History and Options Regarding the Unfunded Liabilities of Alaska's Public Employees' and Teachers' Retirement Systems

by
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About the Author
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I. INTRODUCTION

State pension contributions represent the single largest cost driver in the [S]tate's operating budget.—Governor Sean Parnell, December 5, 2013[1]

[The retirement systems' unfunded liability is] not a sexy topic.—Governor Sean Parnell, December 18, 2013[2]

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.—Alaska Constitution, Article XII, Section 7

In early 2003, financial analysts working for the State of Alaska announced that the two largest public employee retirement systems in Alaska had become significantly underfunded.[3] From fiscal year 2006 (July 1, 2005 through June 30, 2006) to date, the state has paid $6.951 billion—(an average of $534.7 million annually)—to pay down these obligations, which will be called "unfunded liabilities" in this paper.[4]

The State of Alaska has substantial unfunded liabilities remaining to pay off for these two systems, the Public Employees' Retirement System (PERS) and the Teachers' Retirement System (TRS). There is uncertainty about the size of these unfunded liabilities, and there are also different ways of calculating them. For example, the State of Alaska's snapshot balance-sheet approach, subtracting the accrued liabilities from the assets, based on their actuarial value, produces an estimate of $6.609 billion for the combined unfunded liabilities of PERS and TRS.[5] That figure is an estimate of the unfunded liabilities discounted to the present day.

Estimates of the size of the unfunded liabilities particularly vary based on the use of different critical assumptions, such as the rate of future returns on investment. As an example, using an estimated rate of return of 2.142 percent instead of the State of Alaska's assumption of 8 percent produces an estimate of $33.9 billion for the state's unfunded liabilities.[6]

The State of Alaska has committed to paying off the unfunded liabilities under a 25-year amortization schedule that started in 2014, so another highly relevant measurement of those liabilities appears to be the amount actuaries for the state currently project will be needed under that pay-off plan, which runs through fiscal year 2039. The state's actuaries project that from fiscal year 2019 through fiscal year 2039 the state will pay a total of $10.815 billion in extra contributions—called "state assistance" or "additional state contributions" in this paper—to pay off the unfunded liabilities.[7]

In contrast to the state's snapshot estimate of $6.609 billion, this estimate of $10.815 billion in state assistance represents a flow of annual cash payments. That is, the $10.815 billion is an estimate of the total amount needed to eliminate the unfunded liabilities of PERS and TRS under the 25-year amortization schedule the state adopted in 2014.

Note that this state assistance is above and beyond the amount the state is projected to owe in its role as employer in the normal course of funding the two systems.[8] Employers other than the state—primarily local governments and school districts—also participate in PERS and TRS, and the figure for state assistance covers not only unfunded liabilities attributed to the state but also a portion of the unfunded liabilities attributed to non-state employers. As explained more later, the state has assumed, by statute, the responsibility to pay for a share of the unfunded liability of these other employers.[9]

This paper:

- Describes the structure of the Alaska public employee retirement systems in the context of some unusual features of public employment on the Last Frontier
- Reviews how the problem of unfunded liabilities came about
- Examines how concerns over unfunded liabilities produced both changes and proposed changes in the retirement systems over the past dozen years, including proposals for changes in the allocation of burdens between the state and local governments in paying for retirement benefits
- Describes current projections of future amounts needed to pay off the unfunded liabilities
- Discusses how future estimates of the unfunded liabilities might change in response to economic and demographic factors
- Discusses legal provisions protecting the rights of beneficiaries of the retirement systems
- Lays out options for policymakers—other than the current policy of paying down the unfunded liabilities over time—including buyout, bailout, and bankruptcy

II. Alaska Public Employee Retirement Systems and Different Methods of Measuring Their Size and Financial Health

The State of Alaska and local governments in Alaska[10] provide retirement benefits to their employees. Those benefits include pensions and other benefits, primarily health insurance.

The State of Alaska administers these public employee retirement systems for its own employees and for most local government employees in Alaska. It does so through five retirement systems[11]: Public Employees' Retirement System (PERS); Teachers' Retirement System (TRS); National Guard and Naval Militia Retirement System (NGNMRS); Judicial Retirement System (JRS); and Elected Public Official Retirement System (EPORS).[12]

PERS covers a broad range of public employees in Alaska and has a total membership of 76,265, counting active members as well as retirees.[13] The State of Alaska established PERS in 1961.[14] Participating employers in PERS include the state and more than a hundred smaller Alaska organizations—mostly municipalities—ranging from the Municipality of Anchorage to the City of Upper Kalskag.[15]

TRS has a total membership of 24,589.[16] Employees eligible to participate in TRS include elementary and secondary school teachers, school nurses, and some faculty and administrators at the University of Alaska.[17] TRS was created by the Territory of Alaska in 1955.[18] Participating employers in TRS include the University of Alaska, the Alaska Department of Education, and more than 50 other Alaska organizations, almost entirely local school districts.[19]

There are various ways to measure the size of a retirement system, but under all measures PERS and TRS are by far the biggest of the public employee retirement systems operated by the State of Alaska.[20] The market values of the four largest retirement systems as of January 31, 2018 were as follows[21]:

Public Employees' Retirement System (PERS)	$18,963,427,435
Teachers' Retirement System (TRS)	$ 9,230,531,308
Judicial Retirement System (JRS)	$ 213,354,630
National Guard/Naval Militia Retirement System	$ 40,832,242

Members of various professions widely agree that PERS and TRS face shortfalls in meeting the two systems' future obligations. But those different professions tend to view those shortfalls differently, depending on whether they are actuaries, accountants, or other professionals.

Actuaries, for example, are people who deal with assessment and management of risk for financial investments and other ventures involving a measure of uncertainty.[22] When speaking of a retirement system, actuaries tend to focus on its "actuarial value." This is a value that is determined through a study of probable amounts of future pension or post-employment benefits, and the necessary amount of contributions to fund those benefits, based on a number of economic and demographic assumptions.[23]

Accountants, on the other hand, are people who prepare and analyze financial statements and audits.[24] Accountants tend to rely more on terms such as "net pension liability" and "net position."[25] (An actuary explained the difference between the professions this way: "Accountants measure what actually exists—we are measuring something that hasn't happened yet."[26])

Doing actuarial analysis is a difficult job, given the many assumptions that need to be made, particularly for traditional defined-benefit pension plans like PERS and TRS offered employees who started work on or before June 30, 2006. As one commentator has noted, "Funding a traditional pension plan involves relying on assumptions about life expectancy, wage growth, employee tenure, rates of disability, and investment returns."[27]

This paper will focus primarily on actuarial projections in looking at the future of the public employee retirement systems operated by the state, because those projections lay out the estimated amounts needed to cover the shortfalls in funding future obligations of PERS and TRS.

Here are some definitions of actuarial terms used in this paper.[28]

The "actuarial accrued liability" is the total accumulated cost to fund pension or post-employment benefits arising from service in all prior years.

The term "valuation assets" refers to the value of pension plan investments and other property used by an actuary to prepare an actuarial valuation. This is also sometimes called "the actuarial value of assets."[29]

The "unfunded actuarial accrued liability" is the portion of the actuarial accrued liability not offset by a retirement system's assets. (In this paper, "unfunded accrued liability" will be used interchangeably with "unfunded actuarial accrued liability.") The unfunded accrued liability is derived by subtracting the valuation assets from the actuarily accrued liability.[30]

The "funded ratio based on valuation assets" is derived by dividing the valuation assets by the actuarial accrued liability.[31] If the valuation assets are larger than the actuarial accrued liability, the funded ratio is above 100 percent. If the valuation assets are smaller than the actuarial accrued liability, the funded ratio is below 100 percent. The state's actuary for PERS has noted that "[T]he same measurements using market value of assets [as opposed to valuation assets] would result in different funded ratios and unfunded accrued liabilities."[32]

III. Some Unusual Aspects of Public Employment in Alaska

Employers in the U.S. traditionally offered pension benefits to help attract and retain staff.[33] A common view was that governments needed to offer a desirable pension package to compensate for the lower salaries often offered in public employment.[34] That position had a special resonance in Alaska during the 1970s, as public employers felt a particular need to provide attractive pension and health-care benefits to compete with the high incomes Alaskans could earn working on construction of the trans-Alaska oil pipeline.[35] Offering pensions to employees—particularly in the private sector—has declined in recent years.[36]

Although not an exhaustive list, here are two other relevant considerations regarding public employment in Alaska.

An important consideration in a discussion of retirement systems for public employees in Alaska is that while the great majority of employees in the United States participate in the Social Security system,[37] most public employees in Alaska—except for those working for the federal government—do not.[38] Public employees in Alaska who do not work for the federal government are thus among the approximately one-quarter of all participants in public pension programs who do not participate in the Social Security system.[39] Those not covered by Social Security include employees of the State of Alaska, all teachers in public schools (whether or not those public schools are operated—as almost all are—by local school districts), and employees of some local governments who are not teachers.[40]

The Public Employment Relations Act (PERA) creates a statutory right for almost all public employees in Alaska—including teachers—to organize for the purpose of collective bargaining over wages, hours, and other terms and conditions of employment.[41] Local governments—known as "political subdivisions" of the State of Alaska[42]—can only reject the application of PERA if the rejection occurs prior to substantial organizational activity by public employees in reliance on their rights under PERA.[43]

IV. ORIGINS OF UNFUNDED STATE RETIREMENT OBLIGATIONS

The State of Alaska operates retirement systems that promise benefits in retirement and government-financed health care, but there is no legal requirement that those benefits be fully funded in advance.[44] The potential for unfunded liabilities is particularly strong with defined-benefit plans, in which the promise to an employee is of a specific dollar amount of retirement benefits, based on that employee's salary history and length of employment.[45]

Defined-contribution plans, on the other hand, do not promise a specific amount of benefits at retirement. In these plans, the employee or the employer (or both) contribute to the employee's individual account under the plan, and these contributions may be invested either by the employers or the employees themselves. (In Alaska's defined-contribution plan, the employees choose investments, under options the state offers.) The employee will ultimately receive the balance in that account, plus or minus investment gains or losses.[46]

Pure defined-contribution plans do not carry the risk of creating unfunded liabilities.[47] As detailed below, PERS and TRS switched from defined-benefit plans to defined-contribution plans for employees who began working on or after July 1, 2006.

