ALASKA LEGISLATURE COMMITTEE FILES, 2005-2006 8672
11737 SENATE COMMUNITY & REGIONAL AFFAIRS

operation of a solid waste facility. While there are some statutory limitations on liability exposure of government subdivisions, such as those found in AS 9.65.070, the activities of a solid was' entity would for the most part not come under the scope of that protection. As a consequence, other than operating to minimize risk and maintaining generous insurance coverage, the municipal parties could all be jointly and severally liable for the entity's debts and obligations. Since there are many potential large liabilities in operating solid waste facilities, including pollution fines, personal injuries, property damage, service contract violations, and employment-related claims, we believe participating units of government will be better served, and will be more eager to participate, if they did not take on unlimited liability. This seems to be more important than the advantage of not requiring new legislation, though it is a judgment call to be made by the potential participants.

Authority. The E&E Memo did not find any drawbacks for the use of a statutorily constituted authority serving as the solid waste entity, other than the obvious point that it would require new legislation. The existing legislation for other kinds of authorities is far too limiting to be used for a solid waste entity. Since there are good statutory models to follow, unless there is some particular political opposition to enabling legislation that would all

Sample Ballot

Ballot Measures

BALLOT MEASURES

BALLOT MEASURE NO. 1
Constitutional Convention Question

Shall there be a Constitutional Convention?

YES ○
NO ○

BALLOT MEASURE NO. 2
Initiative Moving Location of Legislative Sessions
01CHGE

This bill would move all sessions of the state legislature to the Matanuska-Susitna (Mat-Su) Borough. If facilities fit for these sessions can not be found in that borough, sessions would be held in Anchorage until facilities are available in the Mat-Su Borough. The bill would repeal the requirements that before the state can spend money to move the legislature, the voters must be informed of the total costs as would be determined by a commission, and approve a bond issue for all bondable costs of the move.

Should this initiative become law?

YES ○
NO ○

BALLOT MEASURE NO. 3
Initiative on Gas Pipeline Development Authority
01GSLN

This bill would create the Alaska Natural Gas Development Authority (Authority) as a public corporation of the State. The Authority would acquire and condition North Slope natural gas, and construct a pipeline to transport the gas. The Authority's powers would include buying property or taking it by eminent domain, and to issue state tax-exempt revenue bonds. The gasline route would be from Prudhoe Bay to tidewater on Prince William Sound and the spur line from Glennallen to the Southcentral gas distribution grid. The Authority would operate and maintain the gas pipeline, ship the gas, and market the gas.

Should this initiative become law?

YES ○
NO ○

BACK Card 1 SEQ# 1

Back to Ballot Meausre List

HB

395

ALASKA STATE LEGISLATURE

REPRESENTATIVE KURT OLSON

- Co-Chair, Community and Regional Affairs
- Member, Resources

Session: January - May
State Capitol
Juneau, AK 99801-1182
Phone: 907-465-2693
Fax: 907-465-3835

Interim: May - December
145 Main Street Loop, Ste 221
Kenai, AK 99611
Phone: 907-283-2690
Fax 907-283-2763

Official Business

TO: Senator Bert Stedman - Chair
Senate Community and Regional Affairs Committee

FROM: Representative Kurt Olson KO

DATE: April 3, 2006

RE: Hearing on CSHB 395 (FIN) (am)

I respectfully request a hearing in the Senate Community and Regional Affairs Committee on HB 395, An Act relating to the period of the fire season, at your earliest convenience.

Attached please find a copy of the bill, sponsor statement, and zero fiscal note. Additionally please find letters of support and maps of major Kenai Peninsula fires and fire starts on the Kenai Peninsula from 1990 to 2005.

If you need any further information, please contact Konrad Jackson at ext. 2693.

Thank you for your attention to this request.

Email: Representative_Kurt_Olson@legis.state.ak.us

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 395(FIN)
(H) Publish Date: 3/6/2006

Revision Date/Time (Note if correction):
Dept. Affected: Natural Resources
Title: An Act Extending the Period of the Fire Season
RDU: Statewide Fire Suppression
Component: Fire Suppression Program
Sponsor: Olson
Requester: HFC
Component No.: 2705

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2006) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

Prepared by: House Finance Committee
Phone 465-4945/465-3779

Rep. Kevin Meyer, Co-Chair
Date 3/2/2006

Rep. Mike Chenault, Co-Chair

ALASKA STATE LEGISLATURE

REPRESENTATIVE KURT OLSON

- Co-Chair, Community and Regional Affairs
- Member, Resources

Session: January - May
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145 Main Street Loop, Ste 221
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Fax 907-283-2763

Official Business

SPONSOR STATEMENT

CSHB 395 (FIN) am FIRE SEASON START DATE

The spruce bark beetle kill on the Kenai Peninsula has created an enormous amount of dry grass and dead trees susceptible to lightning strikes and man made fires. The threat grows greater ever year.

For the past several years the climate in our area has been gradually warming earlier in the year, leaving wild areas dry and increasing the probability of a major wildfire early in or even before the start of the current fire season.

The largest uncontained fire on the Southern Kenai Peninsula ever recorded, the Tracy Avenue fire, started prior to May 1, 2005, threatening residents and property. This fire might have been contained had the equipment and personnel been available the first day.

The threat of early season fires is a statewide issue. These pre-green up fires are a very real threat in the Mat-Su Valley, the Anchorage bowl and the Fairbanks area. Since many of these fires are man made, they tend to be near populated areas thus increasing the risk to life and property.

Moving the fire season start date to April 1 will allow the state to become actively involved in fire prevention and control earlier in the fire season and hopefully stop the progress of a disastrous pre-summer fire.

The bill was amended to change the fire season end date to August 31 to allow for a zero fiscal note and to include an immediate effective date.

I respectfully ask for your support of this bill.

Email: Representative_Kurt_Olson@legis.state.ak.us

Fairbanks North Star Borough *Office of the Mayor*

809 Pioneer Road P.O. Box 71267 Fairbanks, Alaska 99707-1267 907/459-1300
Fax 907/459-1102
Email mayor@co.fairbanks.ak.us

February 12, 2006

Via Facsimile 907-465-2833

Co-Chair Mike Chenault
State Capitol
Juneau, Alaska

Via Facsimile 907-465-3476

Co-Chair Kevin Meyer
State Capitol
Juneau, Alaska

Subject: Letter In Support of HB 395: Fire Season Start Date

Dear Messrs. Co-Chairman Chenault & Meyer:

I am writing today in support of HB 395: Fire Season Start Date.

Recent fire seasons in Interior Alaska have made no small secret of the dangers faced within the Fairbanks North Star Borough. Most memorable to us all should be the 2004 Boundary Fire.

Changing the start of fire season from May 1st to April 1st is both necessary and appropriate. The Fairbanks North Star Borough's typical fire danger begins in early to mid May. However, supplies, crews, and other resources may not yet be in place to react to our needs without this legislation. Allowing our commissioner to screen crews and order supplies will prepare a necessary pool of resources for our area to draw upon at a critical juncture saving valuable time and resources during an incident.

The fiscal note attached to this legislation is minimal, and appears unable to incorporate the savings that will undoubtedly occur due to expedited response to incidence. I anticipate that adoption of this legislation would also produce a savings to the department as fires are contained before requiring additional crews and equipment, and a reduction in campaign fires is realized.

Please support this legislation with a recommendation of Do Pass.

Thank you.

Jim Whitaker, Mayor

cc: Representative Richard Foster
Representative Jim Holm
Representative Bruce Weyhrauch
Representative Reggie Joule
Representative Mike Hawker
Representative Mike Kelly
Representative Beth Kerttula
Representative Carl Moses

JW:jy/csm

Memorandum

To: Representative Kurt Olson

From: Dennis Steffy

Date: 17 February 2006

Subject: Bringing forward the fire date

Kurt, I strongly support bringing the date of the fire season forward as described in the Clarion recently. My property was totally burned off in the Gas Well Fire in the early spring of 1969 and is just now beginning to lose the aspects of a desert. I have property on the east side of Kachemak Bay and am suitably terrified that the Kachemak Bay State Park's standing and beetle kill adjoining my property will go someday and take us along with it.

I believe this bill is a good and necessary response to the changing conditions of our spring weather.

Introduced by:	Martin
Date:	01/17/06
Action:	Adopted
Vote:	8 Yes, 0 No, 1 Absent

KENAI PENINSULA BOROUGH

RESOLUTION 2006-008

A RESOLUTION REQUESTING THE ALASKA STATE LEGISLATURE TO AMEND ALASKA STATUTE 41.15.050 TO CHANGE THE FIRE SEASON START DATE FROM MAY 1 TO APRIL 1 OF EACH YEAR

WHEREAS, the Division of Forestry is the lead agency on the Southern Kenai Peninsula for wildland fire protection; and

WHEREAS, recent climate change on the Kenai Peninsula has resulted in warmer weather starting earlier in the year, which has dried out the wildland fuels earlier in the year, increased the length of the wildland fire threat, and raised the mean summer temperatures; and

WHEREAS, the spruce bark beetle infestation has left the Southern Kenai Peninsula with a continuous fuel bed of dead spruce and dry grass; and

WHEREAS, the population growth into the Southern Kenai Peninsula wildland urban interface is rapidly increasing; and

WHEREAS, lightning fires were a common occurrence on the Southern Kenai Peninsula in 2005; and

WHEREAS, the largest uncontained wildfire recorded on the Southern Kenai Peninsula, the Tracy Avenue fire, started before May 1, 2005, and threatened hundreds of residents; and

WHEREAS, the Tracy Avenue Fire could possibly have been contained the first day had equipment been available in the state; and

WHEREAS, the Tracey Avenue fire came at a time of relatively low and benign winds; an

WHEREAS, in the spring of 2005, fires were also burning in other areas of the state; and

WHEREAS, moving the fire season start date to April 1 will improve the state's ability to be prepared for fires earlier each year, potentially saving the state millions of dollars in firefighting costs;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

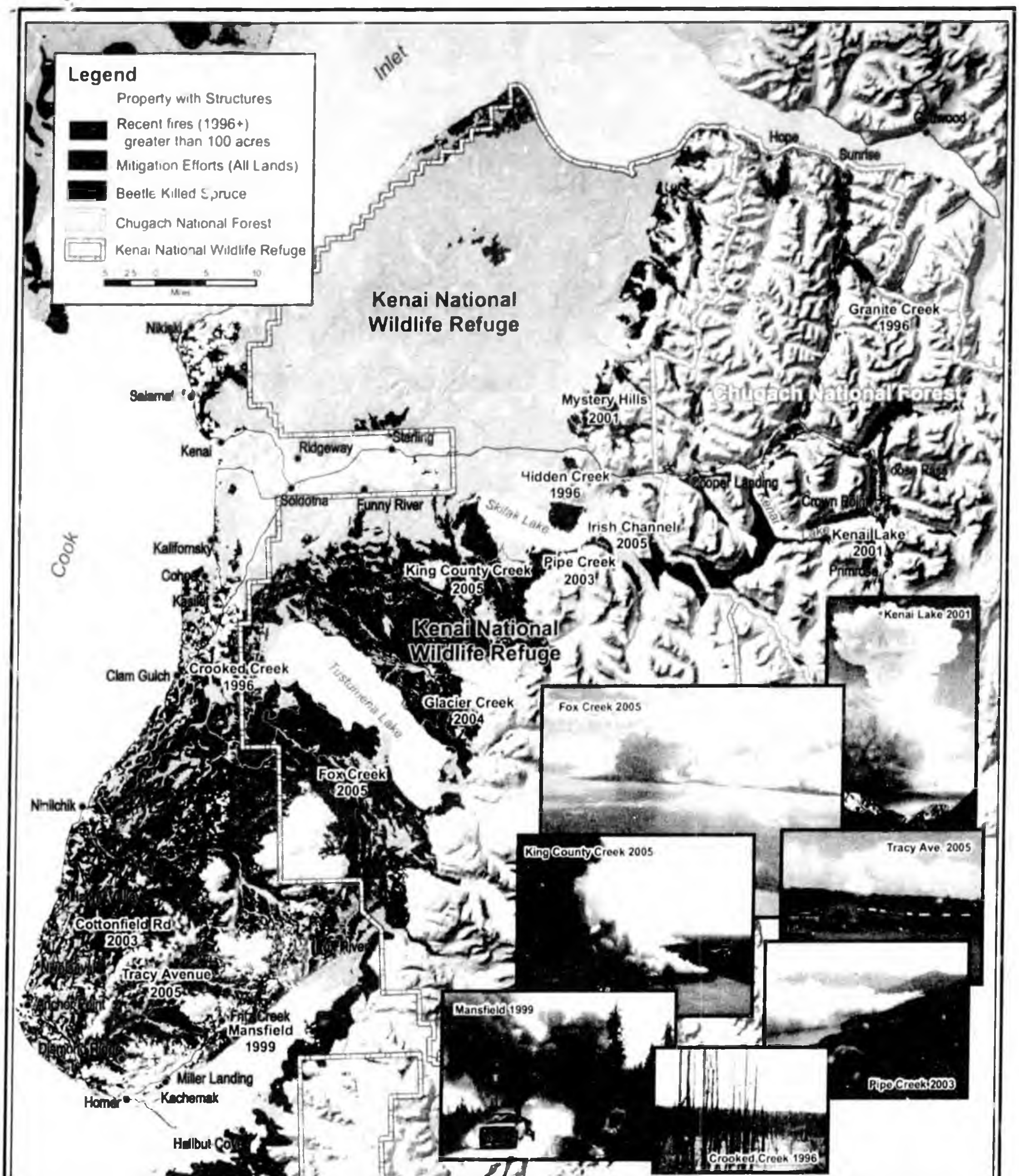
SECTION 1. To reflect these changes in natural dynamics the Kenai Peninsula Borough Assembly requests the Alaska State Legislature to amend AS 41.15.050 to make the fire season effective April 1, rather than May 1, of each year, as well as the fire training season effective the same date.

SECTION 2. That copies of this resolution be forwarded to Michael Menge, Commissioner of

Department of Natural Resources; Senators Albert Kookesh, Con Bunde, Tom Wagoner, and Gary Stevens; Representatives Mike Hawker, Woodie Salmon, Kurt Olson, Mike Chenault, and Paul Seaton.

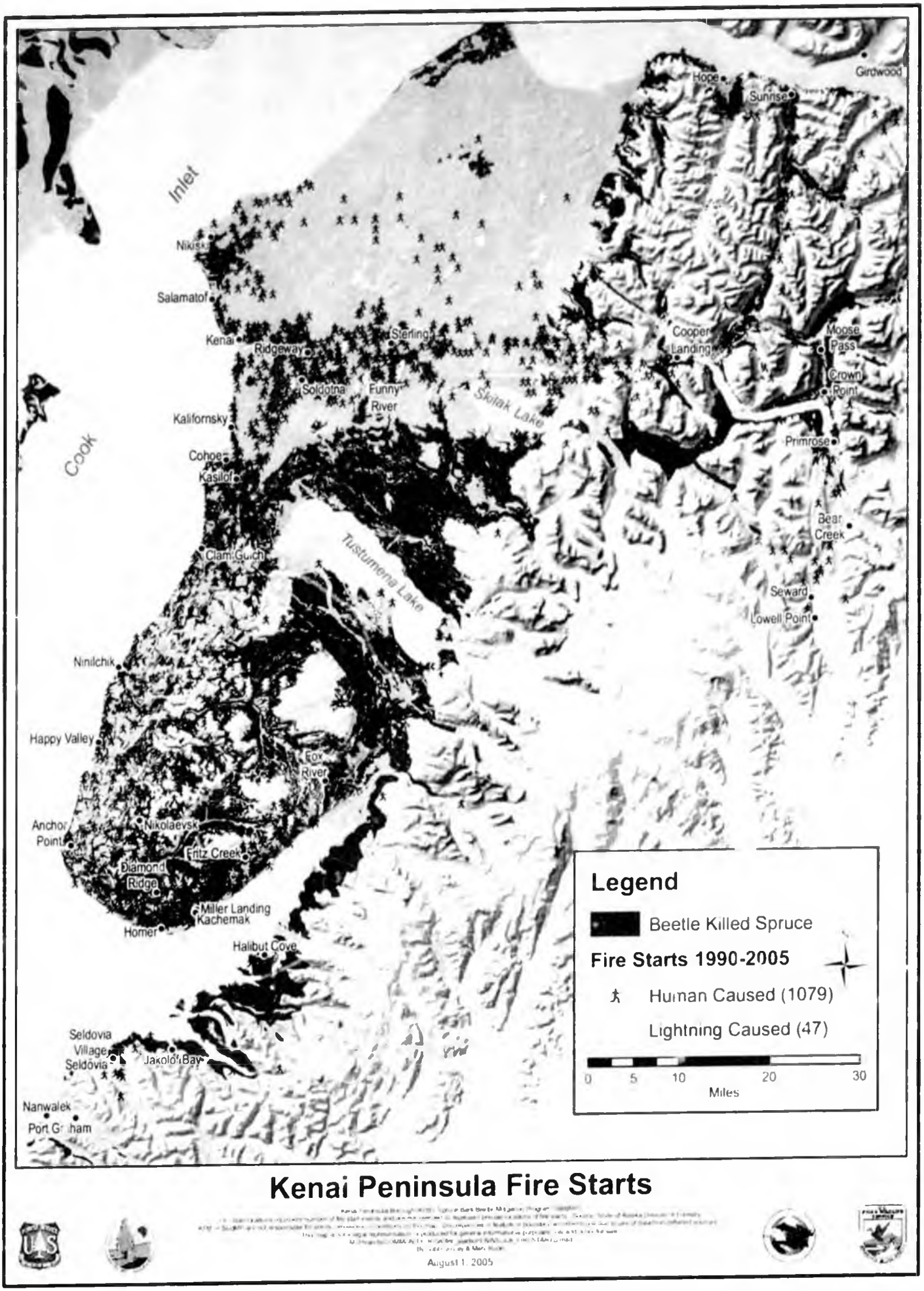
SECTION 3. That this resolution takes effect immediately upon its adoption

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 17TH DAY OF JANUARY, 2006.



