

STATE OF ALASKA

DEPARTMENT OF LAW

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May 24, 2007

The Honorable Sarah Palin
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Re: HCS CSSB 123(FIN) -- relating to the public employees' and teachers' defined benefit retirement plans; relating to the public employees' and teachers' defined contribution retirement plans; relating to the judicial retirement system; relating to the health reimbursement arrangement plan for certain teachers and public employees; relating to the supplemental employee benefit program; relating to the public employees' deferred compensation program; relating to group insurance for public employees and retirees; and making conforming amendments
Our file: 883-07-0023

Dear Governor Palin:

At the request of your legislative office, we have reviewed HCS CSSB 123(FIN), relating to the state's retirement and benefits systems and plans. The bill was introduced at your request. Amendments made by the bill to the state's retirement and benefit system and plan statutes are primarily technical, to correct problems identified in SB 141 (enacted in 2005; ch. 9, FSSLA 2005), maintain the plans' qualified status under the Internal Revenue Code (IRC), and conform to the federal Public Pension Reform Act of 2006. The bill was passed by the legislature with only a few substantive amendments.

The legislature amended the bill to remove a longstanding provision from the teachers' retirement system (TRS) defined benefit plan (TRS DB plan) statute, and a proposed new provision of the TRS defined contribution plan (TRS DC plan) statute, that dealt with TRS employer contributions that were not paid when due. Sections 1 and 24.

Those provisions allowed (or would have allowed) the Department of Education and Early Development to deduct the amount of the delinquent contributions from amounts due to the school district and transmit those amounts to the TRS plan administrator. As amended by the legislature, the bill continues to contain provisions that supply the administrator of the retirement plans with specific authority to obtain contributions that public employees' retirement system (PERS) and TRS employers fail to pay to the plans. Sections 1, 24, 72, and 89 of the final bill. Those sections provide that, if an employer fails to pay its required TRS or PERS contributions, the plan administrator may claim the amount due from any agency of the state or political subdivision that has funds of the delinquent employer or that is authorized to disburse to the employer funds that are not restricted to a specific purpose by statute or appropriation, and the agency must submit the claimed funds to the administrator.

The legislature also amended the bill to add a new sec. 83 that allows political subdivisions to cover certain elected officials under the PERS defined contribution plan (PERS DC plan) established by SB 141. As enacted in 2005, effective July 1, 2006, the PERS DC plan did not cover elected officials who were not members of PERS before July 1, 2006. SB 123 as originally introduced included state elected officials in the PERS DC plan (sec. 111). However, the administration did not propose to include political subdivision elected officials, many of whom receive only token compensation. Under the PERS DB plan, employer liability for benefits for elected officials who receive only small stipends is a factor in the high employer contribution rates for some employers that cover elected officials. To contain employer liability for future medical and occupational disability/death benefits for DC plan members, sec. 83 would set a floor on compensation for elected officials, at \$2,001 per month, which is the statutory compensation set for state legislators. Elected officials who are retired from the plan or who have no previous service with the employer are allowed to waive participation, and a waiver is irrevocable for all subsequent terms of office and employment with the employer.

Other technical drafting changes not affecting the substance of the bill introduced by the administration were made to the bill by the Legislative Affairs Agency's division of legal and research services.

A section-by-section description of the bill follows.

TRS DB Plan Statutes

Section 1 - AS 14.25.065(b): The provision would amend provisions regarding transmittal of contributions to identify the newly created Alaska retiree health care trust as a trust separate from the pension trust to conform to the IRC and would provide that the administrator may claim unpaid contributions and interest due

from any agency of the state or political subdivision from funds due to a school district if the funds are not restricted by statute or appropriation to a specific purpose. The final bill includes an amendment to this section removing current statutory language that allows the Department of Education and Early Development to deduct contributions owed to the plan from state funds due to the school district.

Section 2 - AS 14.25.070(a): The provision would amend to change the calculation of the employer contributions to the TRS defined benefit (DB) plan so that the employer rate is applied to the employer's entire TRS system payroll base.

Section 3 - AS 14.25.070(d) - (e): The new subsections would require employer contributions for retiree health benefits to be separately computed and deposited in the new Alaska retiree health care trust established in sec. 50 of the bill to conform to the IRC; add definitions for "employer normal cost rate" and "past service rate," and clarify that the rate is applied to the employer's entire TRS payroll base.

Section 4 - AS 14.25.075(f): Amendment would clarify the plans eligible for rollover into the plan for the payment of purchased service to be those plans defined in IRC section 402(c)(8)(B).

Section 5 - AS 14.25.075(f): Effective July 1, 2010 under sec. 119 of the bill, amendment would remove the provision that would allow acceptance of qualified rollovers for payment of contributions to reinstate forfeited (refunded) service. Under SB 141, statutes that allow reinstatement of refunded service are repealed, effective July 1, 2010.

