ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8676 HOUSE LABOR & COMMERCE

MITCHELL, BLACKSTOCK AND BARNES

ATTORNEYS

1014 WEST THIRD STREET

LITTLE ROCK, ARKANSAS 72201

(501) 378-7870

EUGENE R. WARREN (1909-1980)
MICHAEL W. MITCHELL*
CLAYTON R. BLACKSTOCK**
MARCIA BARNES
JACK WAGONER III
DAVID L. IVERS

MAILING ADDRESS
P.O. BOX 1510
LITTLE ROCK, AR 72203-1510
TELEFAX 501-375-1940
*CERTIFIED IN CIVIL TRIAL ADVOCACY
BY NATIONAL BOARD OF TRIAL ADVOCACY
**ALSO LICENSED IN TEXAS

QUESTIONS and ANSWERS ON THE PATIENT PROTECTION ACT OF 1995

NOTE: This material is designed to provide general information on the Patient Protection Act, also known as the Any Willing Provider Act. It is not to be relied upon as a legal opinion or advice. There is no case law in Arkansas on this subject, and very little in other states. Moreover, the specific provisions of Arkansas's Act are unique to Arkansas.

Q. When will the Patient Protection Act take effect?

A. The Patient Protection Act did not have an emergency clause. Therefore, it will become effective on the ninety first (91st) day after adjournment, which is July 28, 1995.

Q. Can a health benefit plan limit its physician panel by requiring board certification?

A. Yes. Section 4(b) allows a health benefit plan to institute measures designed to maintain quality.

Q. Can a health benefit plan limit the provision of physician and hospital services through a PHO?

A. Maybe. If a health benefit plan wished to provide medical services through a PHO to "maintain quality and control costs" they might require all services to be provided by members of a PHO. There are at least three ways that the health benefit plan might comply with the Patient Protection Act in a provision of services.

1. An open panel PHO so that any qualified physician and any qualified hospital could join.

2. The network could be opened to any qualified PHO.

3. All providers whether they were in a PHO or not be allowed to participate.

Q. Can a health benefit plan avoid the provisions of the Patient Protection Act by entering into an exclusive arrangement before July 28, 1995?

A. Section 7 of the Act has language to preserve "existing contracts". However, it also has a provision which would void any contract that was contrary to the Act. Any deliberate attempt to avoid the Act by rushing out and entering into a contract before the effective date of the law should be void.

Q. If a managed care contract annual renewal takes place before July 28, 1995, can a physician nevertheless join?

A. No. Contracts that renew in the ordinary course of business before the effective date of the Act would not come under the Act until the subsequent renewal. Therefore, any physician wishing to participate would have to wait until the next annual renewal to request participation.

Q. Can health benefit plans modify existing exclusive arrangements?

A. Yes, if the modification leaves the general purpose and the subject matter of the contract in tact.

Q. Are exclusive arrangements protected under the Act?

A. Only, if the exclusive arrangements were existing contracts at the time of the passage of the Patient Protection Act.

Q. Can a health benefit plan require physicians to be a member of a particular IPA to provide services?

A. Possibly. If the health benefit plan has evidence that providing services through an IPA "maintains quality and controls costs" they may wish to continue this mechanism to provide the services. Again, as with PHOs, there are at least three ways the health benefit plan might comply with the Patient Protection Act: dealing with an IPA that is open to any qualified physician; opening the network to any qualified IPA; or contracting with any provider, whether he or she is in an IPA or not.

Q. Are self-insured plans covered by the Act?

A. No. Self-insured plans are specifically exempted by the Act. Even without the specific exemption, they would be exempt under the federal ERISA statute.

Q. Are federally qualified HMOs covered by the Act?

A. Probably not. It appears that the Federal Health Maintenance Organization Act contains an exemption.

Q. May a health benefit plan pay different fees to providers based upon geographic regions?

A. Probably. The statute does not specifically address this issue, but it was not designed to require uniform pricing across the entire state without regard to rural and urban differences.

No. 2
FISCAL NOTE
Bill Version: HB 270
(H) Publish Date: 3/20/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date:
Title: "An Act relating to retirement incentive...."
Sponsor: Rules Committee
Requestor:

Department Affected: Administration
BRU: Finance
Component: Finance
COMPONENT SERIAL NO. 59

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL	20.3	20.3	20.8	10.4	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND &	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	20.3	20.3	20.8	10.4	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING SOURCE: (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	20.3	20.3	20.8	10.4	0.0	0.0
1005 GF/Program	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	20.3	20.3	20.8	10.4	0.0	0.0

Estimate of any current year (FY 95) cost: $ 0

POSITIONS:

FULL-TIME						
PART-TIME	1	1	1	1		
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
See attached.

Prepared by: Don Wanie DW
Division: Finance
Phone: 465-2240
Date:

Approved by Commissioner: Mark Boyer Mark Boyer
Agency: Department of Administration
Date: 3/16/95

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

COMMITTEE COPY
G:\DIROFFC\LEGISLAT\1995\LL950044.FN

The Division of Finance is responsible for verification of employment history and processing of termination pay for all state employees. This includes verifying the length of employment, accounting for all leave without pay during the entire employment with the state and determining salaries for the three highest years. Final and terminal leave pay must be processed in accordance with contractual agreements.

With implementation of a Retirement Incentive Program (RIP) the workload for these functions would be significantly increased and additional support will be required by the Division of Finance to meet processing deadlines. It is estimated a half time Accounting Technician I will be needed in FY 96, 97 and 9° and the first half of FY 99 to accommodate the additional workload generated by the

Accounting Technician I,	FY 96	FY 97	FY 98	FY 99
Range 14 A half time.	20.3	20.3		
Range 14 B half time.			20.8	10.4

FISCAL NOTE

Bill Version: HB 270
4) Publish Date: 3/20/95

STATE OF ALASKA
1995 LEGISLATIVE SESSIN

Revision Date:
Title: An Act relating to retirement incentive programs for the public employees' retirement system and the teachers' ....
Sponsor: Rules Committee by Request of the Governor
Requestor:

Department Affected: Administration
BRU: Retirement & Benefits
Component: Retirement & Benefits

COMPONENT SERIAL NO. 64

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	489.1	489.1	289.3	289.3	289.3	289.3
TRAVEL	8.0	8.0	3.0	3.0	3.0	3.0
CONTRACTUAL	27.7	22.7	16.5	16.5	16.5	16.5
SUPPLIES	13.2	3.0	2.1	2.1	2.1	2.1
EQUIPMENT	108.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	646.0	522.8	310.9	310.9	310.9	310.9
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	646.0	522.8	310.9	310.9	310.9	310.9
TOTAL	646.0	522.8	310.9	310.9	310.9	310.9

Estimate of any current year (FY 95) cost: zero

FULL-TIME	2	2	2	2	2	2
PART-TIME	0	0	0	0	0	0
TEMPORARY	11	11	5	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

The actuarial costs to participating employers due to this program are to be paid up front and no additional costs to the systems are anticipated. An administrative charge for participating employers will cover the increased costs of administering the retirement incentive program.

Prepared by: Robert F. Stalnaker R.F. Stalnaker
Division: Retirement & Benefits
Phone: 465-4470
Date:

Approved by Commissioner: Mark Boyer Mark Boyer
Agency: Department of Administration
Date: 3/16/95

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

Rev: 01/95

COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. RIP Bill

ANALYSIS: (continued)

This bill creates a retirement incentive program for the Public Employees' (PERS) and Teachers' (TRS) Retirement Systems. In addition, it allows for separation bonuses for state employees. Authorization of a RIP for State employees could begin as early as July 1, 1995 or as late as June 30, 1998. RIP eligibility periods for state employees would be designated by the Commissioner of Administration. RIP window periods would last from 30-60 days. The University of Alaska may adopt a RIP between June 30, 1995 and December 31, 1995. Participating PERS political subdivision employers may adopt a RIP between December 31, 1995 and June 30, 1996. Participating TRS employers may adopt a RIP between June 30, 1995 and December 31, 1995. Active PERS and TRS members could retire on an accelerated basis with an increased benefit under the following conditions: at age 47, if vested; with 17 years of service as a qualified peace officer, fire fighter or teacher; or with 27 years of credited service in the PERS. Before qualifying for an accelerated benefit, however, the member must pay a lump sum indebtedness payment or take an actuarial reduction from their lifetime benefit for the indebtedness amount.

We estimate that two permanent employees will be needed to manage the operations of the program and increased service demands into the future. Eleven long-term non-permanent employees will also be needed over the next two fiscal years, with five of those to remain for the third fiscal year. Personnel will handle increased counseling, address and beneficiary changes, account maintenance, and other services. Subsequent increases in the number of retirees will necessitate increased permanent employees to handle the increased demand for information and services.

We estimate that we will need to increase our normal number of counseling trips by five trips over the next two fiscal years to assure that members understand the options and requirements of the program.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. RIP Bill

The total estimated administrative cost to the division by fiscal year is as follows:

		FY 1996	FY 1997	FY 1998
PERSONAL SERVICES				
FY 1996				
2 Retirement & Benefits Specialist I	$103.0			
5 Retirement & Benefits Tech I/II (NP)	186.0			
1 Accounting Tech II (N/P)	41.1			
3 Accounting Clerk III (NP)	100.8			
2 Admin Clerk I (NP)	58.2			
TOTAL FY 1996 COSTS		$489.1		
FY 1997				
2 Retirement & Benefits Specialist I	$103.0			
5 Retirement & Benefits Tech I/II (NP)	186.0			
1 Accounting Tech II (N/P)	41.1			
3 Accounting Clerk III (NP)	100.8			
2 Admin Clerk I (NP)	58.2			
TOTAL FY 1997 COSTS			$489.1	
FY 1998				
2 Retirement & Benefits Specialist I	$103.0			
3 Retirement & Benefits Tech I/II (N/P)	111.6			
1 Accounting Tech II (N/P)	41.1			
1 Accounting Clerk III (N/P)	33.6			
TOTAL FY 1998 COSTS				$289.3
TRAVEL				
Traveling to various locations throughout the state to counsel prospective retirees and give seminars.		8.0	8.0	3.0
CONTRACTUAL				
Communication (Telephone, Postage)		14.0	13.2	9.6
Mainframe Computer Time		9.7	8.8	6.2
Software Maintenance		3.3		
Training/Risk Management		.7	.7	.7
Total Contractual		27.7	22.7	16.5
SUPPLIES				
Office Supplies, Calculators, software		13.2	3.0	2.1

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. RIP Bill

	FY 1996	FY 1997	FY 1998
EQUIPMENT			
Computer Workstations	44.0	0.0	0.0
File Cabinets (2)	.8	0.0	0.0
Office Chairs (3)	6.6	0.0	0.0
Microfiche Viewers (11)	6.6	0.0	0.0
Office Workstations	10.0	0.0	0.0
Computer/Network Printers	12.0	0.0	0.0
Computer Network Upgrades	21.4	0.0	0.0
Telephone Unit (11)	6.6	0.0	0.0
Total Equipment	108.0	0.0	0.0
TOTAL OPERATIONS COST	$646.0	$522.8	$310.9

The retirement technicians, retirement specialists, accounting technicians, and accounting clerks need constant access to the PERS and TRS computer files. We do not have any excess terminals, microfiche viewers, or calculators. Our equipment request will satisfy our equipment needs for the duration of this program. We propose the purchase of personal computers to be used as terminals because they will be compatible with the division's local area network.

We are also proposing the purchase of two additional computer printers. The previous RiPs put a great demand on our existing printers and we were always in a state of backlog. Our current day-to-day printer needs maximize the capacity of our existing printers. After comparing the cost of leasing printers for two years, coupled with our existing needs, purchasing new printers would be more cost effective.

All administrative costs of the program will be paid in advance by participating employers as required by the bill.

Funding Source Breakdown for FY 1996:

1029	PERS	355.3
1034	TRS	290.7
		$646.0

POSITION INFORMATION HAS BEEN UPDATED AND FUNDING HAS BEEN UPDATED.

03/16/95 Po tion Information Inquiry/' date 11:43:37

Position: 02-02#144 Project: 0____ Salary Costs: 36,444.00
Component: 02-95-05-08-00-00 Region: _ Benefits Costs: 15,071.30
Scenario: 2 FY: 96 COLA %= 0.000 Total Costs: 51,515.30

Actuals not available (Status: UNKNOWN) | Retirement Code: A

Step: A for 12.0 months & Step: B for _0.0 months (total: 12.00)
00/00/00 Merit Date; use merit defaults? N (0.0 @ & 0.0 @)
0 Class/Sched Prefix: 2 Schedule: 2A (actual:)
Bargaining Unit: GG Range: 16 (actual:)
Location Code: AWA Place: JUNEAU
Job Class Code: P1442 Title: RETIREMENT BEN SPEC I_________
Seasonal Indic.: F Type: -

Optional Override Salary Rates:
Monthly Rate: 0.00____ for _0.0 months & rate of 0.00____ for _0.0 months
Hourly Rate: 0.00____ for _0.0 months Frozen at this rate? (Y/N): N