Concerns arose in 2003 about the solvency of PERS and TRS, by far the largest of Alaska's retirement systems, and those concerns seemed to rise suddenly. Although reports issued in late 2002 showed that PERS was more than 100 percent funded and TRS was 95 percent funded,[48] in January 2003 the consulting actuary for PERS and TRS told a meeting of the boards governing the two retirement systems that large investment losses and substantial increases in projected medical costs required a tripling of the rate of employer contributions for the two systems.[49]

The State of Alaska's financial reports issued in December 2003 reflected a new picture, starkly different from the financial reports issued only 12 months before.[50] The reports showed that as of June 30, 2003, PERS was only 75.2 percent funded and TRS 68.2 percent funded,[51] leaving PERS with an unfunded liability of $2.9 billion and TRS with an unfunded liability of $1.4 billion.[52] Michael Barnhill, Alaska deputy commissioner of Administration, said in 2012 that an actuarial audit conducted in 2002 had uncovered the problems that led to the discovery of "the hole."[53] (The report of that audit was presented in October of 2002 to the boards administering PERS and TRS.[54])

The Comprehensive Annual Financial Report for PERS, issued in December 2003, cited investment losses and increasing health-care costs as causes of the shortfalls in funding.[55] But that report also said, "Over the long term, plan member and employer contributions as well as investment income received are expected to cover the pension benefit and postemployment healthcare costs of the Plan."[56] The TRS Comprehensive Annual Financial Report issued that same month had similar comments.[57]

The funding ratios for the two retirement systems continued to deteriorate,[58] however, and the list of causes for the unfunded liabilities grew over time, as more research was done. A document issued by the Senate Finance Committee in 2005[59] had a list including these factors:

- Inaccurate actuarial assumptions
- Historical underestimate of system liabilities
- Rising costs of health care
- Bearish periods in financial markets
- Declining interest rates
- "Unfavorable demographic changes"
- "Artificially low contribution rates in good times"

Three of these factors deserve special mention: "unfavorable demographic changes"; the stock market crash of the early 2000s; and Alaska's extremely high health-care costs.

"Unfavorable demographic changes" means that system beneficiaries were retiring earlier and dying later than actuaries had expected.[60]

The problems of funding for PERS and TRS became obvious in the wake of reverses in the stock market in the early 2000s—the Dow Jones Industrial Average fell in each of the calendar years 2000, 2001, and 2002—three years of the worst performance since the mid-1970s.[61] One journalist noted in 2005 that the State of Alaska's actuaries "had anticipated occasional bad years in projecting long-term earnings rates, but not three years in a row."[62] As the famed investor Warren Buffett wrote about this period in the markets, "After all, you only find out who is swimming naked when the tide goes out."[63]

Health-care costs are critical, particularly given that the State of Alaska's public employee retirement systems provide health insurance as well as pensions, and studies have shown Alaska to have the nation's most expensive[64] health care. Those costs skyrocketed for PERS and TRS in the early 2000s, although those increases have moderated since then.[65] As one journalist noted in 2005, the annual rate of growth in the cost of providing medical coverage to retirees jumped from an average of 4.5 percent in the 1994-1999 period to 14.5 percent for 2000-2004.[66] The monthly cost for a PERS retiree's health coverage was $57.64 in 1977, $806.00 in 2004, and $1,154.04 in 2016.[67] To put that growth in context, while health insurance under PERS costs 20 times as much as it did two decades ago, the Anchorage Consumer Price Index increased slightly more than three-fold over that period.[68]

In the assessment of one journalist in 2005, when taken together "the bad investment performance and higher-than-expected growth in costs of medical coverage account for over 90 percent" of what was then $5 billion in unfunded liabilities for PERS and TRS.[69]

V. State Responses to Unfunded Retirement Liabilities

The concerns about unfunded liabilities—coupled with pressures on the State of Alaska's budget, caused by a long-term decline in oil production and worries about fluctuating oil prices—led to a number of changes and proposed changes over the past dozen years. This section provides a history of changes and major proposals for change.

Below is a chronology of the State of Alaska's responses to the problem of the unfunded liabilities first announced in the early 2000s. This timeline is a road map to the upcoming sections of this paper, which will flesh out the items listed in the timeline.

Timeline of State Responses to Unfunded Retirement Obligations

2005	Legislature amends statutes to change PERS and TRS for new hires from defined-benefit plan to defined-contribution plan and reduce the State of Alaska's share of health-care costs for new hires; the switch becomes effective for employees hired on or after July 1, 2006.
2006	Aiming to pay off the retirement systems' unfunded liabilities, the newly established Alaska Management Retirement Board substantially increases employer contribution rates for PERS and TRS, leading local governments to call for relief from the state.
2007	Legislature provides for financial relief for local governments on PERS and TRS employer contribution rates for one year (fiscal year 2008).
2008	Legislature adopts legislation setting local governments' employer contribution rates at 22 percent of payroll for PERS and 12.56 percent for TRS, with the state to make payments amounting to the difference between the payments due under those statutorily set rates and the payments due under the rates determined by actuaries as necessary to pay off each retirement system's unfunded liability
2010	The management board and Mercer, the retirement systems' former actuary, announce a settlement of a 2007 lawsuit, which had alleged Mercer committed actuarial errors and other misconduct; while admitting no wrongdoing, Mercer agrees to pay $500 million to the retirement systems.
2014	Legislature adopts legislation that (1) injects $3 billion of the state's money into TRS and PERS; (2) requires the management board to extend the amortization schedule previously adopted for paying off the unfunded liabilities for PERS and TRS; and (3) requires the board to use the level-percent of pay method to liquidate the unfunded liabilities, thereby overruling the board's decision to use the level-dollar method. (The level-percent of pay method calculates amortization payments as a constant percentage of projected payroll over a given number of years, while the level-dollar method amortizes the cost into equal dollar amounts

	to be paid over a given number of years. The level dollar method costs employers more up front, but provides significant savings later.)
2015	The state attorney general issues opinion that the state is not legally responsible for the unfunded liability in PERS and TRS that is attributable to non-state employers—notwithstanding the state's history of making "additional state contributions," as set out in the 2008 state statute, to cover a portion of the unfunded liability that could be attributed to non-state employers.
2016	Proposed legislation to shift more costs of PERS and TRS from the state to local governments and school districts fails.

A. Statutory Changes in 2005: Switch from Defined Benefit to Defined Contribution, Reductions in Retirement Medical Coverage, and Creation of Alaska Retirement Management Board (ARMB)

By 2005, legislators were "stunned" by the growth in unfunded liabilities[70] and searching hard for solutions. Lawmakers considered a raft of approaches during the two-year 24th Alaska State Legislature, sitting in 2005-2006, to address what one legislator called a "ticking time bomb."[71]

The options put forward varied in scale and seriousness. One idea on a list circulated at a legislative hearing in early 2005 was to encourage employees to leave public service before they vested.[72] Other suggestions raised as either threats or possibilities to pay for the shortfalls were withdrawals from the Permanent Fund (with no elaboration on whether that was to be the principal or the earnings)[73] and the use of future revenues from as-yet-undeveloped natural gas assets owned by the State of Alaska.[74]

None of these ideas made their way into the law. Instead, the legislature adopted legislation implementing other far-reaching changes: (a) switching from a defined-benefit (DB) plan to a defined-contribution (DC) plan for calculating pension benefits for newly hired employees; (b) reducing the number of newly hired employees who could get retirement medical benefits paid for by the retirement systems; and (c) creating the Alaska Retirement Management Board (ARMB) to replace other boards in managing PERS and TRS.

The most discussed change was eliminating the traditional defined-benefit plan for new employees and replacing it with a defined-contribution plan.[75] The Alaska Division of Retirement and Benefits describes the defined-benefit plan as a system in which retirees "receive a defined monthly check, with the employer taking on the investment risk of the retirement funds."[76] The defined-contribution plan, by contrast, is a retirement savings account resembling a 401(k) or 403(b) account and is "based on employee and matching employer contributions. If the employee's investment choices perform poorly, or if the employee contributes little to the account, the employee receives less money at retirement."[77]

Supporters contended that this change to a defined contribution system would save money for the state, shift risk from employers to employees, and increase flexibility for employees.[78]

Opponents, on the other hand, countered that the shift from defined-benefit to defined-contribution would create too much risk for public employees (most of whom in Alaska are not covered by Social Security)—thereby killing "the American dream of a secure financial retirement"[79]—and would thus harm recruitment and retention of public employees.[80]

Among the diverse factors mentioned during legislative debate over the change was how age plays into comparisons between the two methods of pension-benefit calculation. As a consulting actuary noted at a legislative hearing in 2005, an employee's view of the relative merits of the two systems might depend in part on that person's age.[81] Joseph Esuchanko said that a defined-benefit system tends to favor employees over age 40 or 50, while a defined-contribution system may favor younger employees, apparently in part because the portability of a defined-contribution plan works better for workers with more years left in the workforce.[82]

The legislation switching to defined-contribution was considered in 2005 in an atmosphere featuring months of acrimony and arm-twisting[83] in the state capitol and was partly affected by President George W. Bush's simultaneous push for privatization of Social Security.[84] Supporters of Senate Bill 141, the legislation in Alaska to adopt a defined-contribution system, tied the bill to legislation increasing the State of Alaska's aid for education,[85] and later "attempted to up the ante" by holding up the bill funding capital projects.[86] Opponents of the legislation compared such tactics to "blackmail,"[87] but the legislation passed in a special session, by one vote in the Alaska House of Representatives.[88]

In signing the bill, Governor Frank Murkowski said, "This is not legislation that necessarily solves the problem."[89] He added that, "We think this change will stop the so-called bleeding."[90]

When coupled with previous changes, that shift from defined benefit to defined contribution adopted in 2005 left PERS with four tiers and TRS with three tiers. Tiers I, II, and III of PERS and Tiers I and II of TRS are defined-benefit plans. Tier IV of PERS and Tier III of TRS, by contrast, are defined-contribution plans. Pursuant to the legislation adopted in 2005, Tier IV of PERS and Tier III of TRS are the retirement plans for employees who started service after June 30, 2006.[91] Each later-adopted tier reduced the benefits offered to those in the new tier, compared with what those in in the earlier-adopted tiers received.[92]

Note that even after this hard-fought struggle in 2005, to shift from a defined-benefit system to a defined-contribution system that became effective in mid-2006, there continues to be a very long tail of defined-benefit payouts that will stretch for almost another 100 years. The State of Alaska's actuaries assume that the latest payout under the defined-benefit system of PERS will occur in 2116, while the last payout under the defined-benefit system of TRS is projected for 2111.[93]

Although most of the attention on the legislation passed in 2005 focused on the shift from defined-benefit to defined-contribution, the bill also made several other changes.[94] Most important for the issue of the continuing growth of unfunded liabilities, the new tiers adopted for PERS and TRS pursuant both reduced the number of people eligible for retirement medical coverage and shifted more of the responsibility for paying retiree health insurance premiums from the retirement systems to the retirees.[95] An actuary for the State of Alaska told a legislative hearing in 2006 that the changes made in the new tiers of PERS and TRS result in health-care benefits that "are a lot less generous" than those offered in the tiers created earlier, and said that therefore "We would expect that…over time there should be a reduction in the growth of the health-care benefit liability."[96]

In the same legislation enacted in 2005, the legislature also created the Alaska Retirement Management Board to manage the retirement systems, while abolishing three other boards previously responsible for such management.[97] Among other duties, that new board was charged with the responsibility to "certify to...each employer... (A) an appropriate contribution rate for normal costs...and (B) an appropriate contribution rate for liquidating any past service liability."[98]

B. Legislative Action in 2007 and 2008: Concerns over Increasing Employer-Contribution Rates for Local Governments Lead to Adoption of Lower Rates for Local Governments, with the State Paying More to Compensate

The years following the 2005 enactment of Senate Bill 141 saw repeated attempts to move bills that would return the retirement systems to a defined-benefit plan.[99] Each of those efforts failed. After 2005, much of the action in the legislature involving retirement benefits moved to the question of the allocation of burdens between the state and local governments to pay off the unfunded liabilities associated with the defined benefit plans that remained in effect for all employees hired before July 1, 2006.[100] (In 2006, the commissioner of Administration called these workers "legacy employees".[101])