Section 6 - AS 14.25.125(c): Effective July 1, 2010, amendment would remove the provisions that allow members to repay refunded contributions for the purpose of obtaining a conditional service benefit. This statute was overlooked in the repeal by SB 141 of provisions that allow former PERS members to reinstate service.

Section 7 - AS 14.25.163(b): Amendment would provide that the rollover contributions accepted by the plan are those expressly defined in 14.25.075(f), which are rollovers to purchase forfeited (refunded) or claimed credited service.

Section 8 - AS 14.25.163(c)(2): Amendment would include an alternate payee in the definition of "distributee" to allow rollover right to eligible divorced spouse.

Section 9 - AS 14.25.163(c)(3): Amendment would add a Roth IRA (post-tax) as an eligible plan to receive rollovers as of January 1, 2008, to conform to IRC and would remove obsolete language.

Section 10 - AS 14.25.163(c)(4): Amendment would allow distribution (rollover) of post-tax portion of member account to certain qualified plans if the receiving plan agrees to account for pre-tax and post-tax contributions separately, to conform to IRC.

Section 11 - AS 14.25.168: New subsection would provide that retiree health benefits would be paid in part from the Alaska retiree health care trust established in sec. 50 of the bill as an IRC sec. 115 plan recognized by the IRS as a tax-exempt plan.

Section 12 - AS 14.25.181(b): Amendment would authorize reversion of excess plan assets to employers upon termination of the plan, subject to approval of the termination by the IRS.

Section 13 - AS 14.25.181(c) - (e): New subsections conform plan language to IRC. Subsection (c) would codify the division's practice of use of forfeitures to reduce future employer contributions. Subsection (d) would comply with IRC requirement that the actuarial calculation of benefits is based on actuarial tables using assumptions approved by the administrator and is not subject to discretion of the employer. Subsection (e) would update language providing that contributions to and benefits paid from the plans will not exceed IRC sec. 415(c) limits, and would provide the administrator with the ability to either establish a periodic payment plan or reduce the contribution amount for payments of purchased service that would otherwise exceed the IRC sec. 415(c) limits.

Section 14 - AS 14.25.220(10): Amendment to definition of "compensation" would clarify that reductions to an employee's salary to pay for coverage under a cafeteria plan, such as life insurance or disability insurance or certain fringe benefit agreements that are paid from the employee's salary, are included as compensation.

Section 15 - AS 14.25.220(16): Amendment would remove the National Education Association of Alaska (NEA) from the TRS definition of "employer" to reflect that NEA is not a qualifying employer under this plan. Although NEA had been included in the TRS DB plan in statute, NEA is a private nonprofit organization and does not qualify for inclusion in the system. This error was acknowledged by the Division of Retirement and Benefits, the Department of

Law, and the NEA in the late 1980s/early 1990s. In discussion with participating NEA management, it was decided by the TRS Board that members participating at the time would be grandfathered and inclusion of new members would be discontinued (since then the last member has retired). Removing this language regarding a non-government entity also removes questions about the governmental status of the plan under the IRC.

TRS DC Plan Statutes

Section 16 - AS 14.25.310: Amendment would add a provision for TRS DB plan members who employ with new employers that join the TRS after July 1, 2006, and that do not participate in the TRS DB plan to participate in the TRS DC plan.

Section 17 - AS 14.25.310: Effective July 1, 2010, amendment would add former members of the TRS who have not reinstated refunded service to the definition of employees covered by the TRS DCR Plan. Without this change, a refunded member hired on or after July 1, 2010, would not be covered by either the DB or the DC plan.

Section 18 - AS 14.25.320(c): To conform to the IRC, amendment would clarify that the TRS DC plan is a qualifying hybrid plan, and that retiree medical benefits are not provided by the plan. (Medical benefits would be provided through the new Alaska retiree health care trust established by sec. 50 of the bill.)

Section 19 - AS 14.25.350(b): Amendment would require employer contributions for retiree health insurance to be deposited in the new Alaska retiree health care trust created in sec. 50 of the bill to conform to IRC.

Section 20 - AS 14.25.350(e): New subsection would require employers in the TRS DC plan to pay occupational disability and death benefits through contributions calculated actuarially. Contributions would be deposited to a separate trust account for this purpose. This corrects an inadvertent omission in drafting SB 141 in conference committee, which failed to provide a funding mechanism for TRS occupational death and disability benefits. The "trust account" language would clarify that contributions for these fixed benefits are separate from the contributions to the plan's individual member accounts.

Section 21 - AS 14.25.360(d)(3): Amendment would update the rollover provisions to include any IRA described in 26 U.S.C. (408)(d)(3)(A) rather than limiting only to a conduit IRA and would add a Roth IRA as a qualifying plan eligible for rollover as of January 1, 2008.

Section 22 - AS 14.25.360(d)(4): Amendment would allow distribution (rollover) of post-tax portion of member account to certain qualified plans if the receiving plan agrees to account for pre-tax and post-tax contributions separately, to conform to IRC.