Press ENTER to update record; enter # or use PF key to go to another screen:
1=Premium pay info 2=Funding info 4=Code Translations 6=Calculations
7=MISC NEW POS DATA 8=Detail Report 12=Exit w/o update Selection: 0_

```
POSITION INFORMATION HAS BEEN UPDATED AND FUNDING HAS BEEN UPDATED.
 03/16/95              Po  cion Information Inquiry/. date              16:25:27

 Position: 02-02#149                 Project: 0____        Salary Costs:      28,356.00
 Component: 02-95-05-08-00-00        Region: _             Benefits Costs:     8,887.75
 Scenario:   2    FY: 96             COLA %= 0.000         Total Costs:       37,243.75
-----------------------------------------------------
Actuals not available    (Status: UNKNOWN  ) |             Retirement Code:    N
--------    -------------------------------------
           | Step: A for _6.0 months & Step: B for _6.0 months (total: 12.00 )
 00/00/00  | Merit Date; use merit defaults?  N          (  0.0 @    &  0.0 @    )
 0         | Class/Sched Prefix: 2                       Schedule: 2A (actual:    )
           | Bargaining Unit:     GG                     Range:    12 (actual:    )
           | Location Code:       AWA    Place: JUNEAU
           | Job Class Code:      P1444  Title: RETIREMENT BENEFIT TEC II_____
           | Seasonal Indic.:     G      Type:       -
-----------
Optional Override Salary Rates:
 Monthly Rate: 0.00____  for _0.0 months & rate of 0.00____  for _0.0 months
 Hourly Rate:  0.00____  for _0.0 months          Frozen at this rate? (Y/N): N

 Press ENTER to update record; enter # or use PF key to go to another screen:
 1=Premium pay info    2=Funding info     4=Code Translations   6=Calculations
 7=MISC NEW POS DATA   8=Detail Report   12=Exit w/o update     Selection: 0_
```

```
POSITION INFORMATION HAS BEEN UPDATED AND FUNDING HAS BEEN UPDATED.
 03/16/95          Po  tion Information Inquiry/'  late              16:26:04

 Position: 02-02#151               Project: 0____     Salary Costs:      31,740.00
 Component: 02-95-05-08-00-00      Region:   _        Benefits Costs:     9,328.01
 Scenario:   2    FY: 96           COLA %= 0.000      Total Costs:       41,068.01
-----------------------------------------------
Actuals not available    (Status: UNKNOWN  ) |        Retirement Code:   N
-------   -------------------------------------
          | Step: A for 12.0 months & Step: B for _0.0 months (total: 12.00 )
 00/00/00 | Merit Date; use merit defaults?  N         (  0.0 @   &  0.0 @    )
 0        | Class/Sched Prefix: 2                    Schedule: 2A (actual:    )
          | Bargaining Unit:    GG                   Range:    14 (actual:    )
          | Location Code:      AWA    Place: JUNEAU
          | Job Class Code:     P1211  Title: ACCOUNTING TECH II___________
          | Seasonal Indic.:    G      Type:       -
-----------
Optional Override Salary Rates:
 Monthly Rate: 0.00____ for _0.0 months & rate of 0.00____ for _0.0 months
 Hourly Rate:  0.00____ for _0.0 months         Frozen at this rate? (Y/N): N

 Press ENTER to update record; enter # or use PF key to go to another screen:
 1=Premium pay info    2=Funding info    4=Code Translations   6=Calculations
 7=MISC NEW POS DATA   8=Detail Report   12=Exit w/o update    Selection: 0_
```

POSITION INFORMATION HAS BEEN UPDATED AND FUNDING HAS BEEN UPDATED.
03/16/95 Po. ion Information Inquiry/ date 16:26:37

```
Position: 02-02#154             Project: 0____      Salary Costs:     25,140.00
Component: 02-95-05-08-00-00    Region: _           Benefits Costs:    8,469.35
Scenario:  2   FY: 96           COLA %= 0.000       Total Costs:      33,609.35
---------------------------------------------------
Actuals not available   (Status: UNKNOWN  ) |       Retirement Code:   N
-------  ------------------------------------
          | Step: A for _6.0 months & Step: B for _6.0 months (total: 12.00 )
00/00/00  | Merit Date; use merit defaults?  N       (  0.0 @   &  0.0 @    )
0         | Class/Sched Prefix: 2                   Schedule: 2A (actual:    )
          | Bargaining Unit:    GG                  Range:    10 (actual:    )
          | Location Code:      AWA    Place: JUNEAU
          | Job Class Code:     P1203  Title: ACCOUNTING CLERK III__________
          | Seasonal Indic.:    G      Type:     -
-----------
Optional Override Salary Rates:
 Monthly Rate: 0.00____ for _0.0 months & rate of 0.00____ for _0.0 months
 Hourly Rate:  0.00____ for _0.0 months        Frozen at this rate? (Y/N): N

 Press ENTER to update record; enter # or use PF key to go to another screen:
 1=Premium pay info     2=Funding info     4=Code Translations   6=Calculations
 7=MISC NEW POS DATA    8=Detail Report    12=Exit w/o update    Selection: 0_
```

POSITION INFORMATION HAS BEEN UPDATED AND FUNDING HAS BEEN UPDATED.

```
03/16/95            Po :ion Information Inquiry/' late              16:27:02

 Position: 02-02#156             Project: 0____      Salary Costs:     21,108.00
 Component: 02-95-05-08-00-00    Region: _           Benefits Costs:    7,944.79
 Scenario:   2    FY: 96         COLA %= 0.000       Total Costs:      29,052.79
---------------------------------------------
Actuals not available    (Status: UNKNOWN  ) |      Retirement Code:    N
-------  -----------------------------------
          | Step: A for _6.0 months & Step: B for _6.0 months (total: 12.00 )
 00/00/00 | Merit Date; use merit defaults?  N        (  0.0 @   &  0.0 @   )
 0        | Class/Sched Prefix: 2                    Schedule: 2A (actual:   )
          | Bargaining Unit:    GG                   Range:    07 (actual:   )
          | Location Code:      AWA    Place: JUNEAU
          | Job Class Code:     P1133  Title: ADMINISTRATIVE CLERK I_______
          | Seasonal Indic.:    G      Type:      -
-----------
Optional Override Salary Rates:
 Monthly Rate: 0.00____ for _0.0 months & rate of 0.00____ for _0.0 months
 Hourly Rate:  0.00____ for _0.0 months         Frozen at this rate? (Y/N): N

 Press ENTER to update record; enter # or use PF key to go to another screen:
 1=Premium pay info    2=Funding info     4=Code Translations   6=Calculations
 7=MISC NEW POS DATA   8=Detail Report   12=Exit w/o update     Selection: 0_
```

HB 270

Retirement Incentive Program

Sectional Analysis and Bill Summary

Section 1. FINDINGS AND PURPOSE.

The purpose of the bill is to make retirement and separation incentives available as management tools to assist the State of Alaska, municipalities and school districts in restructuring their operations and work forces, in order to reduce expenditures and balance budgets.

Section 2. RETIREMENT INCENTIVE PROGRAM .

Authorizes employers to adopt a retirement incentive program (RIP), and designate categories of employees eligible to participate in the program. The program may be extended, at the employer's discretion, to employees

(1) in specific budget or administrative components of the employer;
(2) in specific job classifications;
(3) in specific geographic locations; or
(4) on the basis of any combination of these factors.

The prior RIP legislation did not preclude this type of strategic or targeted approach, but this bill provides specific authorization for limiting the RIP to certain groups of employees. The intent of this language is to allow the state, local governments and school districts to design a RIP which is tailored to their budget and staffing requirements, if an across-the-board RIP does not meet their needs.

Section 2 also states requirements for employees to be eligible to participate in a RIP. These requirements are similar to the prior programs, except that savings to the employer for a participating employee must exceed the costs of the RIP within three years. This is the same as the first RIP in 1986-87, but shorter than the five year period established under the last RIP in 1989-90. The intent of this change from the last RIP is to ensure that the program maximizes savings, and to eliminate the use of the program in marginal cases where savings could not be shown in a three year period.

This section also mandates contributions by both employers and employees participating in the RIP to the retirement systems to pay for the additional retirement benefits provided by the RIP (same as prior bills).

The draft bill provides the same retirement incentives as the prior programs: three years of age or service credit under the retirement plan.

Section 3. AUTHORIZATION FOR STATE EMPLOYEE RETIREMENT INCENTIVE .

Allows state agencies to adopt a retirement incentive plan. The major changes from the prior programs are that the authorization window extends for three years, rather than 18 months, and that the application periods are shorter — no less than 30 days and no more than 60 days. Agencies are not required to participate in the RIP, and may participate more than once during the three year period.

Employees must retire within six months after an application period closes.

Section 4. UNIVERSITY OF ALASKA.

Authorizes the University to establish a retirement incentive program, with the same provisions that apply to state agencies.

Section 5. MUNICIPALITIES.

Authorizes political subdivisions of the state participating in the PERS system to establish a RIP, with an application period of December 31, 1995 through June 30, 1996. Employees must retire by February 1, 1997.

Section 6. SCHOOL DISTRICTS.

Authorizes school districts to establish a RIP, with an application period of June 30, 1995 through December 31, 1995. Employees must retire by August 1, 1996.

Section 7. POLITICAL SUBDIVISION EMPLOYMENT.

Allows a state employee to count local government employment toward the years of service requirements necessary to participate in the RIP.

Section 8. RECOVERY OF EMPLOYER DELINQUENCIES.

Provides for recovery of delinquent amounts owed by employers participating in the RIP.

Section 9. REEMPLOYMENT INDEBTEDNESS.

Requires individuals who participate in the RIP, and then return to work under the PERS, TERS, or judicial retirement systems to forfeit the incentive credit and repay 110 percent of the amount received under the RIP.

Also prohibits participants in the RIP from being employed or hired under contract by a state agency or the University for three years, with certain exceptions.

Section 10. SEPARATION INCENTIVE PROGRAM.

This is a new provision which would allow state agencies to offer separation incentive payments instead of, or as an alternative to, the retirement incentive program. The separation incentive program is similar to the current federal program, and to many private sector programs, which often include separation payments as an alternative to retirement credits.

The separation incentive payments would be limited to state employees in a permanent position with at least five years of service with the state. The separation incentive payment may not exceed the lesser of $25,000 or six months of an employee's salary. The separation incentive program could be limited to the same categories of employees as the RIP, and would be available over the same three year period.

Section 11. OFFICE OF MANAGEMENT AND BUDGET.

Requires approval by OMB of state agency plans for offering retirement or separation incentives. Also requires OMB to submit reports to the legislature on the programs.

Section 12. PROGRAM CHANGES.

Provides that employees do not have a vested or contractual right to a benefit under the act until an agreement for their participation is approved. Also reserves the legislature's right to change any aspect of the program in the future.

Section 13. REGULATIONS.

Allows the commissioner of administration to adopt regulations to implement the act.

Section 14. DEFINITIONS.

Defines terms used in the act.

Sections 15-17. EFFECTIVE DATES.

Establishes effective dates and repealers for different sections of the act.

CS FOR HOUSE BILL NO. 270(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"An Act relating to retirement incentive programs for the public employees' retirement system and the teachers' retirement system; relating to separation incentives for certain state employees; and providing for an effective date."

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

* Section 1. FINDINGS AND PURPOSE. The State of Alaska and many local governments and school districts are facing the need to restructure their operations and their work forces in order to reduce expenditures and balance budgets. Retirement and separation incentives are management tools that have been used extensively by the private sector, the federal government, and other state and local governments across the country. The purpose of this Act is to make these management tools temporarily available to the state and to the municipalities and school districts of the state. This Act will enable these entities to be more efficient and cost-effective by eliminating certain nonessential positions, and producing a net reduction in personnel costs.

* Sec. 2. RETIREMENT INCENTIVE PROGRAM. (a) An employer may adopt a

retirement incentive plan under secs. 3 - 6 of this Act, as appropriate, and designate categories of employees eligible to participate in that plan. An employer need not extend the incentive plan to all employees who would otherwise be eligible, but may choose to extend the plan only to employees

(1) in specific budget or administrative components of the employer;

(2) in specific job classifications;

(3) in specific geographic locations; or

(4) on the basis of any combination of factors under (1) - (3) of this subsection.

(b) An employee is eligible to participate in a retirement incentive plan under this Act only if the

(1) employee is a vested member of the public employees' retirement system or the teachers' retirement system;

(2) employee will be qualified to retire under AS 14.25.110 or AS 39.35.370 after receipt of the credit described in (f) of this section;

(3) savings to the employer in personal services costs for the employee's position will exceed the costs to the employer for that position within three years after the employee is appointed to retirement.

(c) An employer shall file its proposed retirement incentive plan with the commissioner of administration. The commissioner shall approve the plan if the plan meets the requirements of this Act, except that the commissioner may approve a state agency's retirement incentive plan only if the office of management and budget approves the calculation of savings under (b)(3) of this section. A proposed plan filed under this section must

(1) identify job classifications of employees, and specific budget or administrative components, eligible to participate in the plan;

(2) include a reimbursement agreement that

(A) requires the employer, for each employee who retires under the plan, to reimburse the appropriate retirement system, within three years after the end of the fiscal year in which the employee is appointed to retirement, in an amount equal to

(i) the actuarial equivalent of the difference between the benefits the participant receives after the addition of the credit under (f) of this section and the amount the participant would have received without the credit, less the amount the participant has paid on the indebtedness determined under (d) or (e) of this section; and

(ii) an appropriate share of the administrative costs of the program; and

(B) provides that contributions from the employer under this section take priority over other obligations of the employer to the maximum extent permitted by law.

(d) A member of the teachers' retirement system who participates in an approved retirement incentive plan under this Act is indebted to that system for an amount calculated under this subsection. The indebtedness is 25.95 percent of the member's actual compensation for the school year in which the member terminates employment, or the calculated school year compensation for a member who works less than the entire school year. An outstanding indebtedness at the time a member is appointed to retirement under an approved retirement incentive plan requires an actuarial adjustment to the benefits payable to that member.

(e) A member of the public employees' retirement system who participates in an approved retirement incentive plan under this Act is indebted to that system for an amount calculated under this subsection. The indebtedness is 22-1/2 percent for a peace officer or fire fighter, and 20-1/4 percent for other members, of the member's actual annual compensation for the year in which the member terminates employment, or the calculated annual compensation for a member who works fewer than 12 months. An outstanding indebtedness at the time a member is appointed to retirement under an approved retirement incentive plan requires an actuarial adjustment to the benefits payable to that member.

(f) An employee who participates in an approved retirement incentive plan under this Act receives a credit of three years. The three years must be applied in the following order until exhausted:

(1) to meet the age or service required for eligibility for normal retirement under AS 14.25.110 or AS 39.35.370, as appropriate;

(2) to meet the age required for early retirement under AS 14.25.110 or AS 39.35.370, as appropriate;

(3) to reduce the actuarial adjustment required for early retirement under AS 14.25.110 or AS 39.35.370, as appropriate;

(4) as years of credited service for calculating retirement benefits.

(g) In this section,

(1) "department" means

(A) a principal department of the executive branch of state government; an independent state entity that is attached to a principal department of the executive branch for administrative purposes but that is not a public organization as defined in AS 39.35.680 is part of that department for purposes of this paragraph; and

(B) the Office of the Governor;

(2) "employer" has the meaning given in AS 14.25.220 and AS 39.35.680 and includes a department.

* Sec. 3. AUTHORIZATION FOR STATE EMPLOYEE RETIREMENT INCENTIVE. (a) A state agency may adopt, and file with the commissioner of administration for approval, a proposed retirement incentive plan for its employees.

(b) Upon the request of a state agency, the commissioner of administration shall establish one or more periods during which the employees of that state agency who are eligible under sec. 2(b) of this Act to participate in a retirement incentive plan may apply to the commissioner of administration to participate in the state agency's approved plan. The periods shall begin no earlier than June 30, 1995, and end no later than June 30, 1998. The periods shall be no less than 30 days and no more than 60 days in duration, and may not begin less than 30 days after their establishment. A state agency is not required to request an application period, and may request more than one application period.