Major Kenai Peninsula Fires 1996+

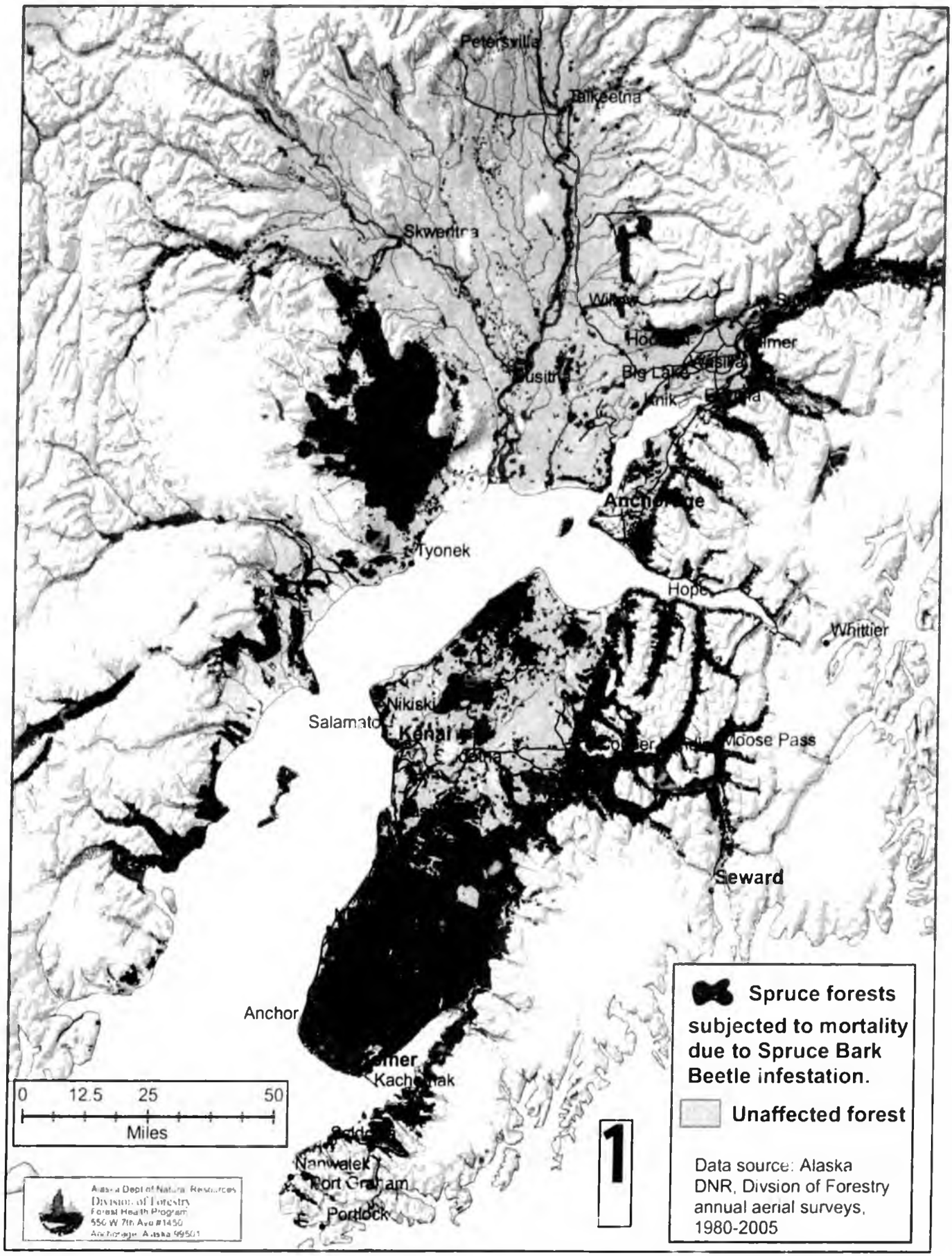
Total area greater than 77,000 acres



Kenai Peninsula Fire Starts

August 1, 2005

Southcentral Alaska Spruce Bark Beetle Outbreak, 1980 - 2005



HB

475

NEA-ALASKA

Affiliated with the National Education Association

TESTIMONY ON HB 475
TOM HARVEY, NEA-ALASKA EXECUTIVE DIRECTOR

Chair Stedman and members of the Senate Community & Regional Affairs Committee, my name is Tom Harvey and I serve as the Executive Director of NEA-Alaska. NEA-Alaska represents over 11,400 active public school employees and over 1,300 retirees. I appreciate the opportunity to testify on HB 475.

Today we are here looking at HB 475 which "is a clean up bill to" SB 141. The reason for HB 475 is that SB 141 is flawed. One reason it is flawed is because it was hurried through the legislative process. More importantly, it is bad public policy. Do not make the same mistake with HB 475. Take the time to get all the corrections to SB 141 done. NEA-Alaska urges you to **amend HB 475 and delay the implementation of SB 141 until July 1, 2008.**

AS 24.08.036 relates specifically to bills affecting the state retirement systems.

> AS 24.08.036. *Fiscal notes on bills affecting retirement systems.*
> Before a bill which would have an effect on the retirement systems of the state is reported to the rules committee, there shall be attached to the bill an analysis of the long-term and short-term costs to the state if the bill is adopted, as well as the impact of the bill on the actuarial soundness of the fund. The analysis is in addition to the fiscal note requirements of AS 24.08.035.

Last session, NEA-Alaska urged you to consider the impact on the present retirement plans if the plans are closed and, thus, the payroll based contributions are reduced. There was testimony that there was no impact. Today we know better. According to the Administration, "employer rates for past service costs will continue to rise as amortized liability is applied to a shrinking payroll paid to members of the defined benefit plans." Thus, not only did SB 141 not address the liability of the retirement plans, it increased the liability for employers. Are you sure that the proposed change will not lead to a greater liability? Do you have the actuarial data to make this determination? NEA-Alaska believes the answer is no to both questions. Thus, I repeat NEA-Alaska's request that you **amend HB 475 and delay the implementation of SB 141 until July 1, 2008.**

Are you sure that the proposal to delay the effective date until 2008 of the provision in SB 141 that establishes a floor on employer contributions does not add liability to the plans and ultimately the taxpayers? If you delay the requirement for a minimum normal cost contribution rate for all those employers that are behind in payments, does that not mean the plans will have even less money for investment purposes and thus add to the liability. Remember, the lowering of employer contribution rates beginning in 1998 had a lot to do with the "unfunded liability" today. The reason, the plans did not have those contributions to invest. While you allow some to recover their "over contribution", many will not contribute the minimum amount needed to begin the recovery of the plans. Thus, I repeat NEA-Alaska's request that you **amend HB 475 and delay the implementation of SB 141 until July 1, 2008.**

ANCHORAGE REGIONAL OFFICE • 4100 Spenard Road • Anchorage, Alaska 99517 • (907) 274-0536 • FAX: (907) 274-0551
JUNEAU OFFICE • 114 Second Street • Juneau, Alaska 99801 • (907) 586-3090 • FAX: (907) 586-2744
FAIRBANKS REGIONAL OFFICE • 2118 S. Cushman Street • Fairbanks, Alaska 99701 • (907) 456-4435 • FAX: (907) 456-2159

Clarifying the provisions regarding how the PERS/TRS death and disability benefits will be funded, is a sound proposal. The question is, "what is the actual cost". For 2006-2007 the rates are established. For each year thereafter the rates "will be actuarially calculated." What assumptions will be used for this calculation? What does this mean in increased costs? The answers to these questions are what AS 24.08.036 require. The answers may not be a liability to the plans, but the answers are surely a liability to the employers and the State of Alaska. If you do not have the answers, NEA-Alaska's request that you **amend HB 475 and delay the implementation of SB 141 until July 1, 2008.**

I would seek clarification of the rationale for the amendment to clarify the basis for calculating employer contribution rates. I believe the reasoning states that the "dollar contributions would remain the same, but the past service cost rate would escalate to over 100%." What does this mean in terms of the elimination of the "unfunded liability?" Would we be eradicating it sooner? Would the DB plans have funding ratios over 100%? And if the answer to those questions is yes, is that not what wee want? Remember the ad hoc Post Retirement Pension Adjustment can only be awarded if the fund ratio exceeds 105%. We want the fund ration to be at least 106% each year so the ad hoc PRPA can be awarded. Otherwise the retirees' pensions will be eroded annually by inflation above 2%.

Changing the basis for the calculating HRA contributions to meet IRS tax qualification status is prudent. The question is what does that do to the employer costs? As SB 141 is presently written, an employer pays on the salary base of their employees, not the entire plan. I suspect that the Municipality of Anchorage has a wage base lower than many other employers in the state. Thus, this change would be a major added cost to Anchorage. Because SB 141 was not properly drafted, municipalities were not able to address this issue. For the sake of good public input, NEA-Alaska's request that you **amend HB 475 and delay the implementation of SB 141 until July 1, 2008.**

The definition that "clearly defines that a DOL or DEED member whose position requires a teaching certificate is in TRS and not PERS", should earn NEA-Alaska's support. But it does not. The language change actually gives the employer the choice, not the employee. The old language allowed the employee the opportunity to choose, if they had the ability to hold a teaching certificate.

NEA-Alaska does support the amendment to disallow employment with NEA as counting towards retirement eligibility.

Before I close my remarks, I want to make it clear that NEA-Alaska's criticism of HB 475, which is really a failing grade for SB 141, is not a reflection on the sponsor, Rep. Seaton. We believe that if he and the House State Affairs Committee had been given the time to develop the original HB 238 last year, it could have led to a hybrid solution that would have been a good solution for all parties. The committee was not given the time. Provide the time by **amending HB 475 and delaying the implementation of SB 141 until July 1, 2008.**

As the committee knows from NEA-Alaska's testimony last year, we believe a defined benefits plan is far superior to a defined contributions plan for retirement purposes for public employees. We understand the concerns of the entire legislature that predictability of costs and limitation of liability must be primary components of any new plan. NEA-Alaska believes a defined benefits plan can be fashioned based on a set contribution from the employer and the employee and the legislature should have the opportunity to choose between SB 141 and such a plan. Last year's forced choice was not good public policy. Thus, I repeat NEA-Alaska's request that you **amend HB 475 and delay the implementation of SB 141 until July 1, 2008.**

Thank you for your time.

What is the cost difference to an employer between a PERS Tier 4 and PERS Tier 3 employee, and a TRS Tier 3 and TRS Tier 2 employee?

Profile New Hire #1

Hire Date: July 1, 2005
Demographic: 31 year-old married male
Annual Salary: $35,411
Membership: PERS "Other"

Question: How much money does the employer need to have ***in the bank on July 1, 2005*** to pay for the benefits expected to be earned over the employee's entire career if the employee is

i. A member of the Defined Benefits Plan? *Answer: $21,652*

ii. A member of the Defined Contribution Plan? *Answer: $16,791*

Conclusion: A new hire into the PERS Defined Benefits Plan will cost an employer **29% more** than a new hire into the PERS Defined Contribution Retirement Plan.

Profile New Hire #2

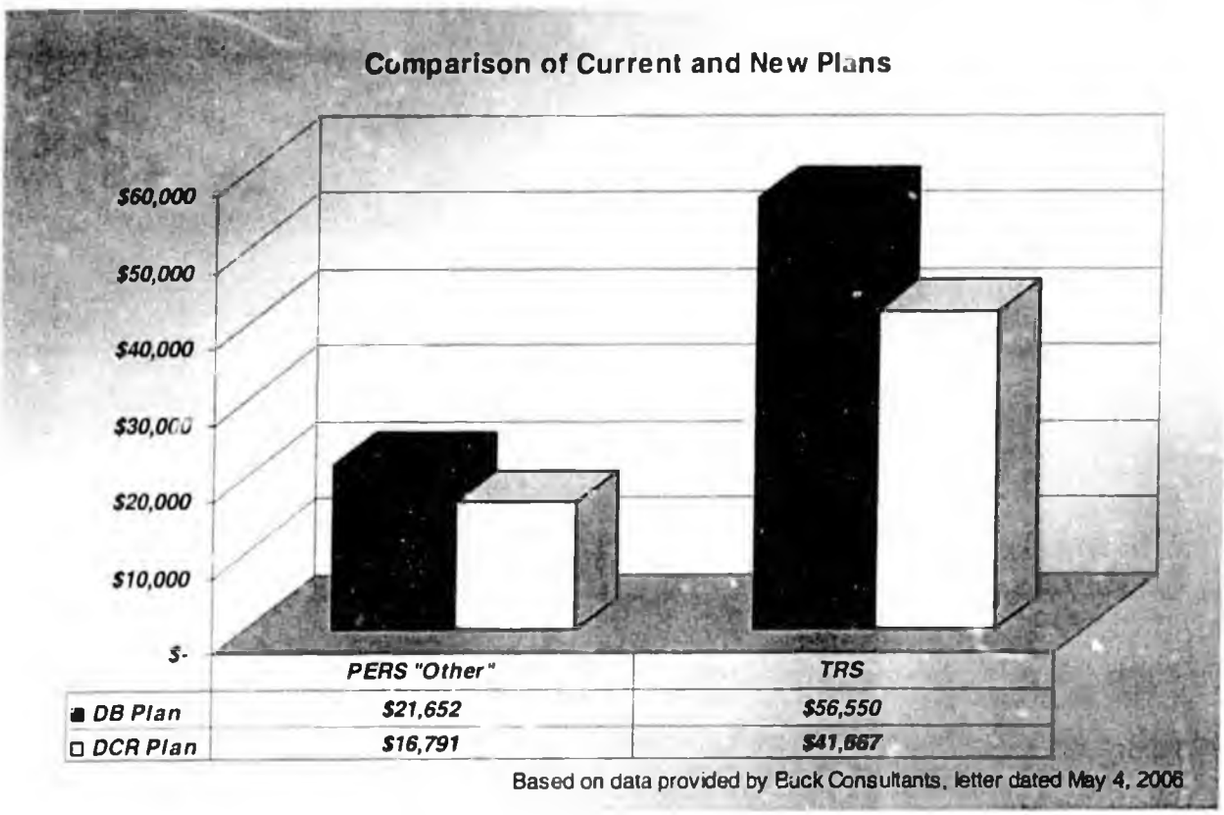
Hire Date: July 1, 2005
Demographic: 31 year-old married female
Annual Salary: $35,605
Membership: TRS

Question: How much money does the employer need to have ***in the bank on July 1, 2005*** to pay for the benefits expected to be earned over the employee's entire career if the employee is

i. A member of the Defined Benefits Plan? *Answer: $56,550*

ii. A member of the Defined Contribution Plan? *Answer: $41,667*

Conclusion: A new hire into the TRS Defined Benefits Plan will cost an employer **36% more** than a new hire into the TRS Defined Contribution Retirement Plan.



ICE MILLER LLP
LEGAL COUNSEL

May 3, 2006

WRITER'S DIRECT NUMBER: (317) 236-2413
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INTERNET: BRAITMAN@ICEMILLER.COM

VIA E-MAIL

Melanie A. Millhorn, Director
Traci Carpenter, Project Manager
Alaska Administration Retirement & Benefits
6th Floor State Office Building
P.O. Box 110203
Juneau, AK 99811-0203

Re: CSHB 475

Dear Melanie and Traci:

You have asked us to comment on the timing issues involving an Internal Revenue Service determination letter request. You have specifically asked up to consider the timing involved in considering possible changes to the original bill language (SB 141).

Code Section 401(b) governs the ability of a qualified plan to make retroactive remedial amendments in order to maintain qualified status. The period in which retroactive corrections are allowed is known as the "remedial amendment period." If corrections are made by the end of the remedial amendment period, the amendments are treated as retroactively effective throughout the entire remedial amendment period and the plan is deemed to have satisfied the qualification requirements of Code Section 401(a) during that time.

The remedial amendment period for a new plan, such as PERS Tier 4 and TRS Tier 3, begins on the effective date of the plan. Treas. Regs. § 1.401(b)-1(d)(i). For a governmental plan, Notice 89-8, 1989-1 C.B. 628, sets the end of the remedial amendment period at the last day of the seventh month after the end of the plan year in which the remedial amendment period begins.

We need to note that the Treasury Regulations provide that under some facts and circumstances, it may not be possible to actually amend a plan retroactively. In such a case, the remedial amendment period ends earlier. However, it is difficult to imagine how this circumstance could arise in Alaska's situation, where the legislature has the ability to amend the Plans. Treas. Regs. § 1.401(b)-1(a).

In conclusion, since the effective date of the new plans is July 1, 2006, the end of the remedial amendment period is January 31, 2008 (the first plan year is July 1, 2006 to June 30, 2007, and the last day of the seventh month after June 30, 2007 is January 31, 2008). Thus, any disqualifying provisions could be amended as late as January 31, 2008. We note that the remedial amendment period could be extended by the Internal Revenue Service determination letter filing, but given the dates involved, we did not think it was necessary to review in this letter the circumstances that would create a possible later date. It can be said, however, that the length of time allowed for correction is generally either the end of the remedial amendment period or 90 days following the issuance of an IRS determination letter, whichever is greater.

Since it is generally desirable to work in conjunction with the Internal Revenue Service on a pending filing, we would expect the actual timeline to be earlier than that, with additional information filed with the IRS shortly and then their questions and reactions occurring later in 2006 and potentially early in 2007.

We hope this is helpful in the deliberations on the timing of implementation of the new Plans.

Very truly yours,

ICE MILLER LLP

Mary Beth Braitman

Mary Beth Braitman

Lisa Erb Harrison

buckconsultants
an ACS company

May 4, 2006

VIA EMAIL

Ms. Melanie Millhorn
Director
State of Alaska
6th Floor, State Office Building
P.O. Box 110203
Juneau, AK 99811-0203

Re: Comparison of Current DB and New DC Plans

Dear Melanie:

As we discussed on Friday, April 28, 2006, we are providing you information to assist with determining the cost of a new entrant into the current Tier 3 of the Public Employees' Retirement System (PERS) and the current Tier 2 of the Teachers' Retirement System (TRS) compared to the cost of the new DC plan that is scheduled to be implemented effective July 1, 2006. We understand that HB 475, which includes a one-year delay in implementation of the new plan, has passed the House.

RESULTS

As you can see in the table below, the net present value of employer paid benefits is greater under the current defined benefit plans than under the new defined contribution plan.

	PERS - Others	TRS
Present Values for Current DB Plans		
- Pension Benefits	$ 14,866	$ 40,696
- Postemployment Healthcare Benefits	25,673	58,172
- Employee Contributions	(14,835)	(32,419)
- Retiree Healthcare Contributions	(4,052)	(9,899)
Employer Paid Benefits	$ 21,652	$ 56,550
Present Value for New DC Plan		
- Employer Contributions	$ 9,808	$ 25,307
- Postemployment Healthcare and Occupational Death and Disability	4,883	13,289
- Retiree Healthcare Contributions	(1,571)	(5,335)
- Employer HRA Contributions	3,671	8,406
Employer Paid Benefits	$ 16,791	$ 41,667
Increase in Employer Cost for Existing DB Plan	**$ 4,861**	**$ 14,883**
Percent Increase in Employer Cost for DB Plan Compared to New DC Plan	**29%**	**36%**

Tabor Center, 1200 17th Street, Suite 1,[illegible]0 • Denver, CO 80202
720.359.7700 • 720.359.7701 (fax)

The present value of benefits under PERS is much smaller than the present value of benefits under TRS primarily due to withdrawal rates. The probability of the PERS member remaining an active employee and attaining 6 years of service is only 31%. For the TRS member, it is 64%. This accounts for most of the difference between the present values between TRS and PERS.

DATA

We used information from the most recent group of new entrants to select individuals for our analysis. The average age of the most recent group of new entrants is 37.8 and the average salary is $36,000. The information below is based on an actual new member into PERS (Others) and TRS as of July 1, 2005. We selected a member from the most recent new entrant group who would reach 30 years of service by age 60 and with a salary close to the average of all new entrants.

Participant Data	PERS - Others	TRS
Age	30.78	30.87
Salary	$ 35,411	$ 35,605
Gender	Male	Female
Marital Status	Married	Married
Employee Contribution to Current Plan	6.75%	8.65%
Employer Contribution to Defined Contribution Plan	5%	7%
Employer HRA Annual Contribution	$ 1,500	$ 1,500

Unless indicated otherwise, all plan provisions, assumptions and methods are described in the actuarial valuation reports as of June 30, 2005. For the new postretirement healthcare and occupational death and disability plans, we assumed that 35% of deaths and disabilities will be occupational for PERS and 10% for TRS. All other assumptions and methods used for the new postretirement healthcare and occupational death and disability plans are described in our letter dated April 10, 2006. The present values on the prior page include the occupational death and disability provisions under HB475.

Please let me know if you have any questions or if we can be of further assistance.