Section 23 - AS 14.25.370: Amendment would clarify that contributions to the plan will be deposited in the appropriate plans or trusts and sets a payment deadline for contributions for the end of the school year. This amendment accommodates deposit of contributions for retiree health benefits in the separate trust established by sec. 50, and deposit of contributions for occupational disability and death benefits in a trust account in the TRS DC plan to conform to the IRC.

Section 24 - AS 14.25.370(b) and (c): New subsec. (b) would provide for interest to be charged on contributions that are not timely transmitted to the TRS DC plan by employers and would allow the TRS administrator to claim the amount of contributions and interest due from any agency of the state or political subdivision from funds due to a school district if the funds are not restricted by statute or appropriation to a specific purpose. New subsec. (c) would provide that employers are responsible for any administrative fees, investment fees and investment losses when ineligible employees are enrolled into the TRS and a correcting adjustment is made and that contributions transmitted to the plan for ineligible participants would be returned to the employer by crediting future payroll the amount of the contributions net of fees and any investment losses. The final bill includes an amendment to this section by the Senate Finance Committee removing a provision, based on current provisions in the TRS DB plan statutes, allowing the Department of Education and Early Development to deduct contributions owed to the plan from state funds due to the school district.

Section 25 - AS 14.25.380: Amendment would clarify that the defined contributions paid into a member's individual account are subject to the limitations of IRC sec. 415(c) and fixed benefits paid under the TRS DCR plan (occupational disability, survivor's pension) are subject to the limitations of IRC section 415(b).

Section 26 - AS 14.25.485(b): Amendment in combination with sec. 30 of the bill would clarify that if a person is able to perform the duties of another available and comparable position, regardless of employer, then that person no longer meets the requirements to receive occupational disability benefits.

Section 27 - AS 14.25.485(d): Amendment would provide that a member who receives disability benefits from the plan is 100 percent vested in all the employer contributions made to the member's individual account, regardless of years of service worked, once the member is appointed to disability. The amendment to this subsection would also clarify that a member may not elect a distribution from the member's individual account while receiving disability benefits. This amendment relates specifically to the continuing employer contributions required under AS 14.25.485(d). IRC sec. 415(c)(3)(C) provides special rules that allow the compensation of a disabled member for any year subsequent to the disability to be considered equivalent to the rate of compensation immediately before the disability. However, these rules only apply if the contributions are non-forfeitable when made.

The clarification that a member may not receive distributions from the individual contribution account while receiving disability benefits effectuates the intent of the legislature that the employer's continued contributions to that account during disability will provide retirement benefits to the member once the normal retirement date is reached and disability benefits end.

Section 28 - AS 14.25.485(g): Amendment would clarify language regarding the termination of disability benefits when a disabled member first qualifies for normal retirement.

Section 29 - AS 14.25.485(i): Amendment to this subsection, which provides benefits for eligible survivors of a disabled member who dies while receiving disability benefits, would mirror other changes being made to the disability and death statutes throughout the bill. The amendment would: (1) clarify the termination of a survivor's pension; (2) clarify that a survivor cannot access the member's individual account while receiving a survivor's pension; (3) clarify the normal retirement benefits available to a survivor; (4) clarify that the period of disability benefits and the period of survivor benefits constitute membership service for eligibility for medical benefits and the Health Reimbursement Arrangement; and (5) establish a tax qualified mechanism for the employer to continue to make employer and employee contributions (see sec. 31) to provide benefits to a survivor when the member would have reached normal retirement, had the member survived.

The majority of the changes to this section are needed to conform to the IRC to provide a benefit to an eligible survivor when the survivor's pension ends. Unlike the special rules under IRC sec. 415(c)(3)(C) that allow the compensation of a disabled member for any year subsequent to the disability to be considered

equivalent to the rate of compensation immediately prior to the disability, thereby allowing continued contributions to the employee's account, there is no corresponding rule for a deceased participant. Thus, there would be no compensation for a deceased member in the year after death and, therefore, no allowable contributions to the deceased member's individual account. The solution this amendment proposes in order to provide the benefits intended by SB 141 is to provide an "additional benefit" that is equal to the amount that would have been contributed to the member's individual account had the member survived, with allocated earnings.

Section 30 - AS 14.25.485(j): Amendment would clarify the definition of "occupational disability," providing that if a person is able to perform the duties of another available and comparable position, regardless of employer, then that person no longer meets the requirements to receive occupational disability benefits.

Section 31 - AS 14.25.485(k): New subsection would require employers to fund the additional benefit (see sec. 29) for survivors of a disabled member by making contributions to the appropriate trust accounts based on the deceased member's gross monthly compensation.

Section 32 - AS 14.25.486: New section would add annual adjustment to occupational disability benefits equal to 75 percent of the increase in the Anchorage Consumer Price Index or 9 percent, whichever is less.

Section 33 - AS 14.25.487(b): Amendment would clarify the termination of a survivor's pension under the occupational death benefit provisions, including the termination of pension when a dependent child no longer meets the definition of dependent (i.e., when the child reaches age 19, or age 23 if the child is enrolled in school).