(c) A proposed retirement incentive plan adopted under this section may not permit an employee who is the governor, the lieutenant governor, or a commissioner, deputy commissioner, or assistant commissioner of a principal department of the executive branch to participate in the plan.

(d) A proposed retirement incentive plan adopted under this section may permit participation only by an employee who is eligible to participate under sec. 2(b) of this Act and who

(1) has been continuously employed by the state for at least one year before

the employee applies to participate in the state agency's approved plan;

(2) is a permanent seasonal employee who has been continuously employed by the state in a permanent seasonal position during all of the time in the one year before the employee's application to participate in which the position normally is filled;

(3) has a job sharing agreement with a state agency in which two or more employees share a single position identified by a single position control number and in which the employee who applies to participate in the plan was continuously employed by the agency during the portion of the one year before the employee's application in which the employee normally worked under the job sharing agreement; or

(4) meets a combination of the requirements of this subsection.

(e) The commissioner of administration may not accept the application of an employee to participate in an approved retirement incentive plan adopted under this section unless the employee will be appointed to retirement not later than the first day of the month that is six months after the last day of the application period established by the commissioner under (b) of this section. A state agency, in a plan adopted under this section, may set an earlier date by which an employee must be appointed to retirement in order to participate in the plan.

* Sec. 4. AUTHORIZATION FOR RETIREMENT INCENTIVE FOR EMPLOYEES OF THE UNIVERSITY OF ALASKA. (a) The Board of Regents of the University of Alaska may adopt, and file with the commissioner of administration for approval, a proposed retirement incentive plan for university employees.

(b) Upon the request of the Board of Regents, the commissioner of administration shall establish one or more periods during which the employees of the university who are eligible under sec. 2(b) of this Act to participate in a retirement incentive plan may apply to the commissioner of administration to participate in the university's approved plan. The periods shall begin no earlier than June 30, 1995, and end no later than June 30, 1998. The periods shall be no less than 30 days and no more than 60 days in duration, and may not begin less than 30 days after their establishment. The Board of Regents is not required to request an application period, and may request more than one application period.

(c) The commissioner of administration may not accept the application of an employee to participate in an approved retirement incentive plan adopted under this section unless the employee will be appointed to retirement not later than the first day of the month that is six months after the last day of the application period established by the commissioner under (b) of this section. The Board of Regents, in a plan adopted under this section, may set an earlier date by which an employee of the University of Alaska must be appointed to retirement in order to participate in the plan.

(d) A participant in the optional university retirement program under AS 14.40.661 - 14.40.799 who is vested in the public employees' retirement system or the teachers' retirement system may participate in a retirement incentive plan for that system if the participant meets the other qualifications of this Act. If a provision of this subsection is inconsistent with another provision of law, the provision of this subsection governs.

* Sec. 5. AUTHORIZATION FOR RETIREMENT INCENTIVE FOR OTHER EMPLOYEES IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM. (a) The governing body of a political subdivision of the state or public organization that has elected to participate in the public employees' retirement system under AS 39.35.550 - 39.35.650 may adopt, and file with the commissioner of administration for approval, a proposed retirement incentive plan for its employees. Upon the request of the governing body, the commissioner of administration shall establish one or more periods during which the employees of a political subdivision or public organization who are eligible to participate in a retirement incentive plan may apply to the commissioner of administration to participate in the approved plan. The periods shall begin no earlier than October 31, 1995, and end no later than October 31, 1998. The periods shall be no less than 30 days and no more than 60 days in duration, and may not begin less than 60 days after their establishment. The governing body is not required to request an application period, and may request more than one application period.

(b) The commissioner of administration may not accept the application of an employee to participate in an approved retirement incentive plan adopted under this section unless the employee will be appointed to retirement not later than the first day of the month that is six months after the last day of the application period established by the commissioner under (a) of this section. The governing body of the political subdivision or public organization, in a plan adopted under this section, may set an earlier date by which an employee must be appointed to retirement in order to participate in the plan.

* Sec. 6. AUTHORIZATION FOR RETIREMENT INCENTIVE FOR OTHER EMPLOYEES IN THE TEACHERS' RETIREMENT SYSTEM. (a) An employer under the

teachers' retirement system who is not otherwise covered by secs. 3 or 4 of this Act may adopt, and file with the commissioner of administration for approval, a proposed retirement incentive plan for its employees. A plan adopted under this section must provide that the application period for participation in the retirement incentive plan is June 30, 1995, through December 31, 1995.

(b) The commissioner of administration may not accept the application of an employee to participate in an approved retirement incentive plan adopted under this section unless the employee will be appointed to retirement on or before August 1, 1996. The employer, in a plan adopted under this section, may set an earlier date by which an employee must be appointed to retirement in order to participate in the plan.

* Sec. 7. POLITICAL SUBDIVISION OR PUBLIC ORGANIZATION EMPLOYMENT. For purposes of determining the years of service requirements for retirement under AS 14.25.110 or AS 39.35.370, as appropriate, a vested member who is a state employee and who applies to participate in a retirement incentive plan approved under this Act may receive credit for employment with a political subdivision or public organization before the political subdivision or organization became an employer under the public employees' retirement system. The member may not receive credit for those years under this subsection for purposes of determining benefits. If a provision of this section is inconsistent with any other provision of law, the provision of this section governs.

* Sec. 8. RECOVERY OF EMPLOYER DELINQUENCIES. To recover a delinquency owed by an employer other than the state under an agreement entered into under sec. 2(c)(2) of this Act, the Department of Administration may

(1) direct that the amount of the delinquency or a lesser amount be withheld from any money payable to the employer by a state department or agency and that the amount withheld be credited to the delinquency; and

(2) bring an action against the employer.

* Sec. 9. REEMPLOYMENT INDEBTEDNESS; PROHIBITION ON REEMPLOYMENT. (a) If an individual is reemployed as a member of the public employees' retirement system under AS 39.35, the teachers' retirement system under AS 14.25, the judicial retirement system under AS 22.25, or the optional university retirement program under AS 14.40.661 - 14.40.799 after appointment to retirement under this Act, that individual forfeits the incentive credit

received under sec. 2(f) of this Act and is indebted to the system under which the individual took retirement. The indebtedness is 110 percent of the amount the individual received as a result of participation in a retirement incentive plan under this Act and to which the individual would not otherwise have been entitled, including the cost of health insurance. The amount that the individual has paid under sec. 2(d) or (e) of this Act will be applied as a credit toward the reemployment indebtedness. Interest on the reemployment indebtedness accrues from the date of reemployment until the date that the individual either is appointed to retirement and accepts an actuarial adjustment to the individual's future benefits or repays the indebtedness in full. The rate of interest is that established by regulation for the public employees' retirement system by the public employees' retirement board and for the teachers' retirement system by the teachers' retirement board.

(b) An individual who was appointed to retirement under this Act may not be employed by, or enter into a contract for personal services with, a state agency or the University of Alaska within the three years after the date of appointment to retirement, except that

(1) the University of Alaska may enter into a personal services contract with the individual for teaching or research; and

(2) the individual may accept employment with the legislature during a legislative session if the employment is on an hourly basis and does not entitle the individual to receive retirement, health, or leave benefits.

(c) Notwithstanding the prohibition in (b) of this section, a state agency or the University of Alaska may enter into a personal services contract with an individual who was appointed to retirement under this Act if the Board of Regents, for the University of Alaska, or the commissioner of administration, for a state agency, determines that there is a compelling reason to do so because of the individual's specialized or extensive experience that relates to a particular program or project of the state agency or university. However, a state agency may not enter into a contract with an individual under this subsection if the individual was employed by that state agency at the time of the individual's appointment to retirement.

* Sec. 10. SEPARATION INCENTIVE PROGRAM. (a) A state agency may, with the approval of the director of the office of management and budget, establish a separation incentive program for its employees. The program may be offered in combination with an

approved retirement incentive plan adopted under sec. 3 of this Act, or may be offered separately from such a plan. A state agency need not extend an incentive program under this section to all employees who would otherwise be eligible to participate, but may choose to extend the program only to employees

(1) in specific budget or administrative components of the state agency;

(2) in specific job classifications;

(3) on the basis of any combination of factors under (1) and (2) of this subsection.

(b) A separation incentive payment under this section shall be paid in a lump sum after the employee's separation from state service, and shall be equal to the lesser of an amount equaling six months of the employee's base salary, or $25,000. However, a state agency or the office of management and budget may set a lower separation incentive payment in the state agency's separation incentive program.

(c) Upon the request of a state agency, the commissioner of administration shall establish one or more periods during which the employees of that state agency may apply to the commissioner of administration to participate in the state agency's approved separation incentive program. The periods shall begin no earlier than July 1, 1995, and end no later than June 30, 1998. The periods shall be no less than 30 days and no more than 60 days in duration, and may not begin less than 30 days after their establishment. A state agency is not required to request an application period, and may request more than one application period. If the commissioner of administration has established one or more application periods for a state agency under sec. 3(b) of this Act, the application period or periods established under this subsection must coincide with the period or periods established under sec. 3(b) of this Act.

(d) A separation incentive program established under this section must provide that a separation incentive payment to an employee may be made only if

(1) the employee is a permanent full-time or permanent full-time seasonal employee with at least five years of service with the state; and

(2) the savings to the state agency in personal services costs for the position occupied by that employee would exceed, in the three years after the employee separates, the amount of the separation incentive payment.

(e) If an individual who received a separation incentive payment under this section subsequently is reemployed by a state agency or the University of Alaska within the three years after the date that the individual received the separation incentive payment, the individual is liable to the state in an amount equal to 110 percent of the amount of the separation incentive payment, plus interest at the rate prescribed by AS 45.45.010, commencing on the date that the individual received the separation incentive payment.

(f) If an employee is eligible to participate in an approved retirement incentive plan adopted under sec. 3 of this Act,

(1) a separation incentive payment to that employee may not exceed the amount that the state agency would be obligated to pay to the appropriate retirement system, notwithstanding (b) of this section; and

(2) the employee may participate in either the separation incentive program under this section or the retirement incentive plan adopted under sec. 3 of this Act, but not both.

(g) In this section, "base salary" means the monthly salary paid to an employee under the applicable collective bargaining agreement, AS 39.27.011, or another applicable pay schedule, and includes geographic differential; if an employee is paid on an hourly basis, the employee's base salary is the employee's hourly rate, including geographic differential, multiplied by the number of hours in the employee's regular work week, multiplied by 4.35.

* **Sec. 11.** OFFICE OF MANAGEMENT AND BUDGET. (a) When designating an employee category for participation in a retirement incentive plan or a separation incentive program under this Act, the executive head of the relevant state agency shall describe in detail the expected effect of the plan or program on the agency's personal services cost and operation. This financial report must be approved by the director of the office of management and budget before the commissioner of administration may approve the proposed plan or program. The state agency shall report each year to the office of management and budget on the cost of each employee's participation and the effect on the agency's personal services cost and operation.

(b) The office of management and budget shall submit to the legislature annual reports on the retirement incentive and separation incentive programs under this Act beginning January 15, 1997, and continuing through January 15, 1999, and shall submit a final report

January 15, 2000. Each report must provide the information necessary for the legislature to evaluate the effectiveness of the programs in achieving their objectives. The report must include information on the designated employee categories under the incentive programs, including the cost of each incentive program per participant, the cost to the state, the cost to the employee, the annual budgeted amount, by state agency, for the incentives, the number of positions deleted or left vacant, and the projected or actual net savings over the three-year period.

* Sec. 12. PROGRAM CHANGES. (a) An individual employee does not have a vested or contractual right to a benefit under this Act until an agreement is executed with the administrator that specifically authorizes that employee to participate in the retirement incentive program under this Act or until an agreement is executed with the commissioner of administration to participate in the separation incentive program under this Act. The legislature reserves the right to change any aspect of either incentive program as it relates to employees for whom participation agreements have not yet been executed with the administrator or with the commissioner of administration.

(b) In this section, "administrator" means the administrator of the public employees' retirement system for employees who are members of that system, and the administrator of the teachers' retirement system for employees who are members of that system.

* Sec. 13. REGULATIONS. The commissioner of the Department of Administration may adopt regulations under AS 44.62 (Administrative Procedure Act) to implement and interpret this Act.

* Sec. 14. DEFINITIONS. (a) Unless provided otherwise in this Act, the definitions set out in AS 14.25.220 apply to provisions in secs. 2 - 9 of this Act that relate to the teachers' retirement system and members of the teachers' retirement system.

(b) Unless provided otherwise in this Act, the definitions set out in AS 39.35.680 apply to provisions in secs. 2 - 9 of this Act that relate to the public employees' retirement system and members of the public employees' retirement system.

(c) In this Act,

(1) "office of management and budget" means the office of management and budget in the Office of the Governor;

(2) "public employees' retirement system" means the Public Employees'

Retirement System of Alaska (AS 39.35);

(3) "state agency"

(A) means

(i) the legislative branch of state government;

(ii) the judicial branch of state government;

(iii) a principal department of the executive branch of state government; an independent state entity that is attached to a principal department of the executive branch for administrative purposes but that is not a public organization as defined in AS 39.35.680 is part of that department for purposes of this clause; and

(iv) the Office of the Governor;

(B) does not include

(i) the University of Alaska;

(ii) a political subdivision of the state; or

(iii) a public organization as defined in AS 39.35.680;

(4) "teachers' retirement system" means the Teachers' Retirement System of Alaska (AS 14.25).

*** Sec. 15.** Sections 2, 3, and 10 of this Act are repealed July 1, 1999.

*** Sec. 16.** Sections 4 - 7 of this Act are repealed July 1, 1997.

*** Sec. 17.** This Act takes effect immediately under AS 01.10.070(c).

CS FOR HOUSE BILL NO. 270(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"An Act relating to retirement incentive programs for the public employees' retirement system, the judicial retirement system, and the teachers' retirement system; relating to separation incentives for certain state employees; and providing for an effective date."

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

*** Section 1.** FINDINGS AND PURPOSE. The State of Alaska and many local governments and school districts are facing the need to restructure their operations and their work forces in order to reduce expenditures and balance budgets. Retirement and separation incentives are management tools that have been used extensively by the private sector, the federal government, and other state and local governments across the country. The purpose of this Act is to make these management tools temporarily available to the state and to the municipalities and school districts of the state. This Act will enable these entities to be more efficient and cost-effective by eliminating certain nonessential positions, and producing a net reduction in personnel costs.