Sincerely,

Michelle DeLange, F.S.A., E.A., M.A.A.A.
Senior Consultant, Actuary

/kr

c: Traci Carpenter, State of Alaska
Charlene Morrison, State of Alaska
Dave Slishinsky, Buck Consultants

ICEMILLER LLP
LEGAL COUNSEL

April 17, 2006

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DIRECT FAX (317) 592-4702
INTERNET KATRINA.CLINGERMAN@ICEMILLER.COM

VIA E-MAIL

Melanie A. Millhorn, Director
Traci Carpenter, Project Manager
Alaska Administration Retirement & Benefits
6th Floor State Office Building
P.O. Box 110203
Juneau, AK 99811-0203

Re: CSHB 475

Dear Melanie and Traci:

You have asked us to prepare for you an overview of the following topics:

1. Mechanics of the plan determination process and filings with Internal Revenue Service ("IRS") when a state implements a new retirement plan;

2. Benefits of passing CSHB 475 from the perspective of compliance with the Internal Revenue Code ("Code") and IRS process; and

3. Consequences of not passing CSHB 475 from the perspective of Code compliance and IRS process.

BACKGROUND

PERS Tier 4 and TRS Tier 3

The new PERS Tier 4 and TRS Tier 3 plans (the "New Plans") are intended to be qualified governmental plans under Code Section 401(a). Code Section 401(a) covers defined benefit plans, defined contribution plans, and plans that contain elements of both. Establishing and maintaining qualified status of the New Plans is critical for the employees who participate in the plans and their beneficiaries. In order to know that the New Plans are qualified, Alaska is seeking IRS "determination letters" for them. This is the procedure that has been followed in the past for the existing PERS and TRS plans and is certainly a "best practice" in the pension world.

HRAs

SB 141 also established health reimbursement accounts ("HRAs"). The IRS has recently issued guidance on the structure of HRAs. These rules must be followed in order to have non-taxable benefits for employees, spouses, and their dependents. The IRS has been very strict in their interpretation of these new rules. The only mechanism for seeking IRS approval of the HRA structure is a private letter ruling.

IMPORTANCE OF QUALIFIED STATUS – FOR NEW PLANS

It is very important to establish and maintain the New Plans as qualified governmental plans for the following reasons:

1. Employer contributions are not taxable to members as they are made (or even when vested); taxation only occurs when plan distributions are made.

2. Earnings and income are not taxed to the trust or the members (until distribution).

3. Favorable tax treatments may be available to members when they receive plan distributions; for example, the ability to rollover eligible distributions.

4. Employers and members do not pay employment taxes (even if the positions are Social Security covered) when contributions are made or when benefits are paid.

5. Members have protection of their benefits in a bankruptcy situation.

6. Qualified plans have an approved status with respect to international investments and foreign tax recaptures.

7. Qualified plans may use IRS correction mechanisms in the case of operational failures.

State and local governments are generally exempt from taxation, so the benefits of qualified status flow to the members.

MECHANICS OF THE PLAN DETERMINATION PROCESS – FOR NEW PLANS

What is filed with the IRS?

Requests for favorable determination letters have been filed with the IRS for each of the New Plans, but those requests need to be revised. The primary focus of the determination letter is compliance with "form requirements" — those plan provisions that are required as a condition

of qualification under Code Section 401(a). In the case of the New Plans, the plan document would be SB 141, CSHB 475 (if passed), and administrative rules.

What do states do while the determination letter application is pending?

You have asked whether, in the normal course of events, states that are implementing a new retirement plan proceed with implementation while a determination letter is pending or delay implementation of a plan pending favorable rulings from the IRS. It has been our experience that states take a variety of approaches, depending on the legislation or process that leads to the adoption of the plan. Where a statute does not require delay until a determination letter is issued, it has been our experience that states move ahead with implementation while the determination letter is pending.

What is the timetable for receiving an IRS determination?

The IRS often takes more than one year to issue a final determination letter. During that time period an IRS agent may ask for clarification of provisions and may request amendments of the plan document. If an amendment is requested, the IRS may issue a determination letter contingent on the adoption of the amendment. The amendment would have to be adopted with 90 days of the issuance of the determination letter.

What happens if the IRS decides that New Plans have disqualifying provisions?

Code Section 401(b) governs the ability of a qualified plan to make retroactive remedial amendments in order to maintain qualified status. The period in which retroactive corrections are allowed is known as the "remedial amendment period."

If corrections are made by the end of the remedial amendment period, the amendments are treated as retroactively effective throughout the entire remedial amendment period and the plan is deemed to have satisfied the qualification requirements of Code Section 401(a) during that time.

The remedial amendment period begins for a new plan, such as PERS Tier 4 and TRS Tier 3, on the effective date of the plan. For a governmental plan, Notice 89-8, 1989-1 C.B. 628, sets the end of the remedial amendment period at the last day of the seventh month after the end of the plan year in which the remedial amendment period begins. By filing a request for a determination letter, Alaska has preserved its right to retroactively amend the New Plans back to the effective date.

Based upon this IRS guidance, we believe that Alaska has been proactive in filing its determination letters so promptly and in the proposed update of those letters. The determination

letter is based upon the "administrative record" that is presented to the IRS, so it is important for Alaska to continue to update the IRS with any changes to the plan document.

BENEFITS OF PASSING CSHB 475

PERS Tier 4 and TRS Tier 3

Passing CSHB 475 would have the following benefits for members in the New Plans:

1. Clarify nature of New Plans to make sure DB-type benefits for those with occupational disability and their survivors are paid from New Plans.

2. Clarify nature of New Plan as to public safety officer retirement benefit options to make sure those benefits are paid from New Plans.

3. Restructure line of duty death benefit so that it would comply with IRC. Failure to adopt will deny tax-favored benefit to survivor.

4. Shorten the IRS review time because the "plan document" for the new tiers would be established in a way that would match up with IRS guidance.

HRAs

Passing CSHB 475 would have the following benefit with respect to the new HRA structure:

Restructure HRA contributions to clarify that contribution is uniformly calculated, thereby strengthening position that all benefits will be non-taxable.

CONSEQUENCES OF NOT PASSING CSHB 475

PERS Tier 4 and TRS Tier 3

Failure to pass CSHB 475 would have the following consequences for members of the New Plans:

1. Failure to adopt CSHB 475 will restrict the ability to offer occupational death and disability benefits for members.

2. Failure to adopt CSHB 475 will restrict the ability to offer optional PERS retirement to police fire injured in line of duty.

3. Failure to adopt will complicate IRS filings and prolong review process.

Failure to meet qualification requirements means that both retroactive and prospective corrections are required. Qualification status goes to the plan as a whole. If under state law, an administrative agency is not authorized to disregard or sever a provision that causes a qualification failure. the plan as a whole would be jeopardized.

HRAs

Failure to adopt could result in taxable benefits to some groups.

Please let us know if this letter responds to your questions.

Very truly yours,

ICE MILLER LLP

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cc: Virginia Ragle

Subject Guide to HCS HB 475 (FIN) Version "X" and SCS for HCS HB 475 (CRA) Version "C"

Internal Revenue Code (IRC) §414(k)

1. Makes conforming changes to clarify that the retirement plans established by SB 141 are hybrid plans which fall under IRC §414(k). [Sec. 5, 6, 9, 10, 23, 43, 44, 47, 48, 62]

Occupational Disability and Occupational Death Benefits

2. Provides statutory authority for funding TRS occupational disability/death benefits. [Sec.8]
3. Clarifies the definition of occupational disability and the termination of disability benefits when a person (1) no longer meets the requirements or (2) qualifies for normal retirement. [Sec. 12, 15, 17, 50, 53, 56]
4. Clarifies that a period of disability benefits constitutes membership service for retiree medical benefits and the HRA. [Sec. 13, 51]
5. Clarifies that a member or survivor is not entitled to elect distributions from the member's individual account while receiving disability benefits or a survivor's pension. [Sec. 14, 16, 20, 52, 55, 59]
6. Upon appointment to disability, immediately vests a member 100% in all *employer* contributions made to the member's individual account, regardless of years of service. [Sec. 14, 52]
7. Revises the method for funding the retirement benefit for survivors to conform to the IRC. [Sec. 16, 21, 55, 60]
8. Clarifies that a period of survivor benefits constitutes membership service for retiree medical benefits, vesting in employer contributions, and the HRA. [Sec. 16, 21, 55, 60]
9. Clarifies the termination of a survivor's pension for dependent children. [Sec. 16, 19, 55, 58]
10. Adds an annual increase to disability benefits and P/F retirement benefits equal to 75% of the increase in the Anchorage Consumer Price Index or 9%, whichever is less. [Sec. 18, 57]
11. Clarifies that the continuing contributions required by the employer are made on behalf of the surviving spouse and member's dependent children rather than "beneficiaries." [Sec. 20, 59]
12. Adds an annual increase to the survivor's pension benefit equal to 50% of the increase in the Anchorage Consumer Price Index or 6%, whichever is less. [Sec. 22, 61]
13. Adds cost-sharing of medical premiums for persons younger than Medicare age whose disability or survivor benefits are terminated due to eligibility for normal retirement. [Sec. 22, 61]
14. Provides statutory authority for funding of PERS disabled P/F monthly retirement benefits. [Sec. 46, 54]

Employer Contributions

15. Changes the employer contribution rate formula to allow the past service rate of the DB plans to be applied to the employer's total payroll base regardless of tier. [Sec. 1, 2, 36, 37]

16. Retroactively (to July 1, 2005) repeals the provision in SB 141 that establishes a floor on employer contributions and reinstates the provision effective with FY 2009 (July 1, 2008). [Sec. 3, 38, 75, 78, 79, 81]

17. Changes the employer contribution for the HRA from an individual employer contribution amount to a uniform employer contribution amount for all participants. [Sec. 33]

18. Updates the initial FY 2007 employer contribution rates for occupational disability and occupational death benefits under both PERS and TRS. [Sec. 73, 77]

Member Contributions

19. Effective July 1, 2010, removes the leftover provisions that allow members to repay refunded contributions for the purpose of obtaining an additional retirement benefit. [Sec. 4, 39, 40, 76, 80]

20. Clarifies that voluntary employee contributions can only be made with pre-tax dollars to the extent permitted under federal law (limited option to be set in regulation). [Sec. 7, 45]

Retiree Medical Benefits

21. Requires a letter of continuous coverage or proof of insurability for a member who does not participate in retiree medical at retirement but later chooses to participate before age 70½. [Sec. 11, 49]

22. Clarifies the participant eligibility requirements for the HRA. [Sec. 34, 35]

Conversion Option

23. Limits the total employer match to the maximum allowed by IRC §415(c) during the limitation year in which the transfer occurs. [Sec. 24, 63]

24. Clarifies that transferred membership from the DB plan will be applied to vesting in both the employer's matching contribution and subsequent contributions. [Sec. 25, 64]

25. Limits the conversion option to two 12-month windows -- an initial period open to all eligible employees and a second period open to employees without the choice the first time. [Sec. 26, 27, 65, 66]

26. Defines "membership service" to clarify what service credit is eligible for transfer from the DB plan and disallows years of service for which contributions have not been fully repaid. [Sec. 28, 67]

Employer Participation and Termination from Plans

27. Adds guidelines for employer participation and termination from the DCR plans, including employee designations for participation and rights upon termination. [Sec. 68]

Regulations and Appeals

28. Returns authority for adopting regulations for the SBS Plan to the Commissioner of Administration. [Sec. 29, 30]

29. Adds appeals under SBS, Deferred Compensation, the HRA, and PERS waivers of adjustment requests to the Office of Administrative Hearings. [Sec. 31, 32, 41, 71, 72]

Miscellaneous Definitions

30. Incorporates the reference to the new administrator section AS 39.35.003 into the definition of "administrator" under the PERS DB plan. [Sec. 42]

31. Clarifies that "member" and "employee" have the same meaning throughout the PERS DCR statutes. [Sec. 69]

32. Provides a clear definition of "peace officer" and "fire fighter" under the DCR plan. [Sec. 70]

Sectional Analysis
SCS for HCS for HB 475 (CRA) & HCS for HB 475 (FIN)

Sec. 1 **AS 14.25.070(a)**. Changes the calculation of the employer contributions so that the normal cost rate is applied only to the payroll base of DB plan members and the past service rate is applied to the employer's entire payroll base.

Reason: The current statutes defining contributions by employers reference contributions to the "plan" and specify that the employer contribution rate will be applied to the salaries paid to "members." This amendment allows the contribution rate for past service costs to be applied to the entire payroll base of the employers' workforce without regard to plan (tier) membership, and will keep employer contribution rates for the DB plan lower than would otherwise be calculated.

Consequence: Without amendment, employer rates for past service costs under the DB plan will continue to rise as the amortized liability is applied to a shrinking payroll paid to members of the DB plan. However, this will neither increase the employers' liability nor will it relieve the employers of the liability, it merely restates the liability as a higher percentage of applicable payroll.

Related bill sections: Sec. 2, AS 14.25.070(d)-(e); Sec. 37, AS 39.35.270(a).

Sec. 2 **AS 14.25.070(d)-(e)**. Adds definitions for "employer normal cost rate" and "past service rate."

Reason: In combination with Sec. 1 of this bill, this amendment changes the calculation of the employer contributions so that the normal cost rate is applied only to the payroll base of DB plan members and the past service rate is applied to the employer's entire payroll base. The TRS employer contribution statutes have never contained these definitions because the TRS is a multi-employer shared cost pool. However, the TRS rates developed by the actuary are still based upon normal costs and past service costs.

Related bill sections: Sec. 1, AS 14.25.070(a); Sec. 36 AS 39.35.250.

Sec. 3 **AS 14.25.070(f)**. Establishes a floor on the employer contribution rate at no less than the normal cost rate, effective July 1, 2008.

Reason: This change, combined with the repeal of AS 14.25.070(b) and the effective date in Sec. 79, delays the effective date of the requirement of SB 141 that the employer contribution rate must be not less than the normal cost rate.

Related bill sections: Sec. 38, AS 39.35.270(d); Sec. 75; Sec. 78; Sec. 79.

Sec. 4 **AS 14.25.125(c).** Effective July 1, 2010, removes the provision that allows members to repay refunded contributions for the purpose of obtaining a conditional service benefit.

Reason: This statute was overlooked in the repeal by SB 141 of the reinstatement of service provisions. AS 14.25.125 allows persons who are eligible for a normal or early retirement salary under PERS to qualify for a normal or early "conditional service" retirement benefit under TRS if he or she has at least two years of credited service in TRS. Members are allowed to reinstate refunded service credit in order to qualify for the conditional service benefit under AS 14.25.125(c). The conditional service benefit is very expensive because it results in payment of medical premiums and other medical charges from both the PERS and TRS for a single retiree.

Consequence: Without change, refunded TRS members will be treated differently under separate statutes. It would also continue to allow an "off-books" liability in the DB plan, one that can be neither accounted for nor paid until an eligible member applies for the benefit.

Related bill sections: Sec. 40, AS 39.35.385(c).

Sec. 5 **AS 14.25.320(b).** Clarifies that the retirement plans established by SB 141 are hybrid plans, containing both defined benefits and defined contributions, which fall under the Internal Revenue Code section 414(k).

Reason: This is one of several conforming amendments necessary to pay all the benefits required in accordance with the intent of SB 141 and the retirement plans contained therein. SB 141 provides both guaranteed fixed benefits for certain eligible persons as well as benefits based upon defined contributions to an individual account, medical benefits, and medical expense reimbursements. This type of plan structure is provided for under 26 USC 414(k) "Certain plans." These changes, in combination with others, are designed to clarify the structure of the new retirement plans in order to successfully obtain a favorable ruling from the IRS.

Consequence: If this amendment is not adopted, the IRS may not recognize and apply the special rules of the §414(k) structure which may result in an IRS plan determination failure.

Related bill sections: Sec. 6, AS 14.25.320(c); Sec. 9, AS 14.25.380; Sec. 10, AS 14.25.400(b); Sec. 23, AS 14.25.510; Sec. 43, AS 39.35.710(b); Sec. 44, AS 39.35.710(c); Sec. 47, AS 39.35.780; Sec. 48, AS 39.35.800(b); Sec. 62, AS 39.35.910.

Sec. 6 **AS 14.25.320(c).** Clarifies that the retirement plans established by SB 141 are hybrid plans, containing both defined benefits and defined contributions, which fall under the Internal Revenue Code section 414(k).

Reason: This is one of several conforming amendments necessary to pay all the benefits required in accordance with the intent of SB 141 and the retirement plans contained therein. SB 141 provides both guaranteed fixed benefits for certain eligible persons as well as benefits based upon defined contributions to an individual account, medical benefits, and medical expense reimbursements. This type of plan structure is provided for under 26 USC 414(k) "Certain plans." These changes, in combination with others, are designed to clarify the structure of the new retirement plans in order to successfully obtain a favorable ruling from the IRS.

Consequence: If this amendment is not adopted, the IRS may not recognize and apply the special rules of the §414(k) structure which may result in an IRS plan determination failure.

Related bill sections: Sec. 5, AS 14.25.320(b); Sec. 9, AS 14.25.380; Sec. 10, AS 14.25.400(b); Sec. 23, AS 14.25.510; Sec. 43, AS 39.35.710(b); Sec. 44, AS 39.35.710(c); Sec. 47, AS 39.35.780; Sec. 48, AS 39.35.800(b); Sec. 62, AS 39.35.910.

Sec. 7 **AS 14.25.340(c).** Clarifies that any voluntary contributions made by an employee under AS 14.25.340(b) can only be made with pre-tax dollars to the extent permitted under federal law.

Reason: The Internal Revenue Code allows pre-tax contributions only if the employee does not have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement plan. This is the case for contributions mandated by statute; however, a voluntary contribution clearly does not meet this test. Under certain restricted arrangements that involve a one-time irrevocable election, the IRS will allow voluntary contributions on a picked-up (pre-tax) basis. This amendment allows the State the flexibility to define such a restricted arrangement in both regulation and in its Private Letter Ruling request.

Related bill sections: Sec. 45, AS 39.35.730(c).

Sec. 8 **AS 14.25.350(e).** Requires employers in the Teachers' Retirement System (TRS) to pay occupational disability and death benefits through contributions actuarially calculated, which will be deposited to a separate trust account.

Reason: This was an inadvertent omission in drafting the bill in conference committee. The "trust account" language clarifies that these contributions are treated differently and kept separate from the contributions to the plan's individual member accounts.

Consequence: The consequence of not enacting this amendment is that there will be no funding source from which to pay TRS occupational disability and death benefits.

Related bill sections: Sec. 46, AS 39.35.750(e); Sec. 77.

Sec. 9 **AS 14.25.380**. Clarifies that only the defined contributions paid into a member's individual account are subject to the limitations of 26 USC 415(c) and not the contributions employers make for the fixed benefits contained in the plans (occupational disability, survivor's pension, etc.). Additionally, the fixed benefits paid to eligible persons are subject to the limitations of §415(b) under the Internal Revenue Code.

Reason: This is one of several conforming amendments necessary to pay all the benefits required in accordance with the intent of SB 141 and the retirement plans contained therein. SB 141 provides both guaranteed fixed benefits for certain eligible persons as well as benefits based upon defined contributions to an individual account, medical benefits, and medical expense reimbursements. This type of plan structure is provided for under 26 USC 414(k) "Certain plans." These changes, in combination with others, are designed to clarify the structure of the new retirement plans in order to successfully obtain a favorable ruling from the IRS.