The adoption of Senate Bill 141 in 2005 had the effect of superseding a previous regulation that had limited annual increases in employer contribution rates to five percentage points as actuarially calculated.[102] Charged with the duty of addressing the systems' unfunded liabilities, armed with new data, and unfettered by that previous regulation, the new Alaska Retirement Management Board raised employer contribution rates for PERS and TRS in a rapid fashion that unpleasantly surprised local governments.[103] For the defined-benefit plans, the new board in September 2006 set average employer contribution rates for fiscal year 2008 at 39.76 percent of payroll for PERS and 54.03 percent of payroll for TRS.[104]

This average rate for PERS masked large differences for individual local governments, based on the amount of each local government's unfunded liability.[105] For example, while the City of Wasilla faced a 24.38 percent rate in PERS for Fiscal Year 2008, the City of Fairbanks was hit with a rate for that system of 180.94 percent.[106]

This "huge jump"[107] in employer contribution rates caused substantial consternation—even shock—among local government officials.[108] The Anchorage School District pointed out that it paid a contribution rate of 24.25 percent for PERS in fiscal year 2007 and expected to pay a rate of 29.25 percent for the following year, but instead faced a rate of 40.89 percent.[109] For TRS, the district had paid a 26 percent rate in fiscal year 2007 and expected to pay a 31 percent rate for the next year, but instead stared at a rate of 54.03 percent.[110]

The reaction from local government officials was to seek relief from the deep pocket, the State of Alaska.[111] A statement from the Anchorage School District said "The [d]istrict is counting on the Legislature to appropriate funds to all districts to relieve this extreme and unexpected burden on expenditures."[112] Carol Comeau, the district superintendent, called the rates "unacceptable" and stated "We urge Governor [Sarah] Palin and the Legislature to require the [s]tate to pay the mandated contributions directly into the retirement systems."[113]

The big increases for local governments produced a drive to reduce those rates. Miles Baker, a legislative finance aide to Bert Stedman, R.-Sitka, co-chair of the state senate finance committee, told the Alaska Retirement Management Board in 2007 that the Palin administration, the municipalities, and the legislature all agreed that PERS had to be moved to a system of cost-sharing.[114] As summarized in the minutes, Baker also said, "The next thing everyone agreed upon was that the state has some responsibility to pay a portion of that—one, because municipalities cannot afford it, and two, because the state ran the system and there is some responsibility to step in and help."[115]

The legislature in 2007 adopted legislation that provided relief to local governments for one year only, fiscal year 2008. As a result of provisions included in budget bills passed during the 2007 session, the actual rates employers were to pay for fiscal year 2008 in the PERS defined-benefit plan were set at no less than 14.48 percent for PERS employers whose actuarially calculated rate was less than 22 percent, and no more than 22 percent for PERS employers whose actuarially determined rate was greater than 22 percent.[116] The "employer effective rate" for the TRS defined-benefit plan for fiscal year 2008 was 12.56 percent for all TRS employers.[117]

Legislation adopted in 2008 provided that PERS employers would contribute 22 percent of their employees' salaries, with the state paying the difference between that 22 percent and the amount needed to "pay the plan's past service liability" (the unfunded liability).[118] That same legislation set that rate at 12.56 percent for TRS employers, with the state again paying the difference as "additional state contributions."[119] The Alaska Department of Administration's Division of Retirement and Benefits said the intent of that legislation was "to convert the PERS to a cost-sharing plan, like the TRS, and provide for one integrated system of accounting for all employers. The bill establishes one uniform rate of 22 percent for PERS employers, rather than separate contribution rates for each employer."[120]

The legislative staff member discussing that legislation before it passed in 2008 described to the Alaska Retirement Management Board the legislative process behind the rate set for PERS.[121] As summarized in the board's minutes, Baker said in 2007 that "The concept was to set a flat rate for the municipalities and the state would pick up the risk and reward of what happens going forward. But because of the additional risk on the state's part, the employer rate (22%) was set much higher than the municipalities wanted it set."[122]

The "additional [s]tate contributions" represent the amount needed to "amortize" (pay off) the unfunded liabilities over a period of 25 years.[123] Those "additional [s]tate contributions" include payments to cover the amounts of the unfunded liabilities linked to the state, as well as amounts linked to municipalities.[124] The total amount that the State pays—above its contribution normally required as an employer—is called "state assistance" in the projections made by the state's actuary.[125] (Journalists, legislators, and bureaucrats sometimes refer to these additional state contributions or state assistance as "on-behalf payments".[126] That terminology is misleading, because it suggests that the state is making those additional payments solely on behalf of non-State employers, while in fact the payments also cover the state's own portion of the unfunded liability. The Governmental Accounting Standards Board does not support the use of the term "on-behalf payments" in this context, apparently on the theory that you can't make on-behalf payments on behalf of yourself.[127])

C. Lawsuit Filed in 2007 Regarding Actuarial Errors Ends in Settlement in 2010

The Alaska Retirement Management Board sued the actuarial firm Mercer in December 2007, alleging that the company had made errors in calculating the state's pension and health-care obligations that generated unfunded liabilities for PERS and TRS.[128] Mercer had worked for the state as an actuary since the 1970s.[129] Filed in state court in Juneau, the original complaint accused Mercer of engaging in actuarial misconduct, breach of professional duty, and breach of contract. It sought more than $1.8 billion in damages.[130]

Mercer responded to the lawsuit filed by saying: "To the extent the state has funding issues, they are caused by a number of economic factors, including skyrocketing medical costs, a downturn in the capital markets[,] and the fact that retirees are retiring earlier and living longer than anticipated….The [s]tate is now attempting to hold Mercer accountable for these economic trends, over which our firm has no control."[131]

The actuary also contended that the boards administering PERS and TRS had declined year after year to boost the employers' required contribution rates to the levels that Mercer recommended to keep the retirement systems fully funded.[132] Mercer's defense to the lawsuit also included a contention that the company's conduct would not have negatively affected the state's required contributions to PERS because during the relevant periods a state regulation imposed a cap of five percentage points on annual contribution rate increases for PERS employers, while Mercer's recommended rate was already much higher.[133]

Following depositions of Mercer employees, the Alaska Retirement Management Board in 2009 filed an amended complaint that alleged a cover-up of its errors by Mercer amounting to fraud.[134] The amended complaint boosted the amount sought to at least $2.8 billion in compensatory damages—"subject to trebling under the Unfair Trade Practices and Consumer Protection Act"—plus punitive damages.[135] Specific errors alleged included underestimating future health-care costs and ignoring some salary increases for employees as well as survivor benefits.[136] The lawsuit followed the report by another consultant for the state, finding mathematical errors by Mercer as well as the use of outdated mortality tables.[137]

But with Mercer facing claims for a total damages award that—counting compensatory, treble damages, and punitive damages—could go up to $9 billion,[138] the case never went to a jury. Less than a month before the case was scheduled to go to trial in Juneau in 2010, the state and Mercer announced a settlement ending the case, in which Mercer agreed to pay the state $500 million while continuing to deny wrongdoing.[139]

Dan Sullivan, Alaska's attorney general said at a news conference announcing the settlement that most of the proceeds of the settlement would go into the pension funds, while almost $100 million would be used to pay legal costs for the case—which a New York law firm handled for the State of Alaska on a contingency fee basis.[140]

The state now uses a different principal actuary, Conduent Human Resource Services (formerly Buck Consultants).[141]

D. Continued Concerns over Unfunded Liabilities Lead to Adoption of Legislation in 2014 Injecting $3 Billion into Retirement Systems and Increasing Local Governments' Liabilities

1. Unfunded Liabilities Keep Growing

Despite the changes made in the retirement systems in 2005, unfunded liabilities continued to grow, with the bear markets of 2008 and 2009 cited as a big factor.[142] In the relatively flush time of 2011, a journalist described future costs of funding retirement benefits as the "one black mark" found "in the [s]tate's otherwise stellar balance sheet" and said that some observers were warning that "[t]he [s]tate's retirement costs, including growing medical expenses and unfunded pension expenses, may grow to unsustainable and crippling levels. . ."[143]

By 2013, that same reporter pointed out that the problem had gotten worse, "with underfunding of pension and health-care plans growing by an additional $800 million this year" and total unfunded liabilities for PERS and TRS amounting to nearly $12 billion.[144] Once again, weaker than expected investment returns were fingered as a major culprit.[145]

2. Alaska Retirement Management Board Debates Alternative Methodologies for Paying Off Unfunded Liabilities of PERS and TRS

The Alaska Retirement Management Board worked to address its difficult legislative mandate to set employer contribution rates to pay off the retirement systems' unfunded liabilities. The big issue was the choice of actuarial methodologies—which at heart involved a decision about whether to stretch out the payments or pay them off sooner.

One option was the "level-dollar funding" method, and another was the "level-percentage of pay" method[146] (also called the "level percent of payroll" method).[147] As compared to the level percentage of pay method, the level dollar method provides significant savings over the long term, but costs more up front.

The level-percentage of pay method "calculates amortization payments as a constant percentage of projected payroll over a given number of years."[148] The level dollar method, by contrast, amortizes the cost "into equal dollar amounts to be paid over a given number of years."[149]

One commentator offered this description of the level-percent of pay method:[150]

> Under the "level percent of payroll" method the actuary first estimates how much the government's total payroll will be in each year of the amortization period assuming it will grow the same percent each year—usually projected at about four percent. Then the actuary calculates a fixed percentage of each year's payroll the government needs to pay to eliminate the unfunded pension debt by the end of the amortization period. That fixed —or "level"—percent of each future year's projected payroll is projected to be each future year's payment.

The same commentator also described the level-dollar method:[151]

> The "level dollar" method is basically the same as the traditional 30 [-] year fixed interest rate and payment home mortgage except the number of years can be shorter. You borrow money to buy a house and pay it back by making equal payments every month for 30 years. Most of the early payments are interest but the last payments mostly reduce debt.

As noted above, the “level-dollar funding” method costs employers more up front, but provides significant savings later.[152]

As an element of a plan to amortize the unfunded liability over 25 years, the management board in 2006 set employer contribution rates for the PERS defined-benefit plan based on the level-dollar funding method, saying in 2007 that the method was “required” for a closed plan.[153] In 2007 the legislature adopted Senate Bill 123, which the board described as “allow[ing]” the use of the level-percentage of pay method. That same year the legislature also passed Senate Bill 53, which indicated the legislature’s intent that the level-percentage of pay method be used in setting employer contribution rates for fiscal year 2008.[154] After the legislature passed those bills, the management board adopted the level-percentage of pay method in setting employer contribution rates for fiscal year 2008.[155]

But in 2012, the board’s decision was different for both PERS and TRS going forward.[156] “The board changed the amortization method used for funding from the level percentage of payroll method to the level dollar method in June 2012 effective June 30, 2012.”[157]

That 2012 board decision had big effects.