* Sec. 2. RETIREMENT INCENTIVE PROGRAM. (a) An employer may adopt a retirement incentive plan under secs. 3 - 6 of this Act, as appropriate, and designate categories of employees eligible to participate in that plan. An employer need not extend the incentive plan to all employees who would otherwise be eligible, but may choose to extend the plan only to employees

(1) in specific budget or administrative components of the employer;

(2) in specific job classifications;

(3) in specific geographic locations; or

(4) on the basis of any combination of factors under (1) - (3) of this subsection.

(b) An employee is eligible to participate in a retirement incentive plan under this Act only if the

(1) employee is a vested member of the public employees' retirement system or the teachers' retirement system;

(2) employee will be qualified to retire under AS 14.25.110 or AS 39.35.370 after receipt of the credit described in (f) of this section;

(3) savings to the employer in personal services costs for the employee's position will exceed the costs to the employer for that position within three years after the employee is appointed to retirement.

(c) An employer shall file its proposed retirement incentive plan with the commissioner of administration. The commissioner shall approve the plan if the plan meets the requirements of this Act, except that the commissioner may approve a state agency's retirement incentive plan only if the office of management and budget approves the calculation of savings under (b)(3) of this section. A proposed plan filed under this section must

(1) identify job classifications of employees, and specific budget or administrative components, eligible to participate in the plan;

(2) include a reimbursement agreement that

(A) requires the employer, for each employee who retires under the plan, to reimburse the appropriate retirement system, within three years after the end of the fiscal year in which the employee is appointed to retirement, in an amount equal to

(i) the actuarial equivalent of the difference between the benefits the participant receives after the addition of the credit under (f) of this section and the amount the participant would have received without the credit, less the amount the participant has paid on the indebtedness determined under (d) or (e) of this section; and

(ii) an appropriate share of the administrative costs of the program; and

(B) provides that contributions from the employer under this section take priority over other obligations of the employer to the maximum extent permitted by law.

(d) A member of the teachers' retirement system who participates in an approved retirement incentive plan under this Act is indebted to that system for an amount calculated under this subsection. The indebtedness is 25.95 percent of the member's actual compensation for the school year in which the member terminates employment, or the calculated school year compensation for a member who works less than the entire school year. An outstanding indebtedness at the time a member is appointed to retirement under an approved retirement incentive plan requires an actuarial adjustment to the benefits payable to that member.

(e) A member of the public employees' retirement system who participates in an approved retirement incentive plan under this Act is indebted to that system for an amount calculated under this subsection. The indebtedness is 22-1/2 percent for a peace officer or fire fighter, and 20-1/4 percent for other members, of the member's actual annual compensation for the year in which the member terminates employment, or the calculated annual compensation for a member who works fewer than 12 months. An outstanding indebtedness at the time a member is appointed to retirement under an approved retirement incentive plan requires an actuarial adjustment to the benefits payable to that member.

(f) An employee who participates in an approved retirement incentive plan under this Act receives a credit of three years. The three years must be applied in the following order until exhausted:

(1) to meet the age or service required for eligibility for normal retirement under AS 14.25.110 or AS 39.35.370, as appropriate;

(2) to meet the age required for early retirement under AS 14.25.110 or

AS 39.35.370, as appropriate;

(3) to reduce the actuarial adjustment required for early retirement under AS 14.25.110 or AS 39.35.370, as appropriate;

(4) as years of credited service for calculating retirement benefits.

(g) In this section,

(1) "department" means

(A) a principal department of the executive branch of state government; an independent state entity that is attached to a principal department of the executive branch for administrative purposes but that is not a public organization as defined in AS 39.35.680 is part of that department for purposes of this paragraph; and

(B) the Office of the Governor;

(2) "employer" has the meaning given in AS 14.25.220 and AS 39.35.680 and includes a department.

* Sec. 3. AUTHORIZATION FOR STATE EMPLOYEE RETIREMENT INCENTIVE. (a) A state agency may adopt, and file with the commissioner of administration for approval, a proposed retirement incentive plan for its employees.

(b) Upon the request of a state agency, the commissioner of administration shall establish one or more periods during which the employees of that state agency who are eligible under sec. 2(b) of this Act to participate in a retirement incentive plan may apply to the commissioner of administration to participate in the state agency's approved plan. The periods shall begin no earlier than June 30, 1995, and end no later than June 30, 1998. The periods shall be no less than 30 days and no more than 60 days in duration, and may not begin less than 30 days after their establishment. A state agency is not required to request an application period, and may request more than one application period.

(c) A proposed retirement incentive plan adopted under this section may not permit an employee who is the governor, the lieutenant governor, or a commissioner, deputy commissioner, or assistant commissioner of a principal department of the executive branch to participate in the plan.

(d) A proposed retirement incentive plan adopted under this section may permit participation only by an employee who is eligible to participate under sec. 2(b) of this Act and who

(1) has been continuously employed by the state for at least one year before the employee applies to participate in the state agency's approved plan;

(2) is a permanent seasonal employee who has been continuously employed by the state in a permanent seasonal position during all of the time in the one year before the employee's application to participate in which the position normally is filled;

(3) has a job sharing agreement with a state agency in which two or more employees share a single position identified by a single position control number and in which the employee who applies to participate in the plan was continuously employed by the agency during the portion of the one year before the employee's application in which the employee normally worked under the job sharing agreement; or

(4) meets a combination of the requirements of this subsection.

(e) The commissioner of administration may not accept the application of an employee to participate in an approved retirement incentive plan adopted under this section unless the employee will be appointed to retirement not later than the first day of the month that is six months after the last day of the application period established by the commissioner under (b) of this section. A state agency, in a plan adopted under this section, may set an earlier date by which an employee must be appointed to retirement in order to participate in the plan.

* Sec. 4. AUTHORIZATION FOR RETIREMENT INCENTIVE FOR EMPLOYEES OF THE UNIVERSITY OF ALASKA. (a) The Board of Regents of the University of Alaska may adopt, and file with the commissioner of administration for approval, a proposed retirement incentive plan for university employees.

(b) Upon the request of the Board of Regents, the commissioner of administration shall establish one or more periods during which the employees of the university who are eligible under sec. 2(b) of this Act to participate in a retirement incentive plan may apply to the commissioner of administration to participate in the university's approved plan. The periods shall begin no earlier than June 30, 1995, and end no later than June 30, 1998. The periods shall be no less than 30 days and no more than 60 days in duration, and may not begin less than 30 days after their establishment. The Board of Regents is not required to request an application period, and may request more than one application period.

(c) The commissioner of administration may not accept the application of an employee to participate in an approved retirement incentive plan adopted under this section unless the employee will be appointed to retirement not later than the first day of the month that is six months after the last day of the application period established by the commissioner under (b) of this section. The Board of Regents, in a plan adopted under this section, may set an earlier date by which an employee of the University of Alaska must be appointed to retirement in order to participate in the plan.

(d) A participant in the optional university retirement program under AS 14.40.661 - 14.40.799 who is vested in the public employees' retirement system or the teachers' retirement system may participate in a retirement incentive plan for that system if the participant meets the other qualifications of this Act. If a provision of this subsection is inconsistent with another provision of law, the provision of this subsection governs.

* Sec. 5. AUTHORIZATION FOR RETIREMENT INCENTIVE FOR OTHER EMPLOYEES IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM. (a) The governing body of a political subdivision of the state or public organization that has elected to participate in the public employees' retirement system under AS 39.35.550 - 39.35.650 may adopt, and file with the commissioner of administration for approval, a proposed retirement incentive plan for its employees. Upon the request of the governing body, the commissioner of administration shall establish one or more periods during which the employees of a political subdivision or public organization who are eligible to participate in a retirement incentive plan may apply to the commissioner of administration to participate in the approved plan. The periods shall begin no earlier than October 31, 1995, and end no later than October 31, 1998. The periods shall be no less than 30 days and no more than 60 days in duration, and may not begin less than 60 days after their establishment. The governing body is not required to request an application period, and may request more than one application period.

(b) The commissioner of administration may not accept the application of an employee to participate in an approved retirement incentive plan adopted under this section unless the employee will be appointed to retirement not later than the first day of the month that is six months after the last day of the application period established by the commissioner under (a) of this section. The governing body of the political subdivision or public organization, in a plan adopted under this section, may set an earlier date by which an employee must be appointed to retirement in order to participate in the plan.

* Sec. 6. AUTHORIZATION FOR RETIREMENT INCENTIVE FOR OTHER

EMPLOYEES IN THE TEACHERS' RETIREMENT SYSTEM. (a) An employer under the teachers' retirement system who is not otherwise covered by secs. 3 or 4 of this Act may adopt, and file with the commissioner of administration for approval, a proposed retirement incentive plan for its employees. A plan adopted under this section must provide that the application period for participation in the retirement incentive plan is June 30, 1995, through December 31, 1995.

(b) The commissioner of administration may not accept the application of an employee to participate in an approved retirement incentive plan adopted under this section unless the employee will be appointed to retirement on or before August 1, 1996. The employer, in a plan adopted under this section, may set an earlier date by which an employee must be appointed to retirement in order to participate in the plan.

* Sec. 7. POLITICAL SUBDIVISION OR PUBLIC ORGANIZATION EMPLOYMENT. For purposes of determining the years of service requirements for retirement under AS 14.25.110 or AS 39.35.370, as appropriate, a vested member who is a state employee and who applies to participate in a retirement incentive plan approved under this Act may receive credit for employment with a political subdivision or public organization before the political subdivision or organization became an employer under the public employees' retirement system. The member may not receive credit for those years under this subsection for purposes of determining benefits. If a provision of this section is inconsistent with any other provision of law, the provision of this section governs.

* Sec. 8. PROVISION AND AUTHORIZATION FOR ADMINISTRATIVE DIRECTOR OF COURT. (a) The chief justice of the state supreme court may adopt a retirement incentive plan for an administrative director of the Alaska Court System who is a member of the judicial retirement system under AS 22.25.012 if participation in the plan will result in savings to the court system in personal services costs within three years after the commencement of the plan. The administrative director may participate only if the administrative director is vested in the judicial retirement system and will be qualified to retire under AS 22.25.010 after receipt of the retirement incentive. To participate, the administrative director shall apply to the commissioner of administration to participate in the approved court system plan.

(b) The court system shall include in the retirement incentive plan a reimbursement agreement that requires the court system, for each administrative director of the Alaska Court System who is retired under the plan, to reimburse the judicial retirement system within three years after the end of the fiscal year in which the administrative director is appointed to retirement in an amount equal to

(1) the actuarial equivalent of the difference between the benefits the administrative director receives after the addition of the credit under (e) of this section and the amount the participant would have received without the credit, less the total of the amount the participant has paid on the indebtedness determined under (d) of this section; and

(2) an appropriate share of the administrative costs of the program.

(c) A retirement incentive plan adopted under this section must provide that contributions from the court system under (b) of this section take priority over other obligations of the court system to the maximum extent permitted by law.

(d) An administrative director of the Alaska Court System who participates in an approved retirement incentive plan is indebted to the system. The amount of indebtedness is equal to 21 percent of the director's actual annual compensation for the year in which the director terminates employment to participate in the program, or the calculated annual compensation for an administrative director who works fewer than 12 months. An outstanding indebtedness at the time the administrative director is appointed to retirement under an approved retirement incentive plan will require an actuarial adjustment to the benefits payable to the director.

(e) An administrative director of the Alaska Court System who participates in an approved retirement incentive plan receives a credit of three years that may only be used to meet the age requirements for normal or early retirement under AS 22.25.010(d).

(f) The chief justice of the Alaska Court System may adopt, and file with the commissioner of administration for approval, a proposed retirement incentive plan for the administrative director of the court system who is a member of the judicial retirement system. Upon the request of the chief justice, the commissioner of administration shall establish a period during which an administrative director eligible to participate in the retirement incentive plan of the court system may apply to the commissioner of administration to participate in the court system's approved plan. The period shall begin no earlier than July 1, 1995, and end no later than June 30, 1998. The period shall be no less than 30 days and no more than 60 days in duration and may not begin less than 30 days after establishment. The chief justice is not required to request an application period.

(g) The commissioner of administration may not accept the application of an administrative director of the court system to participate in an approved retirement incentive plan adopted under this section unless the administrative director will be appointed to retirement not later than the first day of the month that is six months after the last day of the application period established by the commissioner under (f) of this section. The chief justice, in a plan adopted under this section, may set an earlier date by which an administrative director must be appointed to retirement in order to participate in the plan.

* Sec. 9. RECOVERY OF EMPLOYER DELINQUENCIES. To recover a delinquency owed by an employer other than the state under an agreement entered into under sec. 2(c)(2) of this Act, the Department of Administration may

(1) direct that the amount of the delinquency or a lesser amount be withheld from any money payable to the employer by a state department or agency and that the amount withheld be credited to the delinquency; and

(2) bring an action against the employer.

* Sec. 10. REEMPLOYMENT INDEBTEDNESS; PROHIBITION ON REEMPLOYMENT. (a) If an individual is reemployed as a member of the public employees' retirement system under AS 39.35, the teachers' retirement system under AS 14.25, the judicial retirement system under AS 22.25, or the optional university retirement program under AS 14.40.661 - 14.40.799 after appointment to retirement under this Act, that individual forfeits the incentive credit received under sec. 2(f) of this Act and is indebted to the system under which the individual took retirement. The indebtedness is 110 percent of the amount the individual received as a result of participation in a retirement incentive plan under this Act and to which the individual would not otherwise have been entitled, including the cost of health insurance. The amount that the individual has paid under sec. 2(d) or (e) of this Act will be applied as a credit toward the reemployment indebtedness. Interest on the reemployment indebtedness accrues from the date of reemployment until the date that the individual either is appointed to retirement and accepts an actuarial adjustment to the individual's future benefits or repays the indebtedness in full. The rate of interest is that established by regulation for the public employees' retirement system by the public employees' retirement board and for the teachers' retirement

system by the teachers' retirement board.

(b) An individual who was appointed to retirement under this Act may not be employed by, or enter into a contract for personal services with, a state agency or the University of Alaska within the three years after the date of appointment to retirement, except that

(1) the University of Alaska may enter into a personal services contract with the individual for teaching or research; and

(2) the individual may accept employment with the legislature during a legislative session if the employment is on an hourly basis and does not entitle the individual to receive retirement, health, or leave benefits.