Consequence: If this amendment is not adopted, the IRS may not recognize and apply the special rules of the §414(k) structure which may result in an IRS plan determination failure.

Related bill sections: Sec. 5, AS 14.25.320(b); Sec. 6 AS 14.25.320(c); Sec. 10, AS 14.25.400(b); Sec. 23, AS 14.25.510; Sec. 43, AS 39.35.710(b); Sec. 44, AS 39.35.710(c); Sec. 47, AS 39.35.780; Sec. 48, AS 39.35.800(b); Sec. 62, AS 39.35.910.

Sec. 10 **AS 14.25.400(b)**. Clarifies that a participant may only direct the investment of the funds held in the participant's individual account by making the distinction between the defined contribution accounts and the fixed benefit accounts established under the plans.

Reason: This is one of several conforming amendments necessary to pay all the benefits required in accordance with the intent of SB 141 and the retirement plans contained therein. SB 141 provides both guaranteed fixed benefits for certain eligible persons as well as benefits based upon defined contributions to an individual account, medical benefits, and medical expense reimbursements. This type of plan structure is provided for under 26 USC 414(k) "Certain plans." These changes, in combination with others, are designed to clarify the structure of the new retirement plans in order to successfully obtain a favorable ruling from the IRS.

Consequence: If this amendment is not adopted, the IRS may not recognize and apply the special rules of the §414(k) structure which may result in an IRS plan determination failure.

Related bill sections: Sec. 5, AS 14.25.320(b); Sec. 6, AS 14.25.320(c); Sec. 9, AS 14.25.380; Sec. 23, AS 14.25.510; Sec. 43, AS 39.35.710(b); Sec. 44, AS 39.35.710(c); Sec. 47, AS 39.35.780; Sec. 48, AS 39.35.800(b); Sec. 62, AS 39.35.910.

Sec. 11 **AS 14.25.470(g)**. Requires a person who originally chose not to participate in the retiree major medical plan, but who later chooses to participate, to provide a letter of continuous coverage or proof of insurability.

Reason: The Division of Retirement and Benefits had anticipated the provisions for application for retirement and medical benefits would be handled by regulation. However, the plain wording of the statute seems to leave the choice to the eligible person regardless of their health status.

Consequence: Without amendment, the statute leaves the retiree major medical insurance plan open to adverse selection and unpredictable costs.

Related bill sections: Sec. 49, AS 39.35.870(g).

Sec. 12 **AS 14.25.485(b)**. Clarifies the termination of a disability benefit when a person no longer meets the requirements to receive occupational disability benefits.

Reason: The intent of an occupational disability benefit is to provide an income for a person who is no longer able to work due to an injury sustained on-the-job. In combination with Sec. 17 of this bill, the amendment makes it clear that if a person is able to perform the duties of another available and comparable position, regardless of employer, then that person no longer meets the requirements to receive occupational disability benefits.

Related bill sections: Sec. 17, AS 14.25.485(j); Sec. 50, AS 39.35.890(b).

Sec. 13 **AS 14.25.485(c)**. Clarifies that a period of disability benefit constitutes membership service in regard to determining eligibility for retirement and medical benefits including the Health Reimbursement Arrangement (HRA).

Reason: The statutes do not mention vesting in medical benefits during a period of disability benefits. However, the intent is implied by the requirement for continuing employer contributions into the individual account, the HRA, and health insurance fund while a member is receiving disability benefits. The employer must also make the member's contributions to the individual contribution account.

Related bill sections: Sec. 51, AS 39.35.890(c).

Sec. 14 **AS 14.25.485(d)**. Provides that a member who receives disability benefits from the plan is 100% vested in all the employer contributions made to the member's individual account, regardless of years of service worked, once the member is appointed to disability. Clarifies that a member is not entitled to elect distributions from the member's individual account while receiving disability benefits.

Reason: This amendment relates specifically to the continuing employer contributions required under AS 14.25.485(d). 26 USC 415(c)(3)(C) provides special rules that allow the compensation of a disabled member for any year subsequent to the disability to be considered equivalent to the rate of compensation immediately prior to the disability. However, these rules only apply if the contributions are nonforfeitable when made.

Because a disabled member must terminate employment, the disabled member will arguably become eligible for distributions from the individual contribution account under AS 14.25.410. The apparent intent of the disability benefit is to provide an income until such time as a disabled member becomes eligible for the benefits from a "normal retirement." During a period of disability benefits, the employer is required to make continuing employer contributions into the individual account, the HRA, and health insurance fund. The employer must also make the member's contributions to the individual contribution account. The purpose of these contributions would seem to be to accumulate funding for retirement benefits available to the member once the normal retirement date is reached and disability benefits end.

Consequence: If this amendment is not adopted, the special rules of 26 USC 415(c)(3)(C) would not apply, the member's compensation would be zero for the year following disability, and the allowable contributions would therefore be zero. As a result, the benefits could not be paid in accordance with AS 14.25.485. Also, a disabled member may be able to elect distributions from the member's individual account prior to becoming eligible for normal retirement. This could be regarded as "double dipping," and as thwarting the intent of the legislature to provide a retirement benefit once the disability benefit ends.

Related bill sections: Sec. 20, AS 14.25.487(c); Sec. 52, AS 39.35.890(d); Sec. 59, AS 39.35.892(c).

Sec. 15 **AS 14.25.485(g)**. Clarifies the termination of disability benefits when a disabled member first qualifies for normal retirement.

Reason: Technical for administrative purposes. Conforms to other benefit payment provisions.

Related bill sections: Sec. 53, AS 39.35.890(g).

Sec. 16 **AS 14.25.485(i)**. Changes made to this subsection, which is related to the benefits for a survivor of a disabled member who dies while receiving disability benefits, mirror other changes being made to the disability and death statutes throughout this bill. The changes are: (1) clarifies the termination of a survivor's pension; (2) clarifies that a survivor cannot access the member's individual account while receiving a survivor's pension; (3) clarifies the normal retirement benefits available to a survivor; and (4) clarifies that the period of disability benefits and the period of survivor benefits constitute membership service for vesting in employer contributions, and eligibility for medical benefits and the Health Reimbursement Arrangement.

Reason: This is a conforming amendment. See the related bill sections referenced below.

Related bills sections: Sec. 13, AS 14.25.485(c); Sec. 19, AS 14.25.487(b); Sec. 20, AS 14.25.487(c); Sec. 21, 14.25.487(e); Sec. 55, AS 39.35.890(k).

Sec. 17 AS 14.25.485(j). Clarifies the definition of occupational disability.

Reason: The intent of an occupational disability benefit is to provide an income for a person who is no longer able to work due to an injury sustained on-the-job. This definition is slightly different from the definition under AS 39.35.680. In combination with Sec. 12 of this bill, the amendment makes it clear that if a person is able to perform the duties of another available and comparable position, regardless of employer, then that person no longer meets the requirements to receive occupational disability benefits.

Related bill sections: Sec. 12, AS 14.25.485(b); Sec. 56, AS 39.35.890(l).

Sec. 18 AS 14.25.486. Adds an annual adjustment to disability benefits equal to 75% of the increase in the Anchorage Consumer Price Index or 9%, whichever is less.

Reason: This amendment provides a formula for annual increases to the monthly amount of a disability benefit that is the same as the formula for TRS Tier II members.

Consequence: If this amendment is not enacted, a member's monthly disability benefit amount will remain static from year to year without adjustment for inflation.

Related bills sections: Sec. 57, AS 39.35.891.

Sec. 19 AS 14.25.487(b). Clarifies the termination of a survivor's pension under the occupational death benefit provisions, including the end of death benefits when a dependent child no longer meets the definition of dependent.

Reason: The death benefit statute unambiguously states when the benefits will begin and when they will end, omitting termination of the death benefit the last month in which there is an eligible child. A dependent child receiving occupational death benefits might argue that death benefits must be paid until the date the deceased member would have retired, without regard to the age of the child. The disability statute [AS 14.25.485(i)], however, includes language terminating a survivor's benefit (from a disabled member who died while receiving disability) the last month in which there is an eligible surviving spouse or child. This appears to be a conflict of intent.

Consequence: Failure to amend this statute may jeopardize plan qualification because the IRC definition of "dependent" [26 USC, §151 and §152] includes age requirements for distribution to a dependent child under a qualified plan.

Related bill sections: Sec. 58, AS 39.35.892(b).

Sec. 20 **AS 14.25.487(c)**. Clarifies that a survivor of a deceased member is not entitled to elect distributions from the member's individual account while receiving survivor benefits. Clarifies that the continuing contributions required by the employer are made on behalf of the surviving spouse and member's dependent children rather than "beneficiaries." Directs all continuing contributions by the employer into the occupational disability and death trust account in accordance with the Internal Revenue Code (IRC).

Reason: The death benefit provides an income, and eventually retirement benefits, for the family of a member who dies in the line of duty. However, the beneficiaries of a deceased member are arguably immediately eligible for distributions from the individual contribution account under AS 14.25.410. This change preserves the individual account until the survivor is eligible for the normal retirement benefit. The situation is similar to that described under Sec. 14 [AS 14.25.485(d)]. Please see Sec. 21 below for an explanation of the changes required by the IRC.

Consequence: If the clarifications are not enacted, a deceased member's surviving spouse, dependent children, or other beneficiaries may be able to elect distributions from the member's individual account prior to the date the member would have qualified for normal retirement had the member lived. As with distributions taken during a member's disability, this could be regarded as "double dipping," and as thwarting the intent of the legislature to provide eligible survivors with a retirement benefit once the death benefit ends. This scenario has more complications – including possible tax reporting requirements - than the disability provisions because the member's surviving spouse and/or dependent children may not be the only beneficiaries.

Related bill sections: Sec. 14, AS 14.25.485(d); Sec. 21, AS 14.25.487(e); Sec. 59, AS 39.35.892(c).

Sec. 21 **AS 14.25.487(e)**. Revises the language regarding the continuing contributions employers make on behalf of survivors of members who died occupationally. The contributions will be an actuarially calculated amount required to yield the same results as under SB 141; however, the contributions will be made into the trust account established for occupational disability and death benefits rather than into the member's individual account. The benefits will also be paid from the occupational disability and death trust account. This amendment also clarifies that the period of death benefits constitutes membership service for determining vesting in employer contributions and eligibility for medical benefits and the Health Reimbursement Arrangement.

Reason: Unlike the special rules under 26 USC 415(c)(3)(C) that allow the compensation of a disabled member for any year subsequent to the disability to be considered equivalent to the rate of compensation immediately prior to the disability, there is no corresponding rule for a deceased participant. Thus, there would be no compensation for a deceased member in the year after death and, therefore, no allowable contributions to the deceased member's individual account. The solution this amendment proposes is to make contributions to an account that is allowable under the Internal Revenue Code and add an "additional benefit" that is equal to the amount that would have been contributed to the member's individual account had the member survived, plus an earnings credit.

CORRECTION

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

Sec. 20 **AS 14.25.487(c).** Clarifies that a survivor of a deceased member is not entitled to elect distributions from the member's individual account while receiving survivor benefits. Clarifies that the continuing contributions required by the employer are made on behalf of the surviving spouse and member's dependent children rather than "beneficiaries." Directs all continuing contributions by the employer into the occupational disability and death trust account in accordance with the Internal Revenue Code (IRC).

Reason: The death benefit provides an income, and eventually retirement benefits, for the family of a member who dies in the line of duty. However, the beneficiaries of a deceased member are arguably immediately eligible for distributions from the individual contribution account under AS 14.25.410. This change preserves the individual account until the survivor is eligible for the normal retirement benefit. The situation is similar to that described under Sec. 14 [AS 14.25.485(d)]. Please see Sec. 21 below for an explanation of the changes required by the IRC.

Consequence: If the clarifications are not enacted, a deceased member's surviving spouse, dependent children, or other beneficiaries may be able to elect distributions from the member's individual account prior to the date the member would have qualified for normal retirement had the member lived. As with distributions taken during a member's disability, this could be regarded as "double dipping," and as thwarting the intent of the legislature to provide eligible survivors with a retirement benefit once the death benefit ends. This scenario has more complications – including possible tax reporting requirements - than the disability provisions because the member's surviving spouse and/or dependent children may not be the only beneficiaries.

Related bill sections: Sec. 14, AS 14.25.485(d); Sec. 21, AS 14.25.487(e); Sec. 59, AS 39.35.892(c).

Sec. 21 **AS 14.25.487(e).** Revises the language regarding the continuing contributions employers make on behalf of survivors of members who died occupationally. The contributions will be an actuarially calculated amount required to yield the same results as under SB 141; however, the contributions will be made into the trust account established for occupational disability and death benefits rather than into the member's individual account. The benefits will also be paid from the occupational disability and death trust account. This amendment also clarifies that the period of death benefits constitutes membership service for determining vesting in employer contributions and eligibility for medical benefits and the Health Reimbursement Arrangement.

Reason: Unlike the special rules under 26 USC 415(c)(3)(C) that allow the compensation of a disabled member for any year subsequent to the disability to be considered equivalent to the rate of compensation immediately prior to the disability, there is no corresponding rule for a deceased participant. Thus, there would be no compensation for a deceased member in the year after death and, therefore, no allowable contributions to the deceased member's individual account. The solution this amendment proposes is to make contributions to an account that is allowable under the Internal Revenue Code and add an "additional benefit" that is equal to the amount that would have been contributed to the member's individual account had the member survived, plus an earnings credit.

Consequence: If this amendment is not adopted, the State will not receive a favorable ruling from the Internal Revenue Service and will not be able to pay the intended retirement benefits to survivors.

Related bill sections: Sec. 16, AS 14.25.485(i); Sec. 20, AS 14.25.487(c); Sec. 60, AS 39.35.892(e).

Sec. 22 **AS 14.25.488**. Adds an annual adjustment to the survivor's pension benefit equal to 50% of the increase in the Anchorage Consumer Price Index or 6%, whichever is less. Persons who are receiving a survivor's pension who are age 60 or older and persons who have received a survivor's pension for at least 8 years are eligible for the COLA.

AS 14.25.489. Adds a provision that a person whose disability or survivor benefits are terminated due to eligibility for a normal retirement benefit will be treated as if that person is eligible for Medicare, regardless of age, for the purpose of cost-sharing medical premiums with the Plan.

Reason: This amendment provides a formula for annual increases to the monthly amount of a disability benefit that is the same as the formula for TRS Tier II members. It also applies the medical cost-sharing provisions of the new retirement tier so that benefit recipients do not have to bear the full burden of medical insurance premiums when they reach normal retirement.

Consequence: If these amendments are not enacted, a member's monthly disability amount and a survivor's monthly pension amount will remain static from year to year without adjustment for inflation. Disabled members and survivors who have not reached the age required for Medicare eligibility when they qualify for a normal retirement benefit will have to pay 100% of the monthly premium for retiree major medical insurance.

Related bills sections: Sec. 61, AS 39.35.893, AS 39.35.894.

Sec. 23 **AS 14.25.510**. Clarifies that the nonguarantee clause relates only to the defined contribution portion of the retirement plans. The fixed benefits contained under these plans are defined by statute.

Reason: This is one of several conforming amendments necessary to pay all the benefits required in accordance with the intent of SB 141 and the retirement plans contained therein. SB 141 provides both guaranteed fixed benefits for certain eligible persons as well as benefits based upon defined contributions to an individual account, medical benefits, and medical expense reimbursements. This type of plan structure is provided for under 26 USC 414(k) "Certain plans." These changes, in combination with others, are designed to clarify the structure of the new retirement plans in order to successfully obtain a favorable ruling from the IRS.

Consequence: If this amendment is not adopted, the IRS may not recognize and apply the special rules of the §414(k) structure which may result in an IRS plan determination failure.

Related bill sections: Sec. 5, AS 14.25.320(b); Sec. 6, AS 14.25.320(c); Sec. 9, AS 14.25.380; Sec. 10, AS 14.25.400(b); Sec. 43, AS 39.35.710(b); Sec. 44, AS 39.35.710(c); Sec. 47, AS 39.35.780; Sec. 48, AS 39.35.800(b); Sec. 62, AS 39.35.910.

Sec. 24 **AS 14.25.540(c)**. Clarifies that the employer match required under the conversion from the defined benefit plan to the defined contribution plan is subject to Internal Revenue Code contribution limitations. The amendment limits the total employer match to the maximum allowed during the limitation year in which the transfer occurs.

Reason: Because the amount that an employer must match under the conversion option is "new money," it has never been subject to Code limitations. 26 USC 415(c) imposes an annual limit on contributions to a defined contribution plan to the lesser of $44,000 or 100% of employee compensation. In addition, the contributions of the PERS and TRS defined contribution retirement plans are required to be aggregated with the contributions of the SBS Plan.

Consequence: Contributions above the limitations of §415(c) are not allowable under federal law, therefore, any excess contributions must be returned to the employer.

Related bill sections: Sec. 63, AS 39.35.940(c).

Sec. 25 **AS 14.25.540(d)**. Clarifies that transferred membership from the defined benefit (DB) plan to the defined contribution retirement (DCR) plan will be applied to vesting in both the employer's matching contribution and subsequent contributions.

Reason: The bill is silent on this issue. Ambiguity about whether a member's DB plan service applies to vesting in DCR plan employer contributions may prevent members who would otherwise benefit from transferring from making the decision to transfer.

Related bill sections: Sec. 64, AS 39.35.940(d).

Sec. 26 **AS 14.25.540(h)**. Provides a time limit – 12 months from the date the employer consents to the conversion -- within which an eligible member must make the decision to transfer from the DB plan to the DCR plan.

Reason: Under SB 141, an employer's decision to allow its employees to convert is irrevocable and employees have up until the day before they become vested in the Teachers' Retirement System DB plans to convert. However, a plan does not satisfy the qualifications of a §401(a) plan if it includes a cash or deferred arrangement. Treasury Regulation 1.401(k)-1(a)(3) does provide for certain one-time elections. The Division of Retirement and Benefits has received legal tax counsel that implementing a time limit for the decision-making process would meet the requirements of the Treasury Regulation.

Consequence: Without amendment, the State may not receive a favorable plan ruling. Also, because of the open-ended timeframe, employers that would otherwise benefit from consenting to transfers may make the decision not to consent because of annual budgeting uncertainty.

Related bill sections: Sec. 27, AS 14.25.540(i); Sec. 65, AS 39.35.940(h).

Sec. 27 **AS 14.25.540(i).** An employer who makes a conversion election will have an initial 12-month window open to its eligible employees for transfer from the DB plan to the DCR plan. At the end of the initial 12-month period, the employer may consent to an additional 12-month period open only to those eligible employees to whom the option was not available during the initial period.

Reason: Allowing an employer to elect to consent to transfers during an additional 12-month period provides the employer with the opportunity to achieve greater cost savings if the employer determines that consenting to additional transfers is beneficial. However, in order to meet the requirements of Treasury Regulation 1.401(k)-1(a)(3) for certain one-time elections, the second period will be limited to those employees who did not have the choice during the initial period. The Division of Retirement and Benefits has received legal tax counsel that this particular arrangement has received favorable rulings by the IRS for other plans.

Consequence: Without amendment, the State may not receive a favorable plan ruling.

Related bill sections: Sec. 26, AS 14.25.540(h); Sec. 66, AS 39.35.940(i).

Sec. 28 **AS 14.25.540(j).** Adds a definition of "membership service" for purposes of clarifying what service credit is eligible for transfer from the DB plan to the DCR plan and disallows years of service for which contributions have not been fully repaid; i.e., reinstatement of refunded contributions, or indebtedness.

