16. Amends AS 14.25.200(a). Provides that a teacher's right to receive benefits under AS 14.25 may be assigned under a qualified domestic relations order. See sec. 17.

Sec. 17. Amends AS 14.25.220. Adds a new paragraph (43), defining "qualified domestic relations order." A qualified domestic relations order is a divorce or dissolution judgment, including an order approving a property settlement, that recognizes the right of an alternate payee to receive all or a portion of a benefit payable with respect to a teacher. The order must set out the names and addresses of the member and of each alternate payee covered by the order. It must set out the amount or percentage (or manner of determining the amount or percentage) of any benefit to be paid to the alternate payee and the number of payments or period to which the order applies.

A qualified domestic relations order may not require any type or form of benefit or option not otherwise provided by AS 14.25, nor may it require an increase, based on actuarial value, of benefits in excess of the amount provided by AS 14.25. A qualified domestic relations order may not require the payment to an alternate payee of benefits that are required to be paid to another alternate payee under an order previously determined to be a qualified domestic relations order. An example of the effect of these provisions is that, since the systems do not provide for any form of partial health benefit for a spouse of a member and since provision of a full health benefit to more than one spouse would require an increase of benefits in excess of the amount provided by AS 14.25, a qualified domestic relations order cannot require that more than one person is entitled to the health benefits provided to the spouse of a retiree.

Sec. 18. Amends AS 22.25.030(b). Reduces from two to one the number of years a spouse must have been married to a judge for the spouse to be eligible for a survivors' benefit under the Judicial Retirement System (JRS).

Sec. 19. Amends AS 22.25.030. Adds a new subsection (f), providing that the rights of a surviving spouse or dependent to JRS survivors' benefits are subject to the rights of a previous spouse or a dependent under a qualified domestic relations order. See sec. 21.

Sec. 20. Amends AS 22.25. Adds a new section 22.25.-035 which provides that a person who was married to a judge for

Honorable Mitch Abood, Chairman
Senate State Affairs Committee
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Re: CSHB 237(R1s)

at least one year and has not remarried may be treated as the spouse or surviving spouse of a judge to the extent required by a qualified domestic relations order. See sec. 21.

Sec. 21. Amends AS 22.25. Adds a new section 22.25.-900, defining "qualified domestic relations order." See sec. 17.

Sec. 22. Amends AS 25.24.160. Adds a new subsection (b), providing that, in order to distribute Teachers', Judicial, Public Employees' or Alaska National Guard and Naval Militia retirement or death benefits to an alternate payee, a divorce judgment must meet the requirements of a qualified domestic relations order. See secs. 17, 21, 26, 43.

Sec. 23. Amends AS 25.24.230. Adds a new subsection (g), providing that, in order to distribute Teachers', Judicial, Public Employees' or Alaska National Guard and Naval Militia retirement or death benefits to an alternate payee, a dissolution judgment must meet the requirements of a qualified domestic relations order. See secs. 17, 21, 26, 43.

Sec. 24. Amends AS 26.05.224(d). Makes Alaska National Guard or Naval Militia member's right to revoke designation of spouse as beneficiary for death benefits subject to requirements of new AS 26.25.224(e). See sec. 25. If no beneficiary is designated or if the designated beneficiary does not survive the member, the Department of Military and Veterans' Affairs is required to pay the death benefit to the member's surviving spouse, except as required by a qualified domestic relations order. See sec. 26.

Sec. 25. Amends AS 26.05.224. A new subsection (e) is added which makes Alaska National Guard or Naval Militia member's spouse at time of death automatically the member's designated beneficiary, unless the spouse was not married to the member during a period of the member's service. The spouse is the automatic designated beneficiary except to the extent that a qualified domestic relations order requires payment to a former spouse or dependent of the member. See sec. 26. Designation of the spouse as beneficiary can be revoked if the spouse consents in writing to revocation. A person's entitlement under a qualified domestic relations order can be revoked if the person consents in writing to revocation. A new subsection (f) requires persons who claim entitlement to death benefits under AS 26.05.224 to provide the department with evidence of entitlement, such as a marriage certificate, divorce or dissolution judgment, or other evidence. Marriage certificates and divorce or dissolution decrees may be filed with the department immediately after the member is married

or divorced. A person who claims entitlement to death benefits under AS 26.05.224 is not entitled to receive from the Departments of Administration or Military and Veterans' Affairs any death benefits already paid by the department if the department does not receive notification of a claim before 10 days after the member's death.

Sec. 26. Amends AS 26.05.227. Adds a new paragraph (4), defining "qualified domestic relations order." See sec. 17.

Sec. 27. Amends AS 39.35.200(a). Makes terminated employee's right to refund of contribution account subject to requirements of new AS 39.35.200(c). See sec. 28.

Sec. 28. Amends AS 39.35.200. Adds new subsection (c) that makes terminated employee's entitlement to refund of contributions subject to consent of spouse and each person entitled to benefits under a "qualified domestic relations order" (see sec. 43 if the employee is vested, deferred vested, or entitled to a conditional service retirement benefit. Consent of the spouse may be waived by the administrator if the employee was not married to the spouse during any period of the employee's employment with an employer; if the spouse has no rights to benefits under AS 39.35 because of the terms of a qualified domestic relations order; if the spouse cannot be located; or for other reasons established by regulation.

Sec. 29. Amends AS 39.35.370(a). Makes employee's eligibility for a normal retirement benefit subject to the requirements of amended AS 39.35.450. See secs. 36-38.

Sec. 30. Amends AS 39.35.370(b). Makes employee's eligibility for an early retirement benefit subject to the requirements of amended AS 39.35.450. See secs. 36-38.

Sec. 31. Amends AS 39.35.385(a). Makes an employee's eligibility for a normal conditional service retirement benefit subject to the requirements of amended AS 39.35.450. See secs. 36-38.

Sec. 32. Amends AS 39.35.385(b). Makes an employee's eligibility for an early conditional service retirement benefit subject to the requirements of amended AS 39.35.450. See secs. 36-38.

Sec. 33. Amends AS 39.35.420(c). Makes employee's designation of beneficiary other than spouse for nonoccupational

Honorable Mitch Abood, Chairman
Senate State Affairs Committee
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death benefits subject to requirements of amended AS 39.35.490.
See sec. 40.

Sec. 34. Amends AS 39.35.430(f). Makes employee's designation of beneficiary other than spouse for occupational death benefits subject to requirements of amended AS 39.35.490.
See sec. 40.

Sec. 35. Amends AS 39.35.440(b). Makes employee's designation of beneficiary other than spouse for benefits payable upon death of employee after occupational disability subject to requirements of amended AS 39.35.490. See sec. 40.

Sec. 36. AS 39.35.450(a) is repealed and reenacted. The new provisions of AS 39.35.450(a) require an employee who retires or who becomes eligible for normal retirement under AS 39.35.400(f) or 39.35.410(h) to designate his or her spouse at the time of appointment to retirement as the contingent beneficiary for a joint and survivor benefit, unless the designation is revoked under AS 39.35.450(c). See sec. 37. If the designation is revoked, the employee may choose normal or early retirement benefits under AS 39.35.370 or 39.35.385 or a level income option under AS 39.35.460.

Sec. 37. Amends AS 39.35.450(c). Permits an employee to revoke a joint and survivor option only by filing a revocation and a written consent to the revocation signed by the employee's spouse and each person entitled to benefits under a qualified domestic relations order. See sec. 43. The administrator may waive the requirement of written consent from a person entitled under a qualified domestic relations order if the person cannot be located or for other reasons established by regulation. The administrator may waive the requirement that the employee file written consent to a revocation signed by the employee's spouse if the employee is not married, if the employee was not married to the spouse during any period of the employee's employment with an employer, if the spouse has no right to be contingent beneficiary because of the terms of a qualified domestic relations order, if the spouse cannot be located, or for other reasons established by regulation.

Sec. 38. Amends AS 39.35.450. Adds a new subsection (f) which requires the employee and any person who claims to be a contingent beneficiary to file with the administrator evidence necessary to determine the identity of any contingent beneficiary. New subsection (g) limits the liability of the Public Employees' Retirement System if the administrator determines that an employee may choose a benefit other than a joint and survivor

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Senate State Affairs Committee
Alaska State Legislature

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option and no contrary evidence is presented to the administrator within 60 days after the employee's retirement. Under those circumstances, no claim of a spouse or former spouse may be paid if payment would result in an increase in actuarial liability to the system. Under new subsection (h), if the employee fails to specify which of the three joint and survivor options is elected, the 50 percent option provided in AS 39.35.450(a)(2) is considered elected.

Sec. 39. Amends AS 39.35. Adds a new section 39.35.-455, which establishes a person's priority of rights under a qualified domestic relations order over rights of a spouse, surviving spouse or dependent child. See sec. 43. Establishes right of a person to be treated as a spouse or surviving spouse to the extent required by a qualified domestic relations order. Provides that the person's rights do not take effect until the order is filed with the administrator.

Sec. 40. Amends AS 39.35.490. Makes employee's spouse at time of death automatically the employee's designated beneficiary for death benefits, unless the spouse was not married to the employee during a period of the employee's employment with an employer. The spouse is the automatic designated beneficiary except to the extent that a qualified domestic relations order requires payment to a former spouse or dependent of the employee. The designation of the spouse as beneficiary can be revoked if the spouse consents in writing to revocation. A person's entitlement under a qualified domestic relations order can be revoked if the person consents in writing to revocation.

Sec. 41. Amends AS 39.35.490. Adds new subsection (d) that requires persons who claim entitlement to death benefits under AS 39.35 to provide the administrator with evidence of entitlement, such as a marriage certificate, divorce or dissolution judgment, or other evidence. Marriage certificates and divorce or dissolution decrees may be filed with the administrator immediately after the employee is married or divorced. A person who claims entitlement to death benefits under AS 39.35 is not entitled to receive from the division of retirement and benefits any death benefits already paid by the administrator if the administrator does not receive notification of a claim before 10 days after the employee's death.

Sec. 42. Amends AS 39.35.500. Provides that an employee's right to receive benefits under AS 39.35 may be assigned under a qualified domestic relations order. See sec. 43.

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Senate State Affairs Committee
Alaska State Legislature

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Sec. 43. Amends AS 39.35.680. Adds a new paragraph (40), defining "qualified domestic relations order." See sec. 17.

Sec. 44. Requires the Department of Administration to publish notice of the provisions of the Act and make available the forms necessary to implement the Act within 90 days after the effective date of sec. 44.

Sec. 45. Gives sec. 44 an immediate effective date.

Sec. 46. Makes secs. 1-43 of the Act effective on January 1, 1986. (This date should be changed to January 1, 1987.)

Very truly yours,

HAROLD M. BROWN
ATTORNEY GENERAL

By: *Virginia B. Ragle*
Virginia B. Ragle
Assistant Attorney General

VBR/pjg

cc: J. Kenneth Humphreys, Director
Division of Retirement & Benefits
Department of Administration

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION DIVISION OF RETIREMENT & BENEFITS

PLEASE REPLY TO:

POUCH CR (MS 0203)
JUNEAU, ALASKA 99811
PHONE (907)465-4460

2600 DENALI ST. SUITE 401
ANCHORAGE, ALASKA 99503
PHONE (907) 277-7504

Public Employees' Retirement System
Teachers' Retirement System
Judicial Retirement System
Elected Public Officers Retirement System
National Guard Retirement System
Territorial Retirement System
Retirees' Voluntary Dental Vision-Audio Plan
Supplemental Benefits System
Group Health/Life Insurance Benefits
Deferred Compensation Plan
Public Employers Social Security Contributions

Bill Sheffield, Governor

March 24, 1986

The Honorable Mitch Ahood
Chairman
Senate State Affairs
P.O. Box V
Juneau, AK 99811

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(C)

Dear Mr. Chairman:

I am writing in response to your request to John Logan of March 18, 1986, in which you asked for an explanation of the payment options from a Supplemental Benefits System (SBS) annuity account.

An employee is eligible to receive his or her SBS annuity account 90 days following termination of employment.

There are nine forms of payment. Payment may be made in:

- 1) a lump sum
- 2) guaranteed monthly payments over five years
(to the employee or the employee's beneficiary)
- 3) guaranteed monthly payments over ten years
(to the employee or the employee's beneficiary)
- 4) guaranteed monthly payments over 15 years
(to the employee or the employee's beneficiary)
- 5) a single life annuity
(monthly payments over the employee's lifetime only)
- 6) a lifetime annuity with ten years certain
(monthly payments over the employee's lifetime with ten years payments guaranteed)
- 7) a lifetime annuity with 15 years certain
(monthly payments over the employee's lifetime with 15 years payments guaranteed)
- 8) a 50% joint and survivor annuity
(monthly payments over the employee's lifetime with monthly payments of half that amount for the employee's surviving spouse)
- 9) a 100% joint and survivor annuity
(equal monthly payments over the employee's and spouse's lifetimes)

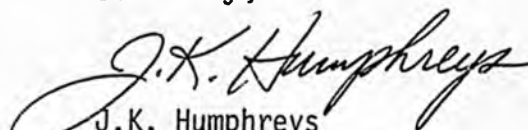
March 24, 1986

If an employee is married at the time payment is to commence, the Federal Retirement Equity Act of 1984 requires that payment be made in the form of a joint and survivor annuity, unless the employee's spouse signs a waiver. The waiver indicates the spouse's understanding and agreement with the form of payment selected.

If the spouse does not sign a waiver, the employee must select either a 50% or 100% joint and survivor annuity (items 8 and 9 above), or the employee may elect to defer receipt of payment until a later date.

If you have additional questions, please let me know.

Sincerely,


J.K. Humphreys
Director

JKH/JAL/cam/4

DRAFT

April 10, 1986

Honorable Mitch Abood, Chairman
Senate State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: CSHB 237(Rls), retirement bill

Dear Senator Abood:

At the committee's March 18, 1986 hearing on CSHB 237 (Rls), the committee instructed me to draft changes to be included in the committee substitute as follows:

1. simplification of language concerning rights under a qualified domestic relations order (QDRO); and
2. addition of language to the bill to allow a spouse "veto power" over only 50 percent of the benefits.

After consultation with the two agencies interested in this bill, the Alaska Women's Commission and the division of retirement and benefits, we recommend that in sections 7 and 39, the following language be substituted for the current language:

A former spouse shall be treated as a spouse or surviving spouse to the extent required by a qual-

ified domestic relations order. Rights under the order do not take effect until the order is filed with the administrator.

In section 20, we recommend that the following language be substituted for the current language:

A former spouse who was married to the justice or judge for at least one year and who has not remarried shall be treated as a spouse or surviving spouse to the extent required by a qualified domestic relations order. Rights under the order do not take effect until the order is filed with the administrator.

The committee has also instructed that language be added to the committee substitute to provide that a spouse has "veto power" only over 50 percent of the benefits. This instruction was given after a discussion about the right of a member to withdraw the member's contribution account upon termination of employment. However, under this bill, the spouse has other "veto" rights, including the rights to withhold consent to payment of a benefit in a form other than a joint and survivor option and to withhold consent to designation of a person other than the spouse as beneficiary for survivors' benefits.

A. Contribution account. The bill currently provides that, when a vested member terminates employment, he or she may receive a refund of the contribution account only with consent of

the spouse and other persons entitled under a QDRO. Allowing "veto power" over only 50 percent of the refund of the contribution account could be accomplished in several ways, none of which is supported by both the Alaska Women's Commission and the division of retirement and benefits. Therefore, the committee must determine which, if any, option it wants to include in the committee substitute, after considering the problems each option presents.