3. Concerns Over Growing State Payments to Cover the Unfunded Liabilities for PERS and TRS Lead Governor Parnell to Propose in 2013 Legislation Injecting $3 Billion into the Retirement Systems

In December 2013, the Parnell administration unveiled to the Alaska Retirement Management Board—in a conference room in a downtown Anchorage hotel—a proposal to take money from the state’s savings accounts to use for a one-time injection of $3 billion into PERS and TRS.[158] The room broke out in cheers and applause.[159]

A newspaper article on the announcement noted two benefits to the state from the proposal.[160] One was the additional earnings expected to come from investing the $3 billion in PERS and TRS, given the assumption that the retirement systems would produce returns averaging 8 percent a year versus the much smaller earnings expected from leaving that money in the state’s short-term savings accounts.[161] The other benefit from “[t]he big bucks up front” would be to reduce state expenses in future years, which the governor’s budget director said “drove the decision to propose the $3 billion.”[162] The article noted that the state’s annual expenditure for PERS was expected to rise to $703 million for the upcoming fiscal year (2015) and that “Parnell wants those contributions capped at $500 million as part of his $3 billion contribution proposal.”[163]

The article also pointed out that the Alaska Retirement Management Board’s decision to adopt the level-dollar funding method “has helped force the issue after inaction by Parnell in recent years.”[164]

The newspaper report concluded by noting that Gov. Sean Parnell’s proposal would put $1.88 billion into PERS and $1.12 billion into TRS.[165]

In a presentation later that month, Governor Parnell said he hoped his plan would result in fixed payments by the state of approximately $500 million a year over the next 25 years.[166]

4. Legislature Discusses in 2014 Various Ways to Reduce State's Short-Term Burden for PERS and TRS

Three conflicts predominated in the 2014 legislative debates on funding for the obligations of PERS and TRS. They can be summarized as:

(a) Cheaper dollars vs. scarcer dollars

(b) Flexibility versus predictability and stability

(c) The state versus local governments as sources of funding

Some of the debates focused on limiting the state's spending on the retirement systems, particularly in the short term. Those taking this view argued that it was important to stretch out the amortization schedule for paying off the unfunded liabilities of PERS and TRS, on the theory that the time value of money meant that dollars spent in the future were worth less than dollars spent in the present.[167]

Those opposing this "stretch out the payments to take advantage of the time value of money" view contended that likely future reductions in government revenues made that approach too risky. In the words of Martin Pihl, a trustee of the Alaska Retirement Management Board, "Some people say pay it off with cheaper dollars later, but I think the reality is, the cheaper dollars become scarcer dollars."[168]

Advocates also dueled over the concepts of flexibility[169] versus predictability and stability. One reporter who followed the 2014 debates closely wrote that, "Many legislators have been reluctant to use [s]tate savings to pay down the unfunded liability now, when they may want to spend the money later on natural gas pipelines, capital projects in their districts, preventing school budget cuts, or unanticipated crises."[170]

Others involved in the debates emphasized the importance of predictability and stability in budgeting for the state[171] and for local governments[172] more than the preservation of state legislators' maximum flexibility in the future, with the executive director of the Alaska Municipal League offering the view that "the crisis is already here" for local governments.[173] The director also pointed to a third question that was not always acknowledged in the 2014 debates: Who would pay for the unfunded liability—the state or local governments?

These conflicts played out as legislators considered various proposals during the 2014 session. The conflict over "Who pays?" was most obvious in a proposal that would have raised the cap on the PERS employers' contribution rate from 22 percent to 24 percent as a way to get local governments to pay a greater share of the that system's unfunded liability.[174] While local governments tended to see the legislation adopted in 2008—establishing the 22 percent cap for local governments' annual employer contribution rate—as a "commitment,"[175] some legislators seemed to view it as a temporary favor.[176] The stand-alone proposal to raise the PERS employer contribution rates ultimately failed, in the face of repeated entreaties from local government officials who warned of tax hikes on local taxpayers to pay for the higher rate.[177]

Fears of higher employer contribution rates drove the debate in other respects. Kathie Wasserman, executive director of the Alaska Municipal League, expressed the fear that doing nothing to address the unfunded liability for PERS would lead the local governments' contribution rate to be increased to 40 percent[178] (which was one percentage point more than what it would have been that fiscal year, without the 22 percent cap in statute).[179] Wasserman said local governments recognized that Governor Parnell's proposal for the $3 billion "cash infusion"[180] also included an extension of the 25-year amortization of the unfunded liability that would impose additional costs on local governments. But she said they would accept those increased costs, rather than an increase in the annual employer contribution rate.[181]

Wasserman put it this way: "When the [l]egislature says to me, 'What are you guys willing to give?,' I say 'We're willing to go ahead and know we're going to be paying 22 percent for a lot more years than we'd been originally been told."[182]

The fight got a lot hotter in the last weeks of the statutorily set 90-day regular legislative session when house Republican leaders unveiled a proposal to switch TRS to a "pay-as-you-go" plan.[183] The proposal, developed by David Teal, the director of the Legislative Finance Division,[184] called for a $1.5 billion cash infusion, with $1.4 billion going into TRS and $100 million into a new pension reserve fund "from which transfers could be made if the trust fund got too low."[185] Compared with Governor Parnell's plan, the proposal called for starting with smaller annual payments that would be stretched over a longer period.[186] Teal said that the "additional state contributions" would not be necessary under the proposal he had developed, and that the employer contribution rate would be increased to 24 percent over the following five years.[187]

Advocates promoted the proposal as more affordable for the state than the governor's plan, particularly given forecasts of smaller state revenues and ongoing budget obligations.[188]

Opponents launched multiple attacks on the "pay-as-you-go" proposal.[189] Michael Barnhill, deputy commissioner of Administration, described it as "a fairly radical change" in the state's policy that contemplated the possibility that TRS would be exhausted in the early 2050s.[190] Angela Rodell, commissioner of Revenue, expressed concern that adopting the proposal could threaten the state's credit rating.[191] Governor Parnell called the proposal "immoral," because it called for "pushing that debt off to our great-great grandchildren."[192] An actuarial analysis showed that the "pay-as-you-go" plan would increase costs for TRS contributions over the coming decades from $8.9 billion to $24.9 billion and extend the amortization schedule for an additional 20 to 30 years, likely out to 2073.[193] David Teal, the architect of the "pay-as-you-go" plan, dismissed the actuary's comparisons as "nothing short of nonsense" and observed that "The billions of dollars in future costs cannot be compared to current dollars unless one believes money has no time value."[194]

Strongly backed by Bill Stoltze, R.-Chugiak, co-chair of the house finance committee,[195] the legislation containing the "pay-as-you-go" plan was approved by that committee,[196] but the plan was defeated by the full House of Representatives and did not appear in legislation that passed the legislature.[197]

5. Legislature Injects $3 Billion into PERS and TRS While Changing the Allocation of the Cash, Re-Starting the 25-Year Schedule for Amortization, and Requiring the Use of the Level-Percent of Pay Method

The legislature made three main statutory changes to PERS and TRS in the 2014 legislative session.[198]

First, the legislature made the cash infusion of $3 billion into PERS and TRS.[199] But it essentially reversed the allocation proposed by Governor Parnell, putting $2 billion into TRS and $1 billion into PERS, when the governor had proposed $1.12 billion for TRS and $1.88 billion for PERS.[200] Senator Pete Kelly, R.-Fairbanks and the co-chair of the senate finance committee, said the legislature made this decision explicitly because the state is responsible for paying a larger share of the unfunded liability for TRS than for PERS, which local governments are more responsible for.[201]

Senator Anna Fairclough, R.-Anchorage,[202] said the cash infusions would mean that TRS—then considered to be only 53 percent funded—would now be 73.9 percent funded, and she added that a funding level of 80 percent is considered adequately funded.[203] (Note that there is considerable disagreement about the adequacy of funding public retirement systems at 80 percent. While one commentator has suggested that 80 percent is "good enough for government"—with the argument being that fully funded or overfunded public pension plans result in employees lobbying for more generous benefits or governments looking to cut benefits[204]—an opposing view is that "Pensions funded at 80 percent are no different than a $400,000 house in a distressed neighborhood with a $500,000 mortgage."[205])

In a second action, the legislature required that the 25-year periods for amortizing the unfunded liabilities for PERS and TRS be re-started ("re-initialized") so that they ran from July 1, 2014, through June 30, 2039.[206] This extended the pay-off period by nine years; the periods adopted by the Alaska Retirement Management Board would have ended in 2030.[207]

Finally, the legislature required that the Alaska Retirement Management Board use the level-percent of pay method to liquidate the unfunded liabilities for PERS and TRS.[208]

Both of the latter changes (stretched-out amortization periods and level-percent of pay methodology) were added in a bill—House Bill 385—that went from introduction to passage in both houses in less than two weeks at the end of the session.[209] One reporter noted that "House Bill 385 passed unanimously but it was drafted in secrecy late in the session, and few legislators in debate or interviews later appeared to fully understand or be able to describe what it did."[210]

Both of those changes also reduce the short-term cost of paying off the unfunded liabilities while increasing the total costs. David Slishinsky, of the state's principal actuary, Buck Consultants, told the Alaska Retirement Management Board that the legislative changes in 2014 added $5 billion to total retirement costs,[211] and also said the unfunded liability would actually increase for the first eight years of the new regime.[212] Kris Erchinger, a trustee of the Alaska Retirement Management Board who also served as the City of Seward's finance director, pointed out at a meeting of the board that the $1 billion appropriation to PERS "reduced the [s]tate assistance by $42 million a year and the House Bill 385 changes [re-started amortization schedule and level percent of pay] reduced the [s]tate assistance by $302 million a year."[213]

Finally, note that the weighting of the allocation of the $3 billion additional state contribution toward TRS rather than PERS had the intent and effect of shifting some costs of paying off the unfunded liabilities from the state to local governments.[214] This is one place where the frequently used analogy of 15-year versus 25- or 30-year mortgages[215] breaks down in the context of unfunded liabilities for PERS and TRS: In the home loan context, there is usually no issue about who makes the payments.[216]

E. Struggle Continues into 2015 over Issue of State's Legal Responsibility for Unfunded Liability of Other Employers Participating in PERS and TRS

Implementation of a new accounting standard fanned the flames of the debate over legal responsibility for paying off the unfunded pension liability, and in 2015 triggered dueling attorney's opinions in on the "who pays?" question. This new accounting standard goes by the innocuous name of Governmental Accounting Standards Board (GASB) Statement No. 68.[217]

While implementing a new accounting standard effective for Fiscal Year 2015,[218] the State of Alaska reported net pension liability "in relation to a special funding situation in the amount of [$3.542 billion]."[219] The "special funding situation" was the responsibility of the State of Alaska for unfunded liabilities of the other employers (mostly municipalities and school districts) in PERS and TRS. [220]

Despite this reporting of the liability for this portion of future "additional state contributions"—required under generally accepted accounting principles—the Alaska Department of Law issued a legal opinion in August 2015, holding that the State of Alaska is not legally responsible for that portion of the net pension liability of PERS and TRS.[221]

The attorney general's opinion acknowledges the statutes adopted in 2008, providing for the state's obligation to make payments of "additional state contributions" that include a portion of the liability that could be attributed to non-state employers and the historical practice of making those payments.[222] But notwithstanding the statutes and the historical practice, the attorney general's opinion points to three provisions of the Alaska Constitution to support its position.