Reason: If a DB plan member has an outstanding indebtedness for refunded contributions, the years of service associated with that indebtedness are not credited back to the member until the indebtedness, including interest, has been fully paid. This change clarifies this process for the conversion option so there is no ambiguity as to: (1) the dollar amount of the member's contributions to be transferred and matched by the employer; and (2) the number of years of service to be counted toward vesting in benefits of the DCR plan.

Consequence: Without amendment, it is unclear whether full service, partial service, or no service credit associated with an indebtedness should be transferred to the new plan. To allow such service to be transferred would be inconsistent with the current statutory provisions of the DB plan (AS 14.25.062).

Related bill sections: Sec. 67, AS 39.35.940(j).

Sec. 29 **AS 39.30.160(a).** Changes the authority for adopting regulations for the Supplemental Benefits System-Annuity Plan (SBS) program from the Alaska Retirement Management Board (ARMB) to the Commissioner of Administration.

Reason: Part of the reform to the retirement systems was a regulation authority change from the prior Public Employees' Retirement Board (PERB) to the Commissioner of Administration. The reference to the PERB in the SBS statute that provides authority for adoption of regulations was changed to the ARMB along with the many other reference changes. SBS regulations, like PERS regulations, relate to administrative matters to be adopted by the Commissioner.

Consequence: If the amendment is not made, in practice, the Division of Retirement and Benefits will draft regulations for administration of the SBS plan for the ARMB's review and approval.

Related bill sections: Sec. 30, AS 39.30.160(e).

Sec. 30 **AS 39.30.160(e).** Changes the reference from "board" to "commissioner".

Reason: This completes the change of authority for adopting regulations for the SBS program. See Sec. 29 above.

Related bill sections: Sec. 29, AS 39.30.160(a).

Sec. 31 **AS 39.30.165.** Adds a provision under the Supplemental Benefits System-Annuity Plan program for a member, annuitant, or beneficiary to appeal a decision of the administrator to the Office of Administrative Hearings (OAH).

Reason: This was an inadvertent omission in transferring all appeals functions to the OAH.

Consequence: Without amendment, appeals will have to be sent to the superior court.

Related bill sections: Sec. 32, AS 39.30.335; Sec. 71, AS 39.45.055; Sec. 72, AS 44.64.030(a).

Sec. 32 **AS 39.30.335.** Adds a provision under the Health Reimbursement Arrangement Plan for a member to appeal a decision of the administrator to the Office of Administrative Hearings.

Reason: This was an inadvertent omission in transferring all appeals functions to the OAH.

Consequence: Without amendment, appeals will have to be sent to the superior court.

Related bill sections: Sec. 31, AS 39.30.165; Sec. 71, AS 39.45.055; Sec. 72, AS 44.64.030(a).

Sec. 33 **AS 39.30.370**. Changes the employer contribution from an individual employer contribution amount to a uniform employer contribution amount for all participants of the Health Reimbursement Arrangement Plan.

Reason: As currently written, the HRA statutes require a separate calculation for each employer on that employer's average annual employee compensation, resulting in a different employer contribution amount for each of the 214 participating employers under PERS and TRS. Employer data for FY 2005 shows the average annual employee compensation for employers is diverse, especially within the PERS. Calculations for PERS demonstrate a probable range of monthly employer contributions from as little as $11 per member to as high as $205 per member (see Attachment #1). There is less difference among TRS employers but there is still disparity. Additionally, the data shows a PERS employer *group* average would result in a $100 per month per member contribution whereas a TRS employer *group* average would result in a $138 per month per member contribution. Employers that participate in both PERS and TRS (primarily school districts) will have different contributions for their PERS and TRS employees.

The disparity in the amount of contributions that will be made by employers to the HRA if it is implemented as it is currently written raises issues of discrimination under federal tax law [Internal Revenue Code 105(h)]. The Department of Law and the Division of Retirement and Benefits are consulting with contracted outside tax counsel on this. There is no discrimination issue if the contribution rate is changed to a uniform amount for all HRA Plan participants.

Consequence: There are several consequences of not changing the statute. Members of the same plan will be receiving different contribution amounts depending on their employer, and members that work for the same school district will receive different amounts depending on their retirement system membership (PERS or TRS). The Division of Retirement and Benefits will need to submit a private letter ruling request to the IRS regarding compliance of the current formula. That ruling is likely to take a year or longer (the IRS is not addressing section 105(h) issues at this time) and may still require a legislative amendment.

Sec. 34 **AS 39.30.380**. Removes the conflict between eligibility for retirement and medical benefits and the statutes that define eligibility for the Health Reimbursement Arrangement Plan.

Reason: One of the medical benefits available under AS 14.25.480 and AS 39.35.880 is access to the HRA. It is not clear whether the eligibility language in AS 14.25.470 and AS 39.35.870 requiring a member to have been an active member for 12 months before application for retirement is only associated with the "retire directly from the system" requirement or whether it is one of the eligibility requirements the legislature intended to apply for purposes of eligibility for HRA reimbursements.

Consequence: Without amendment, there is an ambiguity in the HRA eligibility provisions.

Sec. 35 **AS 39.30.390.** Changes eligibility for reimbursement from the Health Reimbursement Arrangement to persons who meet the eligibility requirements for retirement and medical benefits under either PERS or TRS, rather than under both.

Reason: This is a clarification. It is unlikely that the legislature intended that a member be eligible for retirement and medical benefits under both TRS and PERS in order to be eligible for HRA benefits.

Sec. 36 **AS 39.35.250.** Clarifies the definitions of "consolidated employer normal cost rate" and "past service rate."

Reason: This section has not been updated since 1977. These are technical changes recommended by the State's actuary to accurately reflect that the last benefit enhancements to the DB plan were enacted in 2001 and the entire amortization schedule was rest in 2002 when the process for valuing assets was changed from the corridor method to the smoothing method.

Related bill sections: Sec. 2, AS 14.25.070(d)-(e); Sec. 37, AS 39.35.270(a).

Sec. 37 **AS 39.35.270(a).** Changes the calculation of the employer contributions so that the normal cost rate is applied only to the payroll base of DB plan members and the past service rate is applied to the employer's entire payroll base.

Reason: The current statutes defining contributions by employers reference contributions to the "plan" and specify that the employer contribution rate will be applied to the salaries paid to "members." This amendment allows the contribution rate for past service costs to be applied to the entire payroll base of the employers' workforce without regard to plan (tier) membership, and will keep employer contribution rates for the DB plan lower than would otherwise be calculated.

Consequence: Without amendment, employer rates for past service costs under the DB plan will continue to rise as the amortized liability is applied to a shrinking payroll paid to members of the DB plan. However, this will neither increase the employers' liability nor will it relieve the employers of the liability, it merely restates the liability as a higher percentage of applicable payroll.

Related bill sections: Sec. 1, AS 14.25.070(a); Sec. 36, AS 39.35.250.

Sec. 38 **AS 39.35.270(d).** This change, combined with the repeal of AS 39.35.270(b) and the effective date in Sec. 79, delays the effective date of the requirement of SB 141 that the employer contribution rate must be not less than the normal cost rate.

Reason: This is the same language that currently exists under AS 39.35.270(b) as enacted by sec. 96, ch. 9, FSSLA 2005, which was effective July 1, 2005. A number of employers that did not have the opportunity to budget for the new contribution rates that resulted from this new requirement have been assessed contribution rates that are higher than anticipated for the current fiscal year.

Consequence: If this amendment and Sec. 75, Sec. 78, and Sec. 79 are not enacted, 24 currently active PERS employers will pay an increased contribution rate in FY 2006.

Related bill sections: Sec. 3, AS 14.25.070(f); Sec. 75; Sec. 78; Sec. 79.

Sec. 39 **AS 39.35.375(a)**. Effective July 1, 2010, removes the provision that allows employees to repay refunded contributions for the purpose of obtaining a public service benefit.

Reason: This statute was overlooked in the repeal by SB 141 of the reinstatement of service provisions. AS 39.35.375 allows an active PERS member who has never vested in TRS or PERS and who has cashed out TRS service to reinstate the TRS service credit to establish a "public service benefit."

Consequence: Without change, refunded PERS members will be treated differently under separate statutes. It would also continue to allow an "off-books" liability in the DB plan, one that can be neither accounted for nor paid until an eligible member applies for the benefit.

Related bill sections: Sec. 76, AS 39.35.375(f).

Sec. 40 **AS 39.35.385(c)**. Effective July 1, 2010, removes the provision that allows employees to repay refunded contributions for the purpose of obtaining a conditional service benefit.

Reason: This statute was overlooked in the repeal by SB 141 of the reinstatement of service provisions. AS 39.35.385 allows persons who are eligible for a normal or early retirement salary under TRS to qualify for a normal or early "conditional service" retirement benefit under PERS if he or she has at least two years of credited service in PERS. Members are allowed to reinstate refunded service credit in order to qualify for the conditional service benefit under AS 39.35.385(c). The conditional service benefit is very expensive because it results in payment of medical premiums and other medical charges from both the PERS and TRS for a single retiree.

Consequence: Without change, refunded PERS members will be treated differently under separate statutes. It would also continue to allow an "off-books" liability in the DB plan, one that can be neither accounted for nor paid until an eligible member applies for the benefit.

Related bill sections: Sec. 4, AS 14.25.125(c).

Sec. 41 **AS 39.35.522(d)**. Adds a provision for appeal to the Office of Administrative Hearings of the Commissioner's decisions on waiver requests under PERS.

Reason: SB 141 established a new procedure for persons seeking a waiver of adjustment to benefits paid made by the administrator. The new procedure requires filing a request with the Commissioner of Administration for the waiver. While the TRS statutes allow an appeal of the Commissioner's decision to the OAH, the PERS statutes do not. This was a drafting error.

Consequence: If the amendment is not made, PERS appeals from the Commissioner's waiver decisions will have to be sent to the superior court, which is costly. An alternative would be for the Commissioner to delegate authority to the OAH to make the PERS waiver decisions [AS 44.64.030(b)]. Under this scenario, the OAH could bill the Division for these services.

Related bill sections: Sec. 72, AS 44.64.030(a).

Sec. 42 **AS 39.35.680(3).** Incorporates the reference to the new administrator section AS 39.35.003 into the definition of "administrator" under the PERS DB plan.

Reason: AS 39.35.050(a) is repealed in section 74 of the bill. This is a duplicative section regarding the administrator that was replaced with AS 39.35.003 in SB 141.

Sec. 43 **AS 39.35.710(b).** Clarifies that the retirement plans established by SB 141 are hybrid plans, containing both defined benefits and defined contributions, which fall under the Internal Revenue Code section 414(k).

Reason: This is one of several conforming amendments necessary to pay all the benefits required in accordance with the intent of SB 141 and the retirement plans contained therein. SB 141 provides both guaranteed fixed benefits for certain eligible persons as well as benefits based upon defined contributions to an individual account, medical benefits, and medical expense reimbursements. This type of plan structure is provided for under 26 USC 414(k) "Certain plans." These changes, in combination with others, are designed to clarify the structure of the new retirement plans in order to successfully obtain a favorable ruling from the IRS.

Consequence: If this amendment is not adopted, the IRS may not recognize and apply the special rules of the §414(k) structure which may result in an IRS plan determination failure.

Related bill sections: Sec. 5, AS 14.25.320(b); Sec. 6, AS 14.25.320(c); Sec. 9, AS 14.25.380; Sec. 10, AS 14.25.400(b); Sec. 23, AS 14.25.510; Sec. 44, AS 39.35.710(c); Sec. 47, AS 39.35.780; Sec. 48, AS 39.35.800(b); Sec. 62, AS 39.35.910.

Sec. 44 **AS 39.35.710(c).** Clarifies that the retirement plans established by SB 141 are hybrid plans, containing both defined benefits and defined contributions, which fall under the Internal Revenue Code section 414(k).

Reason: This is one of several conforming amendments necessary to pay all the benefits required in accordance with the intent of SB 141 and the retirement plans contained therein. SB 141 provides both guaranteed fixed benefits for certain eligible persons as well as benefits based upon defined contributions to an individual account, medical benefits, and medical expense reimbursements. This type of plan structure is provided for under 26 USC 414(k) "Certain plans." These changes, in combination with others, are designed to clarify the structure of the new retirement plans in order to successfully obtain a favorable ruling from the IRS.

Consequence: If this amendment is not adopted, the IRS may not recognize and apply the special rules of the §414(k) structure which may result in an IRS plan determination failure.

Related bill sections: Sec. 5, AS 14.25.320(b); Sec. 6, AS 14.25.320(c); Sec. 9, AS 14.25.380; Sec. 10, AS 14.25.400(b); Sec. 23, AS 14.25.510; Sec. 43, AS 39.35.710(b); Sec. 47, AS 39.35.780; Sec. 48, AS 39.35.800(b); Sec. 62, AS 39.35.910.

Sec. 45 **AS 39.35.730(c).** Clarifies that any voluntary contributions made by an employee under AS 39.35.730(b) can only be made with pre-tax dollars to the extent permitted under federal law.

Reason: The Internal Revenue Code allows pre-tax contributions only if the employee does not have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement plan. This is the case for contributions mandated by statute: however, a voluntary contribution clearly does not meet this test. Under certain restricted arrangements that involve a one-time irrevocable election, the IRS will allow voluntary contributions on a picked-up (pre-tax) basis. This amendment allows the State the flexibility to define such a restricted arrangement in both regulation and in its Private Letter Ruling request.

Related bill sections: Sec. 7, AS 14.25.340(c).

Sec. 46 **AS 39.35.750(e).** Adds a fund source in statute to pay for the monthly pension that may be elected by a disabled peace officer or fire fighter upon eligibility for normal retirement. Clarifies that the employer contributions for the defined benefits under this subsection (occupational disability, occupational death, and disabled peace officer/fire fighter retirement benefits) will be deposited to a separate trust account.

Reason: The legislature specified that a monthly pension benefit calculated under AS 39.35.370(c) elected by a disabled peace officer or fire fighter would *not* be paid out of the PERS defined benefit trust (AS 39.35.890((h)(2)); however, the legislature did not specify a funding source for those benefits. The "trust account" is new language to clarify these employer contributions are treated differently and kept separate from the contributions to the plan's individual member accounts. This language is also present in new subsection (e) of AS 14.25.350.

Consequence: The consequence of not enacting this amendment is that there will be no funding source from which to pay retirement benefits for disabled peace officers and fire fighters who elect to have their retirement benefits calculated under AS 39.35.370(c) once the normal retirement date is reached and disability benefits end.

Related bill sections: Sec. 8 AS 14.25.350(e); Sec. 54, AS 39.35.890(h).

Sec. 47 **AS 39.35.780**. Clarifies that only the defined contributions paid into a member's individual account are subject to the limitations of 26 USC 415(c) and not the contributions employers make for the fixed benefits contained in the plans (occupational disability, survivor's pension, etc.). Additionally, the fixed benefits paid to eligible persons are subject to the limitations of §415(b) under the Internal Revenue Code.

Reason: This is one of several conforming amendments necessary to pay all the benefits required in accordance with the intent of SB 141 and the retirement plans contained therein. SB 141 provides both guaranteed fixed benefits for certain eligible persons as well as benefits based upon defined contributions to an individual account, medical benefits, and medical expense reimbursements. This type of plan structure is provided for under 26 USC 414(k) "Certain plans." These changes, in combination with others, are designed to clarify the structure of the new retirement plans in order to successfully obtain a favorable ruling from the IRS.

Consequence: If this amendment is not adopted, the IRS may not recognize and apply the special rules of the §414(k) structure which may result in an IRS plan determination failure.

Related bill sections: Sec. 5, AS 14.25.320(b); Sec. 6, AS 14.25.320(c); Sec. 9, AS 14.25.380; Sec. 10, AS 14.25.400(b); Sec. 23, AS 14.25.510; Sec. 43, AS 39.35.710(b); Sec. 44, AS 39.35.710(c); Sec. 48, AS 39.35.800(b); Sec. 62, AS 39.35.910.

AS 39.35.790(b). This is a duplicate amendment inserted by mistake. Reference Sec. 53 for correct amendment.

Sec. 48 **AS 39.35.800(b)**. Clarifies that a participant may only direct the investment of the funds held in the participant's individual account by making the distinction between the defined contribution accounts and the fixed benefit accounts established under the plans.

Reason: This is one of several conforming amendments necessary to pay all the benefits required in accordance with the intent of SB 141 and the retirement plans contained therein. SB 141 provides both guaranteed fixed benefits for certain eligible persons as well as benefits based upon defined contributions to an individual account, medical benefits, and medical expense reimbursements. This type of plan structure is provided for under 26 USC 414(k) "Certain plans." These changes, in combination with others, are designed to clarify the structure of the new retirement plans in order to successfully obtain a favorable ruling from the IRS.

Consequence: If this amendment is not adopted, the IRS may not recognize and apply the special rules of the §414(k) structure which may result in an IRS plan determination failure.

Related bill sections: Sec. 5, AS 14.25.320(b); Sec. 6, AS 14.25.320(c); Sec. 9, AS 14.25.380; Sec. 10, AS 14.25.400(b); Sec. 23, AS 14.25.510; Sec. 43, AS 39.35.710(b); Sec. 44, AS 39.35.710(c); Sec. 47, AS 39.35.780; Sec. 62, AS 39.35.910.

Sec. 49 **AS 39.35.870(g).** Requires a person who originally chose not to participate in the retiree major medical plan, but who later chooses to participate, to provide a letter of continuous coverage or proof of insurability.

Reason: The Division of Retirement and Benefits had anticipated the provisions for application for retirement and medical benefits would be handled by regulation. However, the plain wording of the statute seems to leave the choice to the eligible person regardless of their health status.

Consequence: Without amendment, the statute leaves the retiree major medical insurance plan open to adverse selection and unpredictable costs.

Related bill sections: Sec. 11, AS 14.25.470(g).

Sec. 50 **AS 39.35.890(b).** Clarifies the termination of a disability benefit when a person no longer meets the requirements to receive occupational disability benefits.

Reason: The intent of an occupational disability benefit is to provide an income for a person who is no longer able to work due to an injury sustained on-the-job. In combination with Sec. 56 of this bill, the amendment makes it clear that if a person is able to perform the duties of another available and comparable position, regardless of employer, then that person no longer meets the requirements to receive occupational disability benefits.

Related bill sections: Sec. 12, AS 14.25.485(b); Sec. 56, AS 39.35.890(l).

Sec. 51 **AS 39.35.890(c).** Clarifies that a period of disability benefits constitutes membership service in regard to determining eligibility for retirement and medical benefits including the Health Reimbursement Arrangement (HRA).

Reason: The statutes do not mention vesting in medical benefits during a period of disability benefits. However, the intent is implied by the requirement for continuing employer contributions into the individual account, the HRA and health insurance fund while a member is receiving disability benefits. The employer must also make the member's contributions to the individual contribution account.

Related bill sections: Sec. 13, AS 14.25.485(c).

Sec. 52 **AS 39.35.890(d).** Provides that a member who receives disability benefits from the plan is 100% vested in all the employer contributions made to the member's individual account, regardless of years of service worked, once the member is appointed to disability. Clarifies that a member is not entitled to elect distributions from the member's individual account while receiving disability benefits.

Reason: This amendment relates specifically to the continuing employer contributions required under AS 39.35.890(d). 26 USC 415(c)(3)(C) provides special rules that allow the compensation of a disabled member for any year subsequent to the disability to be considered equivalent to the rate of compensation immediately prior to the disability. However, these rules only apply if the contributions are nonforfeitable when made.

