will be eligible for pre-election review only if other constitutional provisions make the process "clearly inapplicable." *Id.* at *11. In this case, the constitutional provision that could restrict this proposed initiative is article XI, section 1, which provides that the people may propose and enact *laws* by initiative. The court in *Trust the People* discussed two cases that challenged initiatives based on this provision, but reached conflicting conclusions regarding the propriety of pre-election review.

First, the court reaffirmed its decision in *Yute Air, Inc. v. McAlpine,* 698 P.2d 1173 (Alaska 1985), in which the challengers argued that certain provisions of an initiative were a plebiscite rather than a law, and thus were not a proper subject for an initiative under article XI, section 1. *Id.* The court in *Trust the People* concluded that pre-election review was proper in *Yute Air* because the review was "limited to ascertaining whether an initiative is in compliance with constitutional provisions that regulate legislative enactment via initiative." *Id.* Under this analysis, pre-election review of any challenges based on the constitutional provision that restricts the use of initiative to the enactment of laws would seem to be appropriate.

In its discussion, however, of another case based on the same provision, *Alaskans for Legislative Reform v. State,* 887 P.2d 960 (Alaska 1994), the court reached a different conclusion. Specifically, the question was whether the Alaska Constitution allowed the use of the initiative process to establish term limits for state legislators or whether the proposed term limits could only be established by constitutional amendment. *Alaskans for Legislative Reform,* 887 P.2d at 962. After conducting pre-election review, the court concluded that a term-limit restriction would constitute a constitutional amendment and could not be brought through the initiative process. *Id.* at 966. In discussing *Alaskans for Legislative Reform,* the court in *Trust the People* indicated that pre-election review was not appropriate for this issue, stating, "to the extent *Alaskans for Legislative Reform* supports pre-election review of claims that a term limits initiative is unconstitutional, it appears to have been overruled by *Kodiak Island Borough v. Mahoney,* where we declined to allow pre-election review of a term-limits proposal."[2] *Id.* at 13.

Because the court's conclusions regarding these cases appear to conflict, it is not clear as to how the court would rule regarding the propriety of pre-election review of this initiative. According to the decision in *Trust the People,* pre-election review of this

[2] The challenge to the initiative in *Mahoney* was not based on the argument that a term limit initiative could not be brought because it was an amendment to the constitution and in violation of the constitutional restrictions on initiatives. *Kodiak Island Borough v. Mahoney,* 71 P.3d 896 (Alaska 2003). Instead, the challenge was based on the authority under a municipal initiative statute for a clerk to deny a petition on the basis that it would not be enforceable as a matter of law – a question that relates to general contentions as to the initiative's constitutionality, not whether it can properly be brought as an initiative. *Id.* at 900-01. The court in *Trust the People* did not recognize this distinction. As a result, the overruling of *Alaskans for Legislative Reform* may be limited to the issue of pre-election review of term limits.

initiative is only appropriate if the restriction on initiatives under article XI, section 1 makes the process "clearly inapplicable." Given the overall approach of the court to narrow and restrict pre-election review, it appears that it intended the "clearly inapplicable" rule to be a stringent standard. In this case, there is a valid dispute as to whether this initiative would constitute a constitutional amendment. In addition, the Alaska Supreme Court expressly overruled pre-election review of a challenge based on the same argument that is at issue here – whether the initiative constitutes a constitutional amendment.

We believe that this is a close call. Although the proposed initiative to limit the legislative session to 90 days may constitute an amendment to the constitution, the key issue is whether it is appropriate to make that evaluation prior to an election. The usual rule is to construe voter initiatives broadly so as to preserve them whenever possible. *Boucher v. Engstrom,* 528 P.2d 456, 462 (Alaska 1974). Nevertheless, this rule must be balanced against the expense and time required to conduct an election that ultimately will prove futile. *Whitson v. Anchorage,* 608 P.2d 759, 762 (Alaska 1980).

On balance, given the Alaska Supreme Court's ruling in *Trust the People,* we recommend that you certify the initiative petition.

III. PROPOSED BALLOT AND PETITION SUMMARY

We also have prepared a ballot-ready petition summary and title for your consideration. It is our practice to provide you with a proposed title and summary to assist you in complying with AS 15.45.090(2) and AS 15.45.180. We believe that it is good practice for the petition and ballot to conform to the requirements of a title (six words) and ballot summary (100 words) under AS 15.45.180. We do this in order to reduce the chance of collateral attack due to a divergence between the ballot and petition summaries. We therefore propose the following ballot and petition title and summary for your review:

Initiative for 90-day Legislative Session

This initiative would reduce the maximum length of regular legislative sessions from 120 days to 90 days.

Should this initiative become law?

This summary has a Flesch test score of 50.239, which is close to the target readability score of 60. We believe this summary meets the readability standards of AS 15.60.005.

IV. CONCLUSION

For the reasons set out above, we recommend that you certify this initiative and so notify the initiative committee. Preparation of the petitions may then commence in accordance with AS 15.45.090.

Please contact me if we can be of further assistance to you on this matter.

cc:

State Capitol
Juneau, Alaska 99801
907.465.3520 465.5400 FAX
www.ltgov.state.ak.us

550 West 7th Ave, Suite 1700
Anchorage, Alaska 99501
907.269.7460 269.0263 FAX
Lt_Governor@gov.state.ak.us

Lieutenant Governor Loren Leman

July 5, 2005

Representative Jay Ramras
86 C St
Fairbanks, AK 99701

Dear Representative Ramras: Jay

You submitted an initiative application for a bill entitled "An Act relating to a 90-day regular session of the legislature, and providing for an effective date " to my office for review under AS 15.45.070. I forwarded it to the Division of Elections for verification of signatures and the Department of Law for review.

The petition statistics report prepared by the Division of Elections and the Department of Law's opinion regarding your application are enclosed.

The Division of Elections has verified that your application has a sufficient number of sponsors to qualify for circulation a petition. The Department of Law has concluded that the initiative application complies with AS 15.45.030 and AS 15.45.040. Consequently, I certify this initiative application as being in the proper form under the provisions of AS 15.45.010 through AS 15.45.070, and Article XI of the Alaska Constitution. Your official certificate is enclosed.

As Lieutenant Governor and in accordance with AS 15.45.090 (2), it is my duty to prepare an impartial summary for the petition booklets. The following is the petition summary I propose:

Initiative for a 90-day Legislative Session

This initiative would reduce the maximum length of a regular legislative session from 121 days to 90 days.

Should this initiative become law?

The Division of Elections will prepare and print numbered petition booklets for circulation. As soon as the booklets are available, the Division will send them to the Division's regional office of your choice (Juneau, Anchorage, Fairbanks or Nome). At that time, you will also be provided with instructions for booklet distribution and accounting. These must be followed.

The initiative must be filed within one year from the date notice is given that the petition booklets are ready for delivery (AS 15.45.140). However, you should also be aware of the time requirements provided in AS 15.45.190 (copy enclosed). The petition must be signed by qualified voters at least equal in number to 10 percent of those who voted in the last General Election, who are resident in at least three-fourths of the House districts of the State and who, in each of these House districts, are equal in number to at least seven percent of those who voted in the preceding General Election in the House district.

The number of signatures that you need to gather will be based on the 2004 General Election (6 AAC 25.240 (i)). You will need at least 31,451 qualified voters in at least 30 election districts to sign the petition. The vote totals for each House district from the 2004 General Election are enclosed.

If you have questions or comments about the initiative application certification, please contact my special assistant, Robert Pearson at 465-4082.

Sincerely,

Loren Lema
Lieutenant Governor

Enclosures

cc. Sen. Tom Wagoner, Initiative Committee Member
Sen. Gretchen Guess, Initiative Committee Member
David Marquez, Attorney General
Laura Glaiser, Director, Division of Elections

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 16, 2007

SUBJECT: 90-day regular session (HB 171)

TO: Representative John Coghill
Chair of the House Rules Committee
Attn: Rynnieva Moss

FROM: Tamara Brandt Cook
Director

Since Art. II, sec. 3 establishes a two-year term for a Representative and a four-year term for a Senator, does moving the beginning of the term from January to February create a gap during which only half of the Senate seats will be filled and none of the House seats will be filled?

This may be the result, although I think it is more likely that affected legislators hold over until successors take office. There is no explicit provision for legislators to hold over for a period that is longer than the term stated in the constitution. For what it is worth, the problem of the gap in legislators' terms exists now in AS 24.05.080 as a result of the provision added in 1975 delaying the beginning of a term following a gubernatorial election year. (ch. 143 SLA 1975) Now, every four year the terms of all Representatives and half of the Senators are either extended by 8 days or an 8-day vacancy exists in those seats. In addition, the terms of legislators that begin following a gubernatorial election are shortened by 8 days. As an administrative matter, currently sitting legislators have been treated as remaining in office during the 8-day period. It is possible that is how the court would view the situation also.

Despite the constitutionally established term length set in Art. II, sec. 3, that same section provides: "Their terms begin on the fourth Monday of the January following election **unless otherwise provided by law.**" Clearly, the legislature has the constitutional right to change the date the legislative terms begin, and, equally clearly, when the legislature does so some terms will be shortened, while other seats will be lengthened or left vacant. HB 171 in bill section 3 changes the terms of all members to the second Monday in February to apply consistently every year. If the terms of outgoing legislators are not lengthened, the period during which seats will be vacant is somewhat longer than the periodic gaps under existing law, but the gaps will no longer be recurring. Given the constitutional provision authorizing changes by law to the date a legislative term begins, I suspect that a court would conclude that the resulting shortening of a term due to such a

change is permissible, and that the lengthening of a term due to such a change is also permissible.

What authority does a Representative-elect or Senator-elect have to perform the duties of office before being sworn in?

Under Art. XII, sec. 5 the oath of office must be taken by all public officers "before entering upon the duties of their offices . . . ." A person elected to the legislature is not authorized to perform any of the duties of office before being sworn in. Nonetheless, the services of the Legislative Affairs Agency are routinely extended to newly elected individuals, including bill drafting and research services. Although Uniform Rule 36 does not specifically address prefiling of bills by newly-elected individuals, this has been consistently permitted. However, personal staff and office space has not been provided to a Representative-elect or Senator-elect.

Is there a way to adopt a law that would allow for swearing in an elected legislator prior to the convening of session without amending Uniform Rule 1?

Such a law could be enacted, but it would directly conflict with Uniform Rule 1. There is no reason to feel convinced that the law would be given preference over the Rule if the matter were to become the subject of litigation. I must observe that swearing in a legislator prior to the convening of the session creates other problems. Because the legislature cannot formerly organize until after it is convened, there would be no organization in place -- no committees, no presiding officers -- between the time the new legislators are sworn in and the time they convene in session. This could be messy, especially if a special session is called before each house has chosen its officers. Swearing in members before the body convenes might also deprive members of the constitutional right to "judge of the election and qualifications of its members" under Art. II, sec. 12.

TBC:lmb
07-057.lmb

Referral

Alaska State Legislature

Chairman
State Affairs Committee

Vice-Chairman
Economic Development, Trade & Tourism Committee

Member
Judiciary Committee
Joint Armed Services Committee

Finance Subcommittees
Corrections
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety

A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" RepBobLynnBlog.com

Session:
Alaska State Capitol
Juneau, AK 99801-1182

Phone: (907) 465-4931
Fax: (907) 465-4316
Toll Free: (800) 870-4391

Interim:
716 W. 4th Ave., #650
Anchorage, AK 99501-2133

Phone: (907) 269-0205
Fax: (907) 269-0207

FAX

To: Legal Services Fax #: 2029

From: Nancy Manly x2794
Alaska State Capitol, room 104
Juneau, AK 99801-1182

Phone: 907-465-4931
Fax: 907-465-4316

# of Pages (including cover): 1

This is What Was Taken Out of HB 171 (C) version

Re: HB 171

Please draft a State Affairs Committee CS for HB 171. The Committee will continue to work on this bill but wants to update this bill with the amendments made so far. Thank you!

Amendment #1 (Coghill)
Page 3 Line 3-8 (Delete all material – which is Section 5)

Amendment #2 (Coghill)
Page 4, lines 6-10 (Delete all material – which is Section 8)

Amendment #3 (Coghill)
Page 6, lines 11-20 (Delete all material – which is Section 14)

Amendment #4 (Coghill)
Page 6, lines 21-31 and Page 7, Lines 1-8 (Delete all material – which is Section 15)

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 20, 2007

SUBJECT: Statutory 31-day recess (Work Order No. 25-LS0764)

TO: Representative Paul Seaton

FROM: Tamara Brandt Cook
Director TBC

Could a statute providing for a 31-day recess during each regular session constitute the agreement required under Art. II, sec. 10 of the state constitution for a recess longer than three days?

Art. II, sec. 10 states: "Neither house may adjourn or recess for longer than three days unless the other concurs." The constitution is silent as to the method used to concur. It would be a bit odd for the legislature to use a statutory method of demonstrating concurrence in a long recess because a bill is subject to veto by the governor and the governor does not play a role in the relationship between the two houses under art. II, sec. 10. Furthermore, it is contemplated in the constitution that matters of legislative procedure will be addressed in the uniform rules of the legislature. (Art. II, sec. 12, Constitution of the State of Alaska) That said, there are other statutes that address matters of legislative procedure and I know of nothing that prohibits the legislature from enacting that type of statute.

Be aware that a statute providing for a 31-day recess will not be enforceable by the judicial branch, should one house or both houses refuse to abide by the statute. (Abood v. League of Women Voters, 743 P.2d 333 (Alaska 1987)) Each house will retain its constitutional power to refuse to concur in a recess by the other despite the statute. However, so long as both houses cooperatively abide by the statute and neither expresses its determination to force the other house back into session, I believe that the statute will serve as acceptable evidence of the concurrence in the recess by each of the houses under art. II, sec. 10.

Note also that a statute providing for a 31-day recess will conflict with Uniform Rule 52 which now requires adoption of a concurrent resolution by both houses as evidence of concurrence in a recess that is longer than three days.

TBC:med
07-187.med

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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 16, 2007

SUBJECT: Length of regular legislative session (Work Order 25-LS0764)

TO: Representative Paul Seaton

FROM: Tamara Brandt Cook
Director TBC

What legal issues arise if the legislature limits its regular session to 90 days, but splits the time so that a 30-day break occurs?

The schedule you propose would not comply with the recently initiated law that adds a new subsection to AS 24.05.150 stating: "(b) The legislature shall adjourn from a regular session within 90 consecutive calendar days, including the day the legislature first convenes in that regular session."