The Appropriations clause states that "No money shall be withdrawn from the treasury except in accordance with appropriations made by law."[223] The clause titled "State Debt" generally prohibits the state from incurring debt except for capital improvements and other limited circumstances not applicable to this question.[224] The Anti-Dedication clause prohibits the dedication of funds for "any special purpose, except as provided in section 15 of this article [the Permanent Fund] or when required by the federal government for state participation in federal programs."[225] The opinion also quotes an Alaska Supreme Court decision that says "The constitutional clause prohibiting dedicated funds seeks to preserve an annual appropriation model which assumes that . . . the legislature remain[s] free to appropriate all funds for any purpose on an annual basis...."[226]

Relying on these legal materials, the attorney general's opinion concludes that the statutes adopted in 2008 providing that the state shall make the payments for liabilities attributed to non-state employers "cannot be interpreted to mandate future spending or dedicate funds for additional [s]tate contributions on behalf of other participating employers without raising serious problems with [the Alaska Constitution's Appropriations and Anti-Dedication clauses]."[227] Rather than being "legal mandates to incur debt and assume the unfunded liability of participating employers," the opinion suggests that the statutes in question are "discretionary municipal funding statutes that are subject to annual appropriation" by the Alaska Legislature.[228]

In the course of reaching this conclusion, the opinion also warns of the consequences of taking the opposite view: that the state is legally responsible for the unfunded liability attributable to employers other than the state. The opinion notes that in 2012 the Alaska Retirement

Management Board made changes in its rate-setting methodology that put the state's additional contributions on a course to exceed $1 billion in fiscal year 2016 (changes the legislature later reversed),[229] while the state was projecting "only $2.2 billion in unrestricted general revenue" at the time of the opinion.[230] "The notion that these statutes could essentially result in an earmark of 50 percent of the [s]tate's general funds is not reasonable."[231]

The attorney for the Ketchikan Gateway Borough responded two months later with a legal opinion setting out a suite of arguments for the proposition that the state is legally responsible to make payments on behalf of non-state employers under the statutes providing for "additional [s]tate contributions."[232] Among those arguments is a contention that the statutes did not violate the Appropriations or Anti-Dedication clauses because the statutes expressly say that the state will make the payments each July 1 "or if funds are not available on July 1, as soon after July 1 as funds become available…."[233] Thus, a statute providing for "additional [s]tate contributions" and the payments on behalf of non-state employers embedded in them "is easily interpreted as constitutional because it is expressly subject to the availability of funds appropriated to pay down the unfunded pension liability."[234]

The opinion of the Ketchikan Gateway Borough also states that an implied exception to the Anti-Dedication clause for pension fund contributions would likely lead the courts to rule constitutional the statutes establishing those payments.[235] Disputing the reference in the state attorney general's opinion to the state's determination of the amounts of unfunded liability "attributable" to the state and to "participating [non-state] employers,"[236] the borough attorney's opinion maintains that "[T]he debt cannot be imposed upon participating employers because there is no accurate way to determine what portion of the [unfunded liability] is associated with any particular employer or former employer."[237]

Additionally, the borough attorney's opinion says that "The state has fiduciary responsibilities as operator and manager of the system, obligations to retirees as the operator and manager of the system, and a role as a funder of last resort."[238]

The opinion concludes that "In short, the state has a legal responsibility to make payments towards the NPL [Net Pension Liability] of TRS and PERS under AS 14.25.085 and AS 39.25.280 at the rates set by the ARMB as required to amortize the PERS and TRS unfunded pension liability over a closed 25[-]year period ending June 30, 2039."[239]

Three months after the Alaska Department of Law issued its opinion, staff of the Governmental Accounting Standards Board (GASB) advised State of Alaska officials that for the purposes of GASB 68 the term "legally responsible" should not be construed in a legally enforceable sense.[240] Instead, GASB staff said that (a) the reporting of net pension liability attributable to special funding situations on the state's balance sheet reflected the "economic reality" that the state is making state assistance payments on behalf of other employers participating in PERS and TRS pursuant to state statutes and (b) the existence of such statutes—regardless of their constitutional validity—required the state to report these amounts as liabilities on the state's balance sheet.[241] The Alaska Division of Legislative Audit also advised other state officials that the constitutional prohibition on dedication of revenue, and limitations on one legislature binding the appropriation power of a subsequent legislature, are not permissible exceptions to GASB 68.[242]

The state now reports the amounts associated with the special funding situation on its balance sheet while simultaneously (a) disclaiming "any and all legal responsibility or obligation, in a legally enforceable sense, for the non-state employer GASB 68 net pension liabilities reported as liabilities" on the state's financial statements and (b) acknowledging the different positions on this matter taken by municipalities and school districts participating in PERS and TRS.[243]

F. Attempts in 2016 to Raise Employer Contribution Rates for PERS and TRS Fail Quickly

Faced with an estimated $4.1 billion deficit[244]—an amount equal to about three-quarters of the budget for fiscal year 2016[245]—powerful legislators pushed again in 2016 to raise the maximum employer contribution rates for PERS and TRS, in an attempt to shift costs from the state to local governments.[246]

One bill proposed increases in the PERS contribution rate from the existing 22 percent to 24.5 percent in FY 2017, 25.5 percent in FY 2018, and 26.5 percent for FY 2019 and future years.[247] The other bill proposed increases in the TRS contribution rate from the existing 12.56 percent to 19 percent in FY 2017, 20 percent in FY 2018, 21 percent in FY 2019, and 22 percent for FY 20 and future years.[248] Both bills were introduced by the senate finance committee.[249]

The state's actuary estimated that the senate finance committee's bill on PERS would generate total state savings of $1.1 billion through FY 2039, when state employer contributions and state assistance contributions are considered together,[250] while the TRS bill was forecast to produce $2.1 billion in total savings over the same period.[251]

The two bills faced intense opposition to this substantial shifting of costs onto local governments, as well as a backlash against the fast-tracked consideration of legislation introduced three weeks before the end of the statutory limit of the legislative session.[252] The senate leadership announced a week after the bills were introduced that it was dropping the PERS bill, and the TRS bill never moved from its first committee of referral.[253]

VI. Projected Future Costs of Meeting Unfunded Retirement Obligations of PERS and TRS

As noted above, the State of Alaska's actuary projects that the state will need to provide an additional $10.815 billion through fiscal year 2039 to fully fund its two largest retirement systems for public employees, under the plan adopted in 2014 to amortize the unfunded liabilities over 25 years.[254] This estimate of $10.815 billion in state assistance—or additional state contributions—is of the total amount needed to eliminate, under that plan, the unfunded liabilities of the Public Employees' Retirement System (PERS) and the Teachers' Retirement System (TRS). This figure for state assistance is above and beyond the amounts the state is projected to owe in its role as employer in the normal course of funding the two systems.[255]

Of this total of $10.815 billion through Fiscal Year 2039, the projection for PERS is $5.9 billion and the projection for TRS is $4.9.[256]

For both PERS and TRS, those projected amounts of state assistance increase every year from fiscal year 2018 up until fiscal year 2040, when they go to zero.[257] Particularly given the continuing strains on the State of Alaska's finances, those projected amounts of state assistance are substantial.

Here are some selected projected amounts of state assistance[258]:

Fiscal Year 2021	$383,271,000
Fiscal Year 2025	$425,976,000
Fiscal Year 2030	$510,284,000
Fiscal Year 2035	$629,880,000
Fiscal Year 2039	$808,612,000

These are big numbers, given that the total state Unrestricted General Fund budget—which is what people usually mean in Alaska when they talk about the budget—is $4.3 billion for fiscal year 2018.[259]

Those projected figures for state assistance also loom large when matched up against the state's projected future revenues. The Alaska Department of Revenue's forecast goes out for nine years, and the projection for annual Unrestricted General Fund revenues for that period of fiscal years 2018 through 2026 range from a low of $1.83 billion in FY18 to a high of $2.18 billion in FY26.[260]

The substantial drop in revenues the state has experienced in the past five years—Unrestricted General Fund revenues fell from $9.5 billion in fiscal year 2012 to $1.6 billion in 2017[261]—has helped make Alaska's problem with unfunded liabilities look particularly severe in the national context. A study released in 2017 showed that when measured against annual revenue, Alaska had the second highest unfunded pension liability of any state, with its unfunded pension liability equal to 443 percent of its annual revenue.[262]

Recent changes in the funding ratios, as well as projected future funded ratios, show the importance of assumptions and the big differences they can make in projections of future unfunded liabilities. The funding ratio for a retirement system is the relationship between the actuarial assets and accrued liability. Driven in part by investment returns well below the projected 8 percent returns, funding ratios for PERS and TRS have declined recently.[263] For PERS, the funding ratio based on valuation assets has fallen from 78.3 percent as of the end of fiscal year 2015 to 77.1 percent as of the end of fiscal year 2016, while for TRS the has gone from 83.3 percent to 82.8 percent.[264] The state's actuary expects those funding ratios to decline further before starting to go up again, with fiscal year 2021 expected to be the future low for both systems (PERS at 71.6 percent and TRS at 76.2 percent).[265]

These projections of future needs for state assistance to pay off unfunded liability, and of funding ratios, are based on certain assumptions—and small differences between those assumptions and actual experience can make a big difference.[266] Some of the most important assumptions in the most recent actuarial projections for PERS and TRS include:

- Investment returns of 8 percent on the Fair Value of Assets in all future years[267]
- Total inflation increasing at 3.12 percent annually, as measured by the Anchorage Consumer Price Index for urban and clerical workers.[268]

Other key assumptions include those about mortality rates of beneficiaries.[269]

Factors driving the State of Alaska's actual costs in ways that could make these projections of required state assistance incorrect include:

- Rates of return on investments (the lower the rates of return, the higher the state's costs)
- Health-care inflation rates (the higher the health care inflation rate, the higher the State's costs)
- Demographic changes (despite some offsets involving Medicare, it is generally true that the earlier beneficiaries retire, the more health problems they have while living, and the later they die, the higher the state's costs)
- The state's ability to transfer to local governments some of the costs of the retirement systems currently borne by the state, as set out in Alaska statutes
- The ability of the state to prevail against legal challenges, if it attempts to reduce the value of benefits to beneficiaries

Drawing particular attention has been the use of 8 percent as the "discount rate," a term in economics related to the present value of future payments that plays a big role in funding determinations about defined-benefit pension plans.[270] The lower the assumption for the discount rate, the bigger the liability and the lower the funded status—which drives up the amount that needs to be contributed to the pension fund.[271] For both PERS and TRS, the Alaska Retirement Management Board uses 8 percent (compounded annually and net of expenses) as both the assumed discount rate and the assumed investment rate of return for the retirement system funds.[272] That assumed 8 percent return on long-run investments includes an assumption of 4.88 percent real return, plus an assumed inflation rate of 3.12 percent.[273]

Lowering the discount rate by a single percentage point—that is, dropping the discount rate from 8 percent to 7 percent—increases the net pension liability of PERS by 31 percent[274] and of TRS by 41 percent.[275] Raising that discount rate from 8 percent to 9 percent, on the other hand, decreases the net pension liability of PERS by 26 percent[276] and of TRS by 34 percent.[277]

Recent failures to meet that 8 percent benchmark in annual returns has led to "robust discussions" about whether that figure should continue to be used, according to an actuarial consultant for the state in April 2017.[278] Those robust discussions will also take note of the higher investment returns racked up in the fiscal year ending June 30, 2017, when PERS earned 13.35 percent and TRS gained an almost identical 13.36 percent.[279]

VII. LEGAL PROTECTIONS FOR PUBLIC EMPLOYEE RETIREMENT BENEFITS UNDER ALASKA AND FEDERAL LAW

Alaska law and federal law both contain provisions relevant to public employee retirement benefits. Those legal provisions affect the options that policymakers might consider in dealing with the annual outflow of state assistance as the State of Alaska faces a continuing fiscal squeeze. This section sets out those relevant legal provisions, before the next section lays out various options to address the unfunded liabilities. This section sketches out those options without in any way pretending to address them in the depth needed for an article in a law review.