Because a disabled member must terminate employment, the disabled member will arguably become eligible for distributions from the individual contribution account under AS 39.35.810. The apparent intent of the disability benefit is to provide an income until such time as a disabled member becomes eligible for the benefits from a "normal retirement." During a period of disability benefits, the employer is required to make continuing employer contributions into the individual account, the HRA, and health insurance fund. The employer must also make the member's contributions to the individual contribution account. The purpose of these contributions would seem to be to accumulate funding for retirement benefits available to the member once the normal retirement date is reached and disability benefits end.

Consequence: If this amendment is not adopted, the special rules of 26 USC 415(c)(3)(C) would not apply, the member's compensation would be zero for the year following disability, and the allowable contributions would therefore be zero. As a result, the benefits could not be paid in accordance with AS 39.35.890. Also, a disabled member may be able to elect distributions from the member's individual account prior to becoming eligible for normal retirement. This could be regarded as "double dipping," and as thwarting the intent of the legislature to provide a retirement benefit once the disability benefit ends.

Related bill sections: Sec. 14, AS 14.25.485(d); Sec. 20, AS 14.25.487(c); Sec. 59, AS 39.35.892(c).

Sec. 53 **AS 39.35.890(g)**. Clarifies the termination of disability benefits when a disabled member first qualifies for normal retirement.

Reason: Technical for administrative purposes. Conforms to other benefit payment provisions.

Related bill sections: Sec. 15, AS 14.25.485(g).

Sec. 54 **AS 39.35.890(h)**. Specifies that the monthly pension benefit elected by a disabled peace officer or fire fighter under (2) of this subsection will be paid first from the member's individual account and then from the trust account established under AS 39.35.750(e). Also clarifies that a member who is a peace officer or fire fighter is not entitled to elect distributions from the member's individual account while receiving disability benefits.

Reason: This change is consistent with the method of payment applied under the current defined benefit plan. In the DB plan, the peace officer or fire fighter member who chooses the option to have a monthly benefit calculated under the provisions of the disability benefit is still receiving a normal retirement benefit. The employee contribution account is transferred to the Retirement Reserve account and benefits are paid from that account each month. The employee contribution account is drawn down first, then benefits are paid from the employer's contributions.

Consequence: The consequence of not enacting this amendment is that there will be an ambiguity in the statutes regarding the accounts used for payment of these benefits. See also Sec. 52, above.

Related bill sections: Sec. 46, AS 39.350.750(e); Sec. 52, AS 39.35.890(d).

Sec. 55 **AS 39.35.890(k)**. Changes made to this subsection, which is related to the benefits for a survivor of a disabled member who dies while receiving disability benefits, mirror other changes being made to the disability and death statutes throughout this bill. The changes are: (1) clarifies the termination of a survivor's pension; (2) clarifies that a survivor cannot access the member's individual account while receiving a survivor's pension; (3) clarifies the normal retirement benefits available to a survivor; and (4) clarifies that the period of disability benefits and the period of survivor benefits constitute membership service for vesting in employer contributions, and eligibility for medical benefits and the Health Reimbursement Arrangement.

Reason: This is a conforming amendment. See the related bill sections referenced below.

Related bills sections: Sec. 16, AS 14.25.485(i); Sec. 51, AS 39.35.890(c); Sec. 58, AS 39.35.892(b); Sec. 59, AS 39.35.892(c); Sec. 60, AS 39.35.892(e).

Sec. 56 **AS 39.35.890(l)**. Clarifies the definition of occupational disability.

Reason: The intent of an occupational disability benefit is to provide an income for a person who is no longer able to work due to an injury sustained on-the-job. This definition is slightly different from the definition under AS 39.35.680. In combination with Sec. 51 of this bill, the amendment makes it clear that if a person is able to perform the duties of another available and comparable position, regardless of employer, then that person no longer meets the requirements to receive occupational disability benefits.

Related bill sections: Sec. 17, AS 14.25.485(j); Sec. 50, AS 39.35.890(b).

Sec. 57 **AS 39.35.891**. Adds an annual adjustment to disability benefits, and to retirement benefits elected by disabled peace officers and fire fighters (P/F) under AS 39.35.890(h)(2), equal to 75% of the increase in the Anchorage Consumer Price Index or 9%, whichever is less.

Reason: This amendment provides a formula for annual increases to the monthly amount of a disability benefit, and to a monthly retirement benefit for eligible P/F, which is the same as the formula for PERS Tier III members.

Consequence: If this amendment is not enacted, a member's monthly disability benefit amount or monthly P/F retirement benefit amount will remain static from year to year without adjustment for inflation.

Related bill sections: Sec. 18, AS 14.25.486.

Sec. 58 **AS 39.35.892(b).** Clarifies the termination of a survivor's pension under the occupational death benefit provisions, including the end of death benefits when a dependent child no longer meets the definition of dependent.

Reason: The death benefit statute unambiguously states when the benefits will begin and when they will end, omitting termination of the death benefit the last month in which there is an eligible child. A dependent child receiving occupational death benefits might argue that death benefits must be paid until the date the deceased member would have retired, without regard to the age of the child. The disability statute [AS 39.35.890(k)], however, includes language terminating a survivor's benefit (from a disabled member who died while receiving disability) the last month in which there is an eligible surviving spouse or child. This appears to be a conflict of intent.

Consequence: Failure to amend this statute may jeopardize plan qualification because the IRC definition of "dependent" [26 USC, §151 and §152] includes age requirements for distribution to a dependent child under a qualified plan.

Related bill sections: Sec. 19, AS 14.25.487(b).

Sec. 59 **AS 39.35.892(c).** Clarifies that a survivor of a deceased member is not entitled to elect distributions from the member's individual account while receiving survivor benefits. Clarifies that the continuing contributions required by the employer are made on behalf of the surviving spouse and member's dependent children rather than "beneficiaries." Directs all continuing contributions by the employer into the occupational disability and death trust account in accordance with the Internal Revenue Code (IRC).

Reason: The death benefit provides an income, and eventually retirement benefits, for the family of a member who dies in the line of duty. An employer is required to make the same continuing contributions as required for disabled members. The purpose of these contributions would seem to be to accumulate funding for retirement benefits available to the deceased member's surviving spouse once the normal retirement date is reached and death benefits end. However, the beneficiaries of a deceased member are arguably immediately eligible for distributions from the individual contribution account under AS 39.35.810. Additionally, the beneficiaries may not solely be the surviving spouse and or dependent children. The situation is similar to that described under Sec. 52 [AS 39.35.890(d)]. Please see Sec. 60 below for an explanation of the changes required by the IRC.

Consequence: If the clarifications are not enacted, a deceased member's surviving spouse, dependent children, or other beneficiaries may be able to elect distributions from the member's individual account prior to the date the member would have qualified for normal retirement had the member lived. As with distributions taken during a member's disability, this could be regarded as "double dipping," and as thwarting the intent of the legislature to provide eligible survivors with a retirement benefit once the death benefit ends. This scenario has more complications – including possible tax reporting requirements - than the disability provisions because the member's surviving spouse and/or dependent children may not be the only beneficiaries.

Related bill sections: Sec. 20, AS 14.25.487(c); Sec. 52, AS 39.35.890(d); Sec. 60, AS 39.35.892(e).

Sec. 60 **AS 39.35.892(e).** Revises the language regarding the continuing contributions employers make on behalf of survivors of members who died occupationally. The contributions will be an actuarially calculated amount required to yield the same results as under SB 141; however, the contributions will be made into the trust account established for occupational disability and death benefits rather than into the member's individual account. The benefits will also be paid from the occupational disability and death trust account. This amendment also clarifies that the period of death benefits constitutes membership service for determining vesting in employer contributions and eligibility for medical benefits and the Health Reimbursement Arrangement.

Reason: Unlike the special rules under 26 USC 415(c)(3)(C) that allow the compensation of a disabled member for any year subsequent to the disability to be considered equivalent to the rate of compensation immediately prior to the disability, there is no corresponding rule for a deceased participant. Thus, there would be no compensation for a deceased member in the year after death and, therefore, no allowable contributions to the deceased member's individual account. The solution this amendment proposes is to make contributions to an account that is allowable under the Internal Revenue Code and add an "additional benefit" that is equal to the amount that would have been contributed to the member's individual account, had the member survived, plus an earnings credit.

Consequence: If this amendment is not adopted, the State will not receive a favorable ruling from the Internal Revenue Service and will not be able to pay the intended retirement benefits to survivors.

Related bill sections: Sec. 21, 14.25.487(e); Sec. 55, AS 39.35.890(k); Sec. 59, AS 39.35.892(c).

Sec. 61 **AS 39.35.893.** Adds an annual cost-of-living adjustment (COLA) to the survivor's pension benefit equal to 50% of the increase in the Anchorage Consumer Price Index or 6%, whichever is less. Persons who are receiving a survivor's pension who are age 60 or older and persons who have received a survivor's pension for at least 5 years are eligible for the COLA.

AS 39.35.894. Adds a provision that a person whose disability or survivor benefits are terminated due to eligibility for a normal retirement benefit will be treated as if that person is eligible for Medicare, regardless of age, for the purpose of cost-sharing medical premiums with the Plan

Reason: This amendment provides a formula for annual increases to the monthly amount of a disability benefit that is the same as the formula for PERS Tier III members. It also applies the medical cost-sharing provisions of the new retirement tier so that benefit recipients do not have to bear the full burden of medical insurance premiums when they reach normal retirement.

Consequence: If these amendments are not enacted, a member's monthly disability amount and a survivor's monthly pension amount will remain static from year to year without adjustment for inflation. Disabled members and survivors who have not reached the age required for Medicare eligibility when they qualify for a normal retirement benefit will have to pay 100% of the monthly premium for retiree major medical insurance.

Related bill sections: Sec. 22, AS 14.25.488, AS 14.25.489.

Sec. 62 **AS 39.35.910**. Clarifies that the nonguarantee clause relates only to the defined contribution portion of the retirement plans. The fixed benefits contained under these plans are defined by statute.

Reason: This is one of several conforming amendments necessary to pay all the benefits required in accordance with the intent of SB 141 and the retirement plans contained therein. SB 141 provides both guaranteed fixed benefits for certain eligible persons as well as benefits based upon defined contributions to an individual account, medical benefits, and medical expense reimbursements. This type of plan structure is provided for under 26 USC 414(k) "Certain plans." These changes, in combination with others, are designed to clarify the structure of the new retirement plans in order to successfully obtain a favorable ruling from the IRS.

Consequence: If this amendment is not adopted, the IRS may not recognize and apply the special rules of the §414(k) structure which may result in an IRS plan determination failure.

Related bill sections: Sec. 5, AS 14.25.320(b); Sec. 6, AS 14.25.320(c); Sec. 9, AS 14.25.380; Sec. 10, AS 14.25.400(b); Sec. 23, AS 14.25.510; Sec. 43, AS 39.35.710(b); Sec. 44, AS 39.35.710(c); Sec. 47, AS 39.35.780; Sec. 48, AS 39.35.800(b).

Sec. 63 **AS 39.35.940(c)**. Clarifies that the employer match required under the conversion from the defined benefit plan to the defined contribution plan is subject to Internal Revenue Code contribution limitations. The amendment limits the total employer match to the maximum allowed during the limitation year in which the transfer occurs.

Reason: Because the amount that an employer must match under the conversion option is "new money," it has never been subject to Code limitations. 26 USC 415(c) imposes an annual limit on contributions to a defined contribution plan to the lesser of $44,000 or 100% of employee compensation. In addition, the contributions of the PERS and TRS defined contribution retirement plans are required to be aggregated with the contributions of the SBS Plan.

Consequence: Contributions above the limitations of §415(c) are not allowable, therefore, any excess contributions must be returned to the employer under federal law.

Related bill sections: Sec. 24, AS 14.25.540(c).

Sec. 64 **AS 39.35.940(d)**. Clarifies that transferred membership from the DB plan to the DCR plan will be applied to vesting in both the employer's matching contribution and subsequent contributions.

Reason: The bill is silent on this issue. Ambiguity about whether a member's DB plan service applies to vesting in DC plan employer contributions may prevent members who would otherwise benefit from transferring from making the decision to transfer.

Related bill sections: Sec. 25, AS 14.25.540(d).

Sec. 65 **AS 39.35.940(h).** Provides a time limit – 12 months from the date the employer consents to the conversion -- within which an eligible member must make the decision to transfer from the DB plan to the DCR plan.

Reason: Under SB 141, an employer's decision to allow its employees to convert is irrevocable and employees have up until the day before they become vested in the Teachers' Retirement System DB plans to convert. However, a plan does not satisfy the qualifications of a 401(a) plan if it includes a cash or deferred arrangement. Treasury Regulation 1.401(k)-1(a)(3) does provide for certain one-time elections. The Division of Retirement and Benefits has received legal tax counsel that implementing a time limit for the decision-making process would meet the requirements of the Treasury Regulation.

Consequence: Without amendment, the State may not receive a favorable plan ruling. Also, because of the open-ended timeframe, employers that would otherwise benefit from consenting to transfers may make the decision not to consent because of annual budgeting uncertainty.

Related bill sections: Sec. 26, AS 14.25.540(h); Sec. 66, AS 39.35.940(i).

Sec. 66 **AS 39.35.940(i).** An employer who makes a conversion election will have an initial 12-month window open to its eligible employees for transfer from the DB plan to the DCR plan. At the end of the initial 12-month period, the employer may consent to an additional 12-month period open only to those eligible employees to whom the option was not available during the initial period.

Reason: Allowing an employer to elect to consent to transfers during an additional 12-month period provides the employer with the opportunity to achieve greater cost savings if the employer determines that consenting to additional transfers is beneficial. However, in order to meet the requirements of Treasury Regulation 1.401(k)-1(a)(3) for certain one-time elections, the second period will be limited to those employees who did not have the choice during the initial period. The Division of Retirement and Benefits has received legal tax counsel that this particular arrangement has received favorable rulings by the IRS for other plans.

Consequence: Without amendment, the State may not receive a favorable plan ruling.

Related bill sections: Sec. 27, AS 14.25.540(i); Sec. 65, AS 39.35.940(h).

Sec. 67 **AS 39.35.940(j).** Adds a definition of "membership service" for purposes of clarifying what service credit is eligible for transfer from the DB plan to the DCR plan and disallows years of service for which contributions have not been fully repaid; i.e., reinstatement of refunded contributions, or indebtedness.

Reason: If a DB plan member has an outstanding indebtedness for refunded contributions, the years of service associated with that indebtedness are not credited back to the member until the indebtedness, including interest, has been fully paid. Also, there is no definition of "membership service" under the PERS DB statutes. This change clarifies the definition for the conversion option so there is no ambiguity as to: (1) the dollar amount of the member's contributions to be transferred and matched by the employer; and (2) the number of years of service to be counted toward vesting in benefits of the DCR plan.

Consequence: Without amendment, it is unclear whether full service, partial service, or no service credit associated with an indebtedness should be transferred to the new plan. To allow such service to be transferred would be inconsistent with the current statutory provisions of the DB plan (AS 39.35.350).

Related bill sections: Sec. 28, AS 14.25.540(j).

Sec. 68 **AS 39.35.957**. Adds a provision for employers to designate classes or groups of employees eligible to participate in (or to be excluded from) the DCR plan. Clarifies that a member of the DB plan will become a member of the DCR plan if employed by an employer that participates only in the DCR plan.

AS 39.35.958. Adds the process by which an employer may terminate participation from the DCR plan and outlines the rights of employees and the costs to the employer upon termination.

Reason: The PERS DB plans have specific statutory guidelines on the process for amending and terminating participation in the PERS. Although a provision for participation was added to the DCR plan, amendment and termination were not.

Consequence: If these amendments are not enacted, there will be no statutory guidelines for amendment and termination of participation in the DCR plan. The Division of Retirement and Benefits will have no basis for making decisions regarding members' rights to medical benefits, including the HRA, if an employer terminates from participation.

Sec. 69 **AS 39.35.990(16)**. Clarifies that "member" and "employee" have the same meaning throughout the PERS DCR statutes and excludes instructors at the Department of Labor and Workforce Development (DLW&D) and the Department of Education and Early Development (DEED) in positions requiring a teacher certificate.

Reason: "Member" and "employee" are both used inconsistently throughout the PERS statutes. This change clarifies they are intended to be used interchangeably. Also, the DLWD is changing their position requirements for some of its vocational education positions to *not* require a teacher certificate.

Consequence: Without amendment, instructors at the DLW&D and DEED may be precluded from being members of PERS if they work in a position that does not require a teacher certificate.

Sec. 70 **AS 39.35.990(20)**. Provides a clear definition of peace officer and fire fighter under the DCR plan.

Reason: This is a technical change to clarify the job classes eligible for classification as a peace officer or fire fighter.

Consequence: Without amendment, this definition references back to the definition under AS 39.35.680(29) which contains the same job classes.

Sec. 71 **AS 39.45.055**. Adds a provision under the Deferred Compensation program for a member to appeal a decision of the administrator to the Office of Administrative Hearings.

Reason: This was an inadvertent omission in transferring all appeals functions to the OAH.

Consequence: Without amendment, appeals will have to be sent to the superior court.

Related bill sections: Sec. 31, AS 39.30.165, Sec. 32, AS 39.30.335; Sec. 72, AS 44.64.030(a).

Sec. 72 **AS 44.64.030(a)**. Adds the Supplemental Benefit-Annuity Plan, Health Reimbursement Arrangement Plan, Deferred Compensation Plan, and waivers of adjustment under the PERS and TRS defined benefit plans to the jurisdiction of the Office of Administrative Hearings.

Reason: This is a required change for statutory authority of the appeals delegated under the above programs.

Related bill sections: Sec. 31, AS 39.30.165; Sec. 32, AS 39.30.335; Sec. 41, AS 39.35.522(d); Sec. 71, AS 39.45.055.

Sec. 73 **Sec. 134, ch. 9, FSSLA 2005.** Clarifies that the initial FY 2007 employer contribution rates specified in this section for occupational disability and occupational death benefits will be applied only to the payroll base of the members in the DCR plan.

Reason: Technical change to remove any ambiguity in the application of the employer contribution rates.

Sec. 74 **AS 14.25.045 and 14.25.570**. Repeals participation of National Education Association (NEA) employees in the TRS.

Reason: Although NEA had been included by the legislature in the TRS DB plan in statute, NEA is a non-profit organization and they do not qualify for inclusion in the system. This error was acknowledged by the Division of Retirement and Benefits, the Department of Law, and the NEA in the early 1990's/late 1980's. In discussion with participating NEA management it was decided by the TRS Board that members participating at the time would be grandfathered and inclusion of new members would be discontinued (since then the last member has retired). Inclusion in the new plan resulted from duplication of existing statutes.

AS 39.35.050(a). Repeals duplicative AS 39.35.050(a) which provides for the Commissioner of Administration to appoint an administrator.

Reason: Technical change. This statute was replaced by AS 39.35.003 in SB 141.

Sec. 75 **AS 14.25.070(b) and AS 39.35.270(b).** Repeals the requirement enacted in SB 141 that the employer contribution rate must not be less than the normal cost rate retroactive to July 1, 2005.

Reason: These provisions added by SB 141, and effective July 1, 2005, require that an employer's contribution rate may not be less than the normal cost rate. Under the current version of HB 475, the repeal is effective July 1, 2006 (FY 2007). Sec. 78 makes the repeal of these provisions effective for FY 2006.