Despite the initiated statute, it is unlikely that a court would enforce the 90-day session limit against the legislature by ordering it to adjourn or by invalidating legislation passed by the legislature after the 90-day limit. Under art. II, sec. 12 it is the legislature that must adopt uniform rules for its procedure. The court has determined that, because of separation of powers, it will not interfere with matters involving the procedure of the legislature. (Malone v. Meekins, 650 P.2d 351 (Alaska 1980)) Even when a statute imposes a procedural requirement on the legislature, the court has found the issue to be nonjusticiable. (Abood v. League of Women Voters, 743 P.2d 333 (Alaska 1987) holding that the Open Meetings Act (AS 44.62.310), then applicable to the legislature, only established a rule of procedure that is not a subject of judicial inquiry unless the procedural violation also infringes on the rights of a third person, ignores constitutional restraints, or violates fundamental rights.)

While the matter has not yet been considered by a court, it seems unlikely that the court would give greater weight to the 90-day session limit statute than it gave to the Open Meetings statute simply because the 90-day limit results from a statute that was initiated by the people rather than from a statute passed by the legislature. The decision regarding when the legislature is to adjourn from session is surely a matter central to the procedures of the body itself. Furthermore, the people's power to enact law by initiative is not greater than that of the legislature itself. (Alaskans for Legislative Reform v. State, 887 P.2d 960 (Alaska 1994)) If the legislature cannot bind itself on procedural matters by statute, then it would seem that the people cannot do so by initiated law.

If I am correct that the legislature is not bound by the statutory session limit under AS 24.05.150(b), then the legislature is legally free to adopt your proposed schedule as a compromise position designed to limit the actual number of days the legislature meets to 90 days, while allowing the legislature to wait for better revenue forecasts before it reconvenes and finalizes the budget in the spring. Essentially, the legislature will be in regular session for 120 days, but will take a 30-day recess. Art. II, sec. 10 of the state constitution prevents a house from recessing for longer than three days unless the other concurs, so both houses must be in agreement regarding the timing and duration of the recess. It should also be noted that the governor retains the power to convene the legislature while it is in its scheduled recess under art. III, sec. 17.

A 30-day recess will present other potential scheduling demands that will have to be taken into account. For example, if the governor vetoes a bill and it is returned to the legislature while it is in recess, the legislature may have to return or forego its chance to override the veto under art. II, sec. 16. Under art. X, sec. 12, the Local Boundary Commission may present local boundary changes to the legislature within the first ten days of a regular session and those changes become effective forty five days later unless the legislature acts to disapprove them before that deadline. Consequently, Local Boundary Commission proposals will probably need to be resolved before the legislature recesses.

TBC:med
07-176.med

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB171-GOV-OMB-3-05-07
Bill Version: HB 171
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: All
Title: ACCOMMODATE 90-DAY SESSION
RDU
Component
Sponsor: House Rules Committee
Requester: House State Affairs Committee
Component No.

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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 (FY2007) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill would not have a significant fiscal impact on any State agency.

Prepared by: John Boucher, Senior Analyst
Phone 465-4677
Division: Office of Management and Budget
Date/Time 3/5/07 10:15 AM

Approved by: Karen J. Rehfeld, Director
Date 3/5/2007
Agency: Office of Management and Budget

AMENDMENT

OFFERED IN THE HOUSE
STATE AFFAIRS COMMITTEE

BY REPRESENTATIVE COGHILL

TO: HB 171 Version C

Page 4, lines 6 – 10:

Delete all material

AMENDMENT

OFFERED IN THE HOUSE
STATE AFFAIRS COMMITTEE

BY REPRESENTATIVE COGHILL

TO: HB 171 Version C

Page 6, lines 11-20:

Delete all material

Page 9, line 9, after the words "Sec. 23.":

Insert:

AS 24.45.116 is repealed.

Renumbered "This Act takes effect January 1, 2008." as **Sec. 24.**

FOR IMMEDIATE RELEASE: March 1, 2007

CONTACT: Will Vandergriff, (907) 465-5446
House Majority Press Secretary

Coghill Introduces 90-Day Session Clean-up Bill

HB 171 Adjusts Session Schedules, Governor's Budget Deadlines

(Juneau) – House Rules Committee Chairman John Coghill (R-North Pole) today introduced legislation that will make needed changes to the schedule and deadlines of the Legislature and governor that will allow a smooth flow of legislative business next year when a new 90-day limit takes effect. The 90-day limit resulted from an initiative passed at the August 2006 primary election.

Coghill's bill, HB 171, establishes the convening day of each regular legislative session as the second Monday of February each year. Currently, the legislative session begins on the second Monday of January, except during the session following a gubernatorial election, when it is set for the third Monday.

HB 171 will also give the governor an additional 30 days to make public the annual operating and capital budgets, which currently must be presented on December 15 of each year. It also proposes to reduce the 30-day deadline by which the governor must submit her nominees for boards, commissions, and councils to 15 days.

In addition to numerous minor internal legislative rules changes, HB 171 would also disallow a bill introduced in the first session of a Legislature from carrying over to the second session if it has not been passed by the house in which it was introduced.

"House Bill 171 is the first step toward the smooth flow of bills and other business of the Legislature that we will have to accomplish in 90 days next year," Coghill said. "I expect the bill will evolve as it moves through the process, and I hope by the time it passes and is sent to the governor, we will have identified every piece of the puzzle needed to make it happen."

Coghill noted it has been about 20 years since the Legislature adopted the 120-day session limit, and that the rules and laws related to the flow of work through the session have evolved over those two decades.

"Now, we are a little bit under the gun to condense a four-month session into a three-month one, so we have to be highly aware of each potential glitch that presents itself, and address it with a statute or rule change, whichever is appropriate," he said.

HB 171 was referred to the House State Affairs Committee.

###

Does any other State give as much power to the Governor as does Alaska?

Opinion ~~Leg~~ legal — AJ

1. Jones +

Rise ‖ Gov. answer

Coghill ‖

Doll → OS WIN

Sup. Court

Renn

— don't have to

CJW

Doll

Non-partisan

Gov. ~~Leg~~ legal.

Bar Association

AMENDMENT #3

OFFERED IN THE HOUSE
STATE AFFAIRS COMMITTEE

BY REPRESENTATIVE COGHILL

TO: HB 171 Version C

Page 6, lines 11-20:

Delete all material

Page 9, line 9, after the words "Sec 23.":

Insert:

AS 24.45.116 is repealed.

Renumbered "This Act takes effect January 1, 2008." as **Sec. 24.**

ALASKA STATE LEGISLATURE
HOUSE RULES COMMITTEE
REPRESENTATIVE JOHN COGHILL, CHAIRMAN
State Capitol Juneau, AK 99801-1182 (907) 465 3719
1292 Sadler Way, Fairbanks AK 99701 (907) 456 5081

HB 171 Sectional

Section 1. Public Safety annual report on activities of the narcotic drug and alcohol enforcement unit.

Sec. 2. In odd numbered years Public Safety submits their report on repeated child sexual abuse arrests and criminal exploitation of children to legislature on first day of session

Sec. 3. Changes the beginning of the term of each member of the legislature to the second Monday of February. (in Senate version).

Sec. 4. Starts session the second Monday of February. (in Senate version).

Sec. 5. Expand the direction of the legislature to adopt uniform rules at the beginning of each session. Currently the legislature adopts uniform rules in first legislative session.

Sec. 6. Requires the department affected by a piece of legislation to deliver to a requesting legislative committee a fiscal note within three days of the request. This is a change from five days and after the 90th day two days.

Sec. 7. Extends the profile deadline from January 1 to February 1.

Sec. 8. Requires a bill introduced in the first legislative session to be passed through its house of origin in the first session to be considered in the second session.

Sec. 9. Cleans up AS 24.10.220 and clarifies legislative employees cannot be awarded bonuses.

Sec. 10. Requires the Legislative Budget & Audit Committee to be organized within 10 days after the convening of the legislature.

Sec. 11. Requires the Legislative Budget & Audit Committee to prepare a report of investment programs, plans, performance, and policies of all agencies of the state that perform lending or investment functions and notify the legislature of the report on or before the first day of each regular session versus 30 days after convening.

Sec. 12. Requires the LB & A to file with the governor and the legislature its annual report summarizing audit reports on or before the first day of session versus within five days.

Sec. 13. Requires APOC to publish a directory of registered lobbyists within 15 days after session convenes. They now have 45 days.

Sec. 14. Eliminates one of the disclosure reports for contributions made to a civic league or organization to influence activities of a legislature. The report is currently due on February 10th which most likely will be close to the first day of session.

Sec. 15. This section gives the governor an extra 30 days to present to the legislature the annual operating, capital, and mental health trust budget bills. The deadline is moved from December 15th to January 15th.

Sec. 16. Moves the deadline for the governor's budget workbook to the first Monday in February versus the first Monday in January.

Sec.17. The governor's request for supplemental appropriations must be provided to the legislature by the fifth day of session versus 30th day and the governor's budget amendments must be submitted by the 15th day versus the 45th day.

Sec.18. Requires LB & A to prepare a report of fees collected and recommended fee adjustments of state agencies and provide it to the legislature by the fifth day of session versus 30 days.

Sec.19. Requires DNR to give notice to the legislature within five days from convening that a report reflecting all money deposited to the State Land Disposal Income Fund for the prior fiscal year is available. They currently have until the 30th day.

Sec.20. Reduces from 30 to five days after convening the deadline for DNR to submit a summary of all "cooperative resource management or development agreements" to the legislature.

Sec.21. Requires governor to submit to the legislature within 15 days from convening the names of persons appointed to a position or membership who have not been confirmed by the legislature and persons to be appointed to fill a position or membership for a term that will expire on or before March 1 during that session. Current provides for 30 days. It also instructs the governor to immediately submit the name of someone appointed after the first 15 days by while the legislature is in regular session.

Sec.22. The term of office beginning on the second Monday of February for a member of the legislature first applies to legislators elected during 2008.

Sec.23. This legislation has an effective date of January 1, 2008.

25-LS0653\C
Cook
2/28/07

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE

Introduced:
Referred:

FROM HB171
RYNERSON

A BILL

FOR AN ACT ENTITLED

"An Act relating to the terms of legislators, the date and time for convening regular legislative sessions, adoption of uniform rules of the legislature and to certain of those rules, the date for organizing the Legislative Budget and Audit Committee, and deadlines for certain matters or reports to be delivered to the legislature or filed; prohibiting bonuses for legislative employees; and providing for an effective date."

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

*** Section 1.** AS 18.65.085(b) is amended to read:

(b) The commissioner of public safety shall prepare [, WITHIN 30 DAYS FROM THE DATE THE LEGISLATURE CONVENES,] a report concerning the activities of the narcotic drugs and alcohol enforcement unit. The commissioner shall notify the legislature **on the first day of each regular session** that the report is available. The report must include, but is not limited to, the number of arrests made, the kind, amount, and value of narcotic drugs and alcoholic beverages seized, the

sentences received by narcotic drug and alcohol offenders, and an overall view of the narcotic drug and illicit alcohol problem in the state.

*** Sec. 2.** AS 18.65.086(b) is amended to read:

(b) The commissioner of public safety shall prepare, [WITHIN 30 DAYS FROM THE DATE THE LEGISLATURE CONVENES] in odd-numbered years, a report concerning the activities of the special unit on repeated child sexual abuse and the criminal exploitation of children. The commissioner shall notify the legislature **by the first day of each regular session in an odd-numbered year** that the report is available. The report must include, but is not limited to, the number of arrests made in cases of repeated child sexual abuse and the criminal exploitation of children, the number of investigations that result in the Department of Health and Social Services taking temporary or permanent custody of the child, the sentences received by persons convicted in the state of child sexual abuse or criminal exploitation of a child, and an overall view of the problems of child sexual abuse and the criminal exploitation of children in the state.

*** Sec. 3.** AS 24.05.080 is amended to read:

Sec. 24.05.080. Terms. The term of each member of the legislature begins on the second Monday in **February** [JANUARY FOLLOWING A PRESIDENTIAL ELECTION YEAR; HOWEVER, FOLLOWING A GUBERNATORIAL ELECTION YEAR, THE TERM OF EACH MEMBER BEGINS ON THE THIRD TUESDAY IN JANUARY]. The term of representatives is two years, and the term of senators is four years. One-half of the senators shall be elected every two years.

*** Sec. 4.** AS 24.05.090 is amended to read:

Sec. 24.05.090. Regular sessions. The legislature shall convene at the capital each year on the second Monday in **February** [JANUARY] at **1:00 p.m. Each** [10:00 A.M.; HOWEVER, FOLLOWING A GUBERNATORIAL ELECTION YEAR, THE LEGISLATURE SHALL CONVENE ON THE THIRD TUESDAY IN JANUARY AT 10:00 a.m. EXCEPT AS PROVIDED IN THIS SECTION, EACH] legislature shall have a duration of two years and **consists** [SHALL CONSIST] of a "First Regular Session [,]" **that meets** [WHICH SHALL MEET] in the odd-numbered years, [AND] a "Second Regular Session [,]" **that meets** [WHICH SHALL MEET] in the

even-numbered years, and any special session or sessions that the governor or legislature may find necessary to call.

* **Sec. 5.** AS 24.05.120 is amended to read:

Sec. 24.05.120. Rules. At the beginning of **each** [THE FIRST] regular session of **the** [EACH] legislature, both houses shall adopt uniform rules of procedure for enacting bills into law and adopting resolutions. The rules in effect at the last regular session of the immediately preceding legislature serve as the temporary rules of the legislature until the adoption of permanent rules.

* **Sec. 6.** AS 24.08.035(a) is amended to read:

(a) Before a bill or resolution, except an appropriation bill, is reported from the committee of first referral, there shall be attached to the bill a fiscal note containing an estimate of the amount of the appropriation increase or decrease that would result from enactment of the bill for the current fiscal year and five succeeding fiscal years or, if the bill has no fiscal impact, a statement to that effect shall be attached. The fiscal note or statement shall be prepared in conformity with the requirements of this section by the department or departments affected and may be reviewed by the office of management and budget. The fiscal note or statement shall be delivered to the committee requesting it within **three** [FIVE] days of the request [OR WITHIN TWO DAYS IF THE REQUEST IS MADE AFTER THE 90TH DAY OF A REGULAR SESSION, OR DURING A SPECIAL SESSION OF THE LEGISLATURE]. If the bill is presented by the governor for introduction in accordance with AS 24.08.060(b) and the uniform rules of the legislature, the fiscal note or statement shall be attached to the bill before the bill is introduced. An amendment or a substitute bill proposed by a committee of referral that changes the fiscal impact of a bill shall be explained in a revised fiscal note or statement attached to the bill.