First, if a member has no former spouse or dependents entitled under a QDRO and if the spouse does not consent to withdrawal of the contribution account, the contribution account can be paid out in two checks, one to the member, and one to the spouse. This option is strongly opposed by the Women's Commission. Under the state's retirement systems, the value of the benefits that will/may be received upon retirement, including the monthly benefit and medical benefits for a member's spouse and dependents, is much greater than the value of the contribution account. The main purpose of this bill is to acknowledge and protect the interest of a spouse in those benefits.

Second, if there are persons entitled under a QDRO, those persons can be paid a portion of the contribution account proportionate to their interest in benefits established by the

order. The remainder of the contribution account can be paid to the member or, if the member has a new spouse, half of the remainder can be paid to the member and half to the spouse. In addition to the objections set out for the first option, this option is objectionable due to the fact that it would be very difficult for the division of retirement and benefits to administer. Furthermore, if marital property is divided under a QDRO based on an assumption that a member will receive benefits from a state retirement system, a portion of which will be paid to persons entitled under the QDRO, the member should not be permitted to forfeit the benefits by withdrawing the contribution account without the consent of the persons entitled under the order.

Third, if the member has no former spouse or dependents entitled under a QDRO and if the present spouse does not consent to withdrawal of the contribution account, the bill could provide that one-half of the account would be paid to the member and one-half must remain in the system to provide the spouse with a benefit. New sections would have to be enacted to define what benefit the spouse will receive. Will the benefit be one-half of what the member's benefit would have been? When is the benefit payable to the spouse? Can the spouse select a joint and survivor option? If the member becomes reemployed by the state and wants to reinstate the service credit, can the member reinstate

all of the service credit under his or her own account, or only half of the service credit, with the spouse remaining entitled to a separate benefit? If the member and the spouse divorce, is the spouse's benefit subject to a qualified domestic relations order?

Fourth, if there are persons entitled under a QDRO, the bill could provide that an amount proportionate to the share of the member's benefit that is due those persons must remain in the contribution account. The remainder would be refunded to the member or, if the member has a new spouse, one-half of the remainder would be paid to the member and one-half would remain in the system to provide the spouse with a benefit. Again, new sections would have to be enacted to define the benefit the spouse would receive and the questions raised in option three must be resolved. In addition, it could be extremely difficult, administratively, for the division of retirement and benefits to determine what proportion of the contribution account must remain in the system to result in payment of benefits required under a QDRO.

B. Joint and survivor option. The bill currently requires a married member to choose a joint and survivor option upon retiring, unless the spouse consents to another form of benefit payment. We can think of no way to change this to a 50

percent "veto power."

C. Spouse as designated beneficiary. The bill currently provides that the spouse of a member is automatically the designated beneficiary for survivors' benefits, except to the extent required by a QDRO, unless the spouse consents to designation of some other person as the beneficiary. This could be changed to provide that, notwithstanding the designation of another person as beneficiary and except to the extent required by a QDRO, the spouse is automatically the designated beneficiary entitled to receive one-half of the survivors' benefit that he or she would have been entitled to receive if he or she had been designated the sole beneficiary. Other beneficiaries would receive one-half of what they would otherwise have received. The spouse could consent to designation of someone other than the spouse as beneficiary for 100 percent of the survivors' benefits.

Before the committee hearing on April 16, 1986, we will provide proposed language to add to the March 14, 1986 draft committee substitute to implement the options identified in this memorandum. We recommend that the changes suggested in this memorandum to sections 7, 20, and 39 be included in the draft committee substitute. In addition, in accordance with the committee's instruction at a previous hearing on this bill, the word

DRAFT

Senator Abood

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"present" should be inserted on page 5, line 12 of the March 14, 1986 draft, between the words "the" and "spouse."

Very truly yours,

HAROLD M. BROWN
ATTORNEY GENERAL

By: Virginia B. Ragle
Assistant Attorney General

VBR/pjg

(f) When more than one-half of one per cent of the aggregate of all loans purchased from a financial institution becomes delinquent for 60 days, the pension fund shall discontinue purchasing loans from that financial institution until the delinquency is reduced to less than one-half of one per cent.

(g) The commissioner of revenue may enter into futures contracts for the sale of investments purchased under (b) of this section only for the purpose of hedging an existing equivalent ownership position in the investments.

(h) The commissioner of revenue may transfer at any time a portion of the assets of the retirement fund to a trust which is qualified under sec. 401(a) of the Internal Revenue Code (26 U.S.C. sec. 401(a)) and exempt from taxation under sec. 501(a) of the Internal Revenue Code (26 U.S.C. sec. 501(a)) and which is maintained as a medium for pooling a portion of the funds of pension and profit-sharing trusts for diversifying investments in real estate and interests in real estate.

(i) The commissioner of revenue may enter into a contract or trust agreement necessary to effectuate the transfer of assets of the retirement fund or to maintain the assets of the retirement fund to be transferred to a trust under (h) of this section. (§ 19 ch 145 SLA 1955; am § 15 ch 89 SLA 1960; am § 1 ch 128 SLA 1961; am § 1 ch 90 SLA 1962; am § 3 ch 4 SLA 1964; am §§ 1, 2 ch 66 SLA 1964; am § 1 ch 110 SLA 1964; am § 1 ch 55 SLA 1967; am § 3 ch 73 SLA 1969; am §§ 1, 2 ch 17 SLA 1970; am § 1 ch 112 SLA 1972; am § 26 ch 53 SLA 1973; am §§ 1, 2 ch 25 SLA 1974; am §§ 1, 2 ch 59 SLA 1977; am §§ 1-5 ch 122 SLA 1980)

Editor's notes. — This section is set out above to correct an error in the main pamphlet.

Sec. 14.25.220. Definitions. In this chapter, unless the context requires otherwise,

(1) "active member" means a member who is employed by an employer, is receiving compensation on a full-time or part-time basis and is making contributions to the system, or a member making contributions under AS 14.20.330 or 14.20.345;

(2) "actuarial adjustment" means equality in value of the aggregate expected payments under two different forms of pension payments, considering expected mortality and interest earnings on the basis of tables adopted from time to time by the board;

(3) "administrator" means the person appointed by the commissioner of administration under AS 14.25.015;

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at any time a portion ch is qualified under S.C. sec. 401(a)) and ernal Revenue Code d as a medium for it-sharing trusts for rests in real estate. o a contract or trust r of assets of the retirement fund to be 19 ch 145 SLA 1955; am § 1 ch 90 SLA LA 1964; am § 1 ch h 73 SLA 1969; am am § 26 ch 53 SLA 1 59 SLA 1977; am

unless the context s employed by an or part-time basis t member making e of the aggregate pension payments, gs on the basis of d by the commis-

(4) "annuitant" means a retired member or a disabled member who is receiving a benefit under this system;

(5) "average base salary" means the result obtained by dividing the sum of the member's three highest years' base salary by three, or if a member does not have three years base salary, then by dividing the sum of all base salaries by the number of years of base salary; the base salary for a year in which credit is granted for disability totaling more than one-third of a year may not be used in the computation of the average base salary; the base salary in a school year for which the member receives compensation for less than two-thirds of a year may not be used in the computation of the average base salary; if compensation is received for more than two-thirds of a year, the full base salary for that school year shall be used in the computation of the average base salary;

(6) "base salary" (A) means the total remuneration payable under contract for a full year of membership service, including addenda to the contract;

(B) has the same meaning as "compensation" under AS 39.35.680(8) when applied to a state legislator who elects membership under AS 14.25.040(b);

(7) "beneficiary" means a person designated by a member to receive benefits that may be due from the system upon the member's death;

(8) "BIA service" means service, including partial years, as a teacher, a certificated person employed in a full-time position requiring a teaching certificate as a condition of employment, or a Bureau of Indian Affairs professional educator in a school or school system operated by the Bureau of Indian Affairs in Alaska;

(9) "compensation" means the total remuneration paid under contract to a member for services rendered during a school year, including cost-of-living differentials, payments for leave that is actually used by the member, the amount by which the member's wages are reduced under AS 39.30.150(c), and the amount deferred under an employer-sponsored deferred compensation plan or the tax shelter annuity plan approved by the Department of Education, but does not include retirement benefits, welfare benefits, per diem, expense allowances, workers' compensation payments, or payments for leave not used by the member, whether those leave payments are scheduled payments, lump-sum payments, donations, or cash-ins; for purposes of AS 14.25.050, compensation paid includes any payment made after June 30 of a school year for services rendered before the end of the school year;

(10) "credited service" means all membership service as provided in (20) of this section, territorial employment as defined in (41) of this section, plus outside, military, and Alaska BIA service, with outside and military service limited to 10 years except under the conditions set out in AS 14.25.100;

(11) "deferred vested member" means an inactive member who meets the service requirements of a vested member.

(12) "dependent child" means an unmarried child of a member, including an adopted child, who is dependent upon the member for support and who is either (A) less than 19 years old, or (B) less than 23 years old and registered at and attending on a full-time basis an accredited educational or technical institution recognized by the Department of Education; the age limits set out in this paragraph do not apply to a child who is totally and permanently disabled;

(13) "disabled member" means a member who is terminated, who has not received a refund from the system, and who is receiving a disability benefit from the system;

(14) "early retirement" means retirement under AS 14.25.110(b);

(15) "employer" means a public school district, the Board of Regents of the University of Alaska, the Department of Education, the National Education Association of Alaska, the Regional Resource Centers or the state legislature with respect to a state legislator who elects membership under AS 14.25.040(b);

(16) "former member" means a member who is terminated and who received a total refund of the balance of the mandatory contribution account, or who has requested in writing a refund of the balance of the mandatory contribution account;

(17) "full-time teacher" means a teacher occupying a position requiring teaching on a regular basis for the normal work period per day or week at a teaching assignment, excluding teaching as an assistant or graduate assistant or teaching on a substitute, temporary, or per diem basis;

(18) "inactive teacher or member" means a member who is terminated and who has not received a refund from the system or a member who is on leave of absence and who is not making contributions under AS 14.20.345;

(19) "member contribution account" means the total maintained by the system of the member's mandatory contributions, indebtedness principal and interest contributions, interest credited to each of those accounts, and adjustments to the account in accordance with AS 14.25.170;

(20) "membership service" means

(A) full or part-time service as a teacher in a public school in the Territory or State of Alaska, or both, under the supervision and control of the Territorial Board of Education or the Department of Education or the school board of a city, regional educational attendance area, or borough school district;

(B) full-time or part-time teaching at the University of Alaska or a full-time administrative position at the University of Alaska which requires academic standing and which has been approved for inclusion in the system by the administrator;

(C) any period during which the teacher receives a disability benefit under this system or is on an approved sabbatical leave granted in accordance with AS 14.20.310; or

(D) continuous service as a state legislator when performed by a state legislator who elects membership under AS 14.25.040(b), subject to the requirements of AS 14.25.040(c);

(21) "military service" means active duty in the armed forces of the United States;

(22) "nonpublic school" means a school established by an agency other than a state which is primarily supported by other than public funds, and operation of whose program rests with other than publicly elected or appointed officials, and is state approved or accredited;

(23) "non-vested member" means an active or inactive member who does not meet the requirements of a vested member or deferred vested member;

(24) "normal retirement" means retirement under AS 14.25.110(a);

(25) "outside service" means service

(A) as a certificated full-time elementary or secondary teacher or a certificated person in a full-time position requiring a teaching certificate as a condition of employment in an out-of-state public school within the United States, or in a school outside the United States supported by funds of the United States;

(B) as a certificated full-time elementary or secondary teacher or a certificated person in a full-time position requiring a teaching certificate as a condition of employment in an approved or accredited nonpublic school within the United States, or in a school outside the United States supported by funds of the United States;

(C) in a full-time position requiring academic standing in an out-of-state 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;

(D) as a full-time teacher in an approved or accredited nonpublic institution of higher learning in Alaska;

(26) "part-time teacher" means a teacher occupying a position requiring teaching on a regular basis for at least 50 percent of the normal workweek at a teaching assignment, excluding teaching as an assistant or graduate assistant, or teaching on a substitute, temporary, or per diem basis;

(27) "permanent disability" means a physical or mental condition which, in the judgment of the administrator, based upon medical reports and other evidence satisfactory to the administrator, presumably prevents a member from satisfactorily performing the member's usual duties for the member's employer or the duties of another position or job which an employer makes available for which the member is qualified by training or education;

(28) "prescribed rate of interest" means the rate of interest used for computing employer contributions, for preparing actuarial tables used by the system, for crediting interest to members' contributions, and for charging interest on members' indebtedness accounts;

(29) "public school" means a school operated by publicly elected or appointed school officials in which the program and activities are under the control of those officials and which is supported by public funds;

(30) "retired teacher or member" means a member who is terminated, who has not received a refund from the system, and who is receiving a benefit, other than disability, from the system;

(31) "retirement" means that period of time from the first day of the month following

(A) the date of termination; and

(B) application for retirement in which a person is appointed to receive a retirement benefit, other than a disability benefit;

(32) "retirement benefit" means the annuity received by a retired member from the system;

(33) "retirement fund" means the fund consisting of all matching contributions by local school districts, money made available by appropriations by the state legislature and from all contributions from whatever source, and income and interest derived from the investment of money;

(34) "Retirement System of 1945" and "Retirement Fund of 1945" or like terms mean the system and fund established in sections 37-5-21 — 37-5-35, ACLA 1949;

(35) "school year" means the 12-month period beginning July 1 of each year and ending June 30 of the following year;

(36) "supplemental contribution account" means the account maintained by the system to record the supplemental contributions of each member, including interest and adjustments to the account in accordance with AS 14.25.170;

(37) "system" means the Teachers' Retirement System of Alaska;

(38) "teacher or member" means a person eligible to participate in the system and who is covered by the system, including:

(A) a certificated full-time or part-time elementary or secondary teacher, a certificated school nurse, or a certificated person in a position requiring a teaching certificate as a condition of employment in a public school of the state;

(B) the commissioner of education and all supervisory positions in the Department of Education;

(C) a full-time or part-time teacher of the University of Alaska or a person occupying a full-time administrative position at the University of Alaska which requires academic standing; the approval of the administrator must be obtained before an administrative position qualifies for membership in the system;

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(D) a state legislator who elects membership under AS 4.25.040(b);

(39) "vested member" or "vested teacher" means an active member who has completed either

(A) 15 years of service, the last five of which have been membership service, for a member first hired before July 1, 1975; or

(B) eight years of membership service; or

(C) five years of membership and three years of BIA service;

(40) "year of service" means membership service during the dates set for a school year;

(A) partial-year service credit is given for membership service before July 1, 1969, during any school year as follows:

(i) less than 20 days, no credit;

(ii) 20 days or more but less than 35 days, 0.2 years;

(iii) 35 days or more but less than 49 days, 0.3 years;

(iv) 49 days or more but less than 63 days, 0.4 years;

(v) 63 days or more but less than 77 days, 0.5 years;

(vi) 77 days or more but less than 91 days, 0.6 years;

(vii) 91 days or more but less than 105 days, 0.7 years;

(viii) 105 days or more but less than 119 days, 0.8 years;

(ix) 119 days or more but less than 133 days, 0.9 years;

(x) 133 days or more, 1.0 years;

(B) partial-year service credit is given for membership service after July 1, 1969, during any school year as follows:

(i) less than nine days, no credit;

(ii) nine days or more but less than 27 days, 0.1 years;

(iii) 27 days or more but less than 45 days, 0.2 years;

(iv) 45 days or more but less than 63 days, 0.3 years;

(v) 63 days or more but less than 81 days, 0.4 years;

(vi) 81 days or more but less than 100 days, 0.5 years;

(vii) 100 days or more but less than 118 days, 0.6 years;

(viii) 118 days or more but less than 136 days, 0.7 years;

(ix) 136 days or more but less than 154 days, 0.8 years;

(x) 154 days or more but less than 172 days, 0.9 years;

(xi) 172 days or more, 1.0 years;

(C) if service is performed on a part-time basis, one-half credit shall be given for each day of service;

(41) "territorial employment" means non-teaching employment with the Territory of Alaska as provided under AS 14.25.105; territorial employment is not membership service;

(42) "board" means the Alaska Teachers' Retirement Board established under AS 14.25.035. (§ 2 ch 145 SLA 1955; am § 1 ch 142 SLA 1957; am § 2 ch 89 SLA 1960; am § 7 ch 179 SLA 1960; am §§ 1 ch 2 SLA 1962; am §§ 8 — 12 ch 86 SLA 1963; am § 1 ch 76 SLA 1968; am §§ 15 — 19 ch 84 SLA 1969; am § 21 ch 46 SLA 1970; am §§ 13 — 18 ch 138 SLA 1970; am §§ 3 — 5 ch 229 SLA 1970; am §§ 16 — 18 ch 32

SLA 1971; am §§ 6 — 8 ch 86 SLA 1971; am §§ 30 — 33 ch 66 SLA 1973; am § 3 ch 57 SLA 1974; am § 21 ch 127 SLA 1974; am §§ 12, 13 ch 173 SLA 1975; am §§ 1, 6 ch. 155 SLA 1976; am § 5 ch 169 SLA 1976; am §§ 12, 13 ch 128 SLA 1977; am §§ 4, 5 ch 174 SLA 1978; am §§ 4 — 7 ch 82 SLA 1979; am § 24 ch 13 SLA 1980; am §§ 25 — 28 ch 137 SLA 1982; am § 1 ch 55 SLA 1985)

Effect of amendments. — The 1985 amendment rewrote paragraph (8).