Section 34 - AS 14.25.487(c): Amendment would clarify that a survivor of a member who died from occupational causes is not entitled to elect distributions from the member's individual account while receiving survivor benefits. It would clarify that the continuing contributions required by the employer are made on behalf of the surviving spouse and member's dependent children rather than "beneficiaries." It would direct all continuing contributions by the employer into the occupational disability and death trust account and other appropriate accounts and funds in accordance with the IRC.

Section 35 - AS 14.25.487(e): Amendment would (1) clarify the normal retirement benefits available to survivors of members who died occupationally; (2) establish a tax qualified mechanism for the plan to provide benefits to a survivor when the member would have reached normal retirement, had the member survived (see explanation for sec. 29); and (3) clarify that the period of payment of survivor's pension benefits constitutes membership service for determining vesting in employer contributions and eligibility for medical benefits and the Health Reimbursement Arrangement.

Section 36 - AS 14.25.488: New section would provide annual adjustment to the survivor's pension benefit equal to 50 percent of the increase in the Anchorage Consumer Price Index or 6 percent, whichever is less. Persons receiving a survivor's pension who are age 60 or older and persons who have received a survivor's pension for at least eight years are eligible for the adjustment.

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

Section 37 - AS 14.25.500(d) and (e): New subsections would conform plan language to IRC. Subsection (d) would codify the division's practice of use of forfeitures to reduce future employer contributions. Subsection (e) would comply with IRC requirement that the actuarial calculation of benefits be based on actuarial tables using assumptions approved by the administrator and not be subject to discretion of the employer.

Section 38 - AS 14.25.510: Amendment would clarify that the nonguarantee clause relates only to the defined contribution portion of the TRS DCR plan. The fixed benefits provided by the plan are defined by statute.

Section 39 - AS 14.25.540(c): Amendment would clarify that the IRC sec. 415(c) limits apply to employer matching contributions when a TRS DB member elects to convert to the DC plan. The amount of matching contribution that exceeds the IRC sec. 415(c) limits for the tax year will be made in the following tax year as long as the limits are not exceeded in that tax year.

Section 40 - AS 14.25.540(d): Amendment would clarify that transferred membership service from the TRS DB plan to the TRS DCR plan would be applied to vesting in employer contributions.

Section 41 - AS 14.25.540(h): Amendment would provide a time limit -- 12 months from the date the employer consents to the conversion -- within which an eligible member must make the election to transfer from the TRS DB plan to the TRS DCR plan. The time limit is intended to meet IRC requirements.

Section 42 - AS 14.25.582: Amendment would add language for compliance with the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) referred to in IRC sec. 414(u).

Section 43 - AS 14.25.590(7): Amendment would remove the Social Security Taxable Wage Base cap from the definition of "compensation" to allow contributions on compensation above the wage base, which is currently set at \$ 97,500.

Judicial Retirement System (JRS) Statutes

Section 44 - AS 22.25.022(c)(2): Amendment includes an alternate payee in the JRS definition of "distributee" to allow rollover right to eligible divorced spouse.

Section 45 - AS 22.25.022(c)(3): Amendment would add a Roth IRA (post-tax) as an eligible plan to receive rollovers as of January 1, 2008, to conform to IRC and would remove obsolete language.

Section 46 - AS 22.25.022(c)(4): Amendment would allow distribution (rollover) of post-tax portion of member account to certain qualified plans if the receiving plan agrees to account for pre-tax and post-tax contributions separately, to conform to IRC.

Section 47 - AS 22.25.046(c): New subsection would require separately computed employer contributions to pre-fund retiree health benefits to be paid to the new Alaska retiree health care trust established in sec. 50 of the bill, to conform to IRC.

Section 48 - AS 22.25.090(f): New subsection would provide that retiree health benefits will be paid in part from the Alaska retiree health care trust (sec. 50).

Alaska Retirement Management Board (ARMB) Statute

Section 49 - AS 37.10.210(a): Amendment would provide that the ARMB is the trustee of the assets of the new Alaska retiree health care trusts (sec. 50).

Group Life and Health Insurance Statutes

Section 50 - AS 39.30.097: New section would create IRC sec. 115 Alaska retiree health care trusts to hold employer contributions to pre-fund retiree medical benefits and trust operations, would provide for governance, administration, and investment of the assets, and payment of benefits and administrative costs.

AS 39.30.098: New section would authorize the commissioner of administration to adopt regulations to implement the state's group life and health insurance statutes, including the new Alaska retiree health trust statute.

Supplemental Benefits System (SBS) Statutes

Section 51 - AS 39.30.154: Amendment would clarify the duties of the administrator of SBS.

Section 52 - AS 39.30.160(a): Amendment would return the authority for adopting regulations for SBS to the commissioner of administration from the ARMB. SBS regulations, like TRS and PERS regulations, relate to administrative matters to be adopted by the commissioner.

Section 53 - AS 39.30.160(e): Amendment would change the reference to entity with regulation authority from "board" to "commissioner."