* **Sec. 7.** AS 24.08.050 is amended to read:

Sec. 24.08.050. Prefiling of bills and resolutions. Any member of the legislature whose term extends into a forthcoming session or legislature, or a member-elect may file a bill or resolution or a proposal for a bill or resolution with the Legislative Affairs Agency at any time before **February** [JANUARY] 1. The agency

shall place a prefiled bill or resolution **that** [, WHICH] is approved by the sponsor [,] in proper form and deliver it to the chief clerk of the appropriate house on the day on which the next session convenes or is organized for business. Prefiled bills or resolutions shall be considered as introduced on the day of their delivery to each house.

* **Sec. 8.** AS 24.08.110 is amended to read:

Sec. 24.08.110. Bills carry over. A bill introduced [BUT NOT RECEIVING FINAL ACTION] in the first regular session of a legislature **that is passed by the house in which it is introduced but that does not receive final action** carries over in the same reading or status into the second regular session of the same legislature.

* **Sec. 9.** AS 24.10.220 is amended to read:

Sec. 24.10.220. Bonuses for certain legislative employees. An employee of the legislature may not be awarded or paid a bonus that is in [IN] addition to compensation authorized under AS 24.10.200 and 24.10.210 [, AN EMPLOYEE OF THE LEGISLATURE MAY BE AWARDED AND PAID A BONUS TO REWARD EXTRAORDINARY EFFORT, COMPETENCY, JOB PERFORMANCE, OR UNCOMPENSATED OVERTIME. HOWEVER, AFTER JA JARY 1, 2005, THE AUTHORITY TO AWARD AND PAY A BONUS UNI . THIS SECTION IS TERMINATED, AND BONUSES MAY NOT BE AWARDED OR PAID AFTER THAT DATE].

* **Sec. 10.** AS 24.20.171(a) is amended to read:

(a) The committee shall be organized within **10** [15] days after the organization of each legislature. Members serve for the duration of the legislature during which they are appointed.

* **Sec. 11.** AS 24.20.206 is amended to read:

Sec. 24.20.206. Duties. The Legislative Budget and Audit Committee shall

(1) [REPEALED

(2)] annually review the long-range operating plans of all agencies of the state that perform lending or investment functions;

(2) [(3)] review periodic reports from all agencies of the state that perform lending or investment functions;

(3) [(4)] prepare a complete report of investment programs, plans, performance, and policies of all agencies of the state that perform lending or investment functions and notify the legislature **on or before the first day** [WITHIN 30 DAYS AFTER THE CONVENING] of each regular session that the report is available;

(4) [(5)] in conjunction with the finance committee of each house recommend annually to the legislature the investment policy for the general fund surplus and for the income from the permanent fund;

(5) [(6)] provide for an annual post audit and annual operational and performance evaluation of the Alaska Permanent Fund Corporation investments and investment programs;

(6) [(7)] provide for an annual operational and performance evaluation of the Alaska Housing Finance Corporation and the Alaska Industrial Development and Export Authority; the performance evaluation must include, but is not limited to, a comparison of the effect on various sectors of the economy by public and private lending, the effect on resident and nonresident employment, the effect on real wages, and the effect on state and local operating and capital budgets of the programs of the Alaska Housing Finance Corporation and the Alaska Industrial Development and Export Authority;

(7) [(8)] provide assistance to the trustees of the trust established in AS 37.14.400 - 37.14.450 in carrying out their duties under AS 37.14.415.

* **Sec. 12.** AS 24.20.311 is amended to read:

Sec. 24.20.311. Reports. The committee shall file copies of its approved audit reports including any committee recommendations with the governor, the agency concerned, and the legislature. An annual report summarizing the audit reports and committee recommendations made during the year shall be filed with the governor and with the legislature **on or before** [WITHIN] the first **day** [FIVE DAYS] of each regular session of the legislature. Reports shall be approved by a majority of the committee before their release and shall be open to public inspection after their release to the legislature.

* **Sec. 13.** AS 24.45.041(e) is amended to read:

(e) Within 15 [45] days after the convening of each regular session of the legislature, the commission shall publish a directory of registered lobbyists, containing the information prescribed in (b) of this section for each lobbyist and the photograph, if any, furnished by a lobbyist under (c) of this section. From time to time thereafter the commission shall publish those supplements to the directory that in the commission's judgment may be necessary. The directory shall be made available to public officials and to the public at the following locations: a public place adjacent to the legislative chambers in the state capitol building, the office of the lieutenant governor, the legislative reference library of the Legislative Affairs Agency, and the commission's central office.

* **Sec. 14.** AS 24.45.116 is amended to read:

Sec. 24.45.116. Disclosure of contributions. A civic league or organization shall report the total amount of contributions received for the reporting period and, for any contribution over $100, the name of the contributor and the amount contributed. The civic league or organization may establish a separate fund to account for receipts and expenditures arising out of activities to influence legislative action. Reports shall be made on a form provided by the commission on [FEBRUARY 10,] April 25 [,] and July 10 of each year, listing contributions received during the period that ended 10 days earlier. Upon request of the commission, information required under this section shall be submitted electronically.

* **Sec. 15.** AS 37.07.020(a) is amended to read:

(a) The governor shall prepare a budget for the succeeding fiscal year that must cover all estimated receipts, including all grants, loans, and money received from the federal government and all proposed expenditures of the state government. The budget shall be organized so that the proposed expenditures for each agency are presented separately. The budget must be accompanied by the information required under AS 37.07.050 and by the following separate bills: (1) an appropriation bill authorizing the operating and capital expenditures of the state's integrated comprehensive mental health program under AS 37.14.003(a); (2) an appropriation bill authorizing state operating expenditures other than those included in the state's integrated comprehensive mental health program; (3) an appropriation bill authorizing

capital expenditures other than those included in the state's integrated comprehensive mental health program; and (4) a bill or bills covering recommendations, if any, in the budget for new or additional revenue. The budget for the succeeding fiscal year and each of the bills shall become public information on **January** [DECEMBER] 15 at which time the governor shall submit copies to the legislature and make copies available to the public. The bills, identical in content to the copies released on **January** [DECEMBER] 15, shall be delivered to the rules committee of each house before the fourth legislative day of the next regular session for introduction.

* **Sec. 16.** AS 37.07.040(7) is amended to read:

(7) provide the legislative finance division with an advance copy of the governor's budget workbooks by the first Monday in **February** [JANUARY] of each year [, EXCEPT THAT FOLLOWING A GUBERNATORIAL ELECTION YEAR THE ADVANCE COPY SHALL BE PROVIDED BY THE SECOND MONDAY IN JANUARY];

* **Sec. 17.** AS 37.07.070 is amended to read:

Sec. 37.07.070. Legislative review. The legislature shall consider the governor's proposed comprehensive operating and capital improvements programs and financial plans, evaluate alternatives to the plans, make program selections among the various alternatives and determine, subject to available revenues, the level of funding required to support authorized state services. The operating and capital budgets of each agency shall be separately reviewed. During each regular session of the legislature, legislative review of the governor's supplemental appropriation bills and the governor's budget amendments shall be governed by the following time limits:

(1) requests by the governor for supplemental appropriations for state agency operating and capital budgets for the current fiscal year may be introduced by the rules committee only through the **fifth** [30TH] legislative day;

(2) requests by the governor for budget amendments to state agency budgets for the budget fiscal year may be received and reviewed by the finance committees only through the **15th** [45TH] legislative day.

* **Sec. 18.** AS 37.10.050(c) is amended to read:

(c) Except as provided in AS 37.10.052(a), each state agency shall annually

review fees collected by the agency. By October 1, each state agency shall submit a report to the office of management and budget regarding existing fee levels set by the agency by regulation and adjustments made to fee levels by the agency during the previous fiscal year, and recommended adjustments in fees set by statute that the agency collects. Each year by December 15, the office of management and budget shall submit a report to the Legislative Budget and Audit Committee summarizing the reports and recommendations and the extent to which the fee adjustments have been incorporated in the governor's budget. Within **five** [30] days after the convening of each regular session of the legislature, the committee shall prepare a report on the status of fee regulations and making recommendations for changes in regulations or statutes as appropriate. The committee shall notify the legislature that the report is available.

* **Sec. 19.** AS 38.04.022(b) is amended to read:

(b) Within **five** [30] days after the legislature convenes in regular session, the Department of Natural Resources shall notify the legislature that a report reflecting all money deposited in the fund established under (a) of this section during the prior fiscal year is available.

* **Sec. 20.** AS 38.05.027(b) is amended to read:

(b) A summary of agreements entered into under this section shall be submitted to the legislature within **five** [30] days of the beginning of each regular session.

* **Sec. 21.** AS 39.05.080(1) is amended to read:

(1) Each governor shall present to the legislature the names of the persons appointed by that governor; each governor may present the name of a person appointed by a previous governor; only presentment that occurs during the time that the legislature is in regular session constitutes presentment under this section. The governor shall, within the first **15** [30] days after the legislature convenes in regular session, present to the legislature for confirmation the names of the following persons: (A) persons appointed to a position or membership who have not previously been confirmed by the legislature, and (B) persons to be appointed to fill a position or membership the term of which will expire on or before March 1 during that session of

the legislature. If an appointment is made after the first **15** [30] days of the convening of the regular session but while the legislature is in regular session, the governor shall immediately present to the legislature for confirmation the name of the person appointed.

*** Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICATION. The beginning of the term of office under AS 24.05.080, as amended by sec. 3 of this Act, first applies to legislators elected during 2008 and applies thereafter.

*** Sec. 23.** This Act takes effect January 1, 2008.

ALASKA STATE LEGISLATURE
HOUSE RULES COMMITTEE
REPRESENTATIVE JOHN COGHILL, CHAIRMAN

State Capitol Juneau, AK 99801-1182 (907) 465-3719
1292 Sadler Way, Fairbanks AK 99701 (907) 456-5081

HB 171 Sectional

Section 1. Public Safety annual report on activities of the narcotic drug and alcohol enforcement unit.

Sec. 2. In odd numbered years Public Safety submits their report on repeated child sexual abuse arrests and criminal exploitation of children to legislature on first day of session

Sec. 3. Changes the beginning of the term of each member of the legislature to the second Monday of February. (in Senate version).

Sec. 4. Starts session the second Monday of February. (in Senate version).

Sec. 5. Expand the direction of the legislature to adopt uniform rules at the beginning of each session. Currently the legislature adopts uniform rules in first legislative session.

Sec. 6. Requires the department affected by a piece of legislation to deliver to a requesting legislative committee a fiscal note within three days of the request. This is a change from five days and after the 90th day two days.

Sec. 7. Extends the profile deadline from January 1 to February 1.

Sec. 8. Requires a bill introduced in the first legislative session to be passed through its house of origin in the first session to be considered in the second session.

Sec. 9. Cleans up AS 24.10.220 and clarifies legislative employees cannot be awarded bonuses.

Sec. 10. Requires the Legislative Budget & Audit Committee to be organized within 10 days after the convening of the legislature.

Sec. 11. Requires the Legislative Budget & Audit Committee to prepare a report of investment programs, plans, performance, and policies of all agencies of the state that perform lending or investment functions and notify the legislature of the report on or before the first day of each regular session versus 30 days after convening.

get a CS drafted ASAP

Sec. 12. Requires the LB & A to file with the governor and the legislature its annual report summarizing audit reports on or before the first day of session versus within five days.

Sec. 13. Requires APOC to publish a directory of registered lobbyists within 15 days after session convenes. They now have 45 days.

Sec. 14. Eliminates one of the disclosure reports for contributions made to a civic league or organization to influence activities of a legislature. The report is currently due on February 10th which most likely will be close to the first day of session.

Sec. 15. This section gives the governor an extra 30 days to present to the legislature the annual operating, capital, and mental health trust budget bills. The deadline is moved from December 15th to January 15th.

Sec. 16. Moves the deadline for the governor's budget workbook to the first Monday in February versus the first Monday in January.

Sec.17. The governor's request for supplemental appropriations must be provided to the legislature by the fifth day of session versus 30th day and the governor's budget amendments must be submitted by the 15th day versus the 45th day.

Sec.18. Requires LB & A to prepare a report of fees collected and recommended fee adjustments of state agencies and provide it to the legislature by the fifth day of session versus 30 days.

Sec.19. Requires DNR to give notice to the legislature within five days from convening that a report reflecting all money deposited to the State Land Disposal Income Fund for the prior fiscal year is available. They currently have until the 30th day.

Sec.20. Reduces from 30 to five days after convening the deadline for DNR to submit a summary of all "cooperative resource management or development agreements" to the legislature.

Sec.21. Requires governor to submit to the legislature within 15 days from convening the names of persons appointed to a position or membership who have not been confirmed by the legislature and persons to be appointed to fill a position or membership for a term that will expire on or before March 1 during that session. Current provides for 30 days. It also instructs the governor to immediately submit the name of someone appointed after the first 15 days by while the legislature is in regular session.

Sec.22. The term of office beginning on the second Monday of February for a member of the legislature first applies to legislators elected during 2008.

Sec.23. This legislation has an effective date of January 1, 2008.

Passed as amended

AMENDMENT #3

OFFERED IN THE HOUSE
STATE AFFAIRS COMMITTEE

BY REPRESENTATIVE COGHILL

TO: HB 171 Version C

Page 6, lines 11-20:

Delete all material

Page 9, line 9, after the words "Sec. 23.":

Insert:

AS 24.45.116 is repealed.

Renumbered "This Act takes effect January 1, 2008." as **Sec. 24.**

AMENDMENT #2 Passed

OFFERED IN THE HOUSE
STATE AFFAIRS COMMITTEE

BY REPRESENTATIVE COGHILL

TO: HB 171 Version C

Page 4, lines 6 – 10:

Delete all material

AMENDMENT

OFFERED IN THE HOUSE
STATE AFFAIRS COMMITTEE

BY REPRESENTATIVE COGHILL

TO: HB 171 Version C

Page 6, lines 11-20:

Delete all material

Page 9, line 9, after the words "Sec. 23.":

Insert:

AS 24.45.116 is repealed.

Renumbered "This Act takes effect January 1, 2008." as **Sec. 24.**

90-Day Session

HB 171
An Act relating to a 90 Day Session

Press Release: Rep. John Coghill

Coghill Introduces 90-Day Session Clean-up Bill

HB 171 Adjusts Session Schedules, Governor's Budget Deadlines

Posted: March 1, 2007
Contact: Will Vandergriff, 465-5446, *House Majority Press Secretary*

(Juneau) – House Rules Committee Chairman John Coghill (R-North Pole) today introduced legislation that will make needed changes to the schedule and deadlines of the Legislature and governor that will allow a smooth flow of legislative business next year when a new 90-day limit takes effect. The 90-day limit resulted from an initiative passed at the August 2006 primary election.