Editor's notes. — Section 2, ch. 55, SLA 1985 provides that a member qualified under the 1985 amendment to

paragraph (8) of this section may claim prior service if the member pays the arrearage indebtedness in accordance with AS 14.25.060.

NOTES TO DECISIONS

"Membership years" in AS 14.25.130(a). — Teachers' Retirement Board erred when it interpreted the term "membership years" in AS 14.25.130(a) as being the equivalent of "years of service"

as defined in paragraph (16). *Casperson v. Alaska Teachers' Retirement Bd.*, Sup. Ct. Op. No. 2677 (File No. 6198), 664 P.2d 583 (1983).

Chapter 30. Pupils and Educational Programs for Pupils.

Article

1. Compulsory Education (§§ 14.30.010, 14.30.030)
3. Education for Exceptional Children (§§ 14.30.180, 14.30.186, 14.30.191, 14.30.195, 14.30.231, 14.30.250, 14.30.255, 14.30.260, 14.30.270, 14.30.272, 14.30.274, 14.30.276, 14.30.278, 14.30.280, 14.30.285, 14.30.305, 14.30.310, 14.30.315, 14.30.320, 14.30.325, 14.30.330, 14.30.335, 14.30.347, 14.30.350)
4. Health Education (§ 14.30.360)

Article 1. Compulsory Education.

Section

10. When attendance compulsory
30. Report of violations and procedures

Sec. 14.30.010. When attendance compulsory. (a) Every child between seven and 16 years of age shall attend school at the public school in the district in which the child resides during each school term. Every parent, guardian or other person having the responsibility for or control of a child between seven and 16 years of age shall insure that the child is not absent from attendance.

(b) This section does not apply if a child

(1) is provided an academic education comparable to that offered by the public schools in the area, either by

(A) attendance at a private school in which the teachers are certificated according to AS 14.20.020;

(B) tutoring by personnel certificated according to AS 14.20.020; or

Sec. 39.35.200. Refund upon termination of employment for reason other than death. (a) An inactive employee, not on leave-without-pay status or layoff status, is entitled to receive a refund of the balance of the employee contribution account.

(b) If, upon termination of employment, an employee has credited service of less than five years and has less than \$1,000 in the employee contribution account, a refund of the employee contribution account must be made unless the employee indicates in writing that future retirement is intended and contributions should not be refunded. An employee who is reemployed with an employer and whose contributions have not been refunded before reemployment is not eligible for a refund. (§ 9 a ch 143 SLA 1960; am § 12 ch 1 SLA 1974; am § 1 ch 81 SLA 1976; am § 22 ch 128 SLA 1977; am § 45 ch 137 SLA 1982)

Effect of amendments. — The 1982 amendment, in subsection (a), deleted the item (1) designation preceding "the employee contribution account" and deleted "and (2) his employee savings account" from the end of that subsection. In subsection (b), the amendment substi-

tuted "the" for "his" preceding "employee contribution account" and the language beginning "must be made unless the employee indicates" for "and the employee savings account must be made" in the first sentence.

Sec. 39.35.210. Refund upon termination of employment by death. [Repealed, § 55 ch 128 SLA 1977.]

Sec. 39.35.220. Refund upon retirement. [Repealed, § 55 ch 128 SLA 1977.]

Sec. 39.35.230. Refund upon death of retired employee. Upon the death of a retired employee, the employee's beneficiary shall be paid

(1) the excess of the balance in the employee contribution account of the deceased employee as of the date of the beginning of the employee's pension payments over the sum of the pension payments previously received by the employee, but this amount may not be paid if a joint and survivor option under AS 39.35.450 is in effect or if a surviving spouse's pension under AS 39.35.440 is payable; and

(2) the remaining payments purchased by the balance in the employee savings account of the deceased employee as of the date the employee retired. (§ 9 d ch 143 SLA 1960; am § 107 ch 127 SLA 1974)

Sec. 39.35.240. Withdrawal of voluntary contributions. An active employee may withdraw a savings account only if the employee receives the consent of the administrator. The administrator may permit a withdrawal before termination of employment only in cases of financial need. (§ 9 e ch 143 SLA 1960; am § 23 ch 128 SLA 1977)

Article 4. Contributions by Employers.

Section	Section
250. Calculation of employer's contribution rate	280. Determination and payment of state contributions
260. Annual calculation	290. Regulations governing transmittal of employer contributions
270. Amount of employer's contributions	

Sec. 39.35.250. Calculation of employer's contribution rate. (a) An employer shall make contributions to the system in amounts determined in accordance with this section. For the purposes of this section, the past service date for each employer is the entry date of the employer or December 31, 1972, whichever is later. After December 31, 1972, if amendments to this chapter are enacted that substantially affect benefits accrued before the effective date of the amendment, the past service date will be changed to December 31 of the year immediately preceding that in which the amendment is enacted. The contribution rate is the sum of the consolidated employer rate and the past service rate.

(b) As used in (a) of this section, "consolidated employer rate" means the percentage of compensation of all active employees in the system which, if paid over the period of their credited service after their past service date and when combined with all employee contributions, is sufficient to provide the benefits earned after such past service dates. This percentage is uniformly determined for all employers and is applicable to each employer.

(c) As used in (a) of this section, "past service rate" means the percentage of compensation of all active employees in the system necessary to provide the annual amount required to amortize the unfunded obligations of the employer for benefits earned before the employer's past service date over a period not to exceed 40 years. The period of amortization begins at the past service date of each employer. The percentage is separately determined for each employer. (§ 10 a ch 143 SLA 1960; am § 13 ch 1 SLA 1974; am § 24 ch 128 SLA 1977)

Sec. 39.35.260. Annual calculation. The contribution rate for each employer shall be calculated every fiscal year, using the information available at the time the computation is made. The computation shall be completed in time to be considered in the state budget. Each employer shall provide in its budget for the payment of contributions according to its current contribution rate. (§ 10 b ch 143 SLA 1960)

Sec. 39.35.270. Amount of employer's contributions. The amount of each employer's contributions shall be determined by applying the employer's contribution rate to the total compensation paid to the active employees of the employer for each payroll period. This amount shall be remitted by the employer to the administrator in accordance with AS 39.35.610. (§ 10 c ch 143 SLA 1960; am § 14 ch 1 SLA 1974; am § 25 ch 128 SLA 1977)

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Sec. 39.35.280. Determination and payment of state contributions. The total amount of contributions required under AS 39.35.250 — 39.35.290 to be made by the state into the system shall be ascertained by the department of administration as soon as practicable after the end of each calendar month and shall be paid from the general fund of the state, except as provided in this section. If an employee is paid wages by the state during the month from a special or administrative fund provided by law, the payment to the system shall be made from that special or administrative fund. If the wages of an employee include both wages for state employment paid from the general fund of the state and wages for state employment paid from special or administrative funds, the amount to be paid into the system shall be prorated among the state funds in proportion to the wages paid to the individuals from each fund. However, payment may not be made from the special or administrative fund if the statute covering the special or administrative funds prohibits it. (§ 10 d ch 143 SLA 1960)

Sec. 39.35.290. Regulations governing transmittal of employer contributions. The board shall adopt regulations to ensure the orderly and efficient transmittal of employer contributions. (§ 10 e ch 143 SLA 1960)

Article 5. Service.

Section

- 300. Employment with the state
- 310. Employment with other employer
- 330. Leave of absence
- 340. Military service

Section

- 345. Temporary service credit
- 350. Reinstatement of credited service
- 360. Earlier service

Sec. 39.35.300. Employment with the state. (a) An active employee is entitled to credited service for periods of employment with the state after January 1, 1961, regardless of the office, department, division, or agency of the state in which the person was employed. For purposes of this chapter, the University of Alaska is not an office, department, division, or agency of the state. Service credit may not be granted under this chapter for service that is creditable under the teachers' retirement system, AS 14.25.

(b) A permanent part-time employee of the state receives credited service on a pro rata basis to that which would have been earned as a permanent full-time employee. (§ 11 ch 143 SLA 1960; am § 4 ch 155 SLA 1966; am § 4 ch 27 SLA 1976; am § 26 ch 128 SLA 1977; am § 29 ch 13 SLA 1980)

Effect of amendments. — The 1980 amendment added the present second and third sentences in subsection (a).

Sec. 39.35.310. Employment with other employers. (a) An active employee is entitled to credited service for periods of employment with a political subdivision or a public organization beginning with the effective date of the employer's participation in the system. The employee is also entitled to credited service for periods of employment as designated in the employer's participation agreement.

(b) A permanent part-time employee of a political subdivision or a public organization receives credited service on a basis proportionate to that which would have been earned as a permanent full-time employee. (§ 12 ch 143 SLA 1960; am § 27 ch 128 SLA 1977; am § 30 ch 13 SLA 1980)

Effect of amendments. — The 1980 amendment deleted "or quasi-public" preceding "organization" in the first sentence of subsection (a) and in subsection (b).

Sec. 39.35.320. Transfers between employers. [Repealed, § 55 ch 128 SLA 1977.]

Sec. 39.35.330. Leave of absence. (a) A leave of absence with pay authorized by an employer will not be considered as interrupting employment. If the employee is a permanent part-time employee, credited service will be granted on a basis proportionate to that which would have been earned as a permanent full-time employee.

(b) A leave of absence without pay that exceeds 10 working days in any calendar year or layoff status authorized by an employer will be considered as an interruption of employment and no credited service will be granted. (§ 14 ch 143 SLA 1960; am § 28 ch 128 SLA 1977)

Sec. 39.35.340. Military service. (a) A vested employee is entitled to credited service for active military service in the armed forces of the United States, either by enlistment or induction, if the employee did not receive a dishonorable discharge. The credited service allowed may not exceed an aggregate period of five years. Benefits are not payable on credited service for military service unless the employee makes retroactive contributions to the system for the period of time that service credit is claimed. However, if the employee was in the employ of an employer on the date of entry into the armed forces and returned to the employ of an employer within 90 days after the date of discharge from military service, the employee is not required to make retroactive contributions under this system for the period of credited service.

(b) In order to obtain credited service under this section, an employee shall make an election to do so and shall verify the period of military service. When eligibility for credited service for military service has been established, an indebtedness shall be determined as follows: (1) the employee's actual compensation, or the calculated annual compensation for those employees working less than 12 months, during the calendar year 1976 or the year in which an

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employee first becomes vested under this chapter, whichever is later, multiplied by (2) six percent, this product multiplied by (3) the number of years of military service credited under this section. Interest as prescribed by regulation accrues on this indebtedness commencing on July 1, 1977, or one year following the date a person first becomes vested, whichever is later. Any outstanding indebtedness which exists at the time a person is appointed to retirement will necessitate an actuarial adjustment to the benefits payable based upon that military service.

(c) A retired employee on July 1, 1976, is eligible to receive increased benefits based upon military service as described in (a) of this section. To receive credited service for military service, a retired employee must verify the military service. When verified, a retired employee is entitled to receive an increased benefit that shall be actuarially adjusted to reflect the employee's indebtedness for that credit. The indebtedness shall be calculated in the same manner as described in (b) of this section except that it shall be based on the average monthly compensation used in calculating the benefit. The effective date of this increased benefit is the beginning of the month following that in which eligibility has been established.

(d) The credited service granted under this section may not be used to satisfy the credited service requirements for normal retirement.

(e) A deferred vested employee on July 1, 1976, is eligible to claim credited service under (a) of this section. In order to obtain credited service under this section, such an employee must make an election to do so and must verify the period of military service. When eligibility for military service has been established, an indebtedness shall be determined as follows: the employee's actual compensation, or the calculated annual compensation for those employees working less than 12 months, during the calendar year the employee terminated, shall be multiplied by six percent; this product shall then be multiplied by the number of years of military service credit under this section. Interest as prescribed by regulation accrues on this indebtedness commencing July 1, 1978. Any outstanding indebtedness that exists at the time a person is appointed to retirement will necessitate an actuarial adjustment to the benefits payable based upon that military service.

(f) An employee cannot be credited with a period of active military service in the armed forces of the United States under this section if credit for that military service was granted under AS 14.25.

(g) A surviving spouse receiving or entitled to receive benefits under AS 39.35.420(b), 39.35.430, or 39.35.440 or benefits under a joint and survivor option filed under AS 39.35.450 is eligible to receive increased benefits based on military service as described in (a) of this section. To receive credited service for military service, the surviving spouse must verify the employee's military service. When verified, the surviving spouse is entitled to receive an increased benefit which shall be actuar-

ially adjusted to reflect the indebtedness for that credit. The indebtedness shall be calculated in the same manner as described in (b) of this section except that it shall be based on the average monthly compensation used in calculating the benefit. Benefits payable under this subsection are effective the first day of the month following that in which eligibility has been established.

(h) The combined period of military service claimed under this section and under AS 14.25 may not exceed five years. (§ 15 ch 143 SLA 1960; am § 1 ch 123 SLA 1976; am § 29 ch 128 SLA 1977; am § 6 ch 174 SLA 1978; am §§ 31 — 36 ch 13 SLA 1980; am § 46 ch 137 SLA 1982)

Effect of amendments. — The 1980 amendment in subsection (b), deleted "before July 1, 1977 or within one year following the date when the employee first becomes vested under this chapter, if later" at the end of the first sentence, and added a comma following "July 1, 1977" in the next to last sentence; in subsection (c), inserted a comma following "July 1, 1976" near the beginning of the subsection, deleted "before July 1, 1977" at the end of the second sentence, and substituted "that credit" for "such credit" at the end of the third sentence; in subsection (e), inserted a comma following "July 1, 1976" near the beginning of the subsection, and deleted "before July 1, 1978" at the end of the second sentence; in subsection (f) inserted "a

period of" preceding "active military service" near the beginning of the subsection, and inserted "that" preceding "military service" near the end of the subsection; in subsection (g) deleted "within one year of the effective date of this act" at the end of the second sentence, and substituted "effective the first day of the month following that in which eligibility has been established" for "payable retroactively to July 1, 1977" at the end of the subsection; and added present subsection (h).