(c) Notwithstanding the prohibition in (b) of this section, a state agency or the University of Alaska may enter into a personal services contract with an individual who was appointed to retirement under this Act if the Board of Regents, for the University of Alaska, or the commissioner of administration, for a state agency, determines that there is a compelling reason to do so because of the individual's specialized or extensive experience that relates to a particular program or project of the state agency or university. However, a state agency may not enter into a contract with an individual under this subsection if the individual was employed by that state agency at the time of the individual's appointment to retirement.

* **Sec. 11.** SEPARATION INCENTIVE PROGRAM. (a) A state agency may, with the approval of the director of the office of management and budget, establish a separation incentive program for its employees. The program may be offered in combination with an approved retirement incentive plan adopted under sec. 3 of this Act, or may be offered separately from such a plan. A state agency need not extend an incentive program under this section to all employees who would otherwise be eligible to participate, but may choose to extend the program only to employees

(1) in specific budget or administrative components of the state agency;

(2) in specific job classifications;

(3) on the basis of any combination of factors under (1) and (2) of this subsection.

(b) A separation incentive payment under this section shall be paid in a lump sum after the employee's separation from state service, and shall be equal to the lesser of an amount equaling six months of the employee's base salary, or $25,000. However, a state agency or the office of management and budget may set a lower separation incentive payment in the state agency's separation incentive program.

(c) Upon the request of a state agency, the commissioner of administration shall establish one or more periods during which the employees of that state agency may apply to the commissioner of administration to participate in the state agency's approved separation incentive program. The periods shall begin no earlier than July 1, 1995, and end no later than June 30, 1998. The periods shall be no less than 30 days and no more than 60 days in duration, and may not begin less than 30 days after their establishment. A state agency is not required to request an application period, and may request more than one application period. If the commissioner of administration has established one or more application periods for a state agency under sec. 3(b) of this Act, the application period or periods established under this subsection must coincide with the period or periods established under sec. 3(b) of this Act.

(d) A separation incentive program established under this section must provide that a separation incentive payment to an employee may be made only if

(1) the employee is a permanent full-time or permanent full-time seasonal employee with at least five years of service with the state; and

(2) the savings to the state agency in personal services costs for the position occupied by that employee would exceed, in the three years after the employee separates, the amount of the separation incentive payment.

(e) If an individual who received a separation incentive payment under this section subsequently is reemployed by a state agency or the University of Alaska within the three years after the date that the individual received the separation incentive payment, the individual is liable to the state in an amount equal to 110 percent of the amount of the separation incentive payment, plus interest at the rate prescribed by AS 45.45.010, commencing on the date that the individual received the separation incentive payment.

(f) If an employee is eligible to participate in an approved retirement incentive plan adopted under sec. 3 of this Act,

(1) a separation incentive payment to that employee may not exceed the amount that the state agency would be obligated to pay to the appropriate retirement system,

notwithstanding (b) of this section; and

(2) the employee may participate in either the separation incentive program under this section or the retirement incentive plan adopted under sec. 3 of this Act, but not both.

(g) In this section, "base salary" means the monthly salary paid to an employee under the applicable collective bargaining agreement, AS 39.27.011, or another applicable pay schedule, and includes geographic differential; if an employee is paid on an hourly basis, the employee's base salary is the employee's hourly rate, including geographic differential, multiplied by the number of hours in the employee's regular work week, multiplied by 4.35.

* **Sec. 12.** OFFICE OF MANAGEMENT AND BUDGET. (a) When designating an employee category for participation in a retirement incentive plan or a separation incentive program under this Act, the executive head of the relevant state agency shall describe in detail the expected effect of the plan or program on the agency's personal services cost and operation. This financial report must be approved by the director of the office of management and budget before the commissioner of administration may approve the proposed plan or program. The state agency shall report each year to the office of management and budget on the cost of each employee's participation and the effect on the agency's personal services cost and operation.

(b) The office of management and budget shall submit to the legislature annual reports on the retirement incentive and separation incentive programs under this Act beginning January 15, 1997, and continuing through January 15, 1999, and shall submit a final report January 15, 2000. Each report must provide the information necessary for the legislature to evaluate the effectiveness of the programs in achieving their objectives. The report must include information on the designated employee categories under the incentive programs, including the cost of each incentive program per participant, the cost to the state, the cost to the employee, the annual budgeted amount, by state agency, for the incentives, the number of positions deleted or left vacant, and the projected or actual net savings over the three-year period.

* **Sec. 13.** PROGRAM CHANGES. (a) An individual employee does not have a vested or contractual right to a benefit under this Act until an agreement is executed with the administrator that specifically authorizes that employee to participate in the retirement

incentive program under this Act or until an agreement is executed with the commissioner of administration to participate in the separation incentive program under this Act. The legislature reserves the right to change any aspect of either incentive program as it relates to employees for whom participation agreements have not yet been executed with the administrator or with the commissioner of administration.

(b) In this section, "administrator" means the administrator of the public employees' retirement system for employees who are members of that system, and the administrator of the teachers' retirement system for employees who are members of that system.

* **Sec. 14.** REGULATIONS. The commissioner of the Department of Administration may adopt regulations under AS 44.62 (Administrative Procedure Act) to implement and interpret this Act.

* **Sec. 15.** DEFINITIONS. (a) Unless provided otherwise in this Act, the definitions set out in AS 14.25.220 apply to provisions in secs. 2 - 10 of this Act that relate to the teachers' retirement system and members of the teachers' retirement system.

(b) Unless provided otherwise in this Act, the definitions set out in AS 39.35.680 apply to provisions in secs. 2 - 10 of this Act that relate to the public employees' retirement system and members of the public employees' retirement system.

(c) In this Act,

(1) "office of management and budget" means the office of management and budget in the Office of the Governor;

(2) "public employees' retirement system" means the Public Employees' Retirement System of Alaska (AS 39.35);

(3) "state agency"

(A) means

(i) the legislative branch of state government;

(ii) the judicial branch of state government;

(iii) a principal department of the executive branch of state government; an independent state entity that is attached to a principal department of the executive branch for administrative purposes but that is not a public organization as defined in AS 39.35.680 is part of that department for purposes of this clause; and

(iv) the Office of the Governor;

(B) does not include

(i) the University of Alaska;

(ii) a political subdivision of the state; or

(iii) a public organization as defined in AS 39.35.680;

(4) "teachers' retirement system" means the Teachers' Retirement System of Alaska (AS 14.25).

* **Sec. 16.** Sections 2, 3, and 11 of this Act are repealed July 1, 1999.

* **Sec. 17.** Sections 4 - 8 of this Act are repealed July 1, 1997.

* **Sec. 18.** This Act takes effect immediately under AS 01.10.070(c).

TONY KNOWLES
GOVERNOR

P.O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 20, 1995

The Honorable Gail Phillips
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Phillips:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that establishes a temporary retirement incentive program for employees of the state, its subdivisions, and its school districts, and a temporary separation incentive program for employees of the state.

Closing the state's fiscal gap will require major changes in state operations over the next several years. We need to make state government more efficient and eliminate nonessential services. Our challenge is to accomplish these goals without forcing large layoffs of employees, which could ripple through the private sector and endanger the health of Alaska's economy. Retirement and separation incentive plans have been successfully used by the private sector and government to scale back payroll while eliminating or minimizing the need for layoffs.

Properly structured, these plans can be a cost-effective and humane method of downsizing. This legislation will make these restructuring tools available to the State of Alaska, and will extend the retirement incentive program as an option for municipalities and school districts, which are also facing the need to restructure their operations and work forces.

My Administration will use the retirement and separation incentives in a strategic approach, different from prior programs. The last state retirement incentive program applied to all departments regardless of their budget or personnel situation, and had little effect on downsizing or restructuring government.

Under our approach, the programs will be tailored to the fiscal and staffing requirements of each department. This approach is similar to private sector and federal programs. The incentives will be used in combination with attrition to permanently reduce the number of positions on the state payroll. Departments will be able to participate in the incentive programs only if the programs contribute to their budget and staffing requirements and are cost effective.

This bill differs from the previous retirement incentive program (RIP) laws, enacted in 1986 and 1989, in that employers are specifically authorized to extend an incentive plan to employees in certain components (e.g., certain state divisions slated for major reductions), in certain job classifications, or certain geographic locations. In addition, with regard to the state, not all state employees will be eligible to apply during a window period. Instead the commissioner of administration is authorized to establish window periods (of 30 to 60 days) for some departments and not others. This will allow targeting of departments where major reductions are contemplated, and will alleviate the "brain drain" problem that arose when previous incentive programs were implemented.

The bill also requires that cost savings be shown for each employee allowed to participate, and that cost savings be calculated over a three-year period rather than a five-year period. This change from previous RIP laws will guarantee that the retirement incentive program produces substantial savings to the state and its local governments and school districts.

There are some similarities between this bill and the prior RIP laws. As with those laws, this bill provides that eligible state, municipal, and school district employees in the Public Employees' Retirement System (PERS) and the Teachers' Retirement System (TRS) may obtain three years of retirement credit, to be applied toward reaching normal or early retirement age, reducing the actuarial reduction that early retirees must take, or increasing years of credited service. An employee must pay the appropriate retirement system the employee's normal share for these three years of credit, and the employer must pay the system the difference between what the employee pays and the actuarial cost of allowing the employee to participate. Applications for participation in the program will be allowed only during relatively short "window periods," and the employee must retire within several months after the end of a window period. The bill imposes substantial penalties on an employee retiring under the RIP who accepts employment with another PERS or TRS employer or with a Judicial Retirement System employer, or who is reemployed as a member of the optional university retirement system.

The bill also proposes, for the state only, another temporary incentive program, the separation incentive program, that has not been used previously by the state, but that has been used successfully by local governments and school districts in Alaska, by the federal government, and by the private sector. Under this program, which may be offered in conjunction with the RIP or separately from that program, long-term state employees separating from state service may be paid a one-time separation incentive payment. That payment would be $25,000 or six months' salary, whichever is less, unless a state department or the office of management and budget sets a lower payment. As with the RIP, separation incentive payments could be made only if they would result in cost savings to the state over a three-year period; the program would not be open to all state employees, but could be limited to certain departments or job classes; there would be brief "window periods" for application; and there would be substantial penalties for reemployment by the state within three years.

As this bill works its way through the legislative process, representatives of my Administration will be available to answer any questions that members of your body might have.

I urge your prompt consideration and passage of this bill.

Sincerely,

Tony Knowles
Governor

James M. Tedford
9367 Rivercourt Way
Juneau, Ak. 99801

To Whom It May Concern,

Alaska is no longer the land of plenty. We all have to learn to get by with less, but we should try to minimize the impact on our children. Today most school districts are in a financial bind. Class sizes are growing and education is suffering. HB 270 offers a partial solution to this crisis in funding. A Retirement Incentive Program would free up thousands of dollars that school districts could use to better educate our children. Please move HB 270 expeditiously through the legislative process so a RIP can be in place before the end of this school year.

Sincerely,
James M. Tedford
James M. Tedford

AMENDMENT

OFFERED IN HOUSE LABOR & COMMERCE BY REP. KUBINA

TO: HB 270

Page 1, line 2

Following "public employees' retirement system"

Insert "the judicial retirement system"

Page 7, line 20

Following "employer."

Insert a new section to read:

See text from SB 137

Renumber to following bill sections accordingly.

(b) The commissioner of administration may not accept the application of an employee to participate in an approved retirement incentive plan adopted under this section unless the employee will be appointed to retirement on or before August 1, 1996. The employer, in a plan adopted under this section, may set an earlier date by which an employee must be appointed to retirement in order to participate in the plan.

* **Sec. 7.** POLITICAL SUBDIVISION OR PUBLIC ORGANIZATION EMPLOYMENT. For purposes of determining the years of service requirements for retirement under AS 14.25.110 or AS 39.35.370, as appropriate, a vested member who is a state employee and who applies to participate in a retirement incentive plan approved under this Act may receive credit for employment with a political subdivision or public organization before the political subdivision or organization became an employer under the public employees' retirement system. The member may not receive credit for those years under this subsection for purposes of determining benefits. If a provision of this section is inconsistent with any other provision of law, the provision of this section governs.

* **Sec. 8.** RECOVERY OF EMPLOYER DELINQUENCIES. To recover a delinquency owed by an employer other than the state under an agreement entered into under sec. 2(c)(2) of this Act, the Department of Administration may

(1) direct that the amount of the delinquency or a lesser amount be withheld from any money payable to the employer by a state department or agency and that the amount withheld be credited to the delinquency; and

(2) bring an action against the employer.

* **Sec. 9.** PROVISION AND AUTHORIZATION FOR ADMINISTRATIVE DIRECTOR OF COURT. (a) The chief justice of the state supreme court may adopt a retirement incentive plan for an administrative director of the Alaska Court System who is a member of the judicial retirement system under AS 22.25.012 if participation in the plan will result in savings to the court system in personal services costs within three years after the commencement of the plan. The administrative director may participate only if the administrative director is vested in the judicial retirement system and will be qualified to retire under AS 22.25.010 after receipt of the retirement incentive. To participate, the administrative director shall apply to the commissioner of administration to participate in the approved court system plan.

(b) The court system shall include in the retirement incentive plan a reimbursement agreement that requires the court system, for each administrative director of the Alaska Court System who is retired under the plan, to reimburse the judicial retirement system within three years after the end of the fiscal year in which the administrative director is appointed to retirement in an amount equal to

(1) the actuarial equivalent of the difference between the benefits the administrative director receives after the addition of the credit under (e) of this section and the amount the participant would have received without the credit, less the total of the amount the participant has paid on the indebtedness determined under (d) of this section; and

(2) an appropriate share of the administrative costs of the program.

(c) A retirement incentive plan adopted under this section must provide that contributions from the court system under (b) of this section take priority over other obligations of the court system to the maximum extent permitted by law.

(d) An administrative director of the Alaska Court System who participates in an approved retirement incentive plan is indebted to the system. The amount of indebtedness is equal to 21 percent of the director's actual annual compensation for the year in which the director terminates employment to participate in the program, or the calculated annual compensation for an administrative director who works fewer than 12 months. An outstanding indebtedness at the time the administrative director is appointed to retirement under an approved retirement incentive plan will require an actuarial adjustment to the benefits payable to the director.

(e) An administrative director of the Alaska Court System who participates in an approved retirement incentive plan receives a credit of three years that may only be used to meet the age requirements for normal or early retirement under AS 22.25.010(d).