Rep. John Coghill (R-11)
Chair, (H) RLS Com.

> ***"House Bill 171 is the first step toward the smooth flow of bills and other business of the Legislature that we will have to accomplish in 90 days next year.***

Coghill's bill, HB 171, establishes the convening day of each regular legislative session as the second Monday of February each year. Currently, the legislative session begins on the second Monday of January, except during the session following a gubernatorial election, when it is set for the third Monday.

HB 171 will also give the governor an additional 30 days to make public the annual operating and capital budgets, which currently must be presented on December 15 of each year. It also proposes to reduce the 30-day deadline by which the governor must submit her nominees for boards, commissions, and councils to 15 days.

> ***"Now, we are a little bit under the gun to condense a four-month session into a three-month one. So we have to be highly aware of each potential glitch that presents itself, and address it with a statute or rule change, whichever is appropriate.***

In addition to numerous minor internal legislative rules changes, HB 171 would also disallow a bill introduced in the first session of a Legislature from carrying over to the second session if it has not been passed by the house in which it was introduced.

"House Bill 171 is the first step toward the smooth flow of bills and other business of the Legislature that we will have to accomplish in 90 days next year," Coghill said. "I expect the bill will evolve as it moves through the process, and I hope by the time it passes and is sent to the governor, we will have identified every piece of the puzzle needed to make it happen."

Coghill noted it has been about 20 years since the Legislature adopted the 120-day session limit, and that the rules and laws related to the flow of work through the session have evolved over those

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Rep. John Coghill

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two decades.

"Now, we are a little bit under the gun to condense a four-month session into a three-month one, so we have to be highly aware of each potential glitch that presents itself, and address it with a statute or rule change, whichever is appropriate," he said.

HB 171 was referred to the House State Affairs Committee.

# # #

ALASKA STATE LEGISLATURE
HOUSE RULES COMMITTEE
REPRESENTATIVE JOHN COGHILL, CHAIRMAN
State Capitol Juneau, AK 99801-1182 (907) 465-3719
3340 Badger Road Suite #290, North Pole, AK 99705 (907) 488 5725

SPONSOR STATEMENT

HB 171 90-Day Session Cleanup Bill

With the passage of the initiative on the August, 2006 primary election ballot, state statutes establishing deadlines for submitting budgets and reports will have to be amended to accommodate the 90-day session. HB 171 is the first link to a series of events that must occur to make a 90-day session as productive as possible without usurping adequate public process.

This legislation would move the legislative session forward approximately thirty days and session would begin on the second Monday of February. The legislation would require departments and committees to submit their reports to the legislature within one to five days after the legislature convenes. Under current law, the reports are due thirty to 45 days after the beginning of session.

HB 171 reduces the amount of time the governor has to submit appointments of certain commissioners and appointees of boards, councils, and commissions to the legislature for confirmation.

It requires a piece of legislation introduced in the first session to clear one house in the first session to be carried over to the second session of a legislature.

The bill would give the governor an additional thirty days to present the annual operating and capital appropriations budgets to the legislature but reduces the period of time between the legislature convening and the governor's submittal of a supplemental budget and amendments to the annual appropriations bills.

HB

179

HCUSE COMMITTEE REPC T

(7)
Date Referred to Committee: March 5, 2007 **FURTHER REFERRALS: Finance**

Date of Committee Action: 4-3-07

The STATE AFFAIRS Committee considered: **HB 179**

HOUSE BILL NO. 179 **PUBLIC EMPOYEE/TEACHER RETIREMENT SYSTEMS**

"An Act relating to insurance for public employees, teachers, and certain retired public employees and teachers and to supplemental employee benefits; relating to teachers' and public employees' defined benefit retirement plans, to teachers' and public employees' defined contribution retirement plans, to employee and employer contributions to the teachers' retirement system and the public employees' retirement system, and to the administration of the Public Employees' Retirement System of Alaska and the deferred compensation program for state employees; establishing in the Department of Revenue the teachers' retirement system past service cost liability acconnt and the public employees' retirement system past service cost liability account; relating to benefits of, references to federal law in, and investments in the teachers' retirement system and the public employees' retirement system; modifying the jurisdiction of the independent office of administrative hearings as related to retirement and related personnel benefits; and providing for an effective date."

Recommends it be replaced with [ ] HCS or [X] CS for HB 179 **(** STA **)**
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR______ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to __________ Committee
[ ] Letter of Intent __________ Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES** *Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
Admin				X
Admin				X
Revenue				X

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
Craig Johnson	Johnson				X
Kyle B. Johansen	JOHANSEN			X	
Bob Roses	Roses	X			
[signature]	Gruenberg			✓	
John Coghill	Coghill			✓	
[signature]	Doll			✓	
Chair: [signature]	LYNN			X	
Chair:					

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM April 4, 2007

SUBJECT: CSHB 179(STA) (Work Order No. 25-LS0252\L)

TO: Representative Bob Lynn
Attn: Nancy Manly

FROM: Dan Wayne
Legislative Counsel

You have requested that I provide the committee with a CS (in final form) for HB 179, based on version 25-LS0252\M but with the deletion of sections 1 and 34 (the sections which would have raised the employee contribution rate in PERS and TRS, respectively). You further instructed that I not add any language from amendment number 1 that would cause an increase in the employee contribution rate.

Enclosed is a CS, in final form, as requested. If I may be of further assistance, please advise.

DCW:lmb
07-099.lmb

Enclosure

library

Alaska State Legislature

Chairman
State Affairs Committee

Vice-Chairman
Economic Development, Trade & Tourism Committee

Member
Judiciary Committee
Joint Armed Services Committee

Finance Subcommittees
Corrections
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety

A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" RepBobLynnBlog.com

Session:
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Juneau, AK 99801-1182

Phone: (907) 465-4931
Fax: (907) 465-4316
Toll Free: (800) 870-4391

Interim:
716 W. 4th Ave., #650
Anchorage, AK 99501-2133

Phone: (907) 269-0205
Fax: (907) 269-0207

FAX

To: Legal Services

Fax #: 2029

From: Nancy Manly x2794
Alaska State Capitol, room 104
Juneau, AK 99801-1182

Phone: 907-465-4931
Fax: 907-465-4316

# of Pages (including cover): 3

Re: HB 179 Version M - Public Employees/Teacher's Retirement System

4/03/07 – The House State Affairs Committee passed out HB 179 Version M with two amendments. Please draft a Final CS for HB 179 Version M as amended. Thank you!

Amendment #1 passed with one amendment (Roses)
25-LS0252\M.1

Amendment #1 to Amendment #1 (Doll)
Rep.Doll's amendment is attached

25-LS0252\M.1
Wayne
4/2/07

AMENDMENT #1 As amended
(passed)

OFFERED IN THE HOUSE BY REPRESENTATIVE ROSES

TO: HB 179

9 yes 1 no

Page 2, line 3:

Delete "a new subsection"

Insert "new subsections"

Page 2, line 4:

Delete "2007"

Insert "2010"

Page 2, line 6:

Delete "five"

Insert "one"

Page 2, following line 6:

Insert new bill subsections to read:

"(f) Beginning with the payroll for the first pay period in July 2011, a member shall contribute to the plan, in addition to the combined total of the amounts calculated in (a) and (e) of this section, an amount equal to two percent of the member's base salary.

(g) Beginning with the payroll for the first pay period in July 2012, a member shall contribute to the plan, in addition to the combined total of the amounts calculated in (a), (e), and (f) of this section, an amount equal to two percent of the member's base salary."

Amendment 1 to Amendment 1

AMENDMENT

CS HB 179 BY Rep. Dell

6 Yea 1 Nay

Page 2, lines 3-6

Delete all language

[(E) BEGINNING WITH THE PAYROLL FOR THE FIRST PAY PERIOD IN JULY 2007, A MEMBER SHALL CONTRIBUTE TO THE PLAN, IN ADDITION TO THE AMOUNT CALCULATED IN (A) OF THIS SECTION, AN AMOUNT EQUAL TO FIVE PERCENT OF THE MEMBER'S BASE SALARY]

Page 17, lines 17-19

Delete all language

[(E) BEGINNING WITH THE PAYROLL FOR THE FIRST PAY PERIOD IN JULY 2007, A MEMBER SHALL CONTRIBUTE TO THE PLAN, IN ADDITION TO THE AMOUNT CALCULATED IN (A) OF THIS SECTION, AN AMOUNT EQUAL TO FIVE PERCENT OF THE MEMBER'S BASE SALARY]

TRANSACTION REPORT

APR-02-2007 10:17 PM

FOR: REP LYNN 4654316

SEND

DATE START	RECEIVER	PAGES	TIME	NOTE
APR-02 10:16 PM	2029	3	48"	OK

25-LS0252\M.1
Wayne
4/2/07

AMENDMENT #1

OFFERED IN THE HOUSE BY REPRESENTATIVE ROSES

TO: HB 179

Page 2, line 3:
Delete "a new subsection"
Insert "new subsections"

Page 2, line 4:
Delete "2007"
Insert "2010"

Page 2, line 6:
Delete "five"
Insert "one"

Page 2, following line 6:
Insert new bill subsections to read:

"(f) Beginning with the payroll for the first pay period in July 2011, a member shall contribute to the plan, in addition to the combined total of tne amounts calculated in (a) and (e) of this section, an amount equal to two percent of the member's base salary.

(g) Beginning with the payroll for the first pay period in July 2012, a member shall contribute to the plan, in addition to the combined total of the amounts calculated in (a), (e), and (f) of this section, an amount equal to two percent of the member's base salary."

#3
Rep. Dell

AMENDMENT

CS HB 179 BY

Page 2, lines 3-6

Delete all language

[(E) BEGINNING WITH THE PAYROLL FOR THE FIRST PAY PERIOD IN JULY 2007, A MEMBER SHALL CONTRIBUTE TO THE PLAN, IN ADDITION TO THE AMOUNT CALCULATED IN (A) OF THIS SECTION, AN AMOUNT EQUAL TO FIVE PERCENT OF THE MEMBER'S BASE SALARY]

Page 17, lines 17-19

Delete all language

[(E) BEGINNING WITH THE PAYROLL FOR THE FIRST PAY PERIOD IN JULY 2007, A MEMBER SHALL CONTRIBUTE TO THE PLAN, IN ADDITION TO THE AMOUNT CALCULATED IN (A) OF THIS SECTION, AN AMOUNT EQUAL TO FIVE PERCENT OF THE MEMBER'S BASE SALARY]

ALASKA STATE LEGISLATURE

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REPRESENTATIVE MIKE KELLY
HOUSE DISTRICT 7

Member
House Finance Committee
Legislative Budget & Audit

March 28, 2007

Dear AG ~~Colberg~~ Talis,

I appreciate you and Ms. Behr meeting with us Tuesday in preparation for hearings on HB179 – PERS/TRS. Since we have a new AG in you, I thought a chat to get your perspective would be appropriate. Our discussion concerning how beneficiaries, including legislators, administrators, judges, teachers, public employees, etc. might share a greater portion of the cost of providing their defined benefits was helpful. I've set forth some of the comments and questions which arose during our meeting in order to make research and response by your office easier and more focused.

Comments:

1) The all-in cost of providing old tier PERS/TRS benefits has tripled since 2000. The old tier unfunded liability is expected by Legislative Finance to climb as high as $12 billion ($250,000 for each currently active beneficiary) before it's over.
2) Beneficiaries used to pay roughly one half the all-in cost of providing their benefits.
3) Beneficiaries now pay less than one-sixth of the cost for benefits which Buck Consultants has described as "rich," and which we have learned are unsustainable.
4) I believe the partnership to extinguish the unfunded liability as well as the current cost should involve the State, local employers and the beneficiaries.
5) The challenge is to figure out how to bring beneficiaries to the payment table to pay an appropriate share without unduly risking overturn by the Court.
6) I believe if we give up on changing benefits or increasing employee contributions based on a realistic assessment that the Court is likely to rule it unconstitutional, then other measures such as a constitutional amendment, hiring freezes, wage reductions, wage freezes, denial of coverage for new procedures, drugs, therapies, prostheses, etc. should be considered in order to protect the interests of non-beneficiary Alaskans.
7) Recall my comments about Amerada Hess and the "conflict, or perceived conflict of the Court regarding the potential impact of their pending decision on the individual judges' PFD's"? One wonders if a non-beneficiary Alaskan might have cause for action against the State because of the tremendous negative impact on him or her caused by past decisions of the "benefits cartel" including legislators, administration and judges. The $400 million we are chasing the actuaries for may be small change compared to eligibility, benefit enrichment and contribution rate rulings over time.

Questions:

1) Can the State declare financial exigency to trigger benefit and/or contribution rate changes based on the huge unfunded liability and the forecast decade of deficits ahead? Or would the permanent fund and CBR have to be first exhausted?
2) Do you believe the Court will permit the raising of employee benefit rates associated with the unfunded liability?
3) How about employee rates for the current period benefit costs?
4) If 3) is "No," how about if an equivalent benefit enhancement is involved?
5) If 4) is "Yes," would The Court consider elimination of the $12 billion unfunded liability and return of the plan to solvency regarding its ability to pay 100% of future benefits, to be an enhancement justifying a 5% beneficiary contribution rate increase?
6) New medical procedures, drugs, therapies, replacement joints, MRI imaging, CT scanning, ultrasound, heart stents, new organs and longer life are all enhancements achieved since current rates were set. Would the court consider them an enhancement justifying to a 5% contribution rate increase for beneficiaries?
7) Could the State prevail in a statute providing that all future growth in the current period cost of health care shall be borne equally by the beneficiary and the employer?

I enjoyed our chat and wish you well in your new endeavors. I've put HB179 on the table. Like SB141 that some of us worked so hard to pass into law, this one involves some grown-up decisions considering the unbelievable unfunded liability and the deficit decade ahead. Since the Court looms large, I need your help related to incorporating the most effective mechanism for bringing the beneficiaries to the payment table. Incidentally, I opted not to enter PERS because I knew I'd be advocating tough choices for our system. Please call if you have any questions. I have distributed copies of this letter to committee members and interested others.