The 1982 amendment substituted "benefits under AS 39.35.420(b), 39.35.430, or 39.35.440" for "a surviving spouse's pension under AS 39.35.440" in the first sentence of subsection (g).

Sec. 39.35.345. Temporary service credit. (a) A vested employee is entitled to credited service for periods in which the employee regularly rendered full-time personal service to an employer but was not qualified to participate in the system because of the exclusion of temporary workers as described in AS 39.35.680(21)(C)(iii). Benefits are not payable on this credited service unless the employee makes retroactive contributions to the system for the period of time that credited service is claimed. The retroactive contribution is the full actuarial cost of providing benefits for the credited service claimed.

(b) To obtain credited service under this section, an employee must elect to do so and must verify the period of temporary service before July 1, 1981, or within one year following the date when the employee first becomes vested under this chapter, if later. When eligibility for temporary service credit has been established, an indebtedness shall be determined as provided in (a) of this section. Interest as prescribed by regulation accrues on that indebtedness beginning July 1, 1981, or one year following the date an employee first becomes vested, whichever is later. Any outstanding indebtedness existing at the time an employee retires will require an actuarial adjustment to the benefits payable based on the temporary service.

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(c) A deferred vested employee on July 1, 1980, is eligible to claim credited service under (a) of this section. To obtain credited service under this section, a deferred vested employee must elect to do so and must verify the period of temporary service before July 1, 1981. When eligibility for temporary service credit has been established, an indebtedness shall be determined as provided in (a) of this section. Interest as prescribed by regulation accrues on that indebtedness beginning July 1, 1981. Any outstanding indebtedness existing at the time a deferred vested employee retires will require an actuarial adjustment to the benefits payable based on the temporary service.

(d) The credited service granted under this section may not be used to satisfy the credited service requirements for normal or early retirement. (§ 29 ch 146 SLA 1980)

Revisor's notes. — Enacted as AS
 39.35.156. Renumbered in 1980.

Sec. 39.35.350. Reinstatement of credited service. (a) An employee who receives a refund of contributions in accordance with AS 39.35.200 forfeits corresponding credited service under this chapter.

(b) An employee may reinstate credited service associated with a refund by repaying the total amount of the refund. Interest will accrue from the date of the refund until repayment of the refund or retirement, whichever occurs first. Payments will apply first to accrued interest and then to principal.

(c) Any outstanding indebtedness that exists at the time an employee is appointed to retirement will necessitate an actuarial adjustment to the benefits payable based on service reinstated under this section. (§ 16 ch 143 SLA 1960; am § 3 ch 235 SLA 1968; am § 2 ch 81 SLA 1976; am § 30 ch 128 SLA 1977; am § 84 ch 59 SLA 1982; am § 47 ch 137 SLA 1982)

Effect of amendments. — The first The second 1982 amendment rewrote
 1982 amendment inserted "credited" in subsection (c).
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Sec. 39.35.360. Earlier service. (a) An employee employed before January 1, 1980, who completes three years of credited service with the state aft. January 1, 1961, for which the employee makes contributions required by this chapter is entitled to credited service for service rendered (1) before January 1, 1961, as an employee of the state and former Territory of Alaska; (2) before January 1, 1961, as an employee of the United States government in Alaska, excluding service in the armed forces of the United States; or (3) after January 1, 1961, as a peace officer, correctional officer, or fireman of a participating political subdivision of the state if the employee is vested and is an active peace officer, correctional officer, or fireman in the system as of

July 1, 1980. The retirement benefits payable to an employee under this section shall be reduced by the amount of the retirement pension benefits paid to the employee by the United States government for the same period of service.

(b) An employee who, under (a) of this section, is entitled to credited service for employment before January 1, 1961, is not required to make retroactive contributions under this chapter.

(c) *[Repealed, § 41 ch 146 SLA 1980.]*

(d) *[Repealed, § 2 ch 26 SLA 1974.]*

(e) An employee of a detention facility provided by a local government unit to the territorial or state government under AS 33.30.060, who continues in state employment upon transfer of the facility to the state, is entitled to credited service for prior service with the facility if the employee remains in continuous employment with the state until July 1, 1976. To obtain credited service the employee is required to make retroactive contributions for the period of service between January 1, 1961, and the effective date of the transfer of the facility to the state.

(f) A surviving spouse receiving or entitled to receive a surviving spouse's pension under AS 39.35.440 or benefits under a joint and survivor option filed under AS 39.35.450 is eligible for increased benefits for any service credit authorized under (a) of this section, but not claimed or authorized by law before the employee's death.

(g) An employee is eligible to receive up to 10 years of credited service for service rendered before July 1, 1979, as a temporary employee of the legislature of the state or territory during legislative sessions. To receive retroactive credited service under this subsection, an employee must claim the service before July 1, 1980. When the employee claims the service, an indebtedness of the employee to the system shall be established. The amount of this indebtedness is equal to the contributions the employee would have made if the employee had been eligible for membership in the system. The rate used to calculate these contributions may not be less than the rate in effect on January 1, 1961. Interest as prescribed by regulation accrues on this indebtedness beginning July 1, 1980. Any outstanding indebtedness that exists at the time the employee retires will require an actuarial adjustment to the benefits that are based upon retroactive credited service under this subsection.

(h) An employee of the state is eligible to receive credited service as provided under AS 39.35.300(b) for service rendered as a permanent part-time employee before January 1, 1976. To receive retroactive credited service under this subsection, the employee must claim the service before July 1, 1981. When the employee claims retroactive credited service, an indebtedness of the employee to the system shall be established. The amount of this indebtedness is equal to the contributions the employee would have made if the employee had been

eligible for membership in the system. The rate used to calculate the contributions may not be less than the rate in effect on January 1, 1961. Interest as prescribed by regulation accrues on the indebtedness beginning July 1, 1981. Any outstanding indebtedness that exists at the time the employee retires will require an actuarial adjustment to the benefits that are based on retroactive credited service under this subsection.

(i) An employee who completes three years of credited service with an employer, for which the employee makes contributions required by this chapter, is entitled to credited service on a year-for-year basis for service credited in the Civil Service Retirement System, rendered as an employee of an Alaska Bureau of Indian Affairs (BIA) school, other than service as a teacher. Retroactive credited service under this section must be claimed before the employee retires. When eligibility for retroactive credited service under this section has been established, an indebtedness of the employee to the system shall be established. The amount of this indebtedness is determined by multiplying six percent of the employee's actual annual compensation, or the calculated annual compensation for an employee who works fewer than 12 months, for the most recent calendar year in which service is rendered to an employer before the calendar year in which the employee first becomes eligible to claim service under this subsection, by the number of years of service in Alaska BIA schools that is credited under this subsection. Interest as prescribed by regulation accrues on the indebtedness beginning on the date the employee may first claim the retroactive credited service. Any outstanding indebtedness that exists at the time the employee retires requires an actuarial adjustment to the benefits that are based on retroactive credited service under this section. Service may not be claimed under this subsection and benefits may not be paid for service claimed under this subsection if the employee has, at any point in time, enough service credit in the Civil Service Retirement System to be eligible for a retirement benefit under that system.

(j) An employee who has not completed three years of credited service with an employer may claim credited service as an employee of an Alaska Bureau of Indian Affairs (BIA) school, other than service as a teacher under (i) of this section if, on the date of transfer of the Alaska BIA school to the state, the employee is employed at the school and needs fewer than three additional years of continuous full-time employment for normal retirement in the federal Civil Service Retirement System, and the employee completes a period of service with an employer, for which the employee makes contributions required by this chapter, equal to the additional period of service that would have been required for that employee's normal retirement under the federal Civil Service Retirement System. An employee who claims credited service under this subsection must provide federal government verification of the employee's federal Civil Service Retirement System status when

the claim is filed. (§ 17 ch 143 SLA 1960; am § 4 ch 80 SLA 1964; am §§ 5, 6 ch 155 SLA 1966; am § 4 ch 235 SLA 1968; am § 1 ch 55 SLA 1973; am §§ 1, 2 ch 26 SLA 1974; am §§ 1, 2 ch 245 SLA 1976; am §§ 31 — 33 ch 128 SLA 1977; am §§ 1, 7 ch 174 SLA 1978; am § 3 ch 81 SLA 1979; am § 10 ch 82 SLA 1979; am §§ 31, 32, 41 ch 146 SLA 1980; am §§ 48, 49 ch 137 SLA 1982; am § 2 ch 170 SLA 1984)

Revisor's notes. — Subsection (a) of this section apparently has no effect after January 1, 1980, since it applies only to employees employed before that date.

Subsection (g) of this section apparently has no effect after July 1, 1980, since credited service under this subsection must have been claimed by that date.

Effect of amendments. — The 1980 amendment rewrote subsection (a), repealed subsection (c) and added subsection (h).

The 1982 amendment, in the first sentence of item (3) of subsection (a), deleted "or" preceding "correctional officer" and

inserted "or fireman" preceding "of a participating political subdivision" and "correctional officer, or fireman" preceding "in the system." In subsection (b), the amendment inserted "under (a) of this section."

The 1984 amendment added subsections (i) and (j).

Editor's notes. — Section 15, ch. 92, SLA 1979 provides that AS 39.35.360(g) applies to a temporary employee of the Eleventh Legislature, First Session, even though he may not be an employee under the public employee's retirement system on July 1, 1979.

Article 6. Benefits.

Section

- 370. Retirement benefits
- 385. Conditional service retirement benefits
- 395. Voluntary contribution benefit
- 400. Nonoccupational disability pensions
- 410. Occupational disability pensions
- 420. Nonoccupational death benefits
- 430. Occupational death benefit
- 440. Death after occupational disability
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Section

- 495. Time limit for application
- 500. Safeguard of employee funds held by the system
- 505. Exemption of employee funds and benefits
- 510. Voluntary waiver of benefits
- 520. Adjustments
- 522. Waiver of adjustments
- 525. Limitation on use of credited service as peace officer or fireman
- 527. Election to terminate coverage as a peace officer or fireman
- 530. Limit on pension
- 535. Medical benefits
- 541. Actuarial reduction of benefit
- 546. Tax exemption
- 547. Effect of amendments

NOTES TO DECISIONS

Vested benefits. — Benefits under Public Employees' Retirement System are in the nature of deferred compensation and the right to such benefits vests immediately upon an employee's enrollment in that system. *Hammond v. Hoffbeck*, Sup.

Ct. Op. No. 2345 (File No. 4742), 627 P.2d 1052 (1981).

The vested benefits protected by Alaska Const., art. XII, § 7, necessarily include not only the dollar amount of the benefits payable, but the requirements for eligibil-

SLA 1964; am § 1 ch 55 SLA 1976; am § 3 ch 978; am § 1 ch 146 SLA 1984)

ity as well. Hammond v. Hoffbeck, Sup. Ct. Op. No. 2345 (File No. 4742), 627 P.2d 1052 (1981).

The fact that rights in Public Employees' Retirement System vest on employment does not preclude modifications of the system; that fact does, how-

ever, require that any changes in the system that operate to a given employee's disadvantage must be offset by comparable new advantages to that employee. Hammond v. Hoffbeck, Sup. Ct. Op. No. 2345 (File No. 4742), 627 P.2d 1052 (1981).

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Sec. 39.35.370. Retirement benefits. (a) A terminated employee is eligible for a normal retirement benefit (1) at age 55 with at least five years credited service, or (2) with at least 20 years of credited service as a peace officer or fireman, or (3) with at least 30 years of credited service for all other employees.

(b) A terminated employee is eligible for an early retirement benefit at age 50 with at least five years credited service.

(c) The monthly amount of a retirement benefit for a peace officer or fireman is two per cent of the average monthly compensation times the years of credited service up through 10 years, plus two and one-half per cent of the average monthly compensation times the years of service over 10 years. For all other employees it is two per cent of the average monthly compensation times the years of service. An actuarial adjustment must be made for an early retirement benefit.

(d) The monthly amount of a retirement benefit for a deferred vested member shall be determined in accordance with (c) of this section as it was in effect on the date of the employee's termination of employment.

(e) Benefits payable under this section accrue from the first day of the month after which all of the following requirements are met: (1) the member meets the eligibility requirements of this section; (2) the member terminates employment; and (3) the member applies for retirement. The benefits are payable the last day of the month. If payment is delayed, a retroactive payment shall be made to cover the period of deferment. The last payment shall be made for the month in which a benefit is payable under this section.

(f) A member who is vested in the system as a peace officer or fireman at the time the member incurs a permanent disability of at least 33-1/3 per cent under workers' compensation and who (1) undergoes retraining because of the disability; and (2) is subsequently employed with the state or other employer in a position other than peace officer or fireman, is eligible for a normal retirement benefit as a peace officer or fireman under (a) and (c) of this section upon completing 20 years of credited service. (§ 18 ch 143 SLA 1960; am § 2 ch 102 SLA 1963; am § 7 ch 155 SLA 1966; am § 5 ch 235 SLA 1968; am § 6 ch 109 SLA 1970; am §§ 6, 7 ch 159 SLA 1972; am § 15 ch 47 SLA 1974; am § 34 ch 128 SLA 1977; am § 33 ch 146 SLA 1980)

Effect of amendments. — The 1980 amendment added subsection (f).

Editor's notes. — Section 49, ch. 146, SLA 1980, provides: "The retirement benefit payable to a member of the public employees' retirement system who is receiving a normal retirement benefit under AS 39.35.370 on the effective date of this Act, and who at the time of his retirement was receiving a disability pension under the public employees' retirement system, shall be increased by a percentage equal to the percentage of all

post-retirement pension adjustments payable under AS 39.35.475 during the period that the member was receiving a disability benefit."

Collateral references. — 67 C.J.S. Officers, § 243 et seq.

Rights and liabilities as between employer and employee with respect to general pension or retirement plan, 42 ALR2d 461.

Mandatory retirement of public officer or employee based on age, 81 ALR3d 811.

Sec. 39.35.380. Early retirement benefits. [Repealed, § 55 ch 128 SLA 1977.]

Sec. 39.35.385. Conditional service retirement benefits. (a) An employee is eligible for a normal retirement benefit at age 55 with at least two years of credited service if the employee also is eligible for a normal retirement salary under the teachers' retirement system (AS 14.25).

(b) An employee is eligible for an early retirement benefit at age 50 with at least two years of credited service if the employee also is eligible for an early retirement salary under the teachers' retirement system (AS 14.25).

(c) Credited service for which contributions were refunded is not creditable under this section unless the refunded contributions have been repaid. For purposes of (a) and (b) of this section, a member or former member does not have to be reemployed under this system in order to pay refunded contributions. Compound interest at the rate prescribed by regulation must be added to the reinstatement indebtedness from the date of the refund to the date of repayment.

(d) The monthly amount of a conditional service retirement benefit shall be calculated on the years of fully paid credited service in accordance with AS 39.35.370(c), except that the member may irrevocably elect to substitute one-twelfth of the "average base salary" as defined in AS 14.25.220(5) in place of average monthly compensation.

(e) Benefits payable under this section accrue from the first day of the month (1) in which the member meets the eligibility requirements of this section, (2) following the date of termination, and (3) following application for retirement, and are payable the last day of the month. If payment is delayed, a retroactive payment shall be made to cover the period of deferment. The last payment shall be made for the month in which the member dies or is no longer eligible for a benefit under this section.