Section 54 - AS 39.30.165: Would add new section allowing an SBS member, annuitant, or beneficiary to appeal a decision of the administrator to the Office of Administrative Hearings (OAH). This was an inadvertent omission in SB 141, which transferred appeal functions of the former Public Employees' Retirement Board to the OAH.

Health Reimbursement Arrangement Plan (HRA) Statutes

Section 55 - AS 39.30.335: The provision would add a new section allowing an HRA member to appeal a decision of the administrator to the OAH.

Section 56 - AS 39.30.340: Amendment would allow the HRA trust to be a sub-trust of the Alaska retiree health care trust established in sec. 50 of the bill and would clarify the duties of the administrator.

Section 57 - AS 39.30.370: Amendment would change the employer HRA contribution from an individual employer contribution amount to a uniform employer contribution amount for all participants of the HRA.

PERS DB Plan Statutes

Section 58 - AS 39.35.115(d) and (e): New subsections would clarify that the PERS DB plan is a joint contributory plan (employee and employer contributions) and that, upon termination of the plan, any excess assets would revert to the employer using a method determined by the administrator if termination is approved by the IRS.

Section 59 - AS 39.35.165(f): Amendment would clarify the plans eligible for rollover into the plan for the payment of purchased service are those plans recognized by the IRS in IRC sec. 402(c)(8)(B).

Section 60 - AS 39.35.165(f): Effective July 1, 2010 under sec. 119, amendment would remove the provision that allows acceptance of qualified rollovers for payment of contributions to reinstate forfeited (refunded) service. Under SB 141, former members would not be able to reinstate refunded service effective July 1, 2010.

Section 61 - AS 39.35.195(b): Amendment would clarify that the rollover contributions accepted by the plan are expressly defined in AS 39.35.165(f), which are rollovers to purchase forfeited (refunded) or claimed credited service.

Section 62 - AS 39.35.195(c)(2): Includes an alternate payee in the definition of "distributee" to allow rollover right to eligible divorced spouse.

Section 63 - AS 39.35.195(c)(3): Amendment would add a Roth IRA (post-tax) as an eligible plan to receive rollovers, as of January 1, 2008 to conform to IRC and would remove obsolete language.

Section 64 - AS 39.35.195(c)(4): Amendment would allow distribution (rollover) of post-tax portion of member account to certain qualified plans if the receiving plan agrees to account for pre-tax and post-tax contributions separately, to conform to IRC.

Section 65 - AS 39.35.250: Amendment would change the calculation of the employer PERS DB plan contribution rate to be based on the employer's entire PERS system payroll base. The amendment would also change the period to be

used in determining the past service rate from a maximum of 40 years to the maximum allowed by generally accepted accounting principles of the Governmental Accounting Standards Board.

Section 66 - AS 39.35.250(d): New subsection would require employer contributions for retiree health benefits to be separately computed and deposited in the new Alaska retiree health care trust established in sec. 50 of this bill to conform to the IRC.

Section 67 - AS 39.35.270(a): Amendment would change the determination of the amount of employer contributions to the PERS DB plan so that the employer rate is applied to the employer's entire PERS system payroll base.

Section 68 - AS 39.35.375(a): Effective July 1, 2010, amendment would remove the provision that allows employees to repay refunded contributions for the purpose of obtaining a public service benefit. This statute was overlooked in the repeal by SB 141 of statutes that allow former members to reinstate refunded service.

Section 69 - AS 39.35.385(c): Effective July 1, 2010, under sec. 119, amendment would remove the provision that allows employees to repay refunded contributions for the purpose of obtaining a conditional service benefit. This statute was overlooked in the repeal by SB 141 of statutes that allow former members to reinstate refunded service.

Section 70 - AS 39.35.522(d): Amendment would add a provision for appeal to the OAH of the commissioner's decisions on waiver requests under PERS. This corrects a drafting error in SB 141, which provided for OAH appeals from the commissioner's TRS waiver decisions, but not from PERS waiver decisions.

Section 71 - AS 39.35.535(f): New subsection would provide that retiree health benefits would be paid in part from the Alaska retiree health care trust established by sec. 50, to conform to the IRC.

Section 72 - AS 39.35.610(b): New subsection would provide that the administrator of the PERS DB plan may attach funds held by other state agencies or political subdivisions for an employer in order to pay the employer's delinquent contributions plus added interest.

Section 73 - AS 39.35.615(g) and (h): New subsections would require an employer that voluntarily terminates participation in the PERS DB plan to pay its

termination liability within 60 days of the employer's receipt of notice of the costs, would allow an employer to enter into a payment plan, and would allow employer to join the PERS DCR plan once the termination liability has been paid in full. Employer contemplating termination from the plan must pay for the termination study.

Section 74 - AS 39.35.620(i) and (j): New subsections would require an employer that is involuntarily terminated from PERS DB plan participation to pay its termination liability within 60 days of the employer's receipt of the costs, would allow employer to enter into a payment plan, and allow employer to join the PERS DCR plan once the termination liability has been paid in full. Employer involuntarily terminated from the plan must pay for the termination study.