Best regards,

Representative Mike Kelly
House District 7

Library

25-LS0252\M.2
Wayne
4/2/07

Not offered

AMENDMENT #2

OFFERED IN THE HOUSE BY REPRESENTAT E ROSES

TO: HB 179

Page 17, following line 15:

Insert a new bill section to read:

"* **Sec. 34.** AS 39.35.100(b) is amended to read:

(b) All income of the pension fund and all disbursements made by the fund shall be credited or charged, whichever is appropriate, to the following accounts:

(1) An individual account shall be maintained for each employee to record the amount of the employee's mandatory contributions collected under **AS 39.35.160** [AS 39.35.160(a)]. As of the last day of each calendar year and each fiscal year beginning with June 30, 1969, this account shall be credited with interest, by applying the prescribed rate of interest as determined by the board to the balance in the account as of that date. Within one year following retirement, the amount actuarially determined as necessary to fully fund the benefits to be received shall be transferred first from the employee contribution account and, after the employee contribution account has been exhausted, then from the employer contribution account into the retirement reserve account.

(2) An individual account shall be maintained for each employee to record the amount of the employee's voluntary contributions. As of the last day of each calendar year and each fiscal year beginning with June 30, 1969, this account shall be credited with interest, by applying the prescribed rate of interest as determined by the board to the balance in the account as of that date. Amounts that, before termination of employment, are withdrawn by an employee from the employee's savings account shall be charged to that account. Upon retirement, the amount actuarially determined as necessary to fully fund the benefits to be received shall be

transferred first from the employee savings account and, after the employee savings account has been exhausted, then from the employer contribution account into the retirement reserve account.

(3) A separate account for each employer shall be maintained. The account shall be credited with contributions of the employer. This account shall be charged with the employer's actuarial charge for pension, death benefits, and other benefits paid under this plan to or on behalf of the employee of the employer. After an allowance for interest credited to employee contribution accounts and employee savings accounts, the investment income of the pension fund shall be allocated to the retirement reserve account and to each employer asset share account according to the ratio that the average of the assets in the account as of the beginning and as of the end of the fiscal year bears to the total of the average balance of the retirement reserve account and all employer accounts.

(4) An expense account shall be maintained for the plan. This account shall be charged with all disbursements representing administrative expenses incurred by the plan. At the end of the year the expense account shall be allocated to each employer in accordance with (3) of this subsection. Expenditures from this account shall be included in the governor's budget for each fiscal year and are subject to approval by the legislature."

Renumber the following bill sections accordingly.

Page 17, line 16:

Delete "a new subsection"

Insert "new subsections"

Page 17, line 17:

Delete "2007"

Insert "2010"

Page 17, line 19:

Delete "five"

Insert "one"

Page 17, following line 19:

Insert new bill subsections to read:

"(f) Beginning with the payroll for the first pay period in July 2011, a member shall contribute to the plan, in addition to the combined total of the amounts calculated in (a) and (e) of this section, an amount equal to two percent of the member's base salary.

(g) Beginning with the payroll for the first pay period in July 2012, a member shall contribute to the plan, in addition to the combined total of the amounts calculated in (a), (e), and (f) of this section, an amount equal to two percent of the member's base salary."

Page 34, line 17:

Delete "37, and 38"

Insert "38, and 39"

Page 34, line 18:

Delete "sec. 70"

Insert "sec. 71"

Library

Conceptual

Amend to Amend (1)

8

Rep. Dell

AMENDMENT

CS HB 179 BY

Page 2, lines 3-6

Delete all language

[(E) BEGINNING WITH THE PAYROLL FOR THE FIRST PAY PERIOD IN JULY 2007, A MEMBER SHALL CONTRIBUTE TO THE PLAN, IN ADDITION TO THE AMOUNT CALCULATED IN (A) OF THIS SECTION, AN AMOUNT EQUAL TO FIVE PERCENT OF THE MEMBER'S BASE SALARY]

Page 17, lines 17-19

Delete all language

[(E) BEGINNING WITH THE PAYROLL FOR THE FIRST PAY PERIOD IN JULY 2007, A MEMBER SHALL CONTRIBUTE TO THE PLAN, IN ADDITION TO THE AMOUNT CALCULATED IN (A) OF THIS SECTION, AN AMOUNT EQUAL TO FIVE PERCENT OF THE MEMBER'S BASE SALARY]

Conv to Day

Apr 1

Derek Miller

From: Andy Warwick [warwick@gci.net]
Sent: Friday, March 30, 2007 2:56 PM
To: Derek Miller
Subject: hb 179

I am in support of HB 179 as it provides a solution to the $10 billion shortfall in PERS/TRS retirement system. One can argue that the employees or municipalities should pay more or pay less, but the bill provides a reasonable solution that all can live with. I believe it is important to restore the State's retirement system to fiscal soundness so that we are not burdening future generations of Alaskans,

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capito
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM January 29, 2005

SUBJECT: Accrued benefits of public employment retirements systems and legislative changes to the employee contribution rate (Work Order No. 24-LS0429)

TO: Representative Mike Kelly
Attn: Heath Hilyard

FROM: [redacted]
Legislative Counsel

You have asked questions regard the scope of Article XII, sec. 7 of the Alaska constitution[1] and how it affects the legislature's ability to amend the employee contribution rates of the teacher's retirement system (TRS) and the public employee's retirement system (PERS).[2] In our conversations about this request you asked about changing the contribution rates of vested employees.[3]

---

[1] Alaska Constitution Article XII, Sec. 7:

> SECTION 7. Retirement Systems. Membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of these systems shall not be diminished or impaired.

This provision protects the "accrued benefits" of the systems. The question considered here is whether the employee contribution rate is part of the "accrued benefits."

[2] AS 14.25.050 and AS 39.35.160 respectively.

PERS has three tiers; at this time, the contribution rates are the same for employees in all tiers, but the benefits are increased in Tier I and Tier II:

police and fire employees = 2% (last increased in 1987)
"other" employees = 2% (last increased in 1987)
school district employees = 2.0% (last increased in 1999)

Tier I is for employees first employed between January 1, 1961 and June 30, 1986.
Tier II is for employees entering service between July 1, 1986 through June 30, 1996,
and Tier III applies to employees entering service July 1, 1996 and later.

TRS has two tiers, the employee contribution is 8.65%, last increased in 1991.
Tier I is for teachers first employed between July 1, 1955 and June 30, 1990.

Employee contribution rates have been raised on several occasions in the past without creating a new tier of employees. In 1986 the PERS employee contribution rates were changed from 5% to 7.5% for firefighters and police officers, and the contribution rates for all others were raised from 4.25% percent to the current 6.75%.[4] In 1990 the TRS employee contribution rates were raised from 7% to 8.65%.[5] Both of these changes in compensation rates were made after the Hammond v. Hoffbeck decision in 1981. Hammond v. Hoffbeck, 627 P.2d 1052 (Alaska 1981).[6] These increases in contribution rates apparently did not result in legal challenges. This memorandum, thus, considers whether a new law which raises the employee contribution rates in TRS and PERS while maintaining the accrued benefits in each Tier would be subject to constitutional challenge.

While such a challenge may certainly be brought, it is not a foregone conclusion that the argument would prevail. A strong counter argument can be made that the employee contribution rates are not part of the "accrued benefit" to which members are entitled. The accrued benefits are the rights to receive the retirement and medical plan offered upon employment; the rights accrue as they are earned. A person's contribution rate cannot be changed retroactively for benefits that have already accrued, however, it can be argued that the employee contribution rate can change prospectively to pay for vested benefits.

An employee facing an increased contribution rate for vested benefits can reject the increase by terminating emp' yment while ..ill preserving the employee's vested right to "accrued benefits."[7] An accrued benefit is one that has already been earned, it is not one

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Tier II is for teachers first employed on July 1, 1990 and later.

[4] sec. 15, ch. 82 SLA 1986.

[5] sec. 1, ch. 97 SLA 1990. There was at least one other change in PERS for noncertificated employees of school districts to 9.6% in 1999.

[6] The reductions in benefits in the Hammond v. Hoffbeck case involved a reduction in occupational disability benefits for public safety employees, a requirement that an employee be totally unemployable in order to be eligible for an occupational disability pension rather than "incapacitated for service in the position held" and reducing occupational death benefits from one hundred per cent to forty per cent of monthly salary at the time of death.

[7] A New York case (New York has constitutional protection of pension benefits like Alaska) involving diminution of disability benefits to employees in the public service makes this point, that employees do not have a constitutional right to stay in public employment:

that has not yet been earned. The constitutional promise is that earned benefits cannot be diminished, and the future right to a specified benefit is vested, however Hoffbeck recognized that "rigid adherence to labels like "gratuity," "compensation," "contract," and "vested rights" has not allowed courts the flexibility necessary to deal properly with legitimate legislative response to changing economic and social conditions."[8] The Hoffbeck court found the following language in a California case to be "instructive."

> An employee's vested contractual pension rights may be modified prior to retirement for the purpose of keeping a pension system flexible to permit adjustments in accord with changing conditions and at the same time maintain the integrity of the system. Such modifications must be reasonable, and it is for the courts to determine upon the facts of each case **what constitutes a permissible change. To be sustained as reasonable,** alterations of employees' pension rights must bear some material relation to the theory of a pension system and its successful operation, and changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages. [9]

Following that discussion the decision found:

> We agree with this analysis and hold that the fact that rights in PERS vest on employment does not preclude modifications of the system; that fact does, however, require that any changes in the system that operate to a given employee's disadvantage must be offset by comparable new advantages to that employee.

An important qualification is found in note 11 of Hoffbeck. It may apply to the situation at hand where the system finds that failing to increase employee contributions, and thus increasing the projected unsupportable burden on employers, will threaten the fiscal future of the system as a whole:

> It is long settled, however, that the fact that there can be no constitutional impairment of pension system benefits does not create a constitutional right to stay in public employment. To do this would place the regulation of public employment beyond the control of any authority, which certainly was not intended by our Constitution (Gorman v. City of New York, 280 App Div 39, 45, affd 304 NY 865).

Cook v. Binghamton, 48 N.Y.2d 323, 332 (N.Y., 1979)

[8] Hammond v. Hoffbeck, 627 P.2d at 1057

> We are not called upon to consider the problem, which has frequently arisen in other jurisdictions, presented by a pension fund that is insufficient to satisfy all employee claims brought under its provisions. We intimate no view as to the appropriate legal analysis of any legislative alteration in employee benefits systems made in response to such circumstances.

In this case, it may not be that the system is currently insufficient to handle current claims, and no alteration in the benefits to be received is contemplated. However, the continued fiscal health of the plan for future claims by current beneficiaries may reasonably require a prospective increased contribution rate. Such an argument is not precluded by Hammond v. Hoffbeck.

Four other states have constitutional protection for public employee retirement benefits very similar to Alaska: Hawaii,[10] Michigan,[11] New York and Illinois[12]. There is a case from Michigan which is squarely on point. The Michigan Supreme Court was asked to determine whether a statute increasing the employee contribution rate for certain employees was constitutional. Advisory Opinion re Constitutionality of 1972 PA 258, 389 Mich. 659, (Mich. 1973). The court found that "the Legislature cannot diminish or impair accrued financial benefits, but we think it may properly attach new conditions for earning financial benefits which have not yet accrued."[13] The Michigan court found that raising the employee contribution rate was a "new condition" which was not "a diminishment or impairment of such accrued benefits unless the new conditions were unreasonable and hence subversive of the constitutional protection."

---

[10] Art. XVI, Section 2 of the Hawaii Constitution, provides:

> Membership in any employees' retirement system of the State or any political subdivision thereof shall be a contractual relationship, the accrued benefits of which shall not be diminished or impaired.

[11] Michigan's constitution, art 9, sec. 24 reads:

> The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby. Financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities.

[12] While the constitutional provisions are similar in Illinois and New York the cases have focused on the time of vesting, not relevant to this discussion.

[13] Advisory Opinion re 1972 PA 258, 389 Mich. 659, emphasis added.

A case in Hawaii involved determining the date a firefighter was considered to have begun his retirement. Chun v. Employee's Retirement Sys., 607 P.2d 415, 421 (Hawaii 1980). The court discussed its constitutional protection of public employee retirement systems and found that although benefits attributable to past services could not be reduced, the legislature could make general changes in the retirement system. While not discussed in that case, it could be argued that the employee compensation rate for continued benefits may be a condition that can be changed without violating the constitutional protection of accrued benefits.[14]

After Hoffbeck the next discussion of Article XII, sec. 7 by the Alaska Supreme Court occurred in 2003 where the court considered how to evaluate changes to public employee benefits, specifically health plans. Duncan v. Retired Public Employees of Alaska, Inc. (Duncan) 71 P.3d 882, (Alaska 2003) The state argued that health insurance benefits were not covered by Article XII, sec. 7, and if they were, the dollar amount of the

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[14] Id. at 421, citations omitted.

> This court has never been called upon to examine or construe this particular provision of the Hawaii Constitution. It was proposed from the floor of the 1950 Constitutional Convention and adopted by the Committee of the Whole. The Committee of the Whole Report states:
>
> > It should be noted that the above provision would not limit the legislature in effecting a reduction in the benefits of a retirement system provided the reduction did not apply to benefits already accrued. In other words, the legislature could reduce benefits as to (1) new entrants into a retirement system, or (2) as to persons already in the system in so far as their future services were concerned. It could not, however, reduce the benefits attributable to past services. Further, the section would not limit the legislature in making general changes in a system, applicable to past members, so long as the changes did not necessarily reduce the benefits attributable to past services.
>
> The Committee of the Whole's interpretation of the provision, which we accept, indicates that a member of the retirement system is entitled to the benefits available under the system that have been accrued by the member. From the Committee of the Whole Report, we conclude that the provision was meant to protect an employee from a reduction in accrued benefits. However, the extent of such benefits as well as the conditions under which an employee should receive benefits, are governed by applicable statutory provisions. . . .

premium was all that was protected, not the type of coverage, and third if the first two arguments failed, that changes could be made to vested health benefits so long as any disadvantages from changes were outweighed by advantages, as considered from a group perspective. The court agreed with the third argument only, and found that health benefits could be changed without violating the constitution. Duncan states that "[t]he natural and ordinary meaning of "benefits" in a health insurance context refers to the coverage provided rather than the cost of the insurance."[15]

The language in Duncan does not preclude an argument that the employee contribution rate, applied prospectively, does not diminish accrued benefits. The Michigan case illustrates the argument that employee contribution rates are a condition of current and prospective employment and do not diminish accrued rights. Because the Alaska court has not spoken in regard to the rate of employee contributions in public retirement systems, there can be no certainty. However, there have been changes in employee contribution rates since Hoffbeck none of them generating a constitutional challenge. Increasing the contribution rates of employees prospectively is not explicitly barred by Hoffbeck, or Duncan. Other states with similar constitutional protections have either allowed increases in contribution rates or have acknowledged the need for some flexibility in administering the retirement programs while protecting accrued benefits of public employees.

If I may be of further assistance, please advise.

BRC:med
05-066.med

[15] Duncan, 71 P.3d 882 at 888 - 889. One of the issues in Duncan was whether health benefits consisted of a certain level of coverage, or only a certain dollar amount applied towards health insurance premiums.