(f) An employee is eligible for a normal retirement benefit at age 55 or an early retirement benefit at age 50 if the employee has at least 60 days of credited service as a temporary employee of the legislature during each of five legislative sessions. (§ 3 ch 174 SLA 1978; am § 11

ch 82 SLA 1979; am § 37 ch 13 SLA 1980; am §§ 50, 51 ch 137 SLA 1982)

Effect of amendments. The 1980 amendment added the present second and third sentences in subsection (c).

The 1982 amendment inserted "(a) and (b) of" in the second sentence of subsection (c) and rewrote subsection (d).

Editor's notes. — Section 15, ch. 82,

SLA 1979, provides that AS 39.35.385 (f) applies to a temporary employee of the Eleventh Legislature, First Session, even though he may not be an employee under the public employee's retirement system on July 1, 1979.

Sec. 39.35.390. Deferred retirement benefit. [Repealed, § 55 ch 128 SLA 1977.]

Sec. 39.35.395. Voluntary contribution benefit. The balance of the employee's savings account will be paid in one of the following options as elected by the employee: (1) a lump sum payment; or (2) a life annuity on a full cash refund or term-certain basis; or (3) installments over a designated period of time. (§ 35 ch 128 SLA 1977)

Sec. 39.35.400. Nonoccupational disability pensions. (a) An employee is eligible for a nonoccupational disability pension if the employee's employment is terminated because of a total and apparently permanent nonoccupational disability, as defined in AS 39.35.680, before the employee's normal retirement date and after five or more years of credited service.

(b) The nonoccupational disability benefits accrue beginning the first day of the month following termination of employment as a result of the disability and are payable the last day of the month. If a final determination granting the benefit is not made in time to pay the benefit when due, a retroactive payment shall be made to cover the period of deferment. Benefits shall be continued after one year from the date of appointment to nonoccupational disability only if the disabled employee fulfills the requirements set out in (e) of this section. The last payment shall be for (1) the month in which the death of the disabled employee occurs, or (2) the month in which the disabled employee recovers from disability, or (3) the month in which the disabled employee ceases to be eligible for disability benefits under 42 U.S.C. 301 — 1397f (Social Security Act), or (4) the month in which the disabled employee reaches normal retirement age, whichever occurs first.

(c) If the disabled employee becomes ineligible to receive nonoccupational disability benefits, the employee is entitled to receive a normal or early retirement pension if the employee would have been eligible for the pension had employment continued during the period of disability. However, the period of disability does not constitute credited service.

(d) The monthly amount of the nonoccupational disability pension shall be determined in accordance with AS 39.35.370(c), considering

the employee's credited service and compensation before termination of employment.

(e) A disabled employee receiving a nonoccupational disability benefit shall provide the administrator, one year after appointment to disability benefits and once each year thereafter until disability benefits cease, proof of continuing eligibility to receive disability payments under the Social Security Act. If the disabled employee is otherwise ineligible for a social security payment, the employee shall provide the administrator with sufficient medical evidence once each year to demonstrate that disability payments under the Social Security Act would be payable had the employee been otherwise eligible. If the disabled employee fails to provide the administrator with evidence of continuing eligibility for disability payments under the Social Security Act or other medical evidence required by the administrator within 30 days following each anniversary date, the disability benefits from the system shall cease. If that information is subsequently provided to the administrator, benefit payments will resume beginning for the month following that in which the information is provided. When disability payments under the Social Security Act cease, it is the responsibility of the disabled employee to notify the administrator immediately.

(f) A disabled employee's nonoccupational disability pension terminates when the employee first attains eligibility for normal retirement. At that time, retirement benefits will be calculated under the provisions of AS 39.35.370(c). (§ 21 ch 143 SLA 1960; am § 9 ch 155 SLA 1966; am §§ 9, 10 ch 109 SLA 1970; am § 10 ch 159 SLA 1972; am §§ 15 — 17 ch 1 SLA 1974; am §§ 4—8 ch 123 SLA 1976; am §§ 36, 37 ch 128 SLA 1977)

Sec. 39.35.410. Occupational disability pensions. (a) An employee is eligible for an occupational disability pension if employment is terminated because of a total and apparently permanent occupational disability, as defined in AS 39.35.680, before the employee's normal retirement date.

(b) The occupational disability benefits accrue beginning the first day of the month following termination of employment as a result of the disability and are payable the last day of the month. If a final determination granting the benefit is not made in time to pay the benefit when due, a retroactive payment shall be made to cover the period of deferment. Benefits shall be continued after one year from date of appointment to occupational disability only if the disabled employee fulfills the requirements set out in (g) of this section. The last payment shall be for the month in which (1) the death of the disabled employee occurs, or (2) the month in which the disabled employee recovers from disability, or (3) the month in which the disabled employee ceases to be eligible for disability payments under 42 U.S.C. 301 — 1397f (Social Security Act), or (4) the month the disabled employee reaches normal retirement age, whichever occurs first.

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tional disability benefits before the normal retirement date, the disabled employee shall then be entitled to receive an early retirement pension if the employee would have been eligible for the pension had employment continued during the period of disability. The period of disability constitutes credited service.

(d) The monthly amount of an occupational disability pension is 40 per cent of the disabled employee's gross monthly compensation at the time of termination due to disability.

(e) *[Repealed, § 12 ch 123 SLA 1976.]*

(f) An employee is not entitled to an occupational disability pension unless the employee files an application for it with the administrator within six months after the date of the accident, if disability is attributable to an accident, or within six months after the date the disability begins if the disability is caused by an occupational disease. If the disability is attributable to an accident, the employee shall file a notice of the accident with the administrator within 30 days following the date it occurred. This 30-day filing period is suspended for the time the employee's condition prevents filing.

(g) A disabled employee receiving an occupational disability benefit shall provide the administrator, one year after appointment to disability benefits and once each year thereafter until disability benefits cease, proof of continuing eligibility to receive disability payments under the Social Security Act. If a disabled employee is otherwise ineligible for a social security payment, the employee shall provide the administrator with sufficient medical evidence once each year to demonstrate that disability payments under the Social Security Act would be payable had the employee been otherwise eligible. If the disabled employee fails to provide the administrator with evidence of continuing eligibility for disability payments under the Social Security Act or other medical evidence required by the administrator within 30 days following each anniversary date, the disability benefit from the system shall cease. If that information is subsequently provided to the administrator, benefit payments will resume beginning for the month following that in which the information is provided. When disability payments under the Social Security Act cease, it is the responsibility of the disabled employee to notify the administrator immediately.

(h) A disabled employee's occupational disability pension shall terminate when the disabled employee first attains eligibility for normal retirement. At that time, the employee's retirement benefit will be calculated under the provisions of AS 39.35.370(c). (§ 22 ch 143 SLA 1960; am § 11 ch 109 SLA 1970; am §§ 18 — 21 ch 1 SLA 1974; am §§ 9 — 13 ch 123 SLA 1976; am §§ 38, 39 ch 128 SLA 1977; am § 38 ch 13 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "disabled employee's" for "retired employee's" at the beginning of subsection (h), and inserted

"disabled" preceding "employee" near the middle of the first sentence of subsection (h).

Editor's notes. — Chapter 205, SLA

1975, which amended this section, was submitted to the voters by referendum and was rejected.

NOTES TO DECISIONS

Constitutionality of 1979 amendment to subsections (d) and (g). — The 1976 amendment to subsections (d) and (g) of this section is not violative of Alaska Const., art. XII, § 7 insofar as applied to public safety employees hired before July 1, 1976, who elect to be covered by Public Employees' Retirement System as amended in 1976 and public safety employees hired on or after July 1, 1976. *Hammond v. Hoffbeck*, Sup. Ct. Op. No. 2345 (File No. 4742), 627 P.2d 1052 (1981).

The 1976 amendment to subsections (d) and (g) of this section has the effect of diminishing the vested rights of public safety employees hired before July 1, 1976, who choose to receive benefits under the system in effect at the time they were hired and insofar as applied to those employees, the amended subsections are violative of Alaska Const., art. XII, § 7. *Hammond v. Hoffbeck*, Sup. Ct. Op. No. 2345 (File No. 4742), 627 P.2d 1052 (1981).

Collateral references. — 67 C.J.S. Officers, § 248.

Determination whether firefighter's disability is service-connected for disability pension purposes, 7 ALR4th 799.

Determination whether peace officer's disability is service-connected for disability pension purposes, 12 ALR4th 1158.

Sec. 39.35.420. Nonoccupational death benefits. (a) If the death of an employee occurs from nonoccupational causes after completing less than one year of credited service, the employee's designated beneficiary shall be paid the balance of the employee contribution account. If the death of an employee occurs from nonoccupational causes after completing at least one year but less than five years of credited service, a death benefit shall be paid to the employee's designated beneficiary. The amount of the death benefit shall be the amount set out in (c) of this section.

(b) If the death of a vested member or deferred vested member occurs from nonoccupational causes and the member designated no person other than the surviving spouse as beneficiary to receive nonoccupational death benefits, the surviving spouse may elect to receive either the amounts set out in (c) of this section or a 50 percent joint and survivor option based on credited service to the date of the employee's death or termination. Benefits accrue from the first day of the month following the employee's death and are payable the last day of the month.

(c) If a vested or deferred vested member designates as beneficiary someone other than the surviving spouse to receive nonoccupational death benefits, the designated beneficiary shall be paid: (1) the balance of the deceased member's employee contribution account; and (2) a lump-sum death benefit. The amount of the lump-sum death benefit is \$100 times the years of credited service of the deceased member plus \$1,000. (§ 23 ch 143 SLA 1960; am § 12 ch 109 SLA 1970; am § 11 ch

159 SLA 1972; am § 22 ch 1 SLA 1974; am §§ 14, 15 ch 123 SLA 1976; am § 40 ch 128 SLA 1977; am § 52 ch 137 SLA 1982)

Effect of amendments. — The 1982 amendment, in subsection (a), inserted "designated" and substituted "the employee contribution account" for "(1) the employee's contribution account; and (2) the employee's savings account" in the first sentence, deleted "lump sum" preceding "death benefit" and substituted "employee's designated beneficiary" for "beneficiary of the employee" in the second sentence, deleted "lump sum" preceding "death benefit" and substituted "the amount set out in (c) of this section" for "\$100 times years of credited service plus \$1,000" in the present last sentence, and deleted the former last sentence, which

read "The lump sum death benefit is in addition to the balance of the employee's contribution account and savings account." In subsection (b), the amendment inserted "and the member designated no person other than the surviving spouse as beneficiary to receive nonoccupational death benefits" and substituted "elect to receive either the amounts set out in (c)" for "at his or her discretion receive either the benefits described in (a)" in the first sentence. The amendment also added subsection (c).

Collateral references. — 67 C.J.S. Officers, § 248.

Sec. 39.35.430. Occupational death benefit. (a) [Repealed, § 16 ch 123 SLA 1976.]

(b) If (1) the death of an employee occurs before the employee's retirement and before the employee's normal retirement date, and (2) the proximate cause of death is a bodily injury sustained or a hazard undergone while in the performance and within the scope of the employee's duties, and (3) the injury or hazard is not the proximate result of wilful negligence of the employee, a monthly survivor's pension equal to 40 percent of the employee's monthly compensation in the month in which the employee dies shall be paid to the surviving spouse. If there is no surviving spouse or if the spouse later dies, the monthly survivor's pension shall be paid in equal parts to the dependent children of the employee. On the date the normal retirement of the employee would have occurred if the employee had lived, monthly payments shall equal the monthly amount of the normal retirement benefit to which the employee, had the employee lived and continued employment until the employee's normal retirement date, would have been entitled with an average monthly compensation as existed at death and the credited service to which the employee would have been entitled.

(c) The first payment of the surviving spouse's pension or of a dependent child's pension shall be made for the month following the month in which the employee dies and payment shall cease to be made beginning with the month in which there is no surviving spouse or no dependent child.

(d) [Repealed, § 19 ch 123 SLA 1976.]

(e) [Repealed, § 19 ch 123 SLA 1976.]

(f) If the death of an employee occurs from occupational causes but no surviving spouse or dependent children exist at the time of the death or if the employee designates as beneficiary someone other than the

surviving spouse or dependent children, the employee's designated beneficiary is entitled to receive those benefits available to a beneficiary under AS 39.35.420(c) and no occupational death benefit will be paid to the surviving spouse or dependent children. If the designated beneficiary is the surviving spouse or dependent children, the beneficiary shall receive the benefit described in (b) of this section. (§ 24 ch 143 SLA 1960; am § 13 ch 109 SLA 1970; am § 23 ch 1 SLA 1974; §§ 16—19 ch 123 SLA 1976; am §§ 41, 42 ch 128 SLA 1977; am § 39 ch 13 SLA 1980; am §§ 53, 54 ch 137 SLA 1982)

Effect of amendments. — The 1980 amendment rewrote subsection (c).

The 1982 amendment inserted "or if the

spouse later dies" in the second sentence of subsection (b) and added subsection (f).

NOTES TO DECISIONS

Constitutionality of 1976 subsection amendment to former subsection (a) and subsection (b). — The 1976 amendment to former subsection (a) and subsection (b) of this section is not violative of Alaska Const., art. XII, § 7 insofar as applied to public safety employees hired before July 1, 1976, who elect to be covered by Public Employees' Retirement System as amended and public safety employees hired on or after July 1, 1976. *Hammond v. Hoffbeck*, Sup. Ct. Op. No. 2345 (File No. 4742), 627 P.2d 1052 (1981).

The 1976 amendment to former subsection (a) and subsection (b) of this section has the effect of diminishing the vested rights of public safety employees hired before July 1, 1976, who choose to receive benefits under the system in effect at the time they were hired and insofar as applied to those employees, the amended subsections are violative of Alaska Const., art. XII, § 7. *Hammond v. Hoffbeck*, Sup. Ct. Op. No. 2345 (File No. 4742), 627 P.2d 1052 (1981).