(f) The chief justice of the Alaska Court System may adopt, and file with the commissioner of administration for approval, a proposed retirement incentive plan for the administrative director of the court system who is a member of the judicial retirement system. Upon the request of the chief justice, the commissioner of administration shall establish a period during which an administrative director eligible to participate in the retirement incentive plan of the court system may apply to the commissioner of administration to participate in the court system's approved plan. The period shall begin no earlier than July 1, 1995, and end no later than June 30, 1998. The period shall be no less than 30 days and no more than 60 days in duration and may not begin less than 30 days after establishment. The chief justice is not required to request an application period.

(g) The commissioner of administration may not accept the application of an administrative director of the court system to participate in an approved retirement incentive plan adopted under this section unless the administrative director will be appointed to retirement not later than the first day of the month that is six months after the last day of the application period established by the commissioner under (f) of this section. The chief justice, in a plan adopted under this section, may set an earlier date by which an administrative director must be appointed to retirement in order to participate in the plan.

* Sec. 10. REEMPLOYMENT INDEBTEDNESS; PROHIBITION ON REEMPLOYMENT. (a) If an individual is reemployed as a member of the public employees' retirement system under AS 39.35, the teachers' retirement system under AS 14.25, the judicial retirement system under AS 22.25, or the optional university retirement program under AS 14.40.661 - 14.40.799 after appointment to retirement under this Act, that individual forfeits the incentive credit received under sec. 2(f) or sec. 9(e) of this Act and is indebted to the system under which the individual took retirement. The indebtedness is 110 percent of the amount the individual received as a result of participation in a retirement incentive plan under this Act and to which the individual would not otherwise have been entitled, including the cost of health insurance. The amount that the individual has paid under sec. 2(d) or (e) or sec. 9(d) of this Act will be applied as a credit toward the reemployment indebtedness. Interest on the reemployment indebtedness accrues from the date of reemployment until the date that the individual either is appointed to retirement and accepts an actuarial adjustment to the individual's future benefits or repays the indebtedness in full. The rate of interest is that established by regulation for the public employees' retirement system by the public employees' retirement board and for the teachers' retirement system by the teachers' retirement board.

(b) An individual who was appointed to retirement under this Act may not be employed by, or enter into a contract for personal services with, a state agency or the University of Alaska within the three years after the date of appointment to retirement, except that

(1) the University of Alaska may enter into a personal services contract with

Alaska State Legislature

Please enter into the record my testimony to the House Labor and Commerce
committee name

committee on HB 270, dated May 1, 1995
bill/subject

This issue that will impact not only people eligible for early retirement, but many others--employed and job seekers.

You have an excellent opportunity by passing HB 270 to address an important state and local concern, with serious financial and social implications. When trying to balance the state's budget, it makes fiscal sense for us to encourage those who are at the higher end of the pay scale to retire. This will lighten the debt at state and local levels.

In addition, the bill would help alleviate a potential financial and social crisis in the Delta/Greely community. The effect of Fort Greely's threatened realignment will send a monetary tsunami through this community. Everyone will be touched; many severely. Early retirement will allow fewer families to be uprooted. Fewer families will face financial disaster.

This is a win-win situation. Please support the bill.

Signed: Mary R. Corcoran

Representing (Optional)

HC60 Box 3050, Delta Junction, AK 99737
Address

895-4896
Phone No.

Alaska State Legislature

Please enter into the record my testimony to the Labor & Commerce
committee name

committee on HB 270 & CS dated 5-1-95
bill/subject

This is a note of support for the state employee early retirement program. In this time of ever tightening budgets and the need to reduce overhead this bill is just what the doctor ordered. As we all know the most significant source of overhead is personnel. If an individual agency can realize a significant savings from reducing the number of employees or even replacing higher paid one with those farther down the salary ladder it would save money. This should not be an issue that splits along part lines but rather one that brings us together for what is best for Alaska. An example from my local district might serve to demonstrate this fact. There is a group of people who wish to retire under this bill. If this group were to depart they would not be replaced and the district would realize a salary and fringe benefit savings of $248,000 annually. If the legislation passes others would surely join the program resulting in additional savings. Other districts and agencies would realize savings as per their individual situations, or they would not be participating.

Signed: E Lee Foster
Testifier

DELTA / GREELY EDUC. ASSOC. VICE PRESIDENT
Représenting (Optional)

BOX 671 Delta Jct. Ak 99737
Address

907 895-4077 / 869-3105
Phone No. HOME WORK

CITY MANAGER
POST OFFICE BOX 1397, KODIAK, ALASKA 99615
TELEPHONE (907) 486-8640
FAX (907) 486-8600

May 1, 1995

The Honorable Pete Kott, Chair
House Labor and Commerce Committee
State Capitol
Juneau, AK 99801-1182

Dear Representative Kott: **FAX (907) 465-2819**

We look forward, today, May 1, 1995, to the possible opportunity to address our support of HB 270 as passed to your committee from the House State Affairs Committee. We are pleased that the good work in the House regarding the beginning date and the three year opening period has improved the bill and is now in the Senate version.

We are concerned that the Senate has merged SB 137 (the Retirement Incentive Bill) into SB 148, possibly complicating a good bill and creating a risk of either delays or a veto and denying the City of Kodiak the significant savings that should be available to benefit our taxpayers in this year.

Our effort today will be short and support the House efforts that have taken place to date. If appropriate, we will ask you if there is anything we should be doing to encourage Senate action identical to that which seems to be occurring in the House. Thank you.

Sincerely,

CITY OF KODIAK

Gary Bloomquist

Gary Bloomquist
City Manager

cc: Representative Alan Austerman

Alaska State Legislature

Please enter into the record my testimony to the House Labor, Commerce
committee name

committee on HB270, dated May 1, 1995.
bill/subject

My name is Lucy Hope. I am currently the President of Mat-Su Education Association, representing 800 teachers in the Mat-Su School District. We are facing huge budget difficulties here, as you know. The Retirement Incentive Program in HB270 is a method to alleviate some of this difficulty, especially in the long run.

Our salary schedule is built so that beginning teachers make about one half what our most experienced teachers with advanced degrees make. Because of this, our District stands to save a substantial amount of money by participating in a retirement incentive program.

The last time this was enacted, in 1989-90, our school district saw 26 teachers retire. Typically, in recent years, between 10-13 teachers retired. It is expected that at least 40 additional teachers would retire if there was an early retirement incentive program.

What about savings? Last time, the District saved $469,000 over 3 years as a result of 26 teachers retiring early. This is because the teachers that were hired to replace them were hired at a much lower salary. This is a much more humane way to reduce costs of the School District than laying off personnel, eliminating programs, or increasing class size.

I urge you to pass this bill out of committee, and onto the Floor for a vote. It is a very real way to cut the costs of operating our school districts, and maintain the educational integrity of our schools. Thank you.

Signed: Lucy Hope
Testifier

Mat Su Educ Assn.
Representing (Optional)

PO Box 870887 Wasilla
Address

376-4796
Phone No.

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

M E M O R A N D U M   May 2, 1995

SUBJECT: CSHB 270(L&C)

TO: Representative Pete Kott, Chair
House Labor and Commerce Committee
Attn: George

FROM: Pamela Finley PF
Assistant Revisor of Statutes

Enclosed as you requested is a CS for HB 270, which adds a provision for a retirement incentive for the administrative director of court (sec. 8), taken from CSSB 137(HES). You instructed us not to change other bill sections to account for the addition of the administrative director, even though CSSB 137(HES), from which the new section was taken, did contain those changes in other bill sections. I am enclosing a sponsor blank floor amendment to make the appropriate corrections.

Please give me a call if you have any questions.

PF:glc
95-320.glc

Enclosure

9-GH0044\F.1
Finley
5/2/95

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 270(L&C)

Page 9, line 22, after "sec. 2(f)":

Insert "or sec. 8(e)"

Page 9, line 26, after "or (e)":

Insert "or sec. 8(d)"

Page 13, after line 17:

Insert a new subsection to read:

"(c) Unless provided otherwise in this Act, the definition set out in AS 22.25.900 applies to provisions in sec. 8 of this Act that relate to the judicial retirement system and members of the judicial retirement system."

Reletter the following subsection accordingly.

Page 13, after line 18:

Insert a new paragraph to read:

"(1) judicial retirement system" means the retirement system established for judges and justices in AS 22.25;"

Renumber the following paragraphs accordingly.

Michael H. Andre
1312 Selief Lane #30
Kodiak, Ak. 99615

The Honorable Pete Kott, Chair
House Labor and Commerce Committee
State Capitol
Juneau, Ak. 99801-1182

Dear Representative Kott,

I would like to express my support for the passage of House Bill 270, the Retirement Incentive program bill. I am supportive of the changes recently made to allow municipal employees a 3 year period during which a municipality may petition for a R.E.P (Retire Early Plan).

I am concerned that once this bill gets to the Senate, it may not be passed due to its inclusion in a bill revising the way in which retirements are computed for those being hired after March 1, 1995. I understand the need for finding new ways to help the PERS system become self-supportive. however, I believe that this is a bill that has far reaching effects and that it may be that more consideration and changes need to occur before the bill could pass.

Bill 270 needs to pass now in order to allow the State and local governments the flexibility they need to deal with the presently existing budgeting shortfalls. With the passage of this bill, the highest paid people will retire and allow the governments to keep the lower paid employees. Without this bill, governments will end up laying off the lower paid employees and keeping the higher paid ones, a practice that does not aid in fiscal management.

Sincerely,

Michael H. Andre

YAKUTAT SCHOOL DISTRICT
CITY AND BOROUGH OF YAKUTAT
Larry G. Eklund, Superintendent

100 Forest Hwy.
P.O. Box 429
Yakutat, Alaska 99689

DISTRICT OFFICE (907) 784-3317
HIGH SCHOOL (907) 784-3318
ELEMENTARY SCHOOL (907) 784-3364
FAX (907) 784-3446

April 28, 1995

To: L&C Committee Members
From: Larry Eklund - Supt.

As the superintendent of the Yakutat School District, I think it is important for you to understand my work load before all administrators are labeled "poor".

I work from 7 A.M. until 5 P.M. daily. I usually have a meeting, student help session or other school related event that begins by 7:00 P.M. at least three nights per week. I have actually averaged 3.72 nights this year. I work at least one if not two days each weekend.

I am the evaluator/supervisor for teachers in addition to being the federal programs coordinator, maintenance and classified personnel supervisor, purchasing official, principal for Yakutat Elementary School, principal for Yakutat Junior High School and Principal for Yakutat High School, person responsible for community newsletter, business manager, technical consultant for media, recreation coordinator, facilities manager, and many other duties - but I think you get my point.

We have cut as far as we can cut in administration. One person for 28 personnel and 164 students. Teacher evaluations are done, but challenged by NEA for any constructive criticism or cause for termination. The NEA quite frankly has not done a good job policing its own ranks and making sure that members are quality teachers.

If you desire more information about what I do, please call me at 907-784-3317.

FOR LABOR & COMMERCE

Alaska State Legislature

Please enter into the record my testimony to the Labor & Commerce
committee name

committee on HB 270 & CS's, dated 5-1-95.
bill/subject

I would encourage you to look closely at this Bill and its new Amendments. The retirement incentive plan is a positive step in getting people who are at the high end of the salary schedule off the payroll, either eliminating a position or allowing the agency to ~~[illegible]~~ hire an employee at less pay. This would be yet another way to help reduce high budgets in all State agencie areas. Don't allow amendments to be attached that negate the essence of this bill.

Signed: Debra Fortune
Testifier

Representing (Optional)

Delta Jct POB 1093
Address

Ø
Phone No.

Alaska State Legislature

Please enter into the record my testimony to the Labor & Commerce
committee name

committee on HB 270 + CS, dated 5-1-95
bill/subject

As you're aware the military is going to severely downsize Ft. Greely. The affect on the community of Delta Jct. will be devastating. You can help by passing HB270. Passing this bill will allow some of the more expensive employees the opportunity to retire, allowing for a decrease in revenue spent on wages, plus it will allow other employees the chance to retain jobs that might otherwise be lost. Passage of this bill will also open up jobs in other areas across the state, easing employment pressures for those that will lose there jobs because of this downsizing.

Please take advantage of the opportunity to help fellow Alaskans by passing HB270.

Signed: Harry Cooper
Testifier

Representing (Optional)

HC 60 Box 3530
Address

895-4577
Phone No.

05/01/95	LEGISLATIVE TELECONFERENCE NETWORK SYSTEM	LTN1150
15:02:54	PARTICIPANT LIST (ALL PARTICIPANTS)	BY:KOD
TCN:50691	SCHEDULED FOR:05/01/95 15:00 TO 17:00	FOR:KOD

PUBLIC HEARING HOUSE LABOR & COMMERCE

LOCATION:KODIAK

HB 270	MR	MICHAEL	ANDRE		TESTIFY
HB 270	MR	GARY	BLOOMQUIST	CITY MANAGER	TESTIFY

05/01/95	LEGISLATIVE TELECONFERENCE NETWORK SYSTEM	LTN1150
15:03:19	PARTICIPANT LIST (ALL PARTICIPANTS)	BY:KTN
TCN:50691	SCHEDULED FOR:05/01/95 15:00 TO 17:00	FOR:KTN

PUBLIC HEARING HOUSE LABOR & COMMERCE

LOCATION:KETCHIKAN

HB 270	MR.	MARK	LIVINGSTON	TESTIFY

THE SEAL OF THE STATE OF ALASKA

Official Business

COMMITTEE:

DATE:

SIGN-IN

Subject of meeting:

HB 270

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
JACK KREINHEDER			OMB	Yes
Phyllis Oleta	411 Seventh St	586-2008	Ak Marine Hwy	yes
James Tedford	9367 Rivercourt way	789-6476	Parent	Yes
BOB STALNAKER			RETIREMENT & BENEFITS	IF NEEDED

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

<u>MEMORANDUM</u> February 22, 1995

SUBJECT: Sectional Summary of CFAB Bill Draft
(Work Order No.9-LS0584\F, 2-14-95)

TO: Representative Alan Austerman
Attn: Amy Daugherty

FROM: TB
Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill draft. Please use this summary rather than the summary of February 17, 1995. This summary corrects a misstatement made in Section 9 of the earlier summary and rewrites the section.

As a preliminary matter, note that a sectional summary of a bill draft should not be considered an authoritative interpretation of the bill draft and the bill draft itself is the best statement of its contents.

<u>Section 1</u> corrects the CFAB cross-references to conform to the new CFAB provisions.

<u>Section 2</u> corrects the CFAB cross-references to conform to the new CFAB provisions.

<u>Section 3</u> corrects the CFAB cross-references to conform to the new CFAB provisions.

