

ALASKA LEGISLATURE FILES, 2000-2000

11738 SENATE COMMUNITY & REGIONAL AFFAIRS

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 HR 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 employee 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 reset 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.