Sec. 39.35.440. Death after occupational disability. (a)
[*Repealed, § 19 ch 123 SLA 1976.*]

(b) Upon the death of a disabled employee who is receiving or is entitled to receive an occupational disability benefit, a surviving spouse's pension equal to 40 percent of the employee's monthly compensation at the termination of employment because of occupational disability shall be paid to the surviving spouse. If there is no surviving spouse, the survivor's pension shall be paid in equal parts to the dependent children of the employee. On the date the normal retirement of the employee would have occurred if the employee had lived, monthly payments shall equal the monthly amount of the normal retirement benefit to which the employee, had the employee lived and continued employment until the employee's normal retirement date, would have been entitled with an average monthly compensation as existed at death and the credited service to which the employee would have been entitled. If the death of an employee occurs from occupational causes but no surviving spouse or dependent children exist at the time of the death, or if the employee designates as beneficiary someone other than the surviving spouse or dependent children, the employee's designated beneficiary shall be paid those benefits available to a beneficiary under

(e) If either the employee or contingent beneficiary dies before the employee is appointed to retirement, the election becomes inoperative. Once the employee is appointed to retirement, the election is irrevocable. If a retired employee is reemployed and is subsequently reappointed to retirement, those benefits earned during the period of reemployment are subject to the initial election made under this section, unless the contingent beneficiary is deceased. If the contingent beneficiary is deceased, the benefits earned during the period of reemployment are subject to AS 39.35.370 or this section if another contingent beneficiary was elected during the period of reemployment. All other benefits earned during prior periods of employment are subject to the election at the time the employee was appointed to retirement. If death occurs from nonoccupational causes during the period of reemployment, those benefits earned while reemployed are subject to AS 39.35.420(b). All other benefits earned during prior periods of employment are subject to the election at the time the employee was appointed to retirement. If death occurs from occupational causes during the period of reemployment, all benefits earned during all periods of employment are subject to AS 39.35.430(b) and (c). (§ 26 ch 143 SLA 1960; am § 8 ch 235 SLA 1968; am § 12 ch 159 SLA 1972; am §§ 24 — 26 ch 1 SLA 1974; am § 6 ch 81 SLA 1976; am § 45 ch 128 SLA 1977)

Sec. 39.35.451. Spouse survivor benefits under Public Employees Retirement Act of 1949. A person whose spouse is receiving retirement benefits under the Public Employees Retirement Act of 1949 on July 1, 1972 is entitled to survivor benefits for life in the amount of the retirement benefits received by the retired employee. (§ 13 ch 159 SLA 1972)

Sec. 39.35.460. Level income option. If the payment of a retirement pension begins before age 65, the amount of pension payable before and after that age may be adjusted so that an increased amount will be paid before the time that full social security benefits become available and a reduced amount after that time, so that the employee may receive a more level income for life. The aggregate value of all adjusted payments may not exceed the actuarial equivalent of the value of the pension otherwise payable to the employee. (§ 27 ch 143 SLA 1960; am § 56 ch 137 SLA 1982)

Effect of amendments. — The 1982 amendment substituted "a retirement pension begins before age 65" for "an early retirement pension begins before the earliest age as of which the employee becomes eligible for a primary social security benefit" and "may receive a more level

income for life" for "will receive a level retirement income" in the first sentence, inserted "full" preceding "social security benefits" in the first sentence, substituted "may not exceed" for "however, shall not exceed" in the second sentence.

Sec. 39.35.470. Other forms of payment. [Repealed, § 85 ch 59 SLA 1982; § 75 ch 137 SLA 1982.]

Sec. 39.35.475. Post-retirement pension adjustment. (a) When the administrator determines that the cost of living has increased and the financial condition of the retirement fund permits, the administrator shall increase benefit payments to persons receiving benefits under this system.

(b) The amount of the increase in benefit payments may not exceed the lesser of

- (1) the increase in the cost of living since the date of retirement; or
- (2) four percent of the retirement benefit compounded for each year of retirement.

(c) If at the time of first receiving a retirement benefit a member was receiving a disability benefit under this system, the administrator shall include the time during which the member received the disability benefit in determining the number of years of retirement under this section.

(d) An increase in benefit payments under this section is effective July 1 of the year for which the increase is granted.

(e) The administrator shall implement this section by regulation. (§ 9 ch 235 SLA 1968; am § 14 ch 159 SLA 1972; am § 34 ch 146 SLA 1980; am § 57 ch 137 SLA 1982)

Effect of amendments. — The 1980 amendment rewrote the section.

The 1982 amendment substituted "lesser" for "greater" in the introductory language of subsection (b).

Editor's notes. — Section 49, ch 146, SLA 1980 provides: "The retirement benefit payable to a member of the public employees' retirement system who is receiving a normal retirement benefit under AS 39.35.370, July 1, 1980, and who at the time of his retirement was receiving

a disability pension under the public employees' retirement system, shall be increased by a percentage equal to the percentage of all post-retirement pension adjustments payable under AS 39.35.475 during the period that the member was receiving a disability benefit."

Collateral references. — Validity of legislation providing for additional retirement allowances for public employee previously retired, 27 ALR2d 1442.

Sec. 39.35.480. Cost-of-living allowance. (a) While residing in the state, a person receiving a benefit under this chapter is entitled to receive a monthly cost-of-living allowance in addition to the basic benefit. The amount of this allowance shall be \$50 or 10 per cent of the basic benefit, whichever is greater.

(b) A person receiving a cost-of-living allowance under this section shall notify the administrator when the person expects to be absent from the state for a continuous period that exceeds 90 days. After that notification, the person is no longer entitled to receive the monthly cost-of-living allowance, except that a person may be absent from the state for not more than six months without loss of the cost-of-living allowance if the absence is the result of illness and required by order

of a licensed physician. Upon returning to the state, and upon notification to the administrator, the person is again entitled to receive the monthly cost-of-living allowance, commencing with the first monthly benefit payment made after notification of the person's return.

(c) While residing in the state, a public employee of the Territory of Alaska who participated in the Public Employees' Retirement Act established by ch. 41 SLA 1949, and who retired before the effective date of ch. 102 SLA 1951, is entitled to the cost-of-living allowance equal to 25 per cent of the amount received under ch. 41 SLA 1949.

(d) For purposes of this section, "residing in the state" means domiciled and physically present in the State of Alaska. Being absent from the state for a continuous period of 90 days or less or six months or less when ordered by a physician does not change a person's status as "residing in the state." (§ 29 ch 143 SLA 1960; am § 1 ch 109 SLA 1967; am § 27 ch 1 SLA 1974; am § 108 ch 127 SLA 1974; am § 46 ch 128 SLA 1977; am §§ 12, 13 ch 82 SLA 1979)

Sec. 39.35.485. Minimum benefit. (a) An employee who is eligible for a benefit calculated in accordance with AS 39.35.370(c) is entitled to a benefit of at least \$25 a month for each year of credited service, not including adjustments made under AS 39.35.340 for military service, AS 39.35.350 for reinstatement of credited service, AS 39.35.360 for credit for earlier service, AS 39.35.370(c) for early retirement, AS 39.35.420 for nonoccupational death benefits, AS 39.35.450 for the survivor's option, AS 39.35.460 for the level income option, AS 39.35.475 for the post-retirement pension adjustment, and AS 39.35.480 for the cost of living.

(b) [*Repealed, § 55 ch 128 SLA 1977.*] (§ 15 ch 159 SLA 1972; am § 16 ch 47 SLA 1974; am § 24 ch 123 SLA 1976; am § 55 ch 128 SLA 1977; am § 35 ch 146 SLA 1980; am § 58 ch 137 SLA 1982)

Effect of amendments. — The 1980 amendment substituted "\$25" for "\$17.50" preceding "a month" near the middle of subsection (a).

The 1982 amendment substituted the language beginning "AS 39.35.340 for military service" for "AS 39.35.380,

39.35.410, 39.35.450, 39.35.475 and 39.35.480" in subsection (a).

Editor's notes. — Chapter 205, SLA 1975, which amended this section, was submitted to the voters by referendum and was rejected.

Sec. 39.35.490. Designation of beneficiary. (a) Each employee shall designate the beneficiary or beneficiaries to whom benefits payable under this chapter as a consequence of the employee's death shall be distributed.

(b) The designation may be changed or revoked by the employee without notice to the beneficiary or beneficiaries at any time. If an employee designates more than one beneficiary, each shall share equally unless the employee specifies a different allocation or preference. The designation of a beneficiary and a change or revocation

of a beneficiary shall be made on a form provided by the administrator and is not effective until filed with the administrator.

(c) If an employee fails to designate a beneficiary, or if no designated beneficiary survives the employee, the death benefit shall be paid (1) to the surviving spouse or, if there is none surviving, (2) to the surviving children in equal parts or, if there is none surviving, (3) to the surviving parents in equal parts or, if there is none surviving, (4) to the employee's estate. (§ 30 ch 143 SLA 1960; am § 47 ch 128 SLA 1977; am § 59 ch 137 SLA 1982)

Effect of amendments. — The 1982 amendment, in subsection (a), inserted "under this chapter" and deleted "under AS 39.35.200 — 39.35.240 and AS 39.35.420 — 39.35.440" following "of his death."

Collateral references. — Rights in survival benefits under public pension or retirement plan as between designated beneficiary and heirs, legatees, or personal representative of deceased employee, 5 ALR3d 644.

Sec. 39.35.495. Time limit for application. If no application for benefits or for refund has been filed with the administrator by July 1 following the date on which an inactive member (except an employee on leave-without-pay status or on layoff status) would attain age 75, or if no application for benefits or for refund has been filed with the administrator within the 50 years following the most recent date on which the employee was an active member, no benefits or refunds may be paid under this chapter and the member's records may be destroyed. (§ 40 ch 13 SLA 1980)

Sec. 39.35.500. Safeguard of employee funds held by the system. Employee contributions and other amounts held in the pension fund are exempt from Alaska state and local taxes. Amounts held on behalf of, or payable to, any employee or other person who is or may become eligible for benefits under the system are not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge of any kind, either voluntary or involuntary, before being received by the person entitled to the amount under the terms of the system. An attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, or otherwise dispose of a right to amounts held under the system is void. (§ 39 ch 143 SLA 1960; am § 10 ch 235 SLA 1968; am § 48 ch 128 SLA 1977; am § 7 ch 62 SLA 1982)

Effect of amendments. — The 1982 amendment substituted "or charge" for "charge, garnishment, execution, or levy" in the second sentence.

Revisor's notes. — As amended by § 7, ch. 62, SLA 1982, this section contained a subsection (b) which has been redesignated as AS 39.35.505.

Sec. 39.35.505. Exemption of employee funds and benefits. Employee contributions and other amounts held in the pension fund and retirement benefits payable under this chapter are exempt from levy to enforce the collection of a debt as provided in AS 09.38 (exemptions). (§ 7 ch 62 SLA 1982)

Revisor's notes. — Enacted as AS
39.35.500(b). Renumbered in 1982.

Sec. 39.35.510. Voluntary waiver of benefits. A retired employee may, in writing, request the administrator to suspend, for any period of time, payment of all or part of the benefits to which the employee is entitled. The administrator shall grant the request and may not require the retired employee to disclose a reason for desiring the suspension. Amounts that are suspended pursuant to the request are forfeited. The retired employee may subsequently terminate the suspension by filing a written notice with the administrator that states a desire to revoke the suspension. Upon receipt of the notice, the administrator shall authorize resumption of the retired employee's regular pension payments. (§ 40 ch 143 SLA 1960; am § 49 ch 128 SLA 1977)

Sec. 39.35.520. Adjustments. (a) 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 the employee 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 the person was not entitled is liable for repayment of that amount, and a person who was not paid the full amount to which the person was entitled shall be paid the balance of that amount.

(b) An adjustment that requires the recovery of benefits may not be made under this section if

(1) the incorrect benefit was first paid two years or more before the member or beneficiary was notified of the error;

(2) the error was not the result of erroneous information supplied by the member or beneficiary; and

(3) the member or beneficiary did not have reasonable grounds to believe that the amount of the benefit was in error.

(c) At each regularly scheduled meeting of the Public Employees' Retirement Board, the administrator shall report to the board on all situations since the administrator's last report in which an adjustment has been prohibited under (b) of this section. If the board finds that there is reason to believe that one or more of the conditions set out in (b) of this section have not been met, the administrator shall notify the member or beneficiary that an adjustment will be made to recover the overpayment. A member or beneficiary who receives notice of adjustment under this subsection may appeal to the board for a waiver of the adjustment under AS 39.35.522. An adjustment may not be required while the appeal is pending. (§ 42 ch 143 SLA 1960; am § 4 ch 81 SLA 1976; am § 2 ch 15 SLA 1984)

Effect of amendments. — The 1984 amendment added subsections (b) and (c).

Sec. 39.35.522. Waiver of adjustments. (a) Upon appeal by an affected member or beneficiary under (b) of this section, the board may waive an adjustment or any portion of an adjustment made under AS 39.35.520 if, in the opinion of the board,

(1) the adjustment or portion of the adjustment will cause undue hardship to the member or beneficiary;

(2) *[Repealed, § 60 ch 137 SLA 1982.]*

(3) *[Repealed, § 60 ch 137 SLA 1982.]*

(4) the adjustment was not the result of erroneous information supplied by the member or beneficiary;

(5) before the adjustment was made, the member or beneficiary received confirmation from the administrator that the employee's or beneficiary's records were correct; and

(6) the member or beneficiary had no reasonable grounds to believe the employee's or beneficiary's records were incorrect before the adjustment was made.

(b) In order to obtain consideration of a waiver under this section, the affected member or beneficiary must appeal to the board in writing within 30 days after receipt of notice that the records have been adjusted. The board shall rule on the appeal in writing within 120 days after its receipt.

(c) The board may, at its discretion, conduct a hearing on an appeal under this section. In reaching a decision on an appeal, the board may issue subpoenas, administer oaths, compel the attendance and testimony of witnesses, compel the taking of depositions and the submission of affidavits, and compel the production of documents and records.

(d) The board may impose conditions on the granting of a waiver which it considers equitable. These conditions may include requiring the member or beneficiary to make additional contributions to the system.

(e) The board may reconsider a ruling under this section upon request of the member or beneficiary or the administrator if the request is received within 30 days after the initial ruling. Any modification of the initial ruling must be made within 30 days after receipt of a request for reconsideration.

(f) Rulings and modifications of rulings under this section shall be by a majority of a quorum of the board.

(g) Rulings on appeals and requests for reconsideration under this section may be appealed by an aggrieved member or beneficiary to the superior court for abuse of discretion. (§ 9 ch 174 SLA 1978; am § 41 ch 13 SLA 1980; am § 60 ch 137 SLA 1982)

Effect of amendments. — The 1980 amendment inserted "or beneficiary" following "member" wherever it appeared throughout the section; in subsection (a), inserted "or any portion of an adjustment" following "adjustment" in the introductory paragraph, inserted "or portion of the adjustment" following "the adjustment" at the beginning of paragraph (1), added "or the beneficiary was eligible to receive or was receiving benefits under this chapter before the adjustment" at the end of paragraph (2), substituted "benefits" for "retirement" following "eligibility for" near the beginning of paragraph (3), and substituted "being" for "already" following "reduction of benefits" near the end of paragraph (3).

The 1982 amendment, in subsection (a), added "in the opinion of the board" to the end of the introductory paragraph, deleted "in the opinion of the board" following "adjustment will" in paragraph (1), and repealed paragraphs (2) and (3), which read, respectively, "the member is retired or has submitted notification of impending retirement to his employer to be effective no later than 180 days after the adjustment was made, or the beneficiary was eligible to receive or was receiving benefits under this chapter before the adjustment" and "the adjustment will result in a loss of eligibility for benefits for the member or beneficiary or result in a reduction of benefits being received by the member or beneficiary of \$50 per month or more."

Sec. 39.35.525. Limitation on use of credited service as peace officer or fireman. For the purpose of computing benefits for an employee enrolled as a peace officer or fireman, no more than 30 years of credited service may be considered, except for the purpose of computing average monthly compensation and then the three consecutive years during the entire period of credited service which produced the highest total compensation shall be used. (§ 16 ch 109 SLA 1970)

Sec. 39.35.527. Election to terminate coverage as a peace officer or fireman. (a) Any active member may elect to irrevocably relinquish peace officer or fireman status with the system and to retain all credited service as if it had been acquired as a member other than a peace officer or fireman.

(b) In order to relinquish peace officer or fireman status with the system, a person must be an active member and must file a written request with the administrator by July 1, 1984, or within six months after employment as a peace officer or fireman, whichever occurs later. No person has more than one opportunity to exercise this option.

(c) As soon as possible after the relinquishment, the administrator shall refund to a person who relinquishes peace officer or fireman status under this section a refund equal to the amount by which the balance of the person's accumulated mandatory contributions plus interest exceeds the balance which would exist if all service credit had been acquired as a member other than a peace officer or fireman.