Section 75 - AS 39.35.650: Amendment would clarify that an employer may not receive an amount from the plan except if there are excess assets after the PERS DB plan is terminated, if approved by the IRC, or after all employees removed from participation by employer termination from the plan have either received refunds or have been vested in their accrued benefits.

Section 76 - AS 39.35.678: New section would conform plan language to IRC. Subsection (a) would codify the division's practice of use of forfeitures to reduce employer contributions. Subsection (b) would comply with IRC requirement that the actuarial calculation of benefits is based on actuarial tables using assumptions approved by the administrator and is not subject to discretion of the employer. Subsection (d) would update language providing that contributions to and benefits paid from the plans will not exceed IRC sec. 415 limits and provides for a payment plan for service purchases to prevent contributions received in excess of the IRC sec. 415(c) limits. The administrator may establish a periodic payment plan for the member to comply with the limits. Payments received in excess of the limits can be refused.

Section 77 - AS 39.35.680(3): Amendment would incorporate the reference to the new administrator section AS 39.35.003 into the definition of "administrator" under the PERS DB plan. AS 39.35.050(a), which is repealed in sec. 114 of the bill, is a duplicative section regarding the administrator that was replaced with AS 39.35.003 in SB 141.

Section 78 - AS 39.35.680(9): Amendment would clarify that reductions to an employee's salary to pay for coverage under a cafeteria plan, such as life insurance or disability insurance or certain fringe benefit agreements that are paid from the

employee's salary are included as compensation. The language conforms to the IRS definition of compensation and is not meant to be a substantive change.

Section 79 - AS 39.35.680(18): Amendment to definition of "employer" would clarify that the PERS DB plan is closed to new employers as of July 1, 2006. An employer that assumes the PERS DB plan liability of a DB plan employer as a result of a consolidation or reorganization occurring after July 1, 2006, would remain an employer in the plan.

PERS DC Plan Statutes

Section 80 - AS 39.35.700: Amendment would provide that PERS DB plan members who employ with employers that join the PERS after July 1, 2006, would be members of the PERS DC Plan.

Section 81 - AS 39.35.700: Effective July 1, 2010, under sec. 119, amendment would add former members of the PERS who have not reinstated refunded service to the list of employees covered by the PERS DC Plan.

Section 82 - AS 39.35.710(c): To conform to the IRC, amendment would clarify that the PERS DC plan is a qualifying hybrid plan, and that retiree medical benefits are not provided by the DC plan. (Medical benefits would be provided through the new Alaska retiree health care trust established by sec. 50 of the bill.)

Section 83 - AS 39.35.725: This section was added by the House Ways and Means Committee. It would allow the inclusion in the PERS DC plan of political subdivision elected officials if the elected officials receive compensation in the amount of at least \$ 2,001 per month and the political subdivision has amended its participation agreement to include elected officials. Elected officials who are retired from the plan or who have no previous service with the employer are allowed to waive participation, and a waiver is irrevocable for all subsequent terms of office and employment with the employer.

Section 84 - AS 39.35.750(b): Amendment would provide that employer contributions to pay for retiree major medical insurance shall be deposited in the Alaska retiree health care trust established by sec. 50 of the bill, to conform to the IRC.

Section 85 - AS 39.35.750(e): Amendment would provide that employer contributions for defined benefits under the PERS DC plan (occupational disability, occupational death, and disabled peace officer/fire fighter pension

benefits) would be deposited to a separate trust account in the plan. This would clarify funding of peace officer/fire fighter pension benefits, and conforms to the IRC.

Section 86 - AS 39.35.760(d)(3): Amendment would update the rollover provisions to include any IRA described in 26 U.S.C. (408)(d)(3)(A) rather than limiting only to a conduit IRA. The amendment would also add a Roth IRA as a qualifying plan eligible for rollover as of January 1, 2008.

Section 87 - AS 39.35.760(d)(4): Amendment would allow distribution (rollover) of post-tax portion of member account to certain qualified plans if the receiving plan agrees to account for pre-tax and post-tax contributions separately, to conform to IRC.

Section 88 - AS 39.35.770: Amendment would provide that contributions to the plan will be deposited in the appropriate plans or trusts. This amendment would accommodate deposit of contributions for retiree health benefits in the separate trust established by sec. 50 of the bill, and deposit of contributions for occupational disability and death benefits in a trust account in the PERS DC plan to conform to the IRC.

Section 89 - AS 39.35.770(b) and (c): New subsection (b) would provide for interest to be charged on contributions that are not timely transmitted to the PERS DC plan by employers and would allow the PERS administrator to claim the amount of contributions and interest due from any agency of the state or political subdivision from funds due to an employer if the funds are not restricted by statute or appropriation to a specific purpose. New subsection (c) would provide that employers are responsible for any administrative fees, investment fees and investment losses when ineligible employees are enrolled into PERS and a correcting adjustment is made and that contributions transmitted to the plan for ineligible participants would be returned to the employer by crediting future payroll the amount of the contributions net of fees and any investment losses.