<u>Section 4</u> corrects the CFAB cross-reference to conform to the new CFAB provisions.

<u>Section 5</u> corrects the CFAB cross-reference to conform to the new CFAB provisions.

<u>Section 6</u> corrects a CFAB cross-reference to conform to the new CFAB provisions.

<u>Section 7</u> corrects a CFAB cross-reference to conform to the new CFAB provisions.

<u>Section 8</u> establishes the Alaska Commercial Fishing and Agriculture Bank. Provides that the exercise of bank powers is considered to be for a public purpose. Exempts the bank from the Alaska Banking Code and the Alaska Cooperative Corporation Act in the bank's structure, operations, and exercise of its powers.

Section 9 authorizes the bank to issue certain shares of stock in order to acquire and accumulate capital. Allows the state, through the Department of Revenue, to purchase the stock shares. Requires the bank to repurchase the state's shares in the bank that exceed $1,000,000. Sets a time for the repurchase. Authorizes the commissioner of commerce to appoint a receiver to manage the bank until the shares are repurchased, if the bank fails to make the repurchase within the set time. Gives the nonvoting, preferred stock shares of the state priority for redemption if there is a liquidation of the bank, after payment of all legal obligations of the bank.

Section 10 establishes a board of directors to govern the bank. Establishes the number of directors, the method of appointment and election, the duration of the terms, the staggering of the terms, the bases for removal from the board, the method of removal, the quorum for transacting business, the election of officers for the board, and the compensation the members will receive. Prohibits a board member from voting on a bank transaction under this chapter if the member is a party to the transaction.

Section 11 contains provisions about the officers and employees of the bank. Requires the board to employ a president. Restricts who can be president. States that the president serves at the pleasure of the board. Requires the board to appoint those officers provided for in the bylaws and as the board determines necessary for the bank. Limits who can be an officer. Authorizes the president to hire employees for the bank. Gives approval of salaries to the board. States that employees are not state employees and exempts them from the public employees retirement system chapter.

Section 12 states that the bank is to be structured and run as a cooperative corporation. Directs the board to issue membership stock shares. States that the membership stock may be issued to persons eligible to transact business with the bank. Allows the board to establish one or more mechanisms by which certain persons are required to provide or establish capital ownership in the bank.

Section 13 authorizes the board to adopt, alter, amend, or repeal bylaws for running the bank.

Section 14 allows the bank to indemnify its directors, officers, and employees. Allows the bank to maintain insurance on their behalf. Requires the indemnification and insurance to comply with an indemnification and insurance provision in the corporations code.

Section 15 states that the state pledges to and agrees with a lender to the bank that the state will not change the bank's powers and rights under this chapter to fulfill the terms of a contract made by the bank with the lender, or otherwise impair the lender's rights and remedies with regard to the bank. Indicates the limitations of the pledge.

Section 16 requires the board to publish an annual report to the bank's members and make the report available to the governor, legislature and the public. Indicates what the report must contain. Authorizes the board to publish other appropriate reports.

Section 17 lists the general powers of the bank.

Section 18 describes the lending powers of the bank, including to whom and for what purposes the bank may lend. The powers include making loans for limited entry permits and obtaining the pledge of a limited entry permit as security for a loan.

Section 19 allows a limited entry permit to be pledged as security for a loan. Requires the bank, after the loan has been paid, to certify the repayment to the Commercial Fisheries Entry Commission, so that the Commission can amend the permit certificate to list the equitable owner as the holder. Requires the annual permit cards to be in the name of the equitable owner, who remains responsible for compliance with permit requirements. States that co-borrowers and guarantors on the loan have no right in the pledged permit. Allows the equitable owner of a pledged permit to nominate a person to whom the permit may be transferred if the pledge is foreclosed.

Section 20 lists the purposes for which a permit may be pledged as security for a loan from the bank.

Section 21 adds five sections.

Sec. 44.81.241 requires the bank to notify the borrowers and guarantors (on a loan for which a limited entry permit is pledged) if there is a default on the loan. Lists what information must be included in the notice. This information includes a statement that the default may be cured under certain conditions.

Sec. 44.81.243 provides that if the borrowers and guarantors (on a loan for which a limited entry permit is pledged) fail to cure a default, the entire loan indebtedness becomes due and the bank can take any legal action to collect the loan. If the bank forecloses on the permit pledge, the section allows the bank to proceed with the foreclosure and its other remedies in any order the bank selects.

Sec. 44.81.245 allows the bank to foreclose on a permit pledge by sending a notice of foreclosure. Specifies how the notice is to be sent and what the notice must include.

Sec. 44.81.247 states that the equitable interest in the pledged permit terminates automatically without further notice after the foreclosure notice if the loan is not paid in full within the time allowed. Directs the Commercial Fisheries Entry Commission to cancel the entry permit card of the equitable owner of the permit when the commission receives a certificate of termination containing a copy of the required notices.

Sec. 44.81.249 authorizes the bank to cancel its initial notice of default and a foreclosure notice. Authorizes the bank to extend the time for curing the default. Allows the bank to personally deliver the notices rather than using certified mail.

Section 22 directs the bank, after foreclosing an entry permit pledge, to determine if the permit is subject to the buy-back program. If it is, directs the bank to offer the permit to the commission for the price of the outstanding indebtedness on the loan.

Directs the bank to sell the permit to an eligible person if the permit is not subject to the buy-back program or if the commission fails to buy back the permit within a certain time. Requires the bank to give preference to a state resident under certain circumstances. Requires the bank to pay the borrower the sale proceeds that exceed the indebtedness.

Allows the equitable owner or former equitable owner to nominate a qualified person to assume the loan at any time before foreclosure or within 30 days after foreclosure. Requires transfer of the permit to the nominee when the nominee assumes the loan.

States that the section doesn't affect certain other remedies of the bank.

Section 23 provides for the legislative auditor to cause the bank to be audited. Gives the legislative audit division access to the bank's records. Gives the division specific powers to carry out the audit.

Prohibits the legislative auditor and the auditor's employees from disclosing information acquired during an audit, unless required by law or court order.

Requires the bank to be audited annually by independent outside auditors. Allows the legislative auditor to confer with the outside auditors and to review the audit work papers. Directs the bank board to engage the auditors. Requires the bank to submit copies of the audit to the legislative auditor.

Requires state bank examiners to perform an annual qualitative examination and evaluation of the banks. Provides for payment of a fee for the examination. Directs the examiners to report to the board on the examination. Requires the examiners to prepare a summary report evaluating the bank's loan portfolio quality and addressing bank policies, practices, and management. Directs the examiners to distribute copies of the summary report to the bank, the legislature, and the governor. Subjects the other records related to the examination to a confidentiality and retainage provision in the state banking code.

Section 24 allows the bank to revoke certain distributions, redemptions, and payments if the distribution, redemption, or payment remains unclaimed for a specified period of time. Indicates that the revoked amount may revert to an unallocated capital account of the bank under certain conditions. Provides that the distribution, redemption, or payment is not subject to the state's unclaimed property provisions.

Section 25 amends the definition of "member of the bank" for the CFAB chapter.

Section 26 adds new definitions to the CFAB chapter.

Section 27 repeals certain present CFAB provisions.

Section 28 provides transition guidelines for the new provisions

If I may be of further assistance, please advise.

TLB:lmb:pl
95-127.lmb

CFAB SUMMARY - HB 284

<u>Sec. 1</u>
thru
<u>Sec. 7</u>

These are not substantive changes. The only purpose of these sections is to conform references in the Limited Entry Act to AS 44.81 as renumbered by this legislation.

<u>Sec. 8</u> AS 44.81.010(a) This is essentially a restatement, but also clarifies and makes more comprehensive the exemptions from the banking code and cooperative code.

<u>Sec. 9</u> AS 44.81.010(b) This addresses the technical difference between "operating funds" and "capital funds"; it modifies the 20-year repurchase requirement to provide that the state will remain a permanent owner of CFAB at a minimal level of $1.0 million, which rationalizes CFAB's "special" status (and which also eliminates the irresolvable conflict between the existing statute as a whole and its Sec. 44.81.220); it identifies the department of revenue as the nominal owner of the state's stock (a reflection of the existing reality); and it expresses a means for the state to take control and assure repurchase of its stock, if necessary, without resorting to a process which would place it in conflict with CFAB's individual member-owners. Finally, it makes clear that in liquidation all other owners' interests are subordinate to that of the state.

<u>Sec. 10</u> AS 44.81.020(a) This clarifies that the board's role is one of governance rather than of active management of CFAB. It provides for limited expansion of the board, to accommodate practical necessities as may be determined by the board, while permanently retaining a state presence through two gubernatorial appointments.

(b) thru (e) These paragraphs are intended to group board-related matters in this section, and they incorporate -- with minor changes -- the substance and provisions of existing Secs. 44.81.020(a), 44.81.090, 44.81.100, and 44.81.190.

(f) This paragraph re-states existing Sec. 44.81.110. It also provides for recognition of the need for directors to commit time for travel to and from meetings and/or to occasionally (1) represent the bank for business, ceremonial, or promotional purposes; (2) provide testimony in litigation to which the bank is a party; or (3) attend business-related seminars, conferences, and training sessions.

Sec. 11 AS 44.81.031(a)

thru (c) This covers essentially the same matters as in existing Sec. 44.81.070(a)-(c). The principal differences are to provide more flexibility in official titles; to make clear that active officers may not be directors; to remove the requirement for the board to prescribe the duties of employees (which the board is not competent to do); and to leave the matter of professional services engagements to be addressed as policy.

Sec. 12 AS 44.81.041(a)

thru (c) This establishes that CFAB is structured, and operates, as a cooperative -- a matter which has heretofore been addressed only by inference in existing Sec. 44.81.060 and by legislative history.

Sec. 13 AS 44.81.051. This parallels existing Sec. 44.81.040.

Sec. 14 AS 44.81.061. This is a revision of existing Sec. 44.81.210(a)(21), which is 15-year-old language, and makes available to CFAB the same indemnity provisions as are available to private corporations generally and as were expressed in 1989 amendments to the state's Corporation Code.

Sec. 15 AS 44.81.101(a) This is a revision of existing Sec. 44.81.160. It eliminates cumbersome language, it recognizes that CFAB has access to a range of potential lenders, and it clarifies that the state's "pledge" is a simple non-disturbance provision.

(b) This emphasizes that the state's "pledge" does not relieve CFAB of sole responsibility for its obligations.

Sec. 16 AS 44.81.200. This is changed little from existing Sec. 44.81.200. The primary difference is elimination of a somewhat presumptuous and unrealistic requirement for a discourse on the macro-effects of CFAB's activities.

Sec. 17 AS 44.81.210.

(1) Existing Sec. 44.81.210(a)(5).
(2) Existing Sec. 44.81.210(a)(6).
(3) Existing Sec. 44.81.210(a)(15).
(4) Existing Sec. 44.81.210(a)(16).
(5) Existing Sec. 44.81.210(a)(18).
(6) A new paragraph which confirms CFAB's ability to actively and/or financially support the efforts of individual fishermen or farmers, or groups

thereof, to pursue such things as new products, alternative markets, new harvesting techniques, etc.

(7) Existing Sec. 44.81.210(a)(11).

(8) Existing Sec. 44.81.210(a)(17).

(9) Existing Sec. 44.81.210(a)(13).

(10) Existing Sec. 44.81.210(a)(14).

(11) Existing Sec. 44.81.210(a)(9).

(12) Existing Sec. 44.81.210(a)(12).

(13) Existing Sec. 44.81.210(a)(8).

(14) A new paragraph which will permit CFAB to accomplish necessary or desirable purposes through activities which may be burdened with inherent potential liabilities or other exposures which are inappropriate to its basic function as a lender or to the interests of its members. An example might be a situation in which CFAB has acquired a fish processing plant through foreclosure and cannot find a buyer but encounters an operator willing to lease and operate the plant for a season. Fear of jeopardizing CFAB's total assets through ownership of an operating facility has caused CFAB to consider transferring ownership to a subsidiary in the past; this paragraph clearly establishes the right to do so. Another application of this authority would be creation of an entity whereby CFAB might offer its expertise and capacity in vessel and marine mortgage documentation as a service to fishermen and other lenders.

(15) A new paragraph which would permit CFAB to function as a venture capitalist in certain

situations related to commercial fishing or agriculture.

(16) A slight broadening of the provisions of existing Sec. 44.81.210(a)(4).

(17) Existing Sec. 44.81.210(a)(19).

<u>Sec. 18</u> AS 44.81.215. (1) A revision to the first part of existing Sec. 44.81.210(a)(1), the inserted reference to married couples and the somewhat different approach to membership are to confirm CFAB's ability to deal with instances where, purely for credit purposes, CFAB requires a non-fishing spouse or other person to be a co-borrower on a loan.

(2) The second part of existing Sec. 44.81.210(a)(1) with slight revision.

(3) Existing Sec. 44.81.210(a)(20), except that a two-year residency requirement is removed in response to litigation which has occurred since enactment of the original statute.

(4) Existing Sec. 44.81.210(c).

(5) Existing Sec. 44.81.210(a)(23), except for removal of a limitation which can place CFAB in conflict with the Uniform Commercial Code and work to the disadvantage of the original borrower and CFAB's member-owners.

(6) Existing Sec. 44.81.210(a)(17), except for a language change to permit CFAB to subordinate its position to other kinds of creditors than "a private lending institution."

(7) Existing Sec. 44.81.210(a)(22).

(8) A revision of existing Sec. 44.81.210(a)(10). The revision permits CFAB to participate in loans to qualified applicants for eligible purposes while eliminating the sometimes insurmountable complications of coordinating CFAB's cooperative features with the more basic requirements of other lenders. (The potential volume of such participations is limited by Federal tax law and IRS Code treatment of CFAB as a cooperative.)

(9) A new subparagraph which extends CFAB's authority under the preceding subparagraph to situations where another lender has a loan in place and subsequently seeks a participant.

(10) Existing Sec. 44.81.210(a)(24).

Sec. 19 AS 44.81.231
and
Sec. 20 AS 44.81.236. These are revisions to existing Secs. 44.81.230 and 44.81.235. Although the legislative intents and philosophical/political inferences of the current sections have been maintained, there are both technical or procedural adjustments as well as changes to substance incorporated into the revisions. An example of a technical adjustment appears in the substitution of "boat(s)" for "vessel" in Sec. 236. "Boat" is used throughout other sections of the proposed versions of AS 44.81. and is a generic term. "Vessel" has a particular meaning under some Federal law, a meaning which would arguably exclude certain kinds of "boats" used by many Alaska fishermen. This

change, therefore, is simply to eliminate the potential for costly legal contentiousness.