(d) A written request to relinquish peace officer or fireman status is irrevocable upon filing with the administrator. (§ 1 ch 27 SLA 1983)

Sec. 39.35.530. Limit on pension. An employee may not simultaneously receive a pension under more than one section of this chapter. However, benefits under AS 39.35.420(b), 39.35.430, 39.35.440 or 39.35.450 shall be paid in addition to the benefits or service credit a person is entitled to receive because of the person's own membership in

the retirement system. An employee may not (1) receive duplicate credit under this system for the same period of service, (2) receive more than one year of service credit in the course of any calendar year, or (3) receive a benefit while accruing service credit under this system, except as provided in this section. (§ 42 ch 143 SLA 1960; am § 61 ch 137 SLA 1982)

Effect of amendments. — The 1982 amendment added the second and third sentences.

Sec. 39.35.535. Medical benefits. (a) The following persons are entitled to major medical insurance coverage:

- (1) a person receiving a monthly benefit from the system;
- (2) the spouse of a person receiving a monthly benefit from the system;
- (3) a natural or adopted child of a person receiving a monthly benefit from the system, if the child is a dependent child under AS 39.35.680(11).

(b) Major medical insurance coverage takes effect on the same date as retirement benefits begin, and stops when the retired employee or survivor is no longer eligible to receive a monthly benefit. The coverage for persons age 65 or older is the same coverage available for a person under 65. The benefits payable to those persons age 65 or older supplement any benefits provided under the federal old age, survivors and disability insurance program. (§ 2 ch 200 SLA 1975; am § 62 ch 137 SLA 1982)

Effect of amendments. — The 1982 amendment rewrote this section. Editor's notes. — Provisions relating to federal old-age, survivors, and disability insurance benefits may be found in 42 U.S.C. 301—1397f (Social Security Act).

Sec. 39.35.540. Minimum benefit. [Repealed, § 75 ch 137 SLA 1982.]

Sec. 39.35.541. Actuarial reduction of benefit. If, as a result of service credit claimed for which there is a corresponding indebtedness existing at retirement, the member's retirement benefit is actuarially reduced and the resultant benefit is less than it would have been if the service credit had not been claimed, the retirement benefit shall be equal to the amount it would have been had the service credit not been claimed. (§ 63 ch 137 SLA 1982)

Sec. 39.35.545. Duplicate benefits. [Repealed, § 6 ch 81 SLA 1976.]

Sec. 39.35.546. Tax exemption. Benefits of this chapter are exempt from Alaska state and municipal income taxes. (§ 17 ch 109 SLA 1970; am § 50 ch 128 SLA 1977)

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Sec. 39.35.545. Duplicate benefits. [Repealed, § 6 ch 81 SLA 1976.]

Sec. 39.35.546. Tax exemption. Benefits of this chapter are exempt from Alaska state and municipal income taxes. (§ 17 ch 109 SLA 1970; am § 50 ch 128 SLA 1977)

Sec. 39.35.547. Effect of amendments. (a) An amendment of this chapter is not retroactive unless its retroactivity is expressly stated in the amendment.

(b) The monthly amount of a benefit payable under this chapter shall be determined in accordance with the provisions of this chapter in effect on the date of termination of the member's last segment of employment. (§ 5 ch 81 SLA 1976; am § 42 ch 13 SLA 1980)

Effect of amendments. — The 1980 amendment rewrote the section.

NOTES TO DECISIONS

Constitutionality of 1976 amendment of AS 39.35.410 and 39.35.430. — Insofar as the vested rights of those public safety employees hired before July 1, 1976, who choose to receive benefits under the public employees retirement system in effect at the time they were hired were diminished by the 1976 amendment of AS 39.35.410(d) and (g) and former 39.35.430(a) and 39.35.430 (b), the amended subsections were violative of Alaska Const., art. XII, § 7 as applied to those employees. *Hammond v. Hoffbeck*, Sup. Ct. Op. No. 2345 (File No. 4742), 627 P.2d 1052 (1981).

Article 7. Participation by Political Subdivisions and Public Organizations.

Section	Section
550. Request by political subdivision to participate and adoption of resolution	600. Eligible employees bound to system
560. Request by public organization to participate and adoption of resolution	610. Transmittal of contributions to administrator
570. Survey to determine estimated cost	615. Effect of termination by amendment of agreement
580. Effective date of participation	620. Termination of participation
590. Designation of eligible employees and agreement to contribute	630. Distribution
	640. Conclusiveness of action taken upon termination
	650. Refunds to employers

Sec. 39.35.550. Request by political subdivision to participate and adoption of resolution. A municipality or other political subdivision of the state may request to become an employer in this system. The request shall be made after adoption of a resolution by the legislative body of the political subdivision and after approval of the resolution by the person required by law to approve the resolution. A certified copy of the resolution shall be filed with the administrator. If the administrator approves the request for participation, the political subdivision is an employer of the system. (§ 44 a ch 143 SLA 1960; am § 1 ch 82 SLA 1976; am § 51 ch 128 SLA 1977)

Sec. 39.35.560. Request by public organization to participate and adoption of resolution. A public organization may request to become an employer in this system. The request shall be made after adoption of a resolution by the governing body of the public organization. A certified copy of the resolution shall be filed with the admin-

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Effect of amendments. — The 1980 amendment deleted "or quasi-public" following "A public" at the beginning of the section. wholly or partly by, or deriving its powers from, the legislature of the state" following "A public organization" in the first sentence.

The 1982 amendment deleted "created

Sec. 39.35.570. Survey to determine estimated cost. A political subdivision or public organization contemplating participation in this system may request a preliminary survey to determine the estimated cost of participation, the benefits derived, and other information that is appropriate. The political subdivision or public organization requesting the survey shall pay the cost of it. (§ 44 c ch 143 SLA 1960)

Sec. 39.35.580. Effective date of participation. The effective date of participation in the system by a political subdivision or public organization is the first day of any month acceptable to the governing body of the political subdivision or public organization and to the commissioner of administration. (§ 44 d ch 143 SLA 1960; am § 1 ch 63 SLA 1968; am § 12 ch 235 SLA 1968)

Sec. 39.35.590. Designation of eligible employees and agreement to contribute. The political subdivision or public organization shall designate the departments, groups, or other classifications of employees eligible to participate in the system, and shall agree to make contributions each year that are sufficient to meet the normal cost attributable to inclusion of its employees and to amortize the past service cost for its employees over a period not exceeding 40 years. (§ 44 d ch 143 SLA 1960)

Sec. 39.35.600. Eligible employees bound to system. The eligible employees of a participating political subdivision or public organization are bound by the provisions of this system and are entitled to the benefits provided under it. (§ 44 e ch 143 SLA 1960)

Sec. 39.35.610. Transmittal of contributions to administrator. The contributions of an employer and the contributions of its employees shall be transmitted to the administrator as soon as practicable after the close of the payroll period for which the contributions are made. If an employer is delinquent in transferring the contributions for more than 15 days, interest shall be assessed on the outstanding contributions at one and one-half times the most recent actuarially determined rate of earnings for the retirement system from the date that the contributions were originally due. (§ 44 f ch 143 SLA 1960; am § 28 ch 1 SLA 1974; am § 53 ch 128 SLA 1977)

Sec. 39.35.615. Effect of termination by amendment of agreement. (a) A political subdivision or public organization may request that its participation agreement be amended. The request may be made only after adoption of a resolution by the legislative body of the political subdivision and approval of the resolution by the person required by law to approve the resolution, or, in the case of a public organization, after adoption of a resolution by the governing body of that public organization. A certified copy of the resolution shall be filed with the administrator. If a political subdivision or public organization amends its participation agreement so as to terminate coverage of a department, group, or other classification of employees, each employee whose coverage is so terminated, regardless of the employee's employment status at the date of termination, shall be considered fully vested in actuarially adjusted accrued retirement benefits as of the date of termination, unless the employee's contributions have been refunded.

(b) Each employee whose coverage is terminated must, within 60 days after the date of termination, inform the administrator, in writing, whether the employee wishes to obtain a refund or a vested benefit.

(c) Each employee who elects to obtain a refund shall receive a refund of the balance of the employee contribution account. The vesting in accrued benefits for each employee who elects to obtain a refund is voided upon receipt of the refund, and the corresponding credited service may not be reinstated under this chapter. A partial refund may not be allowed under this section.

(d) For each employee who elects to obtain a vested benefit, the amount actuarially determined as necessary to fully fund the benefits to be received shall be transferred first from the employee contribution account and, after the employee contribution account has been exhausted, then from the employer contribution account into the retirement reserve account.

(e) After all of the employees whose coverage is terminated have either received refunds or have been vested in their accrued benefits, the remaining funds in the employer contribution account attributable to those employees shall be refunded to the employer.

(f) Termination of coverage of a department, group, or other classification of employees does not bar future coverage of that department, group, or classification. If coverage of a department, group, or classification is terminated under (a) of this section and the employer later amends its participation agreement to provide renewed coverage of that department, group, or classification, an affected employee may be credited only with future service. (§ 44 ch 13 SLA 1980; am §§ 65, 66 ch 137 SLA 1982)

Effect of amendments. — The 1982 amendment added the present first and in the first sentence of subsection (c), and in the first sentence of subsection (c), deleted the item (1) designation preceding "the employee contribution account" and "the employee contribution account" and

deleted "and (2) his employee savings account" from the end of that sentence.

Sec. 39.35.620. Termination of participation. (a) If the contributions are not transmitted to the commissioner of administration within the prescribed time limit, the commissioner may grant an extension. If the political subdivision or public organization is in default at the end of the extension, participation in the system is terminated, and it shall be sent notice of termination.

(b) All employees of the terminating employer whose contributions have not been refunded, regardless of their employment status at the date of termination, shall be considered fully vested in their adjusted accrued retirement benefits as of the date of termination of the employer.

(c) If the terminating employer has not liquidated past service liability on the date of termination, the accrued vested benefits of all employees of the terminating employer to which the employees are entitled because of service before July 1, 1973, or the date of entry of the employer, whichever is later, shall be reduced by an amount derived by multiplying the accrued vested benefit by a fraction, the numerator of which is the remaining unfunded past service liability and the denominator of which is the actuarially calculated value of benefits earned before July 1, 1973, or the entry date of the employer, whichever is later.

(d) Each employee of a terminating employer must, within 60 days of the employer's termination of participation, inform the administrator, in writing, whether the employee wishes to obtain a refund or a vested benefit.

(e) Each employee who elects to obtain a refund shall receive a refund of the balance, determined as of the date of the employer's termination of participation, of the employee contribution account. The vesting in accrued benefits for each employee who elects to receive a refund is voided upon receipt of the refund and corresponding credited service may not be reinstated under this chapter. A partial refund may not be allowed under this section.

(f) For each employee who elects to obtain a vested benefit, the amount actuarially determined as necessary to fully fund the benefits to be received shall be transferred first from the employee contribution account and, after the employee contribution account has been exhausted, then from the employer contribution account into the retirement reserve account.

(g) After all of the employees of the terminating employer have either received refunds or have been vested in their accrued benefits, the remaining funds in the employer contribution account shall be refunded to the employer and the employer contribution account shall be closed.

(h) Termination of an employer's participation in the system shall not bar future participation in the system by that employer. If a previously terminated employer returns to the system employees may be credited only with service subsequent to the date of return. Adjustments made to the accrued benefits of the employees of the previously terminated employer at the time of the termination may not be altered by that employer's return to participation in the system. (§ 44 g ch 143 SLA 1960; am §§ 29 — 35 ch 1 SLA 1974; am § 109 ch 127 SLA 1974; am § 45 ch 13 SLA 1980; am § 67 ch 137 SLA 1982)

Revisor's notes. — The intent of the amendment made by § 109, ch. 127, SLA 1974, was to bring the former language of AS 39.35.620(b) into conformity with art. I, § 3 of the Constitution of the State of Alaska. As the reenactment of that subsection by § 29, ch. 1, SLA 1974 removed the necessity for the change in ch. 127, the reenacted version contained in ch. 1, SLA 1974 prevails.

amendment added "and corresponding credited service may not be reinstated under this chapter" at the end of the second sentence in subsection (e).

The 1982 amendment, in the first sentence, deleted the item (1) designation preceding "employee contribution account" and deleted "and (2) his employee savings account" from the end of that sentence.

Effect of amendments. — The 1980

Sec. 39.35.630. Distribution. A distribution made as a result of termination of participation by an employer may, to the extent that no discrimination in value results, be paid in cash or in annuity contracts, in the discretion of the board. (§ 44 h ch 143 SLA 1960)

Sec. 39.35.640. Conclusiveness of action taken upon termination. In making a distribution, the determinations, divisions, appraisals, apportionments, and allotments made are final and conclusive and not subject to question. (§ 44 i ch 143 SLA 1960)

Sec. 39.35.650. Refunds to employers. In no event may an employer receive an amount from the pension fund, except as provided under AS 39.35.615(e) and 39.35.620(g). (§ 44 i ch 143 SLA 1960; am § 46 ch 13 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "as provided under AS 39.35.615(e) and 39.35.620(g)" for "that, upon termination of participation, the employer shall receive the amount which remains after the

satisfaction of all liabilities of the system to the employees of the employer and arising out of variations between actual requirements and expected actuarial requirements" at the end of the section.

Article 8. General Provisions.

Section
660. Nonguarantee of employment
670. Fraud

Section
680. Definitions
690. Short title

Sec. 39.35.660. Nonguarantee of employment. This chapter is not a contract of employment between an employer and an employee,

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nor does it confer a right of an employee to be continued in the employ-
 ment of an employer, nor is it a limitation of the right of an employer
 to discharge an employee with or without cause. (§ 38 ch 143 SLA
 1960)

Sec. 39.35.670. Fraud. A person who knowingly makes a false
 statement, or falsifies or permits to be falsified a record of this system,
 in an attempt to defraud the system, is guilty of a misdemeanor, and
 upon conviction is punishable by a fine of not more than \$500, or by
 imprisonment for not more than twelve months, or by both. (§ 41 ch 143
 SLA 1960)

Sec. 39.35.680. Definitions. In this chapter, unless the context
 otherwise requires,

(1) "active member" means an employee who is employed by an
 employer, is receiving compensation for seasonal, permanent full-time,
 or permanent part-time services, and is making contributions to the
 system;

(2) "actuarial adjustment" means equality in value of the aggregate
 expected payments under two different forms of pension payments,
 considering expected mortality and interest earnings on the basis of
 tables adopted from time to time by the board;

(3) "administrator" means the person appointed by the commis-
 sioner of administration under AS 39.35.050;

(4) "average monthly compensation" means the result obtained by
 dividing the compensation earned by an employee during a considered
 period by the number of months, including fractional months, for which
 compensation was earned; the considered period consists of the three
 consecutive calendar years during the period of credited service that
 yields the highest average, or if the employee does not have three
 consecutive calendar years, the period of credited service; an employee
 must have at least 115 days of credited service in the last calendar year
 in order to be used as part of the three consecutive calendar years;

(5) "beneficiary" means a person designated by an employee to
 receive benefits that may be due from the system upon the employee's
 death;

(6) "board" means the Public Employees Retirement Board;

(7) "calendar year" means the period beginning on January 1 and
 ending on December 31;

(8) "compensation" means the total remuneration earned by an
 employee for personal services rendered, including cost-of-living differ-
 entials, payments for leave that is actually used by the employee, the
 amount by which the employee's wages are reduced under AS
 39.30.150(c), and any amount deferred under an employer-sponsored
 deferred compensation plan, but does not include retirement benefits,
 welfare benefits, per diem, expense allowances, workers' compensation
 payments or payments for leave not used by the employee whether
 those leave payments are scheduled payments, lump-sum payments,
 donations, or cash-ins;

(9) "credited service" means the number of years, including fractional years, recognized for computing benefits that may be due from the system;