Section 90 - AS 39.35.780: Amendment would clarify that the defined contributions paid into a member's individual account are subject to the limitations of IRC sec. 415(c) and the fixed benefits paid under the PERS DCR plan (occupational disability, survivor's pension) are subject to the limitations of IRC sec. 415(b).

Section 91 - AS 39.35.890(b): Amendment, in combination with sec. 96 of the bill, would clarify that if a person is able to perform the duties of another available and comparable position, regardless of employer, then that person no longer meets the requirements to receive occupational disability benefits.

Section 92 - AS 39.35.890(d): Amendment would provide that a member who receives disability benefits from the plan is 100 percent vested in all the employer contributions made to the member's individual account, regardless of years of service worked, once the member is appointed to disability. The amendment would also clarify that a member may not elect a distribution from the member's individual account while receiving disability benefits. See explanation of sec. 27 of the bill.

Section 93 - AS 39.35.890(g): Amendment would clarify language regarding the termination of disability benefits when a disabled member first qualifies for normal retirement.

Section 94 - AS 39.35.890(h): Amendment would provide that the monthly pension benefit elected upon eligibility for normal retirement by a disabled peace officer or fire fighter would be paid first from the member's individual account and then from the trust account established for this purpose. The amendment would also clarify that a member who is a peace officer or fire fighter is not entitled to elect distributions from the member's individual account while receiving disability benefits.

Section 95 - AS 39.35.890(k): Amendment to this subsection, which provides benefits for eligible survivors of a disabled member who dies while receiving disability benefits, would mirror other changes being made to the disability and death statutes throughout the bill. See explanation of sec. 29 of the bill.

Section 96 - AS 39.35.890(l): Amendment would clarify the definition of "occupational disability," providing that if a person is able to perform the duties of another available and comparable position, regardless of employer, then that person no longer meets the requirements to receive occupational disability benefits.

Section 97 - AS 39.35.890(m): New subsection would require employers to fund the additional benefit (see sec. 95 and explanation of sec. 29 of the bill) for survivors of a disabled member by making contributions to the appropriate trust accounts based on the deceased member's gross monthly compensation.

Section 98 - AS 39.35.891: New section would add annual adjustment to occupational disability benefits, and to retirement benefits elected by disabled peace officers and fire fighters (P/F) under AS 39.35.890(h)(2), equal to 75 percent of the increase in the Anchorage Consumer Price Index or 9 percent, whichever is less.

Section 99 - AS 39.35.892(b): Amendment would clarify the termination of a survivor's pension under the occupational death benefit provisions, including the termination of pension when a dependent child no longer meets the definition of dependent (i.e., when the child reaches age 19, or age 23 if the child is enrolled in school).

Section 100 - AS 39.35.892(c): Amendment would clarify that a survivor of a member who died from occupational causes is not entitled to elect distributions from the member's individual account while receiving survivor benefits. The amendment would also clarify that the continuing contributions required by the employer are made on behalf of the surviving spouse and member's dependent children rather than "beneficiaries." Finally, the amendment would also direct all continuing contributions by the employer into the occupational disability and death trust account and other appropriate accounts and funds in accordance with the IRC.

Section 101 - AS 39.35.892(e): Amendment would (1) clarify the normal retirement benefits available to survivors of members who died occupationally; (2) establish a tax-qualified mechanism for the plan to provide benefits to a survivor when the member would have reached normal retirement if the member had survived (see explanation for sec. 29 of the bill); and (3) clarify that the period of death benefits constitutes membership service for determining vesting in employer contributions and eligibility for medical benefits and the HRA.

Section 102 - AS 39.35.893: New section would add annual adjustment to the survivor's pension benefit equal to 50 percent of the increase in the Anchorage Consumer Price Index or 6 percent, whichever is less. Persons receiving a survivor's pension who are age 60 or older and persons who have received a survivor's pension for at least five years are eligible for the adjustment.

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

Section 103 - AS 39.35.900(d) and (e): New subsections would conform plan language to IRC. Subsection (d) would codify the division's practice of use of forfeitures to reduce future employer contributions. Subsection (e) would comply with IRC requirement that the actuarial calculation of benefits is based on actuarial tables using assumptions approved by the administrator and is not subject to discretion of the employer.

Section 104 - AS 39.35.910: Amendment would clarify that the nonguarantee clause relates only to the defined contribution portion of the PERS DC plan. The fixed benefits provided by the plan are defined by statute.

Section 105 - AS 39.35.940(c): Amendment would clarify that the IRC sec. 415(c) limits apply to employer matching contributions when a PERS DB member elects to convert to the DC plan. The amount of matching contribution that exceeds the IRC sec. 415(c) limits for the tax year would be made in the following tax year as long as the limits are not exceeded in that tax year.