A. Alaska's Constitution Explicitly Protects Benefits of Employee Retirement Systems of the State and Local Governments

Article XII, Section 7, of the Alaska Constitution provides that "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." For ease of reference, this paper calls this provision Alaska's Public Retirement System Protection clause.

B. Provisions of the Alaska and U.S. Constitutions Regarding the Impairment of Contracts and Takings[280]

The Alaska Constitution provides that "No law impairing the obligation of contracts…shall be passed."[281]

The U.S. Constitution states that "No State shall . . . pass any…Law impairing the Obligation of Contracts…."[282] The U.S. Supreme Court has ruled that this provision—commonly called the Contracts clause—does not automatically invalidate any modification of a contract provision by a state government, and that certain modifications can be justified as an exercise of a state's police power, particularly in emergencies.[283] But courts employ more scrutiny under the Contracts clause when a state government adopts a law modifying a contract to alter its own contractual obligations.[284]

The U.S. Constitution also provides that "[N]or shall private property be taken for public use, without just compensation."[285] The Alaska Constitution states that "Private property shall not be taken or damaged for public use without just compensation."[286]

VIII. OPTIONS TO ADDRESS THE UNFUNDED LIABILITIES IN LIGHT OF LEGAL PROTECTIONS AND OTHER REALITIES

The serious and continuing fiscal squeeze on the State of Alaska will probably lead policy-makers to consider other steps to deal with the annual outflow of state assistance. A review of history and the relevant literature helped produce this list of options. Note that the author is not endorsing or opposing any option: merely describing them.

A. Pension Obligation Bonds

The State has repeatedly flirted with the idea of selling bonds to pay off some portion of the unfunded liabilities.[287] The legislature in 2008 adopted legislation supported by Representative

Mike Hawker (R.-Anchorage), allowing pension obligation bonds to be issued, but those plans were shelved after the stock market crash later that year.[288]

The idea is arbitrage, with the state taking on debt at relatively low interest rates and paying off that debt with money earned from investments generating rates of return presumed to be higher. Independent of the business case for them, pension obligation bonds postpone and spread the costs of meeting pension obligations, making them attractive to politicians.[289] Following criticism from legislators—including that the proposal involved too much risk—the administration of Governor Bill Walker announced in the fall of 2016 that it was dropping a plan to sell such bonds.[290]

B. Bankruptcy

One time-honored way in the U.S. for debtors to deal with creditors is to declare bankruptcy and have the debts re-organized—and often reduced—in a court-approved plan. Federal bankruptcy law, however, prohibits states from filing for bankruptcy, and some scholars argue that the U.S. Constitution does so as well.[291] With several state governments in financial trouble over the past decade—and the beleaguered Commonwealth of Puerto Rico filing in 2017 for a form of court-supervised debt restructuring akin to bankruptcy—there has been repeated discussion of amending federal law to allow a state to file for bankruptcy.[292]

Beyond the legal restrictions on any state declaring bankruptcy, there is another giant practical issue regarding any attempt by the State of Alaska to pursue that option. That would be the State of Alaska's impressive balance sheet, particularly compared to the "highly distressed cities and states" often cited in discussions about governments with pension funding problems.[293] The state's fiscal circumstances have clearly deteriorated in the last few years—given that oil revenues averaged 90 percent of Unrestricted General Fund revenues for the period 2005-2014,[294] oil production in Alaska has declined approximately 75 percent since the late 1980s,[295] and world oil prices have fallen substantially from the levels of mid-2014.[296] But it is also true, that the State of Alaska—home of fewer than 740,000 people[297]—has a Permanent Fund with a balance of more than $59 billion as of its most recent annual report.[298] Of that total, more than $47 billion is in the principal or corpus (which under the Alaska Constitution cannot be spent absent a constitutional amendment) and more than $12 billion are earnings, which can be spent by a simple majority vote of the Alaska Legislature.[299] This large pot of money would seem likely to loom large in any discussion of bankruptcy—as well as a number of other options on this list (particularly those involving relief from courts).

C. Shift Costs to Local Governments, Perhaps as a Trade to Allow Local Governments to Declare Bankruptcy

As discussed above, legislators have discussed proposals in the last few years to raise the employer contribution rates to shift more of the burden of paying for the retirement systems' unfunded liabilities from the state to local governments, and it is likely that this idea will keep re-appearing. Note also that the state could offer relief to local governments as well, by adopting a statute to allow municipalities to declare bankruptcy. Federal bankruptcy does specifically allow local governments to declare bankruptcy, although under a 1994 statute this is only true if the state in which the local government is located has specifically authorized that step.[300] Alaska is in a large minority of states that have not authorized municipalities to declare bankruptcy.[301]

If the state did specifically authorize local governments to declare bankruptcy—or the law was changed to allow a state to declare bankruptcy—such a move could have big effects. In a widely noted decision issued in 2013 regarding the City of Detroit, a federal bankruptcy judge ruled that provisions in the Michigan constitution similar to Alaska's Public Retirement System Protection clause[302] and Alaska's Contracts clause did not bar the impairment of pensions owed by the City of Detroit.[303] Specifically, the ruling said, "The state constitutional provisions prohibiting the impairment of contracts and pensions impose no constraint on the bankruptcy process."[304] The municipal bankruptcy in Central Falls, Rhode Island, led to pension payments being cut by 55 percent, while municipal general obligation bondholders were paid in full.[305]

D. Federal Bailout

Alaska is not the only state with unfunded liabilities in its public retirement systems. A Pew study identified more than a dozen states with public retirement systems funded at a lower percentage than Alaska's, with systems in Kentucky, Illinois, and New Jersey being the most underfunded as of 2015.[306]

Some commentators have raised the possibility of the federal government stepping in to help states facing substantial unfunded liabilities in public retirement systems, perhaps through a federal pension reform commission that could provide bridge financing or guarantee pension restructuring bonds.[307] As of this writing, however, such federal assistance appears unlikely.

E. Benefit Reductions Secured through Collective Bargaining

Public employee unions could be legally allowed to bargain away benefits for members in negotiations with the State of Alaska, and this option might see more attention in future years.[308] But it is difficult to see how this idea would work with those retirement system beneficiaries who are not union members—which would of course include current pensioners.

F. Buyouts of Benefits

Commentator Eric Madiar has noted that legislators in Illinois have considered proposals that would address current pensioners by paying them an immediate lump sum in return for them foregoing recurring pension payments.[309] If those lump sum payments were for amounts less than the net present value of the pension benefits, the government would save money. Implementing this proposal would require the consent of each individual beneficiary, to take the smaller amount upfront instead of the larger amount over time.

G. Potential Amendments to the Alaska Constitution

An obvious question is whether the pension protection or contract provisions—or both—of the Alaska Constitution set out above could be amended or repealed to allow the unilateral reduction of public employee retirement systems after such benefits have been offered.

Let's start with the Alaska Supreme Court's interpretation of Alaska's Public Retirement System Protection clause—and some recent instructive decisions from the highest court of a state with a similar provision—before looking at possible constitutional changes and the potential effects of such changes on different beneficiaries of Alaska's public retirement systems.

First, recall the language of the provision itself: “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.”[310]

1. Alaska Supreme Court’s Interpretation of Alaska’s Public Retirement System Protection Clause

The Alaska Supreme Court has interpreted this provision to mean 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.’”[311] Those protected benefits include health-insurance benefits, as the court has stated that its own precedents suggest that the term “accrued benefits” in the constitutional provision “should be defined broadly.”[312]

The Alaska Supreme Court has also held that “the rights to benefits vests when the employee enrolls in the retirement system, rather than when the employee is eligible to receive the benefits.”[313] This “first day” interpretation of when rights attach—as one group of scholars noted—makes Alaska “extremely protective of public employees’ and retirees’ pension expectations….”[314] The Alaska Supreme Court has also ruled that the state constitution also protects retirement system beneficiaries’ rights to have the actuarial soundness of their plans evaluated and maintained separately, without being affected by the soundness of other plans.[315]

This provision regarding pension benefits in the Alaska Constitution does not, however, mean that benefits cannot be altered.[316] “Reasonable modifications are permissible” even after rights are “accrued” (also described as “vested”).[317] For a court to rule such modifications are reasonable, “changes that result in disadvantages to employees should be accompanied by comparable new advantages.”[318]

The Alaska Supreme Court has also noted its general agreement with the proposition that modifications may be made “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.”[319] Additionally, the Alaska Supreme Court has twice said that it has offered no view as to the appropriate legal analysis regarding the problem “presented by a pension fund that is insufficient to satisfy all employee claims brought under its provisions.”[320]

2. Instructive Recent Decisions from Illinois, a State with a Pension Protection Clause Similar to Alaska’s Public Retirement System Protection Clause

Alaska is one of apparently only seven states with state constitutional provisions explicitly protecting pension benefits,[321] and it is instructive to look at recent judicial decisions from one of the other six. Illinois has both a provision in its state constitution substantially similar to Alaska’s[322] and a well-documented fiscal crisis that has stretched over years.[323]

The Illinois Supreme Court relied on “the pension protection clause” in the Illinois Constitution to strike down, in 2015 and 2016, legislative enactments that would have reduced benefits for public employee retirement systems.[324]

In 2015, the court ruled that neither dire economic circumstances nor the state’s “reserved sovereign power” (also called its “police power”) could allow the State of Illinois to reduce pension benefits.[325] Regarding the fiscal exigency confronting the Prairie State, the court said that the legislature "made no effort to distribute the burdens evenly among Illinoisans"[326] and noted that one alternative to cutting pension benefits was to seek "additional tax revenue."[327]

The Illinois Supreme Court ruled in a 2016 case that "the pension protection clause" "guarantees pension participants will receive the money due them at the time of their retirement."[328] This provision means, the court held, that the benefits of membership in public retirement systems "must be paid in full, and that they must be paid without diminishing or impairing them."[329] As the commentator Kirk Jenkins noted, this language suggests—without expressly saying so—that "there might be extreme circumstances someday in which the [c]ourt might be willing to order funding to enforce the employees' 'legally enforceable right.'"[330] The commentator Amy B. Monahan has pointed out, however, that courts' traditional reluctance to appear to intrude on core legislative functions of spending and taxation might make it difficult for plaintiffs to obtain a court order that would provide the requested relief, particularly in circumstances of great fiscal distress.[331]

3. Potential Changes in Alaska Constitution to Allow Reduction of Public Retirement System Benefits

Consideration of potential changes to the Alaska Constitution requires that we distinguish among different categories of beneficiaries and different proposals. Given that the unfunded liabilities are a problem of defined-benefit plans, the action is around those members who first entered PERS or TRS prior to July 1, 2006, the cutoff date for entry into those systems' defined-benefit plans. Generally speaking, the payment of benefits to retirees are the most legally protected, both under the Contracts clause and the Takings clause.[332] Among current employees, the benefits for services already performed are generally more likely to be legally protected than the benefits to be owed for services performed in the future.[333]

Having distinguished among classes of beneficiaries, let's look at potential constitutional amendments: (a) a repeal of Alaska's Public Retirement System Protection clause and (b) an amendment of Alaska's Public Retirement System Protection clause that would change the definition of "accrued benefits" in that clause to mean only those benefits earned through services provided prior to the date of the constitutional amendment.