(10) "deferred vested member" means an inactive member who meets the five-year credited service requirement to qualify for a retirement benefit;

(11) "dependent child" means an unmarried child of an employee, including one adopted, who is dependent upon the employee for support and who is either (A) under 19 years old or (B) under 23 years old and registered at and attending on a full-time basis an accredited educational or technical institution recognized by the Department of Education; age restrictions set out in this paragraph do not apply to a child who is totally and permanently disabled;

(12) "disabled member" means an employee who is terminated, who has not received a refund from the system and is receiving a disability benefit from the system;

(13) "early retirement" means retirement for a member who is not eligible for normal retirement and who is at least 50 years old and is eligible to receive benefits under AS 39.35.370(b) or under AS 39.35.385(b) or (f);

(14) "elected official" means a person whose compensation results from personal services rendered to an employer as an elected representative;

(15) "employee contribution account" means the total maintained by the system of the employee's mandatory contributions, voluntary contributions, indebtedness principal, and interest contributions, interest credited to each of those accounts, and adjustments to the accounts in accordance with AS 39.35.100;

(16) "employee savings account" means the account maintained by the system to record the voluntary contributions of each employee, including interest and adjustments to the account in accordance with AS 39.35.100;

(17) "employer" means the State of Alaska or a political subdivision or public organization of the state that participates in the system;

(18) "fiscal year" means the period beginning on July 1 and ending on June 30 of the following calendar year;

(19) "former member" means an employee who is terminated and who has received a total refund of the balance of the employee contribution account, or who has requested in writing a refund of the balance in the employee contribution account, or who is eligible for a refund under AS 39.35.200(b);

(20) "inactive member" means an employee who is terminated and who has not received a refund from the system or an employee on leave-without-pay status or layoff status;

(21) "member" or "employee"

(A) means a person eligible to participate in the system and who is covered by the system;

(B) includes

- (i) active member;
- (ii) inactive member;
- (iii) vested member;
- (iv) deferred vested member;
- (v) non-vested member;
- (vi) disabled member;
- (vii) retired member;

(C) does not include

- (i) former members;
- (ii) persons compensated on a contractual or fee basis;
- (iii) casual or emergency workers or nonpermanent employees as defined in AS 39.25.200;
- (iv) persons covered by the Alaska Teachers' Retirement System;
- (v) employees of the division of marine transportation engaged in operating the state ferry system who are covered by a union or group retirement system to which the state makes contributions;

(vi) justices of the supreme court or judges of the court of appeals or of the superior or district courts of Alaska;

(vii) the administrative director of courts appointed under art. IV, sec. 16 of the state constitution unless the director becomes a member under AS 39.35.158; and

(viii) members of the elected public officers' retirement system (former AS 39.37);

(D) may include employees of the division of marine transportation excluded under (C)(v) of this paragraph provided that

(i) the State of Alaska formally agrees to their inclusion through the process of collective bargaining; and

(ii) no collective bargaining agreement has the effect of obligating contributions made by the state under AS 39.30.150 in the event the state resumes participation in the federal social security system;

(22) "military service" means active duty service in the armed forces of the United States;

(23) "nonoccupational disability" means a physical or mental condition that, in the judgment of the administrator, presumably permanently prevents an employee from satisfactorily performing the employee's usual duties for an employer or the duties of another position or job that the employer makes available and for which the employee is qualified by training or education, not including a condition resulting from a cause that the board, in its regulations has excluded;

(24) "non-vested member" means an active or inactive member who does not meet the five-year credited service requirement to qualify for a retirement benefit;

(25) "normal retirement" means retirement for a member who is eligible to receive benefits under AS 39.35.370(a) or under 39.35.385(a) or (f);

(26) "occupational disability" means a physical or mental condition that, in the judgment of the administrator, presumably permanently prevents an employee from satisfactorily performing the employee's usual duties for an employer; however, the proximate cause of the condition must be a bodily injury sustained, or a hazard undergone, while in the performance and within the scope of the employee's duties and not the proximate result of the wilful negligence of the employee;

(27) "peace officer" or "fireman" means an employee occupying a position as a peace officer, chief of police, correctional officer, correctional superintendent, fireman, or fire chief;

(28) "pension fund" means all assets held in the name of the system;

(29) "permanent full-time" means an employee who is occupying a permanent position which regularly requires working 30 or more hours a week;

(30) "permanent part-time" means an employee who is occupying a permanent position that regularly requires working at least 15 hours less than 30 hours a week;

(31) "prescribed rate of interest" means the rate of interest used for computing employer contributions, for preparing actuarial tables used by the system and for crediting interest to employee contributions and savings accounts, and for charging interest on employee indebtedness accounts;

(32) "public organization" means an organization or entity

(A) created by the constitution or laws of the state for the purpose of administering state programs;

(B) whose officers and employees are paid by a method other than by the state payroll prepared by the Department of Administration; and

(C) whose employees are not required by law to participate in the system;

(33) *[Repealed, § 3 ch 27 SLA 1983.]*

(34) "retired member" means an employee who is terminated, who has not received a refund from the system and is receiving a benefit other than disability, from the system;

(35) "retirement" means that period of time from the first day of the month following (A) the date of termination and (B) application for retirement, in which a person is appointed to receive a retirement benefit, other than occupational or nonoccupational disability benefit;

(36) "seasonal" refers to an employee who is occupying a position for less than 12 months each year where it is anticipated that the same employee will return to the position when needed and includes a temporary employee of the legislature if part of the service for the legislature during each calendar year is performed during a legislative session;

(37) "surviving spouse" means the spouse of an employee who has been married to the employee for at least one year at the time of the employee's death; the one-year marriage requirement does not apply when the employee's death was an occupational or accidental death;

(38) "system" means the Public Employees' Retirement System of Alaska;

(39) "vested member" is an active member who meets the five-year credited service requirement to qualify for a retirement benefit. (§ 3 ch 143 SLA 1960; am § 2 ch 93 SLA 1962; am § 3 ch 102 SLA 1963; am § 10 ch 155 SLA 1966; am § 14 ch 83 SLA 1967; am §§ 18 — 21 ch 109 SLA 1970; am § 16 ch 159 SLA 1972; am § 36 ch 1 SLA 1974; am § 110 ch 127 SLA 1974; am § 3 ch 200 SLA 1975; am §§ 5, 6 ch 27 SLA 1976; am §§ 22, 23 ch 123 SLA 1976; am § 1 ch 141 SLA 1976; am § 7 ch 218 SLA 1976; am §§ 6, 7 ch 245 SLA 1976; am §§ 12, 13 ch 263 SLA 1976; am § 54 ch 128 SLA 1977; am § 3 ch 58 SLA 1979; am § 3 ch 67 SLA 1979; am § 14 ch 82 SLA 1979; am § 27 ch 12 SLA 1980; am §§ 47, 48 ch 13 SLA 1980; am §§ 36, 37 ch 146 SLA 1980; am §§ 68 — 73 ch 137 SLA 1982; am §§ 2, 3 ch 27 SLA 1983)

Revisor's notes. — In 1983, this section was reorganized to place the terms defined in alphabetical order.

Cross references. — For transition provisions relating to the 1983 amendment deleting "qualified employee of the Department of Fish and Game" from the definition of "peace officer", see §§ 4 and 5, ch. 27, SLA 1983, in the Temporary and Special Acts.

Effect of amendments. — The first 1980 amendment inserted "court of appeals or of the" preceding "superior or district courts of Alaska" in subparagraph (C)(vi) of paragraph (21).

The second 1980 amendment substituted "115" for "120" preceding "days of credited service" near the end of paragraph (4) and deleted "or quasi-public" preceding "organization" in paragraph (17).

The third 1980 amendment substituted "person" for "member" following "means a" near the beginning of paragraph (14), inserted "to an employer" following "services rendered" near the middle of paragraph (14), deleted "and who elects coverage under AS 39.35.125" at the end of paragraph (14) and added subparagraph (vii) in subparagraph (21)(C).

The 1982 amendment inserted the language beginning "payments for leave" and ending "employer-sponsored deferred compensation plan," substituted "payments for leave" for "medical leave or annual leave," and added the language beginning

"whether those leave payments are scheduled payments" to the end, all in paragraph (8); inserted "who is not eligible for normal retirement and" and substituted the language beginning "is eligible to receive benefits" for "has a minimum of five years credited service" in paragraph (13); substituted the present provisions of paragraphs (15) and (25) for the provisions as set out in the main pamphlet; added subparagraph (21)(C)(viii); and added the provisions of present paragraph (32).

The 1983 amendment deleted "qualified employee of the department of fish and game" following "correctional superintendent" in the definition of "peace officer" or "firemar." and repealed the definition of "qualified employee of the Department of Fish and Game."

Editor's notes. — Section 15, ch. 82, SLA 1979 provides that AS 39.35.680(35) as amended by § 14, ch. 82, SLA 1979, applies to a temporary employee of the Eleventh Legislature, First Session, even though he may not be an employee under the public employee's retirement system on July 1, 1979.

Section 4, ch. 58, SLA 1979, purported to add a paragraph (25). Section 9 of ch. 58 provided that the amendment take effect on January 1, 1980, if approved by a majority of the votes cast in a special election conducted before January 1, 1980, by the Department of Administration among the active members of the public employees' retirement system. The amendment was rejected.

NOTES TO DECISIONS

The thrust of the exemptions in this chapter, the State Personnel Act, AS 39.25.110, and the statutory leave provisions for state employees, AS 39.20.310, is to provide for those public employees who

are not susceptible to ordinary recruiting and examining procedures. *Hafling v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Sec. 39.35.690. Short title. This chapter may be cited as the Public Employees' Retirement System of Alaska. (§ 1 ch 143 SLA 1960)

Chapter 36. Public Employees' and Teachers' Disability Review.

Section

10. Public Employees' and Teachers' Disability Review Board

Section

20. Duties of the board
500. Definitions

Sec. 39.36.010. Public Employees' and Teachers' Disability Review Board. (a) In recognition of the need for expert review of applications for disability benefits under AS 14.25 and AS 39.35 the Public Employees' and Teachers' Disability Review Board is established in the Department of Administration as a permanent advisory board to the Public Employees' Retirement Board, the Teachers' Retirement Board, and the administrator.

(b) The board consists of five members. One member is the chairman of the Public Employees' Retirement Board or the chairman's designee, one member is the chairman of the Teachers' Retirement Board or the chairman's designee, one member is the director of the division of vocational rehabilitation or the director's designee, and two members are physicians authorized to practice medicine in the state.

(c) The chairman of the Public Employees' and Teachers' Retirement Boards and the director of the division of vocational rehabilitation serve on the board *ex officio*. The physician members of the board shall be appointed by the governor from a list of four names, two of which are submitted by the Public Employees' Retirement Board and two submitted by the Teachers' Retirement Board. The physician members serve at the pleasure of the governor, but the service of a physician member may not exceed four consecutive years unless the physician member's name is resubmitted for reappointment.

(d) The chairman of the Public Employees' Retirement Board or the chairman's designee is chairman of the board except that when the board is considering matters relating to the teachers' retirement system the chairman of the Teachers' Retirement Board or the chairman's designee shall act as chairman.

(e) The *ex officio* members of the board do not receive compensation for their services on the board. The director of the division of vocational rehabilitation shall be excused from regular duties while attending

Revisor's notes. — Formerly AS
09.55.232. Renumbered in 1983.

Sec. 25.24.220. Hearing. (a) After a petition for dissolution is filed under the provisions of AS 25.24.210, a hearing shall be scheduled in accordance with the Alaska Rules of Civil Procedure.

(b) If the petition is brought by both spouses under AS 25.24.200(a), both the husband and wife are required to attend the hearing personally and not through counsel unless the court, for good cause, provides otherwise, or unless a spouse has complied with AS 25.24.200(c), in which case only the spouse filing the petition is required to attend. Either spouse may have counsel at the hearing.

(c) If the petition is brought by one spouse under AS 25.24.200(b), that spouse shall submit proof of diligent inquiry as to the whereabouts of the absent spouse and provide notice by publication, posting, or other means as ordered by the court in accordance with the Alaska Rules of Civil Procedure.

(d) If the petition is brought by both spouses under AS 25.24.200(a), the court shall examine the petitioners or petitioner present and consider whether

(1) the spouses fully understand the nature and consequences of their action;

(2) the agreements between the spouses concerning child custody, child support, and visitation are fair, just, and equitable as between the spouses and in the best interests of the children of the marriage;

(3) the agreements between the spouses relating to the division of property, spousal support, and the allocation of obligations are fair, just, and equitable; and

(4) the conditions in AS 25.24.200(a) have been met.

(e) If the petition is brought by one spouse under AS 25.24.200(b), the court shall examine the petitioner and consider whether the petitioner fully understands the nature and consequences of the action and whether the conditions in AS 25.24.200(b) have been met.

(f) The court may appoint a guardian ad litem to represent the best interests of the child. Appointment of a guardian ad litem or attorney for the child shall be made under the terms of AS 25.24.310.

(g) The court may amend the agreements between the spouses relating to child custody, child support, visitation, spousal support, division of the property, and allocation of obligations, but only if both petitioners concur in the amendment. (§ 1 ch 260 SLA 1976)

Revisor's notes. — Formerly AS
09.55.233. Renumbered in 1983.

Sec. 25.24.230. Judgment. (a) If the petition is brought by one or both spouses under AS 25.24.200(a), the court may grant the spouses a final decree of dissolution and shall provide the other relief as pro-

vided in this section if the court, upon consideration of the information contained in the petition and the testimony of the spouse or spouses at the hearing, finds that

(1) the spouses understand fully the nature and consequences of their action;

(2) the agreements between the spouses concerning child custody, child support, visitation, spousal support and tax consequences, if any, division of property, and allocation of obligations are not grossly unfair, unjust, or inequitable and are in the best interests of the children of the marriage, if any; and

(3) the conditions in AS 25.24.200(a) have been met.

(b) If the petition is brought by one spouse under AS 25.24.200(b), the court may grant the spouses a final decree of dissolution and restore the petitioner's prior name, when so requested, if the court, upon consideration of affidavits supplied by the spouse and the testimony of the spouse at the hearing, finds that

(1) the spouse present at the hearing understands fully the nature and consequences of the action; and

(2) the conditions in AS 25.24.200(b) have been met.

(c) The court shall dismiss or continue an action brought under AS 25.24.200 — 25.24.260 before findings are made if

(1) a representative of the minor children objects to a term of any of the agreements between the spouses;

(2) either of the spouses withdraws from any of the agreements required under AS 25.24.200(a); or

(3) the petition alleges that the conditions in AS 25.24.200(b) exist, but the whereabouts of the absent spouse becomes known to the other spouse or the court before findings are made.

(d) The court shall deny the relief sought in an action brought under AS 25.24.200 — 25.24.260 if the court does not make the findings requisite under (a) and (b) of this section.

(e) If the petition is brought by both spouses under AS 25.24.200(a), the court shall restore either spouse's prior name, if so requested, and shall fully and specifically set out in the decree the agreements of the spouses relating to child custody, child support, visitation, spousal support, division of property, and the allocation of the obligations of the spouses; and the court shall order the performance of those agreements. The court shall also state, in the decree, whether child support payments are to be made through the child support enforcement agency. If the petition is brought by one spouse under AS 25.24.200(b), the decree shall state that it does not bar future action on the issues not resolved in the decree.

(f) Notwithstanding any other provisions of AS 25.24.200 — 25.24.260, the court may not award as between the spouses any real or personal property acquired by the spouses before the date of the marriage, unless the spouses expressly agree otherwise or the court deter-