Another such adjustment appears in the elimination of language in existing Sec. 44.81.230(a) which addresses a certification by the Limited Entry Commission. This is an unnecessary step since the effect is achieved "automatically" -- the Commission will not transfer a permit to a purchaser who is not qualified under AS 16.43 and under its regulations.

The substantive changes, all of which appear in Sec. 44.81.236, are more meaningful and may be summed up as broadening the circumstances or purposes for which a permit may be used as loan collateral. They reflect (1) developments affecting both commercial law and fishermen's operating practices since CFAB's statute was originally enacted; (2) the fact that investments in permits have become, and continue to be, an increasingly significant portion of most fishermen's capital bases; and (3) the difficulty of distinguishing the "total lifestyle" requirements from the "commercial fishing" requirements of a resident Alaska fisherman who is wholly, or nearly wholly, dependent upon commercial fishing income.

The most significant substantive changes in Sec. 44.81.236 are:

Par. (2). This reflects the current and potential imposition of new schemes for the allocation or limitation of harvesting rights, which tend to represent opportunities or requirements for increased participation, diversification, and/or stability for resident fishermen.

Par. (5). Many resident fishermen have by choice or necessity committed most of their families' financial resources to their commercial fishing operations. Under the existing statute, CFAB may not make a loan to a resident fisherman -- secured by a permit pledge -- to pay for cancer treatment for his/her spouse, for example. But the fisherman could sell the permit, use the proceeds to pay the medical expense, and then borrow from CFAB to buy another permit! The latter approach is not only cumbersome and burdened with direct costs and risks, but its timing could quite easily result in unnecessary and costly tax consequences for the fisherman. Under the proposed revision, CFAB could accept a pledge of the permit to secure a loan to pay for the cancer treatment.

Par. (6). On numerous occasions, CFAB has been approached by individual resident fishermen, or groups of such fishermen, for loans to finance involvement in enterprises such as added value processing, new market development, chartering or tendering, diversification into new fisheries, etc. Many, but not all, such proposals appear to be commercially feasible and bankable but are stymied by the fact that there is little or no collateral available to be offered other than a pledge of permits. This provision would allow fishermen in such situations to build upon their established capital bases.

Par. (7). There is a popular perception, supported in part by historical fact, that fishermen's permits are totally insulated from the intrusions or predations of creditors. However, evolving case law -- as well as acts of the Alaska state legislature itself -- has resulted in an increasingly broad range of vulnerability. This paragraph gives creditworthy resident fishermen an opportunity to avoid a permit loss through seizure by borrowing to meet the offending obligation. Potential seizure is not the only threat addressed, however. A not uncommon circumstance is for a Court in a divorce proceeding to order that a permit be sold so that proceeds might be split; this paragraph offers an alternative source of cash proceeds.

Par. (8). As with any lender, there are costs associated with borrowing from CFAB (including an investment required by its cooperative structure). This paragraph confirms that payment of those costs and investments is an appropriate use of proceeds of a loan secured by the pledge of a permit.

Sec. 21 AS 44.81.241
thru
AS 44.81.249. These sections address CFAB's formal response to a default on a loan secured by pledge of a permit as well as the foreclosure process which must be followed and constitute a revision to existing Sec. 44.81.240. Again the original legislative intents and philosophies have been maintained. The procedures have been restructured, however, to reflect changes in CFAB's status since the original statute was enacted; to

permit CFAB to proceed against other collateral prior to resorting to foreclosure of the permit pledge; to provide more time (120 days rather than 90 days) for the borrower to respond to initiation of the process; and to allow CFAB to suspend the foreclosure process in the event of promising "last-minute" actions by the borrower to develop an alternative. The revision does not change the circumstances under which CFAB may declare a default or proceed against a permit pledge.

The language of this part of CFAB's original statute paralleled that of the law governing the state's own commercial fishing loan program. Elsewhere in its statute, CFAB was then identified as "an instrumentality of the state." For reasons unrelated to this issue, CFAB's statute was almost immediately amended to establish its current status as a private commercial lender.

Under applicable law, and as the issuer of a limited entry permit, the state may reserve to itself certain rights and privileges related to that permit; this principle effectively gives the state's commercial fishing loan program a "special" status with regard to foreclosure of a permit pledge. As a private commercial lender, however, CFAB is held to somewhat different standards under both case law and relevant statutes. As reflected in this section, CFAB must follow a more complex and more precise foreclosure procedure than is contemplated by existing Sec. 44.81.240.

Sec. 22 AS 44.81.250. This section deals primarily with the disposition of a limited entry permit following the foreclosure of its pledge. No aspect of the ultimate outcome, as it affects the original borrower, is changed by this revision, but some disordered or illogical steps in the process have been changed or eliminated.

The nomination feature, a somewhat odd concept (odd in the sense that it is almost impossible to imagine a commercial lender ignoring the potential for a viable assumption whether or not there is a statutory right of nomination), has been changed. Under the existing statute, it is only after a minimum of 30 days following foreclosure that the borrower is given a 30-day right of nomination. Furthermore, it is not clear that CFAB presently has the right to require creditworthiness on the part of a proposed assumptor in all cases.

This revised section establishes the borrower's right to propose an assumptor at any time prior to foreclosure and during a 30-day period immediately following foreclosure. It also establishes that CFAB may require a finding of the proposed assumptor's creditworthiness.

This revised section also eliminates the existing discussion of assumption of the loan by a person chosen by lottery from a list maintained by the entry commission. The commission does not maintain such a list. Moreover, this process could only work to the disadvantage of the (former) borrower. An aspiring assumptor, chosen by lottery, would presumably assume the loan only if his or her perception were that the permit's value exceeded the total indebtedness. If that perception were valid, the excess value would accrue to the benefit of the assumptor rather than becoming excess proceeds to be paid to the original borrower upon sale of the permit, by the bank, for an amount equal to or close to the perceived value.

Sec. 23 AS 44.81.270. This incorporates the provisions of existing Secs. 44.81.270 and 44.81.280, and provides a more logical and structured treatment of the three kinds of audits and examinations to which CFAB is subject. It retains and confirms accountability to the state, primarily through reports to the legislature. A significant addition appears in the third sentence of paragraph (c), which statutorily memorializes an existing policy under which CFAB's auditors are responsible to the board of directors rather than to management.

Sec. 24 AS 44.81.300. This is a totally new subject and section, occasioned by CFAB's existance as a cooperative, and its language is taken from the Alaska Cooperative Corporation Act. It addresses unclaimed property which arises from a member's participation as a cooperative member, and provides for such property to revert to the benefit of all other existing and future members. All other forms of unclaimed property would remain subject to forfeiture to the state under the general unclaimed property statute.

Sec. 25 AS 44.81.350(3) This revises the definition of "member of the bank" and is intended to recognize that members and patrons may, and usually do, own residual interests in the bank other than retained patronage earnings.

Sec. 26 AS 44.81.350. This defines "commercial agriculture" to provide context within which CFAB can resolve questions which have repeatedly arisen throughout its history. There are also three new definitions, added for the purpose of clarity.

SECTIONAL REFERENCES TO HB

Chapter 81. Commercial Fishing and Agriculture Bank.

Cross references. — For legislative findings and purpose in connection with the enactment of this chapter, see §§ 1 and 2, ch. 159, SLA 1978 in the Temporary and Special Acts.

8 **Sec. 44.81.010. Alaska Commercial Fishing and Agriculture Bank.** (a) There is established the Alaska Commercial Fishing and Agriculture Bank. The exercise by the bank of the powers conferred by this chapter is considered to be for a public purpose. The bank is exempt from the provisions of AS 06.05 (Alaska Banking Code) and AS 10.15 (Alaska Cooperative Corporation Act) in the exercise of powers granted by this chapter.

9 (b) For the purpose of the funding of the bank's operations, the board of directors may issue nonvoting, preferred shares of stock in the bank and determine the value of each share. The state, through appropriate agencies, may purchase the nonvoting, preferred shares issued by the bank. Shares purchased by the state shall be repurchased by the bank within 20 years after their purchase. If the bank fails to repurchase the shares within 20 years, the commissioner of commerce and economic development may dissolve the bank.

(c) *[Repealed, § 43 ch 85 SLA 1988.]* (§ 3 ch 159 SLA 1978; am § 1 ch 53 SLA 1979; am § 12 ch 122 SLA 1980; am § 1 ch 109 SLA 1981; am § 65 ch 21 SLA 1985; am § 1 ch 49 SLA 1987; am § 43 ch 85 SLA 1988)

Revisor's notes. — Formerly AS 44.64.010. Renumbered in 1980.

Cross references. — For legislative findings in connection with the 1981 amendments to this section, see § 9, ch. 109, SLA 1981 in the Temporary and Special Acts.

NOTES TO DECISIONS

Status for maritime foreclosure proceedings. — The Alaska Commercial Fishing and Agriculture Bank is not a state agency for purposes of maritime lien foreclosure proceedings. Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast, 715 P.2d 707 (Alaska 1986).

10 **Sec. 44.81.020. Board of directors.** (a) The bank shall be managed by a board of directors consisting of seven members. Five board members shall be elected by the members of the bank, with at least one of the elected board members being an Alaska farmer, and two board members shall be appointed by the governor until the repurchase of all the nonvoting, preferred shares initially issued by the bank and purchased by agencies of the state. After repurchase is completed, all board members shall be elected by the members of the bank. The board members shall annually elect a chairman from among themselves. The purpose of the board is to manage the assets of the bank.

(b) The governor shall designate the two members whose positions on the board will remain appointive for the period set out in (a) of this section. (§ 3 ch 159 SLA 1978; am § 2 ch 53 SLA 1979; am § 3 ch 51 SLA 1980; am § 2 ch 49 SLA 1987)

Revisor's notes. — Formerly AS 44.64.020. Renumbered in 1980.

Sec. 44.81.030. Articles of incorporation. [Repealed, § 66 ch 21 SLA 1985.]

13 – 27 **Sec. 44.81.040. Bylaws.** The board of directors shall adopt the initial bylaws of the bank. The power to alter, amend, or repeal the bylaws is vested in the board of directors. The bylaws may contain provisions for the regulation and management of the affairs of the bank not inconsistent with this chapter or other provisions of law. (§ 3 ch 159 SLA 1978)

Revisor's notes. — Formerly AS 44.64.040. Renumbered in 1980.

27 **Sec. 44.81.050. Membership meetings.** Upon filing the articles of incorporation, the board of directors, with the assistance of the commissioner of commerce and economic development or the commissioner's designee, may hold public meetings throughout the state for the purpose of explaining to members of the commercial fishing and farming industries the functions of the bank and to encourage membership in the bank. (§ 3 ch 159 SLA 1978)

Revisor's notes. — Formerly AS 44.64.050. Renumbered in 1980.

12 & 27

Sec. 44.81.060. Membership stock. (a) The board of directors shall issue shares of membership stock in the bank in the amounts and with the value determined by the board and stated in the articles of incorporation.

(b) Loans made to members of the bank under the provisions of this chapter shall be in accordance with a schedule of maximum amounts adopted by the board of directors based upon proportional ownership of shares of capital stock. (§ 3 ch 159 SLA 1978; am § 4 ch 51 SLA 1980)

Revisor's notes. — Formerly AS 44.64.060. Renumbered in 1980.

11 & 27

Sec. 44.81.070. President; officers and employees. (a) The board of directors shall employ a president. The president may not be a member of the board of directors. The president serves at the pleasure of the board of directors. The president is the chief executive officer of the bank.

(b) The board of directors shall appoint one or more vice-presidents, as prescribed in the bylaws of the bank, a secretary, a treasurer, and other officers as the board of directors considers necessary. The board of directors may appoint one person to more than one of the positions described in this subsection. The officers described in this subsection are not required to be members of the board of directors.

(c) The president may hire employees of the bank reasonably necessary for the efficient performance of the functions of the bank. Subject to the approval of the board of directors, the president may also contract for and engage the services of professional and technical advisors. The board of directors shall prescribe the duties and compensation of employees of the bank. Employees of the bank are not employees of the state and are not considered to be employees of a public organization for the purposes of AS 39.30.150 — 39.30.180 or AS 39.35. (§ 3 ch 159 SLA 1978; am § 5 ch 51 SLA 1980; am § 2 ch 109 SLA 1981)

Revisor's notes. — Formerly AS 44.64.070. Renumbered in 1980.

Sec. 44.81.080. Exempt status. [Repealed, § 10 ch 109 SLA 1981. For current law see AS 44.81.070(c).]

10 & 27

Sec. 44.81.090. Term of office and removal. The members of the board shall serve for terms of three years, and they may serve successive terms. Terms shall be staggered. An elected member of the board who releases confidential information in violation of AS 44.81.260, commits serious ethical misconduct that relates to the member's fitness to serve as a member of the board, or maintains a chronically and irredeemably substandard borrowing relationship with the bank may be removed from the board by affirmative vote of a majority of the members of the board. (§ 3 ch 159 SLA 1978; am § 3 ch 53 SLA 1979; am § 3 ch 49 SLA 1987)

Revisor's notes. — Formerly AS 44.64.090. Renumbered in 1980.

10 & 27

Sec. 44.81.100. Quorum. A majority of the members of the board constitutes a quorum for the transaction of business and the exercise of the powers and duties of the board. (§ 3 ch 159 SLA 1978)

Revisor's notes. — Formerly AS 44.64.100. Renumbered in 1980.

10 & 27

Sec. 44.81.110. Compensation of board members. Members of the board receive compensation not to exceed $250 as determined by the board for each day the board meets if they attend the meeting. (§ 3 ch 159 SLA 1978; am § 3 ch 109 SLA 1981)

Revisor's notes. — Formerly AS 44.64.110. Renumbered in 1980.

NOTES TO DECISIONS

Cited in Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast, 715 P.2d 707 (Alaska 1986).

Secs. 44.81.120 — 44.81.150. Bonds of the bank; trust indentures and trust agreements; validity of pledges; nonliability on bonds. [Repealed, § 10 ch 109 SLA 1981.]

15 & 27

Sec. 44.81.160. Pledge of the state. The state pledges to and agrees with any lender to the bank and with the federal agency or regional institution of the federal farm credit system that loans or contributes funds in respect of a project, that the state will not limit or alter the rights and powers vested in the bank by this chapter to fulfill the terms of any contract made by the bank with the lender to the