Related bill sections: Sec. 3, AS 14.25.070(f); Sec. 38, AS 39.35.270(d); Sec. 78; Sec. 79.

Sec. 76 **AS 39.35.375(f).** This subsection relates to reinstating service associated with refunded contributions for obtaining a public service benefit.

Reason: With the change to the public service benefit under AS 39.35.375(a) – see Sec. 39 - - this subsection will have no applicable meaning beginning July 1, 2010.

Sec. 77 **Uncodified law.** Establishes an initial contribution rate for TRS employers to fund occupational disability and death benefits during the first fiscal year of the DCR plan (FY 2007).

Reason: The first valuation year in which employees will be enrolled in the DCR plan begins July 1, 2006. The ARMB will consider the contribution rate for this cost during the 2007 valuation, ending date June 30, 2006.

Consequence: If this section, in combination with Sec. 8 of this bill, is not enacted, there will be no funding source from which to pay TRS occupational disability and death benefits. If Sec. 8 is enacted but not this section, implementation of a cost rate for this benefit, and contributions to the plan, may be delayed until the ARMB can request a calculation by the actuary and approve a contribution rate.

Related bill sections: Sec. 8, AS 14.25.350(e).

Sec. 78 **Retroactivity clause for section 75.** July 1, 2005.

Sec. 79 **Effective date for sections 3 and 38.** July 1, 2008.

Sec. 80 **Effective date for sections 4, 39, and 40.** July 1, 2010.

Sec. 81 **Immediate effective date for sections 75 and 78.** AS 01.10.070(c).

Sec. 82 **Effective date remainder of bill.** July 1, 2006.

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MEMORANDUM

TO: Senator Bert Stedman, Chair
Senate Community and Regional Affairs Committee

FROM: Representative Paul Seaton

DATE: Friday, April 28, 2006

RE: Request for a hearing on CSHB 475(FIN)am

I respectfully request a hearing before the Senate Community and Regional Affairs Committee on HB 475

In summary, HB 475 is a clean-up bill to the Retirement Security Act (SB 141) that passed in 2005. Due to the length of SB 141, errors and oversights were made that need to be changed for a smooth transition to Tier IV. HB 475 was a technical bill. It now includes two policy changes:

1) Retroactive and deferred effective dates for mandated normal cost contributions by employers (per the requested of over funded employers) and;
2) A one-year delayed effective date of the implementation of SB 141 that was added as a floor amendment.

Attached please find: CSHB 475(FIN)am version X.A; sponsor statement; abbreviated sectional analysis for version X.A; detailed departmental sectional analysis on CSHB 475(FIN) version X and CSHB 475(FIN) version X.*

*The detailed sectional analysis was prepared by the department for version X of the bill and has not been updated to reflect version X.A as amended on the House Floor. Therefore, I have included version X that corresponds to the detailed sectional for a more in-depth analysis of the bill than the abbreviated sectional provides.

Staff contact. Katie Shows, 2028

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REPRESENTATIVE PAUL SEATON
House District 35

Sponsor Statement CSHB 475

HB 475 is a clean up bill to the Retirement Security Act (SB 141) that passed in 2005. Due to the length of SB 141, a handful of errors and oversights were made that need to be changed for a smooth transition to Tier IV. HB 475 is a technical bill. It is not intended to include any policy changes.

Revisions encompassed in HB 475:

1. Clarifies the procedure for an appeal to the Office of Administrative Hearings
2. Requires employers to contribute at least the normal cost rate starting in 2008
3. Changes the requirements to receive a conditional/public service benefit
4. Clarifies provisions regarding PERS/TRS death and disability benefits, including how those benefits will be funded
    a. Funding death and disability benefits
    b. The structure of death and disability benefits
    c. Survivor benefit
5. Clarifies the eligibility requirements for medical benefits
6. Clarifies requirements for non-vested Tier II or Tier III employees who wish to transfer to Tier IV
7. Clarifies the basis for calculating employer contribution rates
8. Gives regulatory authority to the appropriate party
9. Changes the basis for calculating HRA employer contributions to meet IRS tax qualifications
10. Definitions
11. Disallows employment with NEA as counting towards Tier IV retirement eligibility
12. Establishes provisions for employer termination of participation in the plan
13. Clarifies defined benefit and defined contribution components of the plan
14. Establishes adherence to IRS limitations
15. Delayed effective date

The above listed changes are not absolutely necessary for Tier IV to come on line July 1, 2006. However, these revisions clarify many aspects of the statutes, providing a benefit both to the plan and members. If changes are not made, many crucial decisions will be left to the Administrator of the plan without proper guidance from the legislature.

Abbreviated Sectional Analysis for CSHB 475(FIN)am V.X.A

1. Clarifies the procedure for an appeal to the Office of Administrative Hearings (OAH)

Sec. 36, Sec. 39, Sec. 49, Sec. 82, Sec. 83

Change: Adds the Supplemental-benefit-annuity Plan (SBS), Health Reimbursement Arrangement (HRA) Plan, Deferred Compensation Plan, and waivers of adjustment under the PERS and TRS Defined Benefit (DB) plans to the jurisdiction of the OAH. Gives members the authority to appeal the administrator's decision to the OAH.

Reason: These changes are necessary to give all applicable appellants the authority to appeal to the OAH.

2. Requires employers to contribute at least the normal cost rate starting in 2008

Sec. 5, Sec. 46, Sec. 88, Sec. 90, Sec. 93, Sec. 87

Change: Retroactively repeals the provision in SB 141 that establishes a floor on employer contributions and reinserts it with a delayed effective date (2008).

Reason: A handful of communities have assets that exceed their liabilities. By delaying the effective date they have a few years to contribute below the normal cost rate so their assets can match their liabilities before the minimum normal cost contribution rate will be required.

3. Changes the requirements to receive a conditional service benefit and a public service benefit.

Sec. 6, Sec. 47, Sec. 48, Sec. 89, Sec. 94

Change: Removes the provision that allows PERS and TRS employees to repay refunded contributions for the purpose of obtaining a conditional/ public service benefit with a delayed effective date (2011).

Reason: Right now a member who refunded out of one plan (TRS or PERS) could qualify for retirement benefits in the other plan. By paying back a minimum of 2 years of indebtedness in the first plan a person could be eligible for a pension and medical benefit in *both* plans. Also, currently any member that has refunded out of the system can re-enter employment, pay back their indebtedness, and become a member of the Tier they belonged to at the time of employment. This represents a significant unknown liability to the system. The above change gives former PERS/TRS members four years to re-enter employment and payback their service.

4. Clarifies provisions regarding PERS/TRS death and disability benefits, including how those benefits will be funded.

4a. Funding death and disability benefits

Sec. 13, sec. 57, Sec. 84

Change: Establishes that the amount an employer needs to contribute for death and disability benefits will be actuarially calculated each year and placed into a separate trust account, except for the first year when contributions for police/fire will be .73%, PERS other .37% and TRS .26%.

Reason: If occupational death and disability benefits are not funded it creates an unfunded liability to the system. All employers need to pay into a system wide trust so the benefit is not a liability to each employer individually.

4b. The structure of death and disability benefits

Sec. 17, Sec. 18, Sec. 19, sec. 20, Sec. 22, Sec. 23, Sec. 61, Sec. 62, Sec. 63, Sec 64, Sec. 65, Sec. 67, Sec. 68

Change: A disabled member is immediately vested in 100% of the employer and employee contributions upon disability. A period spent receiving disability benefits counts as membership service towards vesting. A member is not allowed to take money out of their DC account while receiving disability benefits. Disability benefits terminate when the member first qualifies for normal retirement. However, a member who becomes eligible for normal retirement while receiving disability benefits will be treated as if they were Medicare eligible age for the purpose of qualifying for retiree medical benefits. Death and disability benefits for PERS and TRS members mirror current Tier III benefits. Upon reaching normal retirement age, a disabled police/fire member may choose either their DC account or a pension benefit as if they were in Tier III. If they elect to have their retirement in a monthly pension, the pension will first be paid out of the members individual DC trust account. Provides a definition of occupational disability.

Reason: Details of death and disability benefits were not provided in SB 141. These changes clarify the intent of the legislature last year to provide death and disability benefits for all members.

4c. Survivor benefits

Sec. 21, Sec. 24, Sec. 25, Sec. 26, Sec. 27, Sec. 69, Sec. 70, Sec. 71, Sec. 72

Change: Clarifies that a survivor's benefit terminates when the beneficiary is no longer eligible or the deceased member would have reached normal retirement. A period spent receiving death benefits counts as membership service for vesting purposes. A survivor is not allowed to take money out of the deceased member's DC account while receiving survivor benefits. Establishes

that funds paid towards a survivor's retirement benefit will be paid into a separate trust account in order to meet IRS tax qualifications.

5. Clarifies the eligibility requirements for medical benefits.

Sec. 16, Sec. 41, Sec. 42, Sec. 60, Sec. 66

Change: Requires someone who originally declined to participate in the retiree major medical and latter so wishes must provide a letter that proves they have had continuous coverage or demonstrate proof of insurability. Clarifies that a member has access to their Heath Reimbursement Arrangement (HRA) without retiring directly from the system. Fixes a drafting error that requires a member to meet eligibility requirements for both PERS and TRS to qualify for the HRA.

Reason: Without requiring continuous coverage the plan is exposed to an unknown liability in built up medical treatment. It was the intent of the legislature last year to give the member ownership of the HRA, similar to a DC account, and not require that you retire directly from the system to gain access to it.

6. Clarifies requirements for non-vested Tier II or Tier III employees who wish to transfer to Tier IV

Sec. 29, Sec. 30, Sec. 31, Sec. 32, Sec. 33, Sec. 58, Sec. 74, Sec. 75, Sec. 76, Sec. 77, Sec. 78

Change: Gives employees 12 months from when they are notified that they can transfer from the DB plan to the DC plan to do so. Allows employers to open the transfer option up to employees for a second 12-month period. Clarifies that membership service under a DB plan counts towards vesting once you transfer to the DC plan. However, refunded service by a member will not count towards vesting unless the member has paid back the indebtedness. Clarifies that the employer can only match up to the IRS limit when matching employer contributions for purposes of the transfer. Establishes that the second transfer period is only available to eligible employees who did not have the option to transfer during the first transfer period.

Reason: A time limit needed to be placed on the transfer option otherwise employers would be opening themselves up to an unknown liability. Clarification on the allowable contribution amount ensures the plan meets IRS standards.

7. Clarifies the basis for calculating employer contribution rates

Sec. 3, Sec. 4, Sec. 44, Sec. 45

Change: Specifies that the past service cost will be applied to the employer's entire wage base. Adds a definition of employer normal cost and past service cost rate.

Reason: Even though DC members do not have a past service cost, all of the previous calculations and analysis use the entire wage base to calculate the past service cost payment as a

percentage rate. Though the dollar contributions would remain the same, without this provision the past service cost rate would escalate to over 100% for DB members. This change provides consistency.

8. Gives regulatory authority to the appropriate party

Sec. 34, Sec. 35

Change: Changes the authority for adopting SBS regulations from the ARM board to the Commissioner of Administration.

Reason: In the transfer of authorities under SB 141, this section was overlooked.

9. Changes the basis for calculating HRA contributions to meet IRS tax qualified status

Sec. 40

Change: Changes the basis for calculating the 3% employer contribution for the HRA from the wage base of each individual employer to the wage base of the plan.

Reason: Without this change the plan is discriminatory and it would not qualify for IRS tax-exempt status.

10. Definitions

Sec. 50, Sec. 80, Sec. 81, Sec. 85

Change: Repeals duplicative section regarding the definition of administrator. Provides a clear definition of peace officer and fire fighter under the DC plan. Establishes that 'member' and 'employee' have the same meaning throughout the statute. Clearly defines that a DOL or DEED member whose position requires a teaching certificate is in TRS and not PERS.

Reason: Clean-up language.

11. Disallows employment with National Education Association (NEA) as counting towards Tier IV retirement eligibility

Sec. 85

Change: Repeals participation of NEA employees in TRS.

Reason: NEA is no longer an eligible TRS employer, however, statutes were duplicated during the drafting of SB 141 and this section was inadvertently included.

12. Establishes provisions for employer termination

Sec. 79

Change: Establishes the procedure for employer termination in the DC plan, mirroring DB language. An employer can choose to terminate participation for subgroups of its employees. When the employer terminates the employee is considered fully vested in the employer and employee contributions and the HRA. A new employer may choose to participate only in the DC plan.

Reason: Currently employers can terminate participation in the Tier I, II and III plans, however no provisions were included in SB 141 to allow employer termination from the Tier IV plan.

13. Clarifies defined benefit and defined contribution components of the plan

Sec. 8, Sec. 9, Sec. 14, Sec. 15, Sec. 28, Sec. 52, Sec. 59, Sec. 73

Change: Clarifies that the retirement plans established in SB 141 have both DB and DC components and points out the distinctions between the two and which IRS codes the respective portions fall under.

Reason: This change clarifies what IRS category the plan falls under and consequently the rules that have to be followed. Without the change the plan runs the risk of not qualifying for IRS tax-exempt status.

14. Establishes adherence to IRS limitations

Sec. 11, Sec. 55, Sec. 53

Change: Clarifies that employee voluntary contributions to their retirement account are subject to federal limits in order to qualify as tax exempt.

Reason: Without these changes employers and employees contributions to the plan could be taxed.

15. Delayed effective date

Sec. 1, Sec. 2, sec. 7, Sec. 8, Sec. 10, Sec. 12, Sec. 37, Sec. 38, Sec. 43, Sec. 51, Sec. 54, Sec. 56, Sec. 86, Sec. 91, Sec. 92, Sec. 93, Sec. 94, Sec. 95 (these are the primary sections that incorporate the delay, other sections may reference July 1, 2008)

Change: Delays the effective date of SB 141 till July 1, 2007.

version X

Sectional Analysis
Finance Committee Substitute for House Bill 475

Sec. 1 **AS 14.25.070(a).** Changes the calculation of the employer contributions so that the normal cost rate is applied only to the payroll base of DB plan members and the past service rate is applied to the employer's entire payroll base.

Reason: The current statutes defining contributions by employers reference contributions to the "plan" and specify that the employer contribution rate will be applied to the salaries paid to "members." This amendment allows the contribution rate for past service costs to be applied to the entire payroll base of the employers' workforce without regard to plan (tier) membership, and will keep employer contribution rates for the DB plan lower than would otherwise be calculated.

Consequence: Without amendment, employer rates for past service costs under the DB plan will continue to rise as the amortized liability is applied to a shrinking payroll paid to members of the DB plan. However, this will neither increase the employers' liability nor will it relieve the employers of the liability, it merely restates the liability as a higher percentage of applicable payroll.

Related bill sections: Sec. 2, AS 14.25.070(d)-(e); Sec. 37, AS 39.35.270(a).

Sec. 2 **AS 14.25.070(d)-(e).** Adds definitions for "employer normal cost rate" and "past service rate."

Reason: In combination with Sec. 1 of this bill, this amendment changes the calculation of the employer contributions so that the normal cost rate is applied only to the payroll base of DB plan members and the past service rate is applied to the employer's entire payroll base. The TRS employer contribution statutes have never contained these definitions because the TRS is a multi-employer shared cost pool. However, the TRS rates developed by the actuary are still based upon normal costs and past service costs.

Related bill sections: Sec. 1, AS 14.25.070(a); Sec. 36 AS 39.35.250.

Sec. 3 **AS 14.25.070(f).** Establishes a floor on the employer contribution rate at no less than the normal cost rate, effective July 1, 2008.

Reason: This change, combined with the repeal of AS 14.25.070(b) and the effective date in Sec. 79, delays the effective date of the requirement of SB 141 that the employer contribution rate must be not less than the normal cost rate.

Related bill sections: Sec. 38, AS 39.35.270(d); Sec. 75; Sec. 78; Sec. 79.

Sec. 4 AS 14.25.125(c). Effective July 1, 2010, remove the provision that allows members to repay refunded contributions for the purpose of obtaining a conditional service benefit.

Reason: This statute was overlooked in the repeal by SB 141 of the reinstatement of service provisions. AS 14.25.125 allows persons who are eligible for a normal or early retirement salary under PERS to qualify for a normal or early "conditional service" retirement benefit under TRS if he or she has at least two years of credited service in TRS. Members are allowed to reinstate refunded service credit in order to qualify for the conditional service benefit under AS 14.25.125(c). The conditional service benefit is very expensive because it results in payment of medical premiums and other medical charges from both the PERS and TRS for a single retiree.

Consequence: Without change, refunded TRS members will be treated differently under separate statutes. It would also continue to allow an "off-books" liability in the DB plan, one that can be neither accounted for nor paid until an eligible member applies for the benefit.

Related bill sections: Sec. 40, AS 39.35.385(c).

Sec. 5 **AS 14.25.320(b).** Clarifies that the retirement plans established by SB 141 are hybrid plans, containing both defined benefits and defined contributions, which fall under the Internal Revenue Code section 414(k).

Reason: This is one of several conforming amendments necessary to pay all the benefits required in accordance with the intent of SB 141 and the retirement plans contained therein. SB 141 provides both guaranteed fixed benefits for certain eligible persons as well as benefits based upon defined contributions to an individual account, medical benefits, and medical expense reimbursements. This type of plan structure is provided for under 26 USC 414(k) "Certain plans." These changes, in combination with others, are designed to clarify the structure of the new retirement plans in order to successfully obtain a favorable ruling from the IRS.

Consequence: If this amendment is not adopted, the IRS may not recognize and apply the special rules of the §414(k) structure which may result in an IRS plan determination failure.

Related bill sections: Sec. 6, AS 14.25.320(c); Sec. 9, AS 14.25.380; Sec. 10, AS 14.25.400(b); Sec. 23, AS 14.25.510; Sec. 43, AS 39.35.710(b); Sec. 44, AS 39.35.710(c); Sec. 47, AS 39.35.780; Sec. 48, AS 39.35.800(b); Sec. 62, AS 39.35.910.

Sec. 6 **AS 14.25.320(c)**. Clarifies that the retirement plans established by SB 141 are hybrid plans, containing both defined benefits and defined contributions, which fall under the Internal Revenue Code section 414(k)

Reason: This is one of several conforming amendments necessary to pay all the benefits required in accordance with the intent of SB 141 and the retirement plans contained therein. SB 141 provides both guaranteed fixed benefits for certain eligible persons as well as benefits based upon defined contributions to an individual account, medical benefits, and medical expense reimbursements. This type of plan structure is provided for under 26 USC 414(k) "Certain plans." These changes, in combination with others, are designed to clarify the structure of the new retirement plans in order to successfully obtain a favorable ruling from the IRS.

Consequence: If this amendment is not adopted, the IRS may not recognize and apply the special rules of the §414(k) structure which may result in an IRS plan determination failure.

Related bill sections: Sec. 5, AS 14.25.320(b); Sec. 9, AS 14.25.380; Sec. 10, AS 14.25.400(b); Sec. 23, AS 14.25.510; Sec. 43, AS 39.35.710(b); Sec. 44, AS 39.35.710(c); Sec. 47, AS 39.35.780; Sec. 48, AS 39.35.800(b); Sec. 62, AS 39.35.910.

Sec. 7 **AS 14.25.340(c)**. Clarifies that any voluntary contributions made by an employee under AS 14.25.340(b) can only be made with pre-tax dollars to the extent permitted under federal law.