A constitutional amendment repealing Alaska's Public Retirement System Protection Clause would face significant constitutional hurdles in accomplishing everything its supporters might wish. First, the repeal might be interpreted to apply only to benefits earned after the effective date of the constitutional amendment—which would significantly limit the amendment's effectiveness in reducing the unfunded liabilities.[334] It is also possible that the Alaska Supreme Court would view the PERS and TRS employees' pension rights as unilateral contracts, the terms of which were intended to bind employers to allow employees to earn benefits throughout their careers at the same or very comparable levels to those provided by the formula established at the time of their initial employment.[335] If that were the ruling, a constitutional amendment repealing Alaska's Public Retirement System Protection clause would not be effective in reducing the unfunded liabilities associated with benefits of participants in the PERS and TRS defined-benefit systems, even after the effective date of such amendment.

More generally, a constitutional amendment repealing Alaska's Public Retirement System Protection clause would likely still face challenges based on the Alaska and federal Contracts clauses. Under the federal Contracts Clause, a law substantially impairing a contract—even if not unilateral—can only be justified if the change in the contract is justified by an important public purpose and is reasonable and necessary.[336] Courts mount inquiries into the facts to make those determinations in this area of the law.[337] Given that "a State is not free to impose a drastic impairment when an evident and more moderate course would serve its purposes equally well,"[338] courts look at the alternatives confronting the government when the decision was made to impair the contract.[339] In conducting such inquiries, courts consider matters such as the facts about the taxation levels of the governments involved, compared with the national average[340]—and Alaska's status as the state with the lowest taxes in the country[341] would appear to count against it on that score. Even without reliance on the federal Contracts Clause, beneficiaries might also bring successful lawsuits alleging breach of contract in tort law that could trigger substantial awards of damages.[342]

A constitutional amendment that eschewed repeal but instead attempted to narrow the scope of the benefits covered would change the definition of "accrued benefits" in Alaska's Public Retirement System Protection clause to mean only those benefits earned through services provided prior to the date of the constitutional amendment.[343] Such a proposal would also face the Contracts clause challenge described in the previous paragraph.

Other factors likely to play into future judicial decisions include the courts' recognition of the legitimate reliance of employees and retirees on their employers' promises,[344] and the fact that the members of many retirement systems (such as most public employees in Alaska) do not participate in the Social Security system.[345]

H. Arguments that Courts Have Made Incorrect Interpretations of the Scope of "Accrued Benefits" and Should Scale Back the Definition of What the Alaska Constitution Protects

Some commentators have contended that the Alaska Supreme Court has interpreted Alaska's Public Retirement System Protection clause to protect more benefits more broadly than is supported by a fair reading of the text of Article XII, Section 7.[346] More specifically, that article protects "accrued benefits," but the Alaska Supreme Court has interpreted that language to mean that "the right to benefits vests when the employee enrolls in the retirement system, rather than when the employee is eligible to receive the benefits."[347] In a seminal 1981 decision, the court held that benefits under a public employee retirement system like PERS (or TRS) "are in the nature of deferred compensation and that the right to such benefits vests immediately upon an employee's enrollment in that system."[348] The court also said in that decision "these benefits are regarded as an element of the bargained-for consideration given in exchange for an employee's assumption and performance of the duties of his employment."[349]

To assess the potential success of an attempt in litigation to persuade the Alaska Supreme Court that it should overrule its previous ruling, it is worth looking in detail at the 1981 decision in which the Alaska Supreme Court made that holding.[350]

The court identified four factors[351] in issuing its ruling that Alaska's Public Retirement System Protection clause protects benefits from the day the employee enrolls in the retirement system: the "plain meaning" of the text of the constitutional provision; the intent of that provision; the precedents of court decisions from other states; and "reason." (The Alaska Supreme Court has also said it decides questions of constitutional interpretation by adopting "the rule of law that is the most persuasive in the light of precedent, reason, and policy."[352])

As to the intent of the framers, the court cited the commentary to the Alaska Constitutional Convention of 1955, which said that the constitutional provision "will assure state and municipal employees who are now tied into various retirement plans that their benefits under these plans will not be diminished or impaired when the Territory becomes a state."[353]

Regarding reason or policy, the court quoted at length from the commentator Rubin G. Cohn,[354] who wrote that[355]

> The universally recognized primary objectives of retirement plans are to enable the employer to attract better employees, to reduce turnover, to facilitate orderly retirement of older employees, to retain valuable employees who might seek more productive employment elsewhere, and, most importantly from the employee viewpoint, to assure a measure of income upon retirement adequate to allow the annuitant to live in reasonable security.

According to the commentator, governments must compensate for the lower salaries almost always offered in public employment as compared with those in the private sector by offering "an attractive and liberal retirement plan."[356] The Alaska Supreme Court said it agreed with the commentator's description of the role benefit plans play in government employment.[357]

IX. Conclusions

The large costs associated with the unfunded liabilities of PERS and TRS will likely lead to continuing controversy over the two retirement systems. These unfunded liabilities are very substantial, and under the latest actuarial projections amount to 19 to 20 percent of the State of Alaska's projected Unrestricted General Fund revenues for fiscal years 2021 and 2025.[358] These obligations are uncertain in their precise amounts and could rise or fall. What does seem certain is that the unfunded liabilities of PERS and TRS need to be considered in any discussion of Alaska's continuing fiscal challenge.

The State of Alaska has a deep structural deficit that has generated substantial debates about Permanent Fund restructuring proposals, continued budget-cutting, changes in the oil and gas tax system, and possible broad-based taxes.[359] As the columnist Dermot Cole has pointed out, these discussions often do not grapple with the full scope of Alaska's fiscal challenge, which includes pressures for increased capital spending (including deferred maintenance) as well as the Last Frontier's particular problem with health-care costs that have for years escalated much faster than the overall inflation rate.[360] Another unappreciated dimension is the overhang of old debts from unfunded liabilities of public employee retirement systems, which will be paid off in part by Alaskans now too young to vote, not yet born, and not yet resident in the state.[361]

The continuing controversy over the unfunded liabilities will include the question of the State of Alaska's responsibility for those portions of the obligations that could be attributed to employers other than the State of Alaska.

There may well be more attempts in the future by the state to avoid or re-allocate the obligations to pay the unfunded liabilities. Such efforts will be legally tricky, and could borrow from some of the ideas that have arisen in other states facing large unfunded liabilities in public employment retirement systems, as well as the substantial list of policy options offered by commentators.

ENDNOTES

[1] Elizabeth Pfeuti, "Alaska Governor Reveals Pension Deficit Plan," *Chief Investment Officer*, December 6, 2013, found at http://www.ai-cio.com/channel/NEWSMAKERS/Alaska_Governor_Reveals_Pension_Deficit_Plan.html on the Internet.

[2] Cinthia Ritchie, "Payroll, pensions, oil revenues," *Chugiak-Eagle River Star*, December 25, 2013, found at http://www.alaskastar.com/Alaska-Star/December-Issue-4-2013/Payroll-taxes-pensions-oil-revenues/ on the Internet.

[3] "Actuaries reveal retirement fund time bomb," *Alaska Budget Report*, March 5, 2003, p. 2. The author is indebted to Gregg Erickson, the long-time editor of the *Alaska Budget Report*, who gave the author access to articles published in this subscription-based publication. *See also* State of Alaska, Department of Administration, *Comprehensive Annual Financial Report (CAFR) of the Public Employees' Retirement System (PERS) (System) for the fiscal year ended June 30, 2003* ("PERS FY03 CAFR,"), p. 16, found at http://doa.alaska.gov/drb/pdf/pers/cafr/2003_pers_final_cafr_NO-Cover.pdf on the Internet with a letter of transmittal dated December 16, 2003; and State of Alaska, Department of Administration, *Comprehensive Annual Financial Report (CAFR) of the Teachers' Retirement System (TRS) (System) for the fiscal year ended June 30, 2003* ("TRS FY03 CAFR"), p. 16, found at http://doa.alaska.gov/drb/pdf/trs/cafr/2003_trs_cafr_NO-cover.pdf on the Internet with a letter of transmittal dated December 16, 2003.

[4] Commissioner Leslie Ridle and Director Ajay Desai, "Public Employees' Retirement System (PERS) [/] Teachers' Retirement System (TRS) 2018 UPDATE," presentation to Alaska Senate Finance Committee, February 14, 2018, p. 15, found at http://www.akleg.gov/basis/get_documents.asp?session=30&docid=40099 on the Internet.

[5] Conduent, State of Alaska Public Employees' Retirement System, Actuarial Valuation Report As of June 30, 2016, May, 2017, p. 2, found at http://doa.alaska.gov/drb/pdf/pers/Alaska_rpt06302016_PERS.PDF on the Internet; and Conduent, State of Alaska Teachers' Retirement System, Actuarial Valuation Report As of June 30, 2016, May, 2017, p. 2, found at http://doa.alaska.gov/drb/pdf/trs/Alaska_rpt06302016_TRS.PDF on the Internet. The Alaska Department of Administration's Division of Retirement and Benefits released on February 14, 2018 draft figures from the PERS and TRS actuarial valuation reports as of June 30, 2017 that are scheduled to be adopted by the Alaska Retirement Management Board in June of 2018. Those draft figures show for the end of FY2017 combined unfunded liabilities of PERS and TRS of $6.641 billion based on this snapshot balance-sheet approach, less than o.5 percent more than the $6.609 billion shown under that approach for the end of FY2016. The previous two sentences are based on Commissioner Leslie Ridle and Director Ajay Desai, "Public Employees' Retirement System (PERS) [/] Teachers' Retirement System (TRS) 2018 UPDATE," presentation to Alaska Senate Finance Committee, February 14, 2018, p. 12, found at http://www.akleg.gov/basis/get_documents.asp?session=30&docid=40099 on the Internet.

[6] American Legislative Exchange Council (ALEC), "Unaccountable and Unaffordable [:]

Unfunded Public Pension Liabilities Exceed $6 Trillion," December, 2017, pp. 4, 6, found at https://www.alec.org/app/uploads/2017/12/2017-Unaccountable-and-Unaffordable-FINAL_DEC_WEB.pdf on the Internet; Conduent, State of Alaska Public Employees' Retirement System, Actuarial Valuation Report As of June 30, 2016, May, 2017, p. 39, found at http://doa.alaska.gov/drb/pdf/pers/Alaska_rpt06302016_PERS.PDF on the Internet; and Conduent, State of Alaska Teachers' Retirement System, Actuarial Valuation Report As of June 30, 2016, May, 2017, p. 33, found at http://doa.alaska.gov/drb/pdf/trs/Alaska_rpt06302016_TRS.PDF on the Internet.