MEMORANDUM

State of Alaska

Department of Law

TO: Ray Matiashowksi, Commissioner
Department of Administration

DATE: April 20, 2005

OUR FILE: 663-05-0192

Thru: Scott Nordstrand
Deputy Attorney General - Civil
Attorney General's Office

TELEPHONE NO: 465-3600

FROM: Virginia B. Ragle
Assistant Attorney General
Labor & State Affairs Section - Juneau

SUBJECT: Retirement system amendments - constitutional issues

You have asked three questions regarding application of proposed legislative modifications of the state's public employees' (PERS) and teachers' (TRS) retirement systems to current members of the systems. Those questions are:

1. Is it allowable to increase PERS and TRS contribution rates for individuals who became members of the systems before the effective date of the rate increases?

2. Is it allowable to discontinue pre-funding the medical component or set a rate that targets less than 100 percent funding for existing members or new members?

3. Is it allowable to prospectively not pay existing members new [or additional] ad hoc post retirement pension adjustments (PRPAs)? If not, could a new statutory provision reduce the existing number of members eligible for this benefit prospectively to reduce costs to the system?

While we believe that definitive answers to these questions will only be provided by the Alaska Supreme Court, based on our review of existing case law our, short answers to these questions are:

1. PERS and TRS contribution rates may be increased for individuals who became members of the systems before the effective date of the rate increases if the increases are accompanied by comparable enhancements to benefits.

2. Pre-funding of the medical component of PERS and TRS benefits, to the extent that pre-funding would be considered an accrued benefit, may not be discontinued for members who were employed during the period that statutes required pre-funding. Funding of medical benefits may be set at less than 100% funding for new members.

3. If the financial condition of the funds does not permit payment of the PRPA, it is allowable to prospectively not pay existing members new [or additional] ad hoc PRPAs. A new statutory provision cannot reduce the existing number of members who retain a vested right to a PRPA if one is awarded, unless the new statutory provision includes comparable enhancements to benefits.

The above responses might be different if it were established that application of modification of the retirement systems to current members is necessary to allow the retirement systems to pay current benefit claims.

ALASKA CASE LAW

Each of these questions raises substantial legal issues under Alaska Constitution article XII, section 7, as interpreted by the Alaska Supreme Court. That constitutional provision provides:

> **Retirement Systems.** Membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of those systems shall not be diminished or impaired.

There is a substantial body of Alaska jurisprudence interpreting article XII, section 7 of the Alaska Constitution. Since this case law guides our advice on the issues you have raised, we provide the following synopses of the most pertinent Alaska Supreme Court cases.

State ex rel. Hammond v. Allen, 625 P.2d 844 (Alaska 1981)

The Alaska Supreme Court first interpreted Alaska Constitution article XII, section 7 in the case of *State ex rel. Hammond v. Allen*, 625 P.2d 844 (Alaska 1981). That case involved the Elected Public Officers' Retirement System (EPORS), which was established by the enactment of chapter 205, SLA 1975. A referendum petition to repeal the Act was filed in September 1975, before the Act became effective on

January 1, 1976.[1] Following passage of the referendum by a substantial majority of the voters in an election on August 24, 1976 (effective October 14, 1976), the state filed an action for declaratory judgment, arguing that article XII, section 7 did not apply and that the repeal was effective as to "officials who were participating in EPORS at the time of its repeal, but who were not then entitled to benefits." 625 P. 2d at 845.

The court held that article XII, section 7 did apply, and that even "the extreme likelihood of the subsequent repeal" of EPORS did not constitute an implicit condition subsequent that would extinguish the state's contractual obligation to provide benefits under EPORS.[2] The court concluded that "[a]ll elected officials who were participating in EPORS at the time its repeal became effective will, therefore, be entitled to the benefits provided by that system upon retirement." Under this holding, the state was required to permit even those EPORS members who had not met the minimum age or service requirements for retirement to continue to participate in the repealed retirement system.

***Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981)**

Later in 1981, the court issued its opinion in *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). In that case, public safety employees challenged statutory changes enacted in 1976 regarding PERS occupational disability and death benefits. Two of the challenged statutory changes reduced the amount of benefits, and one modified the eligibility requirements for occupational disability benefits.

The court first had to address whether an employee's rights to benefits under PERS vest on employment and enrollment in the system or only at the time when the employee becomes eligible to receive those benefits. The court ruled that under the Alaska Constitution, the former applied.[3] The court stated

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[1] The repealed provisions of EPORS are set out in the editor's notes to AS 39.37.

[2] The court observed "[w]e believe that if the possibility of repeal of a law could function as an implicit condition subsequent to a contract formed under that law, the protection of contract rights afforded by article XII, section 7, would be seriously eroded."

[3] The court noted that it had "previously held that the phrase 'accrued rights' is synonymous with 'vested' rights. *Bidwell v. Scheele*, 355 P.2d 584, 586 (Alaska 1960)." *Id.* at n.4.

> We are of the view that the plain meaning of Alaska Const. Art. XII, § 7, as well as the purposes underlying its adoption, compels such a conclusion. Furthermore, a review of the relevant case authority from several jurisdictions has persuaded us that this rule represents the better reasoned of the alternative approaches that have been adopted. The rule that regards members' rights in public employees' benefits systems as vested only at the time which an individual employee is eligible to receive payment of those benefits necessarily depends in some degree upon the anachronistic notion that such benefits are in the "nature of a bounty springing from the appreciation and graciousness of the sovereign." . . . Under the rule mandated by Alaska's Constitution, on the other hand, these benefits are regarded as an element of the bargained-for consideration given in exchange for an employee's assumption and performance of his employment. This approach, in our view, more accurately reflects the realities of public employment in Alaska.

Id. at 1056-57 (citations omitted). Therefore, the court held

> that benefits under PERS are in the nature of deferred compensation and that the right to such benefits vests immediately upon an employee's enrollment in that system.

Id. at 1057.

Recognizing that "rigid adherence to labels like 'gratuity,' 'compensation,' 'contract,' and vested rights' has not allowed the courts the flexibility necessary to deal properly with legitimate legislative response to changing economic and social conditions," the court found California's "'limited vesting' approach to be instructive." *Id.* The court agreed with the California court's analysis[4] and held

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[4] *Citing Betts v. Board of Administration of the Public Employees' Retirement System*, 582 P.2d 614, 617 (1978) (1974 amendment changing "fluctuating" computation method to less beneficial "fixed" computation method included no comparable new advantages and could not constitutionally be applied to official whose employment was performed before the amendment); *Allen v. City of Long Beach*, 287 P.2d 765 (CA 1955) (invalidating city's increase in employee contribution rate, change in method of computing benefits, and change in contribution requirements upon reinstatement of employment following absence for military service).

> the fact that rights in PERS vest on employment does not preclude modifications of the system; that fact does, however, require that any changes in the system that operate to a given employee's disadvantage must be offset by comparable new advantages to that employee.

Id. The court reserved judgment on changes to the retirement system that might be needed to sustain a retirement system that could not pay all the benefits it owed. In footnote 11, the court stated:

> We are not called upon to consider the problem, which has frequently arisen in other jurisdictions, presented by a pension fund that is insufficient to satisfy all employee claims brought under its provisions. We intimate no view as to the appropriate legal analysis of any legislative alteration in employee benefits systems made in response to such circumstances.

Id.

Addressing the amendment to the method of computation of PERS occupational disability benefits, the court held that "at least as to some individuals, the new system cannot be said to offer advantages which outweigh its obvious disadvantages." *Id.* at 1058.

Regarding the change in eligibility requirements for occupational disability benefits, the court rejected the state's argument that eligibility standards were not part of the vested benefits protected by article XII, section 7. The court stated that the protected vested benefits "necessarily include not only the dollar amount of the benefits payable, but the requirements for eligibility as well." The court regarded "it as self-evident that this change will entail serious disadvantage" to certain injured public safety employees. *Id.*

The court rejected the state's argument that modification to PERS death benefits could be applied to current employees because rights to those benefits do not vest until the death of an employee. The court reasoned

> It is not the vesting of survivors' benefits that is at issue; it is rather the vesting of employee benefits. The fact that part of an employee's benefit package is, effectively, a life insurance policy, the proceeds of which will never be received by the employee, does not make that whole package any less an element of the consideration that the state contracts to tender in exchange for services rendered by the employee.

Id. at 1059.

The court concluded that the three challenged modifications to PERS "violate Alaska Const. Art. XII, § 7, as to those public safety employees who are adversely affected by them." The court noted "that a determination of whether vested rights to benefits have been diminished must be made on a case-by-case basis" and that the "choice is best made by each affected individual." *Id.* However, the court reversed the superior court's holding that the amendments were invalid as to all public safety employees. The court's interpretation rendered "the 1976 amendments . . . constitutional except as to public safety employees hired before July 1, 1976, who opt to receive benefits under the system in effect at the time they were hired." *Id.*

***Sheffield v. APEA*, 732 P.2d 1083 (Alaska 1987)**

The court next interpreted Alaska Constitution article XII, section 7 in the case of *Sheffield v. APEA*, 732 P.2d 1083 (Alaska 1987). That case involved statutes allowing employees to take early retirement, and also requiring that early retirement benefits be actuarially adjusted. "Actuarial adjustment" was statutorily defined as "equality in value of the aggregate expected payments under two different forms of pension payments, considering expected mortality and interest earnings on the basis of tables adopted from time to time by the board."

A new, more accurate table of early retirement factors adopted by the board in 1981 resulted in computation of slightly lower early retirement benefits than the 1972 table of factors previously in effect. APEA sued to prevent application of the factors in the new table to employees hired before the board adopted the new table. APEA also stipulated that the factors set out in the new table came "closer to achieving equality in value of aggregate payments as between early and normal retirement than would be possible under the old factors." *Id.* at 1084

The court quoted favorably from a case interpreting Massachusetts' law regarding contractual rights to public employee retirement benefits:

> The minimal meaning ... is that the "contract" is formed when a person becomes a member by entering the employment, and he is entitled to have the level of rights and benefits then in force *preserved in substance in his favor without any modification downwards*.... When we speak of the level of rights and benefits protected by [this statute] we mean the *practical effect of the whole complex of provisions* not excluding the [employees' contributions], for an increase in the [rate thereof] is little different from a diminution of the allowance.

Id. at 1087, *quoting Opinion of the Justices*, 303 N.E.2d 320, 327 (Mass. 1973) (emphasis added by court). Adhering to its case-by-case diminishment analysis in *Hoffbeck*, the court held that employees had a vested right to application of the more-favorable factors in effect during their employment. The court noted that

If the PERS board repeatedly revises the tables during the course of an employee's employment, we think the employee should be permitted to elect which of those tables will apply to the computation of his or her PERS early retirement benefits. *Cf. Hoffbeck*, 627 P.2d at 1059 n. 13 ("Upon remand the state is to give requisite notice to and a reasonable time for all those public safety employees affected to exercise their right to choose which system they desire to come under.").

Id. at 1089 n.13. The court explained

To hold that employees have a right only to early retirement benefits which are subject to actuarial changes until retirement would vitiate Alaska's constitutional protection of accrued benefits for those employees who anticipate early retirement: they could not count on any particular amount of pension but only that they will receive one. We therefore hold that the plain meaning of Alaska Const. Art. XII, § 7 should be interpreted to cover the diminution in early retirement benefits at issue, without regard to the fact that the diminution is accomplished through regulations (the actuarial factors) contemplated by the PERS statutes.

Id. at 1089.

***Flisock v. State, Div. of Retirement and Benefits*, 818 P.2d 640 (Alaska 1991)**

In 1991, the court again interpreted Alaska Constitution article XII, section 7 in the case of *Flisock v. State, Div. of Retirement and Benefits*, 818 P.2d 640 (Alaska 1991). That case involved a claim by a TRS member that the determination of the "base salary" to be used in the computation of his benefit should include a lump sum payment he received for unused leave he accrued during a six year period of employment with one of his employers.

The court stated the first issue in the case as being whether the Alaska Constitution required "that Flisock's retirement benefits be calculated in accordance with the law and practice in 1969, the year in which he first entered" TRS. *Id.* at 643. Citing the *Hoffbeck* and *Sheffield* cases, the court held that "Flisock is entitled to have his benefits calculated according to 1969 law." *Id.* The court interpreted the law in effect in 1969 as allowing Flisock to include in his base salary the portion of the lump sum that represented compensation for unused leave accrued during the three years used for computation of his benefit. *Id.* at 644.

***Municipality of Anchorage v. Gallion*, 944 P.2d 436 (Alaska 1997)**

In 1997, the Alaska Supreme Court issued its opinion in the case of *Municipality of Anchorage v. Gallion*, 944 P.2d 436 (Alaska 1997). That case involved a challenge to a Municipality of Anchorage (MOA) ordinance that affected the funding of the Anchorage Police and Fire Retirement System (APFRS). APFRS consisted of three plans with different levels of benefits and eligibility requirements, and with membership based primarily on date of hire. In 1994, Plans I and II were more than 100 percent funded, and Plan III was 89 percent funded. Although MOA had historically funded the plans separately under its ordinances, in 1994 MOA enacted an ordinance providing that contributions were not required if "the Board's actuary determines that the funds necessary to pay the actuarial liability for the benefits for system members contained herein are available from the total assets of the system." *Id.* at 439. MOA had already suspended contributions to Plans I and II. Based on the new ordinance, and the fact that the system considered as a whole was funded at over 100 percent of projected liabilities, MOA discontinued contributions to Plan III.

Anchorage Police and Fire Retirement System members sued on behalf of Plans I and II, contending that MOA's diversion of funds from those plans violated Alaska Constitution article XII, section 7. In discussing the constitutional standard to be applied, the court pointed out that, in the *Sheffield* case, it had adopted the reasoning of the Massachusetts Supreme Court when

> we made it clear that the benefits in force at the time of enrollment in the system will be protected, stating:
> [A member] is entitled to have the level of rights and benefits then in force *preserved in substance in his favor without any modification downwards*. ... When we speak of the level of rights and benefits protected by [this statute] we mean the *practical effect of the whole complex of provisions*....
> *Id.* at 1087 (quoting *Opinion of the Justices*, 364 Mass. 847, 303 N.E.2d 320, 327 (1973) (emphasis added)).

Id. at 441. Dispelling any notion that rights protected by the constitution are limited to the amount of and eligibility requirements for benefits,[5] the court held that MOA's ordinance impaired

> the vested right of members of Plans I and II to have the actuarial soundness of those plans evaluated and maintained separately without being affected by the soundness of other plans. That failure impairs the ability of Plans I and II to withstand future contingencies, such as increases in plan obligations, declines in investment revenue, and inability by MOA to fund any shortfall. It is therefore unconstitutional.