Reason: The Internal Revenue Code allows pre-tax contributions only if the employee does not have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement plan. This is the case for contributions mandated by statute; however, a voluntary contribution clearly does not meet this test. Under certain restricted arrangements that involve a one-time irrevocable election, the IRS will allow voluntary contributions on a picked-up (pre-tax) basis. This amendment allows the State the flexibility to define such a restricted arrangement in both regulation and in its Private Letter Ruling request.

Related bill sections: Sec. 45, AS 39.35.730(c).

Sec. 8 **AS 14.25.350(e)**. Requires employers in the Teachers' Retirement System (TRS) to pay occupational disability and death benefits through contributions actuarially calculated, which will be deposited to a separate trust account.

Reason: This was an inadvertent omission in drafting the bill in conference committee. The "trust account" language clarifies that these contributions are treated differently and kept separate from the contributions to the plan's individual member accounts.

Consequence: The consequence of not enacting this amendment is that there will be no funding source from which to pay TRS occupational disability and death benefits.

Related bill sections: Sec. 46, AS 39.35.750(e); Sec. 77.

Sec. 9 **AS 14.25.380**. Clarifies that only the defined contributions paid into a member's individual account are subject to the limitations of 26 USC 415(c) and not the contributions employers make for the fixed benefits contained in the plans (occupational disability, survivor's pension, etc.). Additionally, the fixed benefits paid to eligible persons are subject to the limitations of §415(b) under the Internal Revenue Code.

Reason: This is one of several conforming amendments necessary to pay all the benefits required in accordance with the intent of SB 141 and the retirement plans contained therein. SB 141 provides both guaranteed fixed benefits for certain eligible persons as well as benefits based upon defined contributions to an individual account, medical benefits, and medical expense reimbursements. This type of plan structure is provided for under 26 USC 414(k) "Certain plans." These changes, in combination with others, are designed to clarify the structure of the new retirement plans in order to successfully obtain a favorable ruling from the IRS.

Consequence: If this amendment is not adopted, the IRS may not recognize and apply the special rules of the §414(k) structure which may result in an IRS plan determination failure.

Related bill sections: Sec. 5, AS 14.25.320(b); Sec. 6, AS 14.25.320(c); Sec. 10, AS 14.25.400(b); Sec. 23, AS 14.25.510; Sec. 43, AS 39.35.710(b); Sec. 44, AS 39.35.710(c); Sec. 47, AS 39.35.780; Sec. 48, AS 39.35.800(b); Sec. 62, AS 39.35.910.

Sec. 10 **AS 14.25.400(b)**. Clarifies that a participant may only direct the investment of the funds held in the participant's individual account by making the distinction between the defined contribution accounts and the fixed benefit accounts established under the plans.

Reason: This is one of several conforming amendments necessary to pay all the benefits required in accordance with the intent of SB 141 and the retirement plans contained therein. SB 141 provides both guaranteed fixed benefits for certain eligible persons as well as benefits based upon defined contributions to an individual account, medical benefits, and medical expense reimbursements. This type of plan structure is provided for under 26 USC 414(k) "Certain plans." These changes, in combination with others, are designed to clarify the structure of the new retirement plans in order to successfully obtain a favorable ruling from the IRS.

Consequence: If this amendment is not adopted, the IRS may not recognize and apply the special rules of the §414(k) structure which may result in an IRS plan determination failure.

Related bill sections: Sec. 5, AS 14.25.320(b); Sec. 6, AS 14.25.320(c); Sec. 9, AS 14.25.380; Sec. 23, AS 14.25.510; Sec. 43, AS 39.35.710(b); Sec. 44, AS 39.35.710(c); Sec. 47, AS 39.35.780; Sec. 48, AS 39.35.800(b); Sec. 62, AS 39.35.910.

Sec. 11 **AS 14.25.470(g)**. Requires a person who originally chose not to participate in the retiree major medical plan, but who later chooses to participate, to provide a letter of continuous coverage or proof of insurability.

Reason: The Division of Retirement and Benefits had anticipated the provisions for application for retirement and medical benefits would be handled by regulation. However, the plain wording of the statute seems to leave the choice to the eligible person regardless of their health status.

Consequence: Without amendment, the statute leaves the retiree major medical insurance plan open to adverse selection and unpredictable costs.

Related bill sections: Sec. 49, AS 39.35.870(g).

Sec. 12 **AS 14.25.485(b)**. Clarifies the termination of a disability benefit when a person no longer meets the requirements to receive occupational disability benefits.

Reason: The intent of an occupational disability benefit is to provide an income for a person who is no longer able to work due to an injury sustained on-the-job. In combination with Sec. 17 of this bill, the amendment makes it clear that if a person is able to perform the duties of another available and comparable position, regardless of employer, then that person no longer meets the requirements to receive occupational disability benefits.

Related bill sections: Sec. 17, AS 14.25.485(j); Sec. 50, AS 39.35.890(b).

Sec. 13 **AS 14.25.485(c)**. Clarifies that a period of disability benefits constitutes membership service in regard to determining eligibility for retirement and medical benefits including the Health Reimbursement Arrangement (HRA).

Reason: The statutes do not mention vesting in medical benefits during a period of disability benefits. However, the intent is implied by the requirement for continuing employer contributions into the individual account, the HRA, and health insurance fund while a member is receiving disability benefits. The employer must also make the member's contributions to the individual contribution account.

Related bill sections: Sec. 51, AS 39.35.890(c).

Sec. 14 **AS 14.25.485(d)**. Provides that a member who receives disability benefits from the plan is 100% vested in all the employer contributions made to the member's individual account, regardless of years of service worked, once the member is appointed to disability. Clarifies that a member is not entitled to elect distributions from the member's individual account while receiving disability benefits.

Reason: This amendment relates specifically to the continuing employer contributions required under AS 14.25.485(d). 26 USC 415(c)(3)(C) provides special rules that allow the compensation of a disabled member for any year subsequent to the disability to be considered equivalent to the rate of compensation immediately prior to the disability. However, these rules only apply if the contributions are nonforfeitable when made.

Because a disabled member must terminate employment, the disabled member will arguably become eligible for distributions from the individual contribution account under AS 14.25.410. The apparent intent of the disability benefit is to provide an income until such time as a disabled member becomes eligible for the benefits from a "normal retirement." During a period of disability benefits, the employer is required to make continuing employer contributions into the individual account, the HRA, and health insurance fund. The employer must also make the member's contributions to the individual contribution account. The purpose of these contributions would seem to be to accumulate funding for retirement benefits available to the member once the normal retirement date is reached and disability benefits end.

Consequence: If this amendment is not adopted, the special rules of 26 USC 415(c)(3)(C) would not apply, the member's compensation would be zero for the year following disability, and the allowable contributions would therefore be zero. As a result, the benefits could not be paid in accordance with AS 14.25.485. Also, a disabled member may be able to elect distributions from the member's individual account prior to becoming eligible for normal retirement. This could be regarded as "double dipping," and as thwarting the intent of the legislature to provide a retirement benefit once the disability benefit ends.

Related bill sections: Sec. 20, AS 14.25.487(c); Sec. 52, AS 39.35.890(d); Sec. 59, AS 39.35.892(c).

Sec. 15 **AS 14.25.485(g)**. Clarifies the termination of disability benefits when a disabled member first qualifies for normal retirement.

Reason: Technical for administrative purposes. Conforms to other benefit payment provisions.

Related bill sections: Sec. 53, AS 39.35.890(g).

Sec. 16 **AS 14.25.485(i)**. Changes made to this subsection, which is related to the benefits for a survivor of a disabled member who dies while receiving disability benefits, mirror other changes being made to the disability and death statutes throughout this bill. The changes are: (1) clarifies the termination of a survivor's pension; (2) clarifies that a survivor cannot access the member's individual account while receiving a survivor's pension; (3) clarifies the normal retirement benefits available to a survivor; and (4) clarifies that the period of disability benefits and the period of survivor benefits constitute membership service for vesting in employer contributions, and eligibility for medical benefits and the Health Reimbursement Arrangement.

Reason: This is a conforming amendment. See the related bill sections referenced below.

Related bills sections: Sec. 13, AS 14.25.485(c); Sec. 19, AS 14.25.487(b); Sec. 20, AS 14.25.487(c); Sec. 21, 14.25.487(e); Sec. 55, AS 39.35.890(k).

Sec. 17 **AS 14.25.485(j)**. Clarifies the definition of occupational disability.

Reason: The intent of an occupational disability benefit is to provide an income for a person who is no longer able to work due to an injury sustained on-the-job. This definition is slightly different from the definition under AS 39.35.680. In combination with Sec. 12 of this bill, the amendment makes it clear that if a person is able to perform the duties of another available and comparable position, regardless of employer, then that person no longer meets the requirements to receive occupational disability benefits.

Related bill sections: Sec. 12, AS 14.25.485(b); Sec. 56, AS 39.35.890(l).

Sec. 18 **AS 14.25.486**. Adds an annual adjustment to disability benefits equal to 75% of the increase in the Anchorage Consumer Price Index or 9%, whichever is less.

Reason: This amendment provides a formula for annual increases to the monthly amount of a disability benefit that is the same as the formula for TRS Tier II members.

Consequence: If this amendment is not enacted, a member's monthly disability benefit amount will remain static from year to year without adjustment for inflation.

Related bills sections: Sec. 57, AS 39.35.891.

Sec. 19 **AS 14.25.487(b)**. Clarifies the termination of a survivor's pension under the occupational death benefit provisions, including the end of death benefits when a dependent child no longer meets the definition of dependent.

Reason: The death benefit statute unambiguously states when the benefits will begin and when they will end, omitting termination of the death benefit the last month in which there is an eligible child. A dependent child receiving occupational death benefits might argue that death benefits must be paid until the date the deceased member would have retired, without regard to the age of the child. The disability statute [AS 14.25.485(i)], however, includes language terminating a survivor's benefit (from a disabled member who died while receiving disability) the last month in which there is an eligible surviving spouse or child. This appears to be a conflict of intent.

Consequence: Failure to amend this statute may jeopardize plan qualification because the IRC definition of "dependent" [26 USC, §151 and §152] includes age requirements for distribution to a dependent child under a qualified plan.

Related bill sections: Sec. 58, AS 39.35.892(b).

Sec. 20 **AS 14.25.487(c).** Clarifies that a survivor of a deceased member is not entitled to elect distributions from the member's individual account while receiving survivor benefits. Clarifies that the continuing contributions required by the employer are made on behalf of the surviving spouse and member's dependent children rather than "beneficiaries." Directs all continuing contributions by the employer into the occupational disability and death trust account in accordance with the Internal Revenue Code (IRC).

Reason: The death benefit provides an income, and eventually retirement benefits, for the family of a member who dies in the line of duty. However, the beneficiaries of a deceased member are arguably immediately eligible for distributions from the individual contribution account under AS 14.25.410. This change preserves the individual account until the survivor is eligible for the normal retirement benefit. The situation is similar to that described under Sec. 14 [AS 14.25.485(d)]. Please see Sec. 21 below for an explanation of the changes required by the IRC.

Consequence: If the clarifications are not enacted, a deceased member's surviving spouse, dependent children, or other beneficiaries may be able to elect distributions from the member's individual account prior to the date the member would have qualified for normal retirement had the member lived. As with distributions taken during a member's disability, this could be regarded as "double dipping," and as thwarting the intent of the legislature to provide eligible survivors with a retirement benefit once the death benefit ends. This scenario has more complications – including possible tax reporting requirements - than the disability provisions because the member's surviving spouse and/or dependent children may not be the only beneficiaries.

Related bill sections: Sec. 14, AS 14.25.485(d); Sec. 21, AS 14.25.487(e); Sec. 59, AS 39.35.892(c).

Sec. 21 **AS 14.25.487(e).** Revises the language regarding the continuing contributions employers make on behalf of survivors of members who died occupationally. The contributions will be an actuarially calculated amount required to yield the same results as under SB 141; however, the contributions will be made into the trust account established for occupational disability and death benefits rather than into the member's individual account. The benefits will also be paid from the occupational disability and death trust account. This amendment also clarifies that the period of death benefits constitutes membership service for determining vesting in employer contributions and eligibility for medical benefits and the Health Reimbursement Arrangement.

Reason: Unlike the special rules under 26 USC 415(c)(3)(C) that allow the compensation of a disabled member for any year subsequent to the disability to be considered equivalent to the rate of compensation immediately prior to the disability, there is no corresponding rule for a deceased participant. Thus, there would be no compensation for a deceased member in the year after death and, therefore, no allowable contributions to the deceased member's individual account. The solution this amendment proposes is to make contributions to an account that is allowable under the Internal Revenue Code and add an "additional benefit" that is equal to the amount that would have been contributed to the member's individual account had the member survived, plus an earnings credit.

Consequence: If this amendment is not adopted, the State will not receive a favorable ruling from the Internal Revenue Service and will not be able to pay the intended retirement benefits to survivors.

Related bill sections: Sec. 16, AS 14.25.485(i); Sec. 20, AS 14.25.487(c); Sec. 60, AS 39.35.892(e).

Sec. 22 **AS 14.25.488**. Adds an annual adjustment to the survivor's pension benefit equal to 50% of the increase in the Anchorage Consumer Price Index or 6%, whichever is less. Persons who are receiving a survivor's pension who are age 60 or older and persons who have received a survivor's pension for at least 8 years are eligible for the COLA.

AS 14.25.489. Adds a provision that a person whose disability or survivor benefits are terminated due to eligibility for a normal retirement benefit will be treated as if that person is eligible for Medicare, regardless of age, for the purpose of cost-sharing medical premiums with the Plan.

Reason: This amendment provides a formula for annual increases to the monthly amount of a disability benefit that is the same as the formula for TRS Tier II members. It also applies the medical cost-sharing provisions of the new retirement tier so that benefit recipients do not have to bear the full burden of medical insurance premiums when they reach normal retirement.

Consequence: If these amendments are not enacted, a member's monthly disability amount and a survivor's monthly pension amount will remain static from year to year without adjustment for inflation. Disabled members and survivors who have not reached the age required for Medicare eligibility when they qualify for a normal retirement benefit will have to pay 100% of the monthly premium for retiree major medical insurance.

Related bills sections: Sec. 61, AS 39.35.893, AS 39.35.894.

Sec. 23 **AS 14.25.510**. Clarifies that the nonguarantee clause relates only to the defined contribution portion of the retirement plans. The fixed benefits contained under these plans are defined by statute.

Reason: This is one of several conforming amendments necessary to pay all the benefits required in accordance with the intent of SB 141 and the retirement plans contained therein. SB 141 provides both guaranteed fixed benefits for certain eligible persons as well as benefits based upon defined contributions to an individual account, medical benefits, and medical expense reimbursements. This type of plan structure is provided for under 26 USC 414(k) "Certain plans." These changes, in combination with others, are designed to clarify the structure of the new retirement plans in order to successfully obtain a favorable ruling from the IRS.

Consequence: If this amendment is not adopted, the IRS may not recognize and apply the special rules of the §414(k) structure which may result in an IRS plan determination failure.

Related bill sections: Sec. 5, AS 14.25.320(b); Sec. 6, AS 14.25.320(c); Sec. 9, AS 14.25.380; Sec. 10, AS 14.25.400(b); Sec. 43, AS 39.35.710(b); Sec. 44, AS 39.35.710(c); Sec. 47, AS 39.35.780; Sec. 48, AS 39.35.800(b); Sec. 62, AS 39.35.910.

Sec. 24 **AS 14.25.540(c)**. Clarifies that the employer match required under the conversion from the defined benefit plan to the defined contribution plan is subject to Internal Revenue Code contribution limitations. The amendment limits the total employer match to the maximum allowed during the limitation year in which the transfer occurs.

Reason: Because the amount that an employer must match under the conversion option is "new money," it has never been subject to Code limitations. 26 USC 415(c) imposes an annual limit on contributions to a defined contribution plan to the lesser of $44,000 or 100% of employee compensation. In addition, the contributions of the PERS and TRS defined contribution retirement plans are required to be aggregated with the contributions of the SBS Plan.

Consequence: Contributions above the limitations of §415(c) are not allowable under federal law, therefore, any excess contributions must be returned to the employer.

Related bill sections: Sec. 63, AS 39.35.940(c).

Sec. 25 **AS 14.25.540(d)**. Clarifies that transferred membership from the defined benefit (DB) plan to the defined contribution retirement (DCR) plan will be applied to vesting in both the employer's matching contribution and subsequent contributions.

Reason: The bill is silent on this issue. Ambiguity about whether a member's DB plan service applies to vesting in DCR plan employer contributions may prevent members who would otherwise benefit from transferring from making the decision to transfer.

Related bill sections: Sec. 64, AS 39.35.940(d).

Sec. 26 **AS 14.25.540(h)**. Provides a time limit – 12 months from the date the employer consents to the conversion -- within which an eligible member must make the decision to transfer from the DB plan to the DCR plan.

Reason: Under SB 141, an employer's decision to allow its employees to convert is irrevocable and employees have up until the day before they become vested in the Teachers' Retirement System DB plans to convert. However, a plan does not satisfy the qualifications of a §401(a) plan if it includes a cash or deferred arrangement. Treasury Regulation 1.401(k)-1(a)(3) does provide for certain one-time elections. The Division of Retirement and Benefits has received legal tax counsel that implementing a time limit for the decision-making process would meet the requirements of the Treasury Regulation.

Consequence: Without amendment, the State may not receive a favorable plan ruling. Also, because of the open-ended timeframe, employers that would otherwise benefit from consenting to transfers may make the decision not to consent because of annual budgeting uncertainty.

Related bill sections: Sec. 27, AS 14.25.540(i); Sec. 65, AS 39.35.940(h).

Sec. 27 **AS 14.25.540(i).** An employer who makes a conversion election will have an initial 12-month window open to its eligible employees for transfer from the DB plan to the DCR plan. At the end of the initial 12-month period, the employer may consent to an additional 12-month period open only to those eligible employees to whom the option was not available during the initial period.

Reason: Allowing an employer to elect to consent to transfers during an additional 12-month period provides the employer with the opportunity to achieve greater cost savings if the employer determines that consenting to additional transfers is beneficial. However, in order to meet the requirements of Treasury Regulation 1.401(k)-1(a)(3) for certain one-time elections, the second period will be limited to those employees who did not have the choice during the initial period. The Division of Retirement and Benefits has received legal tax counsel that this particular arrangement has received favorable rulings by the IRS for other plans.

Consequence: Without amendment, the State may not receive a favorable plan ruling.

Related bill sections: Sec. 26, AS 14.25.540(h); Sec. 66, AS 39.35.940(i).

Sec. 28 **AS 14.25.540(j).** Adds a definition of "membership service" for purposes of clarifying what service credit is eligible for transfer from the DB plan to the DCR plan and disallows years of service for which contributions have not been fully repaid; i.e., reinstatement of refunded contributions, or indebtedness.

Reason: If a DB plan member has an outstanding indebtedness for refunded contributions, the years of service associated with that indebtedness are not credited back to the member until the indebtedness, including interest, has been fully paid. This change clarifies this process for the conversion option so there is no ambiguity as to: (1) the dollar amount of the member's contributions to be transferred and matched by the employer; and (2) the number of years of service to be counted toward vesting in benefits of the DCR plan.

Consequence: Without amendment, it is unclear whether full service, partial service, or no service credit associated with an indebtedness should be transferred to the new plan. To allow such service to be transferred would be inconsistent with the current statutory provisions of the DB plan (AS 14.25.062).

Related bill sections: Sec. 67, AS 39.35.940(j).