Section 106 - AS 39.35.940(d): Amendment would clarify that transferred membership service from the PERS DB plan to the PERS DC plan would be applied to vesting in employer contributions.

Section 107 - AS 39.35.940(h): Amendment would provide a time limit -- 12 months from the date the employer consents to the conversion -- within which an eligible member must make the decision to transfer from the PERS DB plan to the PERS DC plan. The time limit is intended to meet IRC requirements

Section 108 - AS 39.35.957: New section would add a provision for employers to designate classes or groups of employees eligible to participate in (or to be excluded from) the PERS DC plan; would clarify that a PERS DB plan member will become a member of the DC plan if employed by an employer that participates only in the DC plan.

AS 39.35.958: New section would add the process by which an employer may terminate participation from the PERS DC plan and outlines the rights of employees and the costs to the employer upon termination.

Section 109 - AS 39.35.972: New section would add required language for the PERS DC plan to be in compliance with the federal USERRA referred to in IRC sec. 414(u).

Section 110 - AS 39.35.990(7): Amendment would remove the Social Security Taxable Wage Base cap from the definition of "compensation" to allow contributions on compensation above the wage base, which is currently set at \$97,500.

Section 111 - AS 39.35.990(16): Amendment would clarify that "member" and "employee" have the same meaning throughout the PERS DC statutes; would include as members the governor, lieutenant governor, and legislators; and would exclude instructors at the Department of Labor and Workforce Development and the Department of Education and Early Development in positions requiring a teacher certificate.

Section 112 - AS 39.35.990(20): The provision would provide a definition of peace officer and fire fighter under the PERS DC plan.

Deferred Compensation Program Statutes

Section 113 - AS 39.45.020(d): New subsection would add language for the powers and duties of the Deferred Compensation Program administrator to conform the powers and duties of the administrator across all plans.

Section 114 - AS 39.45.055: New section would add a provision under the Deferred Compensation Program for a member to appeal a decision of the administrator to the OAH. This was an inadvertent omission in SB 141, which transferred appeal functions of the former Public Employees' Retirement Board to the OAH.

OAH Statute

Section 115 - AS 44.64.030(a): The provision would add the SBS, HRA, Deferred Compensation Program, and waivers of adjustment under the PERS and TRS defined benefit plans to the jurisdiction of the OAH.

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Section 116 - Would repeal the following statutory provisions:

AS 14.25.045: Would repeal statute providing that the National Education Association (NEA) is a participating employer in the TRS DB plan. See explanation of sec. 15 of the bill.

AS 14.25.340(b): Would repeal the voluntary pre-tax contribution provision of the TRS DC Plan.

AS 14.25.570: Would repeal participation of NEA in the TRS DC plan. See explanation of sec. 15 of the bill. Inclusion of NEA in the new TRS DC plan resulted from duplication of language in existing statutes.

AS 39.35.050(a): Would repeal duplicative statute, which would provide commissioner of administration authority to appoint the administrator of the PERS and the Supplemental Benefits System.

AS 39.35.370(k): Would repeal unnecessary definitions of "compensation" and "determination period."

AS 39.35.375(f): Would repeal the subsection relating to reinstating service associated with refunded contributions for obtaining a public service benefit, effective July 1, 2010, under sec. 119 of the bill.

AS 39.35.615(d), 39.35.615(f), 39.35.620(c), 39.35.620(f), 39.35.620(h): Would repeal provisions that the division of retirement and benefits determined are no longer necessary or replaced by amendments in secs. 73 and 74 of the bill, provisions regarding accounting for employee and employer contribution accounts when the employees whose coverage is terminated by a participating employer, provisions regarding termination and reinstatement of coverage of a group or other classification of employees, and provisions that result in reduction or forfeiture of member benefits when employer's participation is involuntarily terminated and employer fails to pay past service liability.

AS 39.35.730(b): Would repeal the voluntary pre-tax contribution provision of the PERS DC Plan.

Sections 15 and 91, ch. 9, FSSLA 2005: The provision would repeal sections of SB 141 that amend AS 14.25.075(f) and AS 39.35.165(f), effective July 1, 2010. Those statutes are amended by secs. 5 and 60 of this bill, effective July 1, 2010, under sec. 119 of the bill.

Section 117 - Uncodified law: The provision would establish an initial contribution rate for TRS employers to fund TRS DC plan occupational disability and death benefits during the fiscal year 2008.

Section 118 - Uncodified law: The provision would require the commissioner of administration to transfer all funds for payment of retiree health benefits deposited in the former group health and life benefits fund or any account into which retiree health benefit funds have been deposited into the new Alaska retiree health care trusts (sec. 50 of the bill) on July 1, 2007, or as soon as the funds become available for transfer.

Section 119 - Effective date clause for secs. 5, 6, 17, 60, 68, 81, and 116(b): July 1, 2010.

Section 120 - Effective date remainder of bill: Immediately.

We have identified no constitutional or other legal problems with the bill.

Sincerely,

TALIS J. COLBERG
Attorney General

TJC:VR:jm