Id. at 444. The court declined to adopt the reasoning of case law from other jurisdictions that upheld allocations of fund earnings or surpluses to supplemental benefits because those allocations did not diminish or impair payment of full benefits[6] or to an underfunded plan because the system remained actuarially sound.[7] Instead, the court was persuaded by *Valdes v. Cory*, 139 Cal. App.3d 773, 189 Cal. Rptr. 212 (1983). In *Valdes*, the Court of Appeal for the Third District of California held that provisions of emergency

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[5] In the 1988 case of *Rice v. Rice*, 757 P.2d 60 (Alaska 1988), the court mentioned that "[t]he modifications to PERS which we have found to operate to disadvantage an employee are those changes which reduce the dollar amount of the benefits payable or the requirements for eligibility." 757 P.2d at 62 (citations omitted).

[6] *Poggi v. City of New York*, 109 A.D.2d 265, 491 N.Y.S.2d 331 (1985), *aff'd*, 67 N.Y.2d 794, 501 N.Y.S.2d 397 (1986); *Halstead v. City of Flint*, 127 Mich. App. 148, 338 N.W.2d 903 (1983).

[7] *State ex rel. Dadisman v. Caperton*, 413 S.E.2d 684 (W. Va. 1991).

legislation passed by the California legislature suspending employer contributions to the state's retirement systems for three months during a budget crisis interfered "with vested contractual rights of PERS members." 189 Cal. Rptr. at 223. The Alaska Supreme Court explained that, although the California legislature's action

> had not reduced employee benefits under the system, the [California] court determined that the state could not suspend its statutorily defined contributions absent actuarial input to insure that the system would remain actuarially sound. *Id.* at 223. The court stated that although an employee may not suffer out of pocket expenses, "the interest of the employee at issue here is the security and integrity of the funds available to pay future benefits." *Id.* at 222.

944 P.2d at 445.

***Duncan v. Retired Public Employees of Alaska*, 71 P.3d 882 (Alaska 2003)**

The Alaska Supreme Court's most recent case interpreting Alaska Constitution article XII, section 7 is *Duncan v. Retired Public Employees of Alaska*, 71 P.3d 882 (Alaska 2003). In that case, Retired Public Employees of Alaska and other plaintiffs challenged modifications to the retiree health plan made by the state in 1999 and 2000. Some of the modifications "provided greater benefits; others were disadvantageous to retirees." *Id.* at 885 In its overview of article XII, section 7, the court quoted from its *Hoffbeck* analysis of the vesting of an employee's right to benefits upon employment and enrollment in the system, and explained that "[t]his means that system benefits offered to retirees when an employee is first employed and as improved during the employee's tenure may not be 'diminished or impaired.'" *Id.* at 886-87. The court reiterated that vested benefits are subject to reasonable modification, "[b]ut to be sustained as reasonable, changes that result in disadvantages to employees should be accompanied by comparable new advantages." *Id.*

The court rejected the state's argument that health insurance benefits, which were not provided by territorial retirement systems when the Alaska Constitution was ratified, were not intended to constitute "accrued benefits." The court observed that its "case law suggests that 'accrued benefits' should be defined broadly." *Id.* at 887. The court concluded

> that the term "accrued benefits" is not limited to just the benefits that were provided to public employees at the time of ratification of the constitution. Instead, the term includes all retirement benefits that make up the retirement benefit package that becomes part of the contract of employment when the public employee is hired, including health insurance benefits.

Id. at 888. The court acknowledged "that medical costs are rapidly rising, making health insurance increasingly difficult to provide. But we do not believe that this fact is of sufficient weight to change the meaning of the plain language of article XII, section 7." *Id.*

The court also rejected the state's argument that the "accrued benefit" was not the level of coverage provided, but was the highest amount of the monthly premium for retiree health coverage in effect during an employee's employment. The court stated

> The natural and ordinary meaning of "benefits" in a health insurance context refers to the coverage provided rather than the cost of the insurance. Further, the various employee publications promise coverage, not merely payment of a particular premium.

Id. at 888-89. The court acknowledged that "[t]he state's argument that the pension system may at some point be threatened by increasing costs of health care is a serious one. Again however, we do not believe that this argument is sufficient to change the meaning of the constitutional language in question." *Id.*

The court agreed with the state's third argument, concluding that the determination of whether detrimental changes in retiree health coverage are offset by comparable new beneficial changes must be made from a group standpoint rather than on an individualized basis. The court reasoned that

> Changes to fixed streams of income such as occupational disability and pension payments can be much more readily evaluated on an individual basis to determine whether they result in a net benefit than can changes to health insurance. Pension and occupational disability payments are, for the most part, predictable and fixed, while health insurance benefits change according to the unpredictable, changing medical needs of each individual.

Id. at 891. The court cautioned that

> equivalent value must be proven by reliable evidence. Just as with an individual comparative analysis, offsetting advantages should be established under the group approach by solid, statistical data drawn from actual experience--including accepted actuarial sources--rather than by unsupported hypothetical projections.

Id. at 892. The court indicated that some individuals could suffer serious hardship from changes in medical coverage that are constitutionally acceptable from a group standpoint. Contrasting the serious hardship established in *Hoffbeck* with the examples of detriments offered in the *Duncan* case, which amounted to "at most several hundred dollars a year, without consideration of [offsetting] benefits," the court stated that individuals who showed serious hardship caused by substantial detriments that are not offset by comparable advantages "should be allowed to retain existing coverage." *Id.*

RESPONSE TO QUESTIONS

1. PERS and TRS contribution rates may be increased for individuals who became members of the systems before the effective date of the rate increases if the increases are accompanied by comparable enhancements to benefits.

Alaska Supreme Court case law summarized above is clear in establishing the date of enrollment in a public retirement system as the date upon which an employee's rights are "vested" or "accrued" under the retirement system. [8] That case law also establishes that "accrued benefits" protected by article XII, section 7 broadly include not just the amount of and eligibility requirements for benefits, but also "the practical effect of the whole complex of provisions" of the systems. *Gallion*, 944 P.2d at 441; *Sheffield*, 732 P.2d at 1087 (both quoting *Opinion of the Justices*, 303 N.E.2d 320, 327 (Mass. 1973)).

Although a majority of the Alaska Supreme Court has not addressed the specific issue of the circumstances under which the state's retirement systems may be amended to raise employee contribution levels, cases that the court has cited, and on which the court has relied, do address the issue.

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[8] Following the Alaska Supreme Court's issuance of its opinion in *Hoffbeck*, this office advised the commissioner of administration that the state could not, by statute, raise the employee contribution rate for teachers employed before the rate increase. 1983 Inf. Op. Att'y. Gen. (366-329-83; February 14).

The Alaska Supreme Court cited the 1955 case of *Allen v. City of Long Beach*, 287 P.2d 765 (CA 1955), in *Hoffbeck*, adopting the California Supreme Court's "limited vesting" and "comparable advantage" approach. *Hoffbeck*, 627 P.2d at 1057. In the *City of Long Beach* case, the California court specifically considered the 1951 modification of a pension plan by the city, increasing the contribution rate of employees hired before March 29, 1945, from 2 percent to 10 percent. The court stated that the change to the city's charter:

> substantially decreases plaintiffs' pension rights without offering any commensurate advantages, and there is no evidence or claim that the changes enacted bear any material relation to the integrity or successful operation of the pension system established by section 187 of the charter.
>
> The provision raising the rate of an employee's contribution to the city pension fund from 2 percent of his salary to 10 percent obviously constitutes a substantial increase in the cost of pension protection to the employee without any corresponding increase in the amount of the benefit payments he will be entitled to receive upon his retirement.

287 P.2d at 767. The court invalidated the city charter provision increasing the contribution rate.[9]

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[9] Other California contribution rate cases include *Wisley v. City of San Diego*, 188 Cal.App.2d 482, 10 Cal. Rptr. 765 (1961) (successive amendments gradually increasing employee contribution rates from one percent to eight percent were obviously detrimental and there was no showing of commensurate benefit or that increases were necessary to the integrity or successful operation of the pension program; holding that the contribution rate increases could not be sustained as reasonable as applied to the plaintiffs); and *City of Downey v. Board of Administration, Public Employees Retirement System*, 47 Cal. App.3d 621, 121 Cal. Rptr. 295 (1975) (detrimental change in contribution rate from individual actuarial computation of portion of benefits employee would receive to flat seven percent of salary was outweighed by increase in retirement allowance, reduction in mandatory retirement age, and option of benefit for spouse).

The Massachusetts case *Opinion of the Justices*, 303 N.E.2d 320 (Mass. 1973), on which the court relied in adopting the interpretation that "accrued benefits" include "the practical effect of the whole complex of provisions" of the retirement systems (*Gallion*, 944 P.2d at 441; *Sheffield*, 732 P.2d at 1087) also involved proposed legislation to raise the employee contribution rate.[10] The Massachusetts court explained that a proposed increase in the employee contribution rate from five percent to seven percent

> would mean a forty percent increase of the member contributions providing the annuity share of the yearly allowance, and a comparable decrease in the pension share provided by the government, for the pension share represents roughly the difference between what the member has created in the way of an annuity and the fixed yearly retirement to which he is entitled. The member would pay more without any enlargement of the benefits.

303 N.E.2d at 324. The Massachusetts court stated

> Legislation which would materially increase present members' contributions without any increase of the allowances finally payable to those members or any other adjustments carrying advantages to them, appears to be presumptively invalid--invalid, that is to say, unless saved by the reserved police powers. . . . That the maintenance of a retirement plan is heavily burdening a governmental unit has not itself been permitted to serve as justification for a scaling down of benefits figuring in the 'contract,' although no case presenting proof of a catastrophic condition of the public finances has been put.

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[10] Massachusetts does not have a constitutional provision comparable to Alaska Constitution article XII, section 7. The court applied Massachusetts statute section 25(5) of G.L. c. 32, which provided that the retirement system statutes "shall be deemed to establish . . . membership in the retirement system as a contractual relationship under which members who are or may be retired for superannuation are entitled to contractual rights and benefits, and no amendments or alterations shall be made that will deprive any such member or any group of such members of their pension rights or benefits provided for thereunder, if such member or members have paid the stipulated contributions . . . ." 303 N.E.2d at 322-23.

Id. at 329-30 (citations omitted). The Massachusetts court concluded that the proposed increase in contribution rate of members of the retirement system was presumptively invalid. *Id.* at 331. The court also concluded that the contribution rate could be applied to employees hired after enactment of the new rate. *Id.*

In addition to these cases from other jurisdictions on which the Alaska Supreme Court has relied, the case of *Hudson v. Johnstone*, 660 P.2d 1180 (Alaska 1983), provides insight as to the probable outcome of a challenge to application of increased contribution rates to current employees. In *Johnstone*, the Alaska Supreme Court considered amendments to the Judicial Retirement System (JRS). Before July 1, 1978, judges were not required to make contributions to JRS. Amendments enacted in 1978 kept JRS non-contributory for judges appointed before July 1, 1978, and made JRS contributory for judges hired after that date. AS 22.25.011. The court upheld the amendments, without citing Alaska Constitution article XII, section 7. Justice Rabinowitz wrote a concurring opinion analyzing that constitutional provision, and opined:

> . . . . under the provisions of article XII, section 7, justices and judges appointed on or before July 1, 1978, are constitutionally entitled to receive benefits under the non-contribution retirement system established prior to the enactment of AS 22.25.011. Thus the legislature is precluded from requiring such judges to contribute toward their retirement benefits even when they commence new "terms of office."

Id. at 1187. Justice Rabinowitz reviewed the 1981 cases of *State v. Allen* and *Hammond v. Hoffbeck*, and stated his view that those cases "preclude the legislature from requiring the members of the judiciary appointed on or before July 1, 1978, from contributing toward their retirement benefits, absent some offsetting comparable new advantage." *Id.* at 1188.

In your request for advice, you mention a memorandum dated January 29, 2005, from the Legislative Affairs Agency's Division of Legal and Research Services ("LAA memorandum") to Representative Mike Kelly regarding "[a]ccrued benefits of public employment retirements systems and legislative changes to the employee contribution rate." That memorandum acknowledges that, under *Hoffbeck*, a challenge may be raised to an increase in employee contribution rates, but states that

> [a] strong counter argument could be made that the employee contribution rates are not part of the 'accrued benefit' to which members are entitled. The accrued benefits are the rights to receive the retirement and medical plan offered upon employment; the rights accrue as they are earned. A person's contribution rate cannot be changed retroactively for benefits that have already accrued, however, it can be argued that the employee contribution rate can change prospectively to pay for vested benefits.

These statements and the analysis that follows them in the LAA memorandum are not consistent with the Alaska Supreme Court's repeated rulings that an employee's rights under the retirement systems vest – i.e., are "accrued" – at the time the employee first enrolls in the system, and that those accrued rights include not only the amount of and eligibility requirements for benefits, but also "the practical effect of the whole complex of provisions" of the systems.[11] In the one case cited by the LAA memorandum in which an increase in the contribution rate of a group of teachers was approved, the Michigan Supreme Court relied on Michigan constitutional history indicating that the framers intended to protect retirees from diminishment of rights "after the service has been performed." *Request for Advisory Opinion, In re Enrolled Senate Bill 1269*, 389 Mich. 659, 209 N.W.2d 200, 202 (Mich. 1973). There is no comparable Alaska constitutional history, and this is contrary to Alaska case law regarding accrual of benefits under the Alaska Constitution.[12]

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[11] The LAA opinion discusses the *Hoffbeck* case, then states that "the next discussion of Article XII, sec. 7 by the Alaska Supreme Court occurred in 2003" citing the *Duncan* case. The LAA memorandum does not address the earlier *Hammond v. Allen* case, or the intervening *Sheffield v. APEA*, *Flisock v. State*, and *MOA v. Gallion* cases.

[12] The case cited in the LAA memorandum in support of the proposition that public employees could choose to resign instead of paying increased contributions did not construe a retirement statute. In *Cook v. City of Binghamton*, 398 N.E.2d 525 (N.Y. 1979), the court upheld changes to a general law that provided for continued payment of salary and medical benefits to certain firemen who were disabled by injuries while performing their duties.

The LAA memorandum correctly points out that increases in contribution rates have been applied to current employees in the past – specifically in 1986 for PERS members and in 1990 for TRS members – without creating a new tier and without drawing legal challenges.[13] However, the 1986 and 1990 legislation that raised the contribution rates included provisions intended to enhance benefits to offset the rate increases. For example, in addition to increasing the PERS contribution rate, the 1986 legislation added the automatic actuarially funded PRPA, increased some of the multipliers for computation of benefits, and made contributions pre-tax. Ch. 82, SLA 1986.

The bill review that the attorney general's office provided to the Governor in 1986 described the increase in the contribution rates for PERS members, and explained that because of the pre-tax treatment, little if any change in the take-home pay of employees would result.[14] The bill review also explained that the bill provided "additional benefits to . . . offset any diminution in benefits resulting from the increase in the contribution rate. The most significant and valuable of these additional benefits is the automatic, actuarially funded (PRPA) . . . ." Other provisions of the 1986 legislation that would constitute diminishments of benefits, such as the increase in early and normal retirement ages, the requirements that retirees under the age of 60 pay full premiums and retirees between the ages of 60 and 65 pay half premiums for medical coverage, and limits on inclusion of geographic cost of living differentials in computation of benefits, were made applicable only to employees hired after July 1, 1986 (this created PERS Tier II).

Similarly, Ch. 97, SLA 1990 raised the TRS contribution rates, and also made offsetting changes making the contributions pre-tax, increasing a multiplier, and adding the automatic actuarially funded PRPA. Again, the increase in the early and normal retirement ages for teachers with less than 20 years of service and the medical coverage premium requirement applied only to teachers hired after June 31, 1990 (this created TRS Tier II).

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[13] Footnote 3 of the LAA memorandum mentions that the contribution rate was "last increased in 1999" for PERS school district employees. However, the 1999 contribution rate increase was not imposed on school district PERS employees. Under the 1999 legislation, noncertificated PERS employees of school districts who worked during the school year, and therefore did not accrue a whole year of service credit under PERS each year, were allowed to elect to pay a higher contribution rate in exchange for accrual of a full year of service credit. Ch. 22, SLA 1999.

[14] File no. 883-86-0140.

In applying Alaska Supreme Court case law interpreting Alaska Constitution article XII, section 7 to your first question, we conclude that legislation increasing the PERS and TRS contribution rates for employees who became members of the systems before the effective date of the rate increases is likely to face a serious legal challenge. Because this kind of dispute is resolved on a case-by-case basis, only a definitive opinion of the Alaska Supreme Court will provide certainty as to the outcome of the challenge. However, we can say that if the increases are accompanied by comparable enhancements to benefits, the prospects of prevailing are increased.

2. Pre-funding of the medical component of PERS and TRS benefits may not be discontinued for members who were employed during the period that the statutes required pre-funding. Funding of medical benefits may be set at less than 100 percent funding for new members.

State law requires employer contribution rates to be calculated in amounts sufficient, when combined with employee contributions, "to provide the benefits earned . . . . " AS 39.35.250; *see also* AS 14.25.070. Under PERS each employer, including the state, is required to provide in its budget for the payment of the contributions, and to remit the payments monthly. AS 39.35.260, 39.35.270, and 39.35.280. Additionally, AS 39.30.095(b), requires the commissioner of administration, after obtaining the advice of an actuary, to determine and set the rate of employer contribution and employee contribution, if any, required for payment to the group health and life benefits fund for payment of benefits including retiree health benefits.

As explained in the summary of the *Duncan* case above, the Alaska Supreme Court has held that health benefits provided by the state's retirement system statutes are part of "the retirement benefit package that becomes part of the contract of employment when the public employee is hired." 71 P.3d at 888. As such, retiree health benefits are among the benefits that must be included in the PERS and TRS employer contribution rates under AS 14.25.070, AS 39.30.095, and AS 39.35.220-39.35.290. We understand that, in accordance with these statutes, employer contribution rates have historically been set to fully fund retiree health benefits.

In a memorandum of advice dated December 2, 1992, this office addressed the question of "whether the governor is constitutionally or statutorily mandated to include in the budget, and the legislature is constitutionally mandated to appropriate, those employer contributions that are prescribed by the boards of the various retirement systems to keep the systems actuarially sound." 1992 Inf. Op. Att'y Gen. (663-92-0073; December 2). We advised that "we believe the court would hold that article XII,

section 7, requires the funding of the retirement systems . . . ." *Id.* at 3. That advice was tempered by the lack of Alaska case law directly addressing the question, and by the fact that recent case law from other jurisdictions created some uncertainty.

Since 1992, the Alaska Supreme Court decided the *Gallion* case, holding that employees' vested interest in the integrity and security of their plans could not be diminished by combining the plans with a plan that was less actuarially sound. In *Gallion*, the court was persuaded by the California Court of Appeal case relied upon in our 1992 memorandum of advice, *Valdes v. Cory*.[15] The court also declined to adopt the rationale of one of the cases that created uncertainty, *State ex rel. Dadisman v. Caperton*, *supra*, n.7.

We adhere to the advice we gave in 1992. We believe that the Alaska Supreme Court would hold that the "the practical effect of the whole complex of provisions" of the systems in which employees have accrued rights includes the statutory provisions for employer contributions and the state's practice of establishing employer contribution rates that fully fund retiree medical benefits in accordance with those statutes.

The legislature may change the employer contribution statutes to provide for less than full funding of the retiree medical benefits of employees hired after the effective date of the legislation.[16] We understand that no Governmental Generally Accepted Accounting Principle requires a public entity to fully actuarially fund retiree medical benefits. If the legislature chooses to enact such a change, in accordance with the court's holding in the *Gallion* case, past and future contributions for fully funded medical benefits for employees hired before the effective date of the legislation should be kept separate from contributions for underfunded medical benefits in the trust fund, in order to maintain the integrity and security of the fully funded benefits.

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[15] 139 Cal. App.3d 773, 189 Cal. Rptr. 212 (1983). *See also Board of Administration of the Public Employees' Retirement System v. Wilson*, 52 Cal. App.4th 1109, 61 Cal. Rptr.2d 207 (1997) (state PERS employees' contractual right to an actuarially sound system was unconstitutionally impaired by amendment to employer contribution portion of funding methodology).

[16] It is also possible that such a change could be applied to benefit recipients whose benefits are based solely on service performed before the legislature first enacted legislation providing for employer-paid retiree medical benefits in 1975. Ch. 200, SLA 1975. Those benefit recipients would not have a contractual right to pre-funded medical benefits arising from employment with the state.

3. **If the financial condition of the funds does not permit payment of the PRPA, it is allowable to prospectively not pay existing members new [or additional] ad hoc PRPAs. A new statutory provision cannot reduce the existing number of members who retain a vested right to a PRPA if one is awarded, unless the new statutory provision includes comparable enhancements to benefits.**

Before July 1, 1986, for PERS, and before July 1,1990, for TRS, the retirement system statutes provided for granting of post retirement pension adjustments to retirees if the administrator determined that the cost of living had increased, and that the financial condition of the funds permitted. AS 14.25.143 (TRS); AS 39.35.475 (PERS). The amount of the PRPA was based on the increase of the cost of living since retirement, with a cap of four percent of the base benefit compounded for each year of retirement. The PRPAs were not automatic, and were considered discretionary or "ad hoc." Potential future PRPAs were not included in the actuarially-determined employer contribution rates.

In 1986 for PERS, and in 1990 for TRS, the legislature repealed the ad hoc PRPAs, and replaced them with actuarially funded automatic PRPAs. Sec. 41, ch. 82 SLA 1986; sec.12, ch. 97 SLA 1990. The automatic PRPAs are paid to retirees age 60 or older, or who have been retired for at least five years from PERS or eight years from TRS. The amount of the PRPA for members who are at least 65 years old or who are receiving disability benefits is the lesser of 75 percent of the cost of living increase in the preceding calendar year or nine percent. For other retirees eligible for PRPAs, the amount is the lesser of 50 percent of the cost of living increase in the preceding calendar year or six percent.

Following repeal of the PERS ad hoc PRPA and enactment of the automatic PERS PRPA in 1986, this office advised the commissioner of administration that the PERS and TRS ad hoc PRPAs could be withheld "if the administrator of the systems makes appropriate, factually supported findings regarding the condition of the retirement funds." 1990 Inf. Op. Att'y Gen. (663-90-0206; January 19). In that memorandum of advice, we

acknowledged that "[b]ecause the right to receive a specific type of retirement benefit, including the PRPA, vests upon the date of employment, the ad hoc PRPA remains viable for members of PERS hired before the effective date of ch. 82, SLA 1986." *Id.* at 1.[17]

Based on the Alaska Supreme Court case law summarized above, the administrator must continue to consider annually whether the cost of living has increased and whether the financial condition of the retirement funds permits awarding of ad hoc PRPAs to retirees. It is not constitutionally allowable for legislation to reduce the existing number of members eligible to receive an ad hoc PRPA if one is awarded, unless that legislation provides comparable offsetting benefits. However, as we noted in our memorandum of advice in 1990,

> [t]o the extent possible, the division should also weigh other advantages provided by ch. 82, SLA 1986 [and ch. 97 SLA 1990] (such as the increased [PERS] "multipliers" in the benefit formula applied to service accrued after June 30, 1986 in excess of 10 and 20 years) in determining whether a retiree is actually disadvantaged by the change in the . . . PRPA.

Id. at 2.[18]

Legislation that limits the administrator's discretion – for example, legislation that allows award of an ad hoc PRPA only if a retirement fund is actuarially funded at over 100 percent and employer contribution rates are set at less than eight percent – would also be subject to challenge under the Alaska Supreme Court cases summarized above.

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[17] We also acknowledged this in pleadings filed in litigation filed by and on behalf of retirees after the TRS ad hoc PRPA was repealed. *National Education Association – Alaska v. Usera*, Case No. 3AN-91-8274 Civil. That litigation was settled in October 1996. Each year since then, the administrator has considered whether to grant an ad hoc PRPA based on the increase of the cost of living and the financial conditions of the retirement funds. The administrator denied ad hoc PRPAs for 2003 and 2004.

[18] As with medical benefits, it is possible that there are benefit recipients whose benefits are based solely on service performed before the PRPA was first enacted for TRS in 1966 (ch. 151 SLA 1966) or for PERS in 1968 (ch. 235 SLA 1968). Such a benefit recipient would not have a contractual right to the ad hoc PRPA arising from employment with the state, and would be eligible only for the automatic PRPA.

The constitutional rights of members regarding the ad hoc PRPA include the right to consideration of award of a PRPA based on the discretion existing under the repealed statutes.[19]

4. The above responses might be different if it were established that application of modification of the retirement systems to current members is necessary to allow the retirement systems to pay current benefit claims

As explained above, the Alaska Supreme Court has not ruled on application to current members of changes to the retirement systems that might be necessary if a pension fund were "insufficient to satisfy all employee claims brought under its provisions." *Hoffbeck*, 627 P.2d at 1057 n.11. Although the Alaska Supreme Court has not established standards to be applied in such a case, analysis by the California court in the *Valdes* case may be instructive:

> On the other hand, a substantial impairment may be constitutional if it is "reasonable and necessary to serve an important public purpose." . . .
>
> Both the California and United States Supreme Courts have identified factors which may warrant legislative impairment of vested contract rights on the grounds of necessity: "(1) the enactment serves to protect basic interests of society, (2) there is an emergency justification for the enactment, (3) the enactment is appropriate for the emergency and (4) the enactment is designed as a temporary measure, during which the vested contract rights are not lost but merely deferred for a brief period, interest running during the temporary deferment."

189 Cal. Rptr. at 225-26 (citations omitted).

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[19] Using the above example of potential legislative restrictions, if the administrator historically awarded a PRPA when a retirement fund was at least 95 percent funded, employer contribution rates were set at 10 percent, and no other facts existed that would cause the administrator to determine that the condition of the fund did not permit the award of a PRPA, the legislative restrictions would diminish or impair the vested rights of retirees if those historical conditions were ever achieved again.

If the Alaska Supreme Court adopted these standards for approving impairments based on reasonableness and necessity, it would consider the facts specific to the legislative enactment. We are not in a position to express an opinion as to the adequacy under these standards of the reasons advanced by legislators in support of amendments to the retirement systems currently under consideration. We must emphasize the importance of establishing as complete a record as possible for any justifications supporting the change if we are to conduct an effective defense.

Please let us know if you need additional advice regarding these matters.

VBR:rca

25-LS0252\M

HOUSE BILL NO. 179

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE KELLY

Introduced: 3/5/07
Referred: State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

"An Act relating to insurance for public employees, teachers, and certain retired public employees and teachers and to supplemental employee benefits; relating to teachers' and public employees' defined benefit retirement plans, to teachers' and public employees' defined contribution retirement plans, to employee and employer contributions to the teachers' retirement system and the public employees' retirement system, and to the administration of the Public Employees' Retirement System of Alaska and the deferred compensation program for state employees; establishing in the Department of Revenue the teachers' retirement system past service cost liability account and the public employees' retirement system past service cost liability account; relating to benefits of, references to federal law in, and investments in the teachers' retirement system and the public employees' retirement system; modifying the jurisdiction of the independent office of administrative hearings as related to retirement and related personnel benefits;

and providing for an effective date."

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

*** Section 1.** AS 14.25.050 is amended by adding a new subsection to read:

(e) Beginning with the payroll for the first pay period in July 2007, a member shall contribute to the plan, in addition to the amount calculated in (a) of this section, an amount equal to five percent of the member's base salary.

*** Sec. 2.** AS 14.25.070(a) is amended to read:

(a) An employer shall make contributions to the plan **in accordance with this section and as certified by the board** in an amount sufficient, after subtracting member contributions, to provide the benefits of AS 14.25.009 - 14.25.220. The amount shall be calculated by applying **the employer normal cost rate to the sum total of the base salaries paid to members in the plan and by applying the past service rate to the sum total of the base salaries paid to members in the system** [AN EMPLOYER CONTRIBUTION RATE, CERTIFIED BY THE BOARD, AGAINST THE SUM TOTAL OF THE BASE SALARIES PAID TO MEMBERS], including any adjustments to contributions required by AS 14.25.173(a). **The employer shall remit this amount to the administrator in accordance with AS 14.25.065.**

*** Sec. 3.** AS 14.25.070 is amended by adding new subsections to read:

(d) In (a) of this section, "employer normal cost rate" means the percentage of compensation of all active members in the plan that, when combined with the member contribution rate of active members in the plan, is sufficient to provide the benefits that are expected to be credited with respect to service during the year beginning after the last valuation date. This percentage is uniformly determined for all employers and is applicable to each employer.

(e) In (a) of this section, "past service rate" means the percentage of compensation of all active members in the system necessary to provide the annual amount required to amortize the unfunded obligations of the employers for benefits earned by members in the plan before the date of the last actuarial valuation over a period not to exceed the maximum period allowed by generally accepted accounting