[7] Conduent Human Resources Services (hereinafter "Conduent"), State of Alaska Public Employees' Retirement System, Actuarial Valuation Report As of June 30, 2016, May, 2017, Section 4.6, p. 46, found at http://doa.alaska.gov/drb/pdf/pers/Alaska_rpt06302016_PERS.PDF on the Internet; Conduent, State of Alaska Teachers' Retirement System, Actuarial Valuation Report As of June 30, 2016, May, 2017, Section 4.6, p. 40, found at http://doa.alaska.gov/drb/pdf/trs/Alaska_rpt06302016_TRS.PDF on the Internet; and Commissioner Leslie Ridle and Director Ajay Desai, "Public Employees' Retirement System (PERS) [/] Teachers' Retirement System (TRS) 2018 UPDATE," presentation to Alaska Senate Finance Committee, February 14, 2018, p. 15, found at http://www.akleg.gov/basis/get_documents.asp?session=30&docid=40099 on the Internet.

[8] "State Assistance" is the term used by the State's actuary. *See* Conduent, State of Alaska Public Employees' Retirement System, Actuarial Valuation Report As of June 30, 2016, May, 2017, Section 4.6, p. 46, found at http://doa.alaska.gov/drb/pdf/pers/Alaska_rpt06302016_PERS.PDF on the Internet; and Conduent, State of Alaska Teachers' Retirement System, Actuarial Valuation Report As of June 30, 2016, May, 2017, Section 4.6, p. 40, found at http://doa.alaska.gov/drb/pdf/trs/Alaska_rpt06302016_TRS.PDF on the Internet.

[9] *See* AS 39.35.280; and AS 14.25.085. These statutes label as "Additional State Contributions" the payments the State makes to the pension systems above and beyond its payments as an employer—and in addition to the capped payments of other employers (mostly local governments).

[10] Local governments are sometimes referenced as "municipalities" or "political subdivisions of the State of Alaska," and those three terms are used interchangeably in this paper.

[11] This list does not include the supplemental annuity plan (SBS-AP) that applies to all state and municipal employees not participating in Social Security, nor does it include the deferred compensation plan (DCP).

[12] This list comes from the website of the Alaska Department of Administration's Division of Retirement and Benefits.

[13] Commissioner Leslie Ridle and Director Ajay Desai, "Public Employees' Retirement System (PERS) [/] Teachers' Retirement System (TRS) 2018 UPDATE," presentation to Alaska Senate Finance Committee, February 14, 2018, p. 15, found at http://www.akleg.gov/basis/get_documents.asp?session=30&docid=40099 on the Internet.

[14] "Glossary of Terms and Acronyms," posted on the website of the Alaska Department of Administration's Division of Retirement and Benefits, found at http://doa.alaska.gov/drb/help/glossary.html#.VPPseid4raU on the Internet.

[15] Department of Administration, Division of Retirement and Benefits, *Public Employees' Retirement System COMPREHENSIVE ANNUAL FINANCIAL REPORT [,] A Component Unit of the State of Alaska [,] For the Fiscal Year Ended June 30, 2017*, December 15, 2017, pp. 194-196.

[16] Commissioner Leslie Ridle and Director Ajay Desai, "Public Employees' Retirement System (PERS) [/] Teachers' Retirement System (TRS) 2018 UPDATE," presentation to Alaska Senate Finance Committee, February 14, 2018, p. 9, found at http://www.akleg.gov/basis/get_documents.asp?session=30&docid=40099 on the Internet.

[17] *See* 2011 TRS Information Handbook, found at http://doa.alaska.gov/drb/pdf/trs/handbook/2011/TRS_handbook_2011_04_membership.pdf on the Internet, p. 5 (available on the website of the Alaska Division of Retirement and Benefits).

[18] "Glossary of Terms and Acronyms," posted on the website of the Alaska Department of Administration's Division of Retirement and Benefits, found at http://doa.alaska.gov/drb/help/glossary.html#.VPPseid4raU on the Internet.

[19] Department of Administration, Division of Retirement and Benefits, *Teachers' Retirement System COMPREHENSIVE ANNUAL FINANCIAL REPORT [,] A Component Unit of the State of Alaska [,] For the Fiscal Year Ended June 30, 2017*, December 15, 2017, p. 189.

[20] NGNMRS has a total membership of 6,534 as of the latest report available. KPMG, State of Alaska National Guard and Naval Militia Retirement System (A Component Unit of the State of Alaska)[,] (A Component Unit of the State of Alaska)[,] Financial Statements and Supplemental Schedules[,] June 30, 2016 and 2015 (With Independent Auditors' Report Thereon), p. 12, found at http://doa.alaska.gov/drb/pdf/ngnmrs/ngnmrs-financial-statement-2016.pdf on the Internet (this figure is as of June 30, 2014). A pension benefit is available to those members who voluntarily retire from the Alaska National Guard or the Alaska Naval Militia after a total of 20 more years of service in those organizations or the U.S. armed forces if a total of five years of that service is in the Alaska National Guard or the Alaska Naval Militia. AS 26.05.224. This benefit is also available to those who have been involuntarily separated from the Alaska National Guard or the Alaska Naval Militia because of federal standards imposed on the Alaska National Guard or Alaska Naval Militia, regardless of length of service, unless the separation occurs due to the member's misconduct, misrepresentation, or unwillingness to satisfy established standards for continued participation. AS 26.05.224(a)(2). The retirement pension is $100 a month, payable for the same number of months that the member participated satisfactorily in the Alaska National Guard or the Alaska Naval Militia. AS 26.05.224. A recipient of the retirement pension can also elect to receive it in (a) a lump sum actuarially determined to be equal to the value—at the time of retirement—of the entire pension due or (b) a monthly amount that will result in payment by the recipient's 72nd birthday of an amount determined to be the actuarial

equivalent of the entire pension due at the time of retirement. AS 26.05.224(b). The Judicial Retirement System has a total membership of 210, and members are judges and justices of the State of Alaska. KPMG, State of Alaska Judicial Retirement System (A Component Unit of the State of Alaska)[,] (A Component Unit of the State of Alaska)[,] Financial Statements and Supplemental Schedules[,] June 30, 2016 and 2015 (With Independent Auditors' Report Thereon), p. 13, found at http://doa.alaska.gov/drb/pdf/jrs/fs2016jrs.pdf on the Internet. EPORS is a tiny and closed system, as a 1976 referendum and an Alaska Supreme Court ruling have combined to limit the application of EPORS to those elected state officials (legislators, the Governor, and the Lieutenant Governor) who served in 1976. *State v. Allen*, 625 P.2d 844 (Alaska 1981).

[21] Alaska Retirement Management Board website, found at http://treasury.dor.alaska.gov/armb on the Internet (accessed February 15, 2018). This data excludes plans—as opposed to retirement systems—managed by the Alaska Retirement Management Board. As of February 15, 2018, that same website shows the market value of the Alaska Supplemental Annuity Plan as $3,994,200,966 and that of the Alaska Deferred Compensation Plan as$956,374,784 .

[22] Drawn from definition of "actuary" found at http://www.investopedia.com/terms/a/actuary.asp on the Internet.

[23] *See* Conduent, State of Alaska Public Employees' Retirement System, Actuarial Valuation Report As of June 30, 2016, May, 2017, p. 101, found at http://doa.alaska.gov/drb/pdf/pers/Alaska_rpt06302016_PERS.PDF on the Internet; and http://www.investopedia.com/terms/a/actuarial-valuation.asp on the Internet.

[24] Drawn from definition of "accountant" found at http://www.investopedia.com/terms/a/accountant.asp?lgl=rira-baseline-vertical on the Internet.

[25] *See* State of Alaska Department of Administration, Division of Finance, *State of Alaska Comprehensive Annual Financial Report [CAFR] For the Fiscal Year July 1, 2015-June 30, 2016*, May 26, 2017, p. 14, found at http://doa.alaska.gov/dof/reports/resource/fy16/2016cafr.pdf on the Internet; and *State of Alaska Department of Administration, Division of Retirement and Benefits, Public Employees' Retirement System Comprehensive Annual Financial Report [CAFR], A Component Unit of the State of Alaska For the Fiscal Year Ended June 30, 2016*, December 22, 2016, p. 21, found at http://doa.alaska.gov/drb/pdf/pers/cafr/2016PersCafr.pdf on the Internet.

[26] Pat Forgey, "Will Alaska's unfunded pension, health liabilities swamp future state budgets?," *Alaska Dispatch News*, July 10, 2013, found at http://www.adn.com/article/20130710/will-alaskas-unfunded-pension-health-liabilities-swamp-future-state-budgets on the Internet.

[27] Amy B. Monahan, "When a Promise Is Not a Promise: Chicago-Style Pensions," 64 *UCLA Law Review* 356, 359 (2017).

[28] Unless otherwise noted, the following definitions of actuarial terms come from Conduent, State of Alaska Public Employees' Retirement System, Actuarial Valuation Report As of June 30, 2016, May, 2017, p. 101, found at http://doa.alaska.gov/drb/pdf/pers/Alaska_rpt06302016_PERS.PDF on the Internet.

[29] See also http://webserver.rilin.state.ri.us/HouseFinance/Key%20Pension%20Terms.pdf on the Internet.

[30] Conduent, State of Alaska Public Employees' Retirement System, Actuarial Valuation Report As of June 30, 2016, May, 2017, p. 2, found at http://doa.alaska.gov/drb/pdf/pers/Alaska_rpt06302016_PERS.PDF on the Internet.

[31] Conduent, State of Alaska Public Employees' Retirement System, Actuarial Valuation Report As of June 30, 2016, May, 2017, p. 2, found at http://doa.alaska.gov/drb/pdf/pers/Alaska_rpt06302016_PERS.PDF on the Internet.

[32] Conduent, State of Alaska Public Employees' Retirement System, Actuarial Valuation Report As of June 30, 2016, May, 2017, p. 2, found at http://doa.alaska.gov/drb/pdf/pers/Alaska_rpt06302016_PERS.PDF on the Internet.

[33] *See Hammond v. Hoffbeck*, 627 P.2d 1052, 1057 n. 10 (Alaska 1981).

[34] *See Hammond v. Hoffbeck*, 627 P.2d 1052, 1057 n. 10 (Alaska 1981).

[35] Robert M. Johnson is one of a number of long-time observers of public employment in Alaska who has made this point; he made it in an electronic mail message to the author January 11, 2018.

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[38] "Defined benefits bill moves in Senate," *Alaska Budget Report*, March 5, 2009, pp. 15, 16.

[39] Amy B. Monahan, "When a Promise Is Not a Promise: Chicago-Style Pensions," 64 *UCLA Law Review* 356, 363 (2017).

[40] *See* Alaska Division of Retirement and Retirements, Public Employees' Retirement System and Teachers' Retirement System, "Social Security, Medicare, and Your PERS/TRS Retirement Benefit," March, 2012, p. 1, found at

http://doa.alaska.gov/drb/pdf/general/gen049SocialSecurityMedicareAndRetirementBenefit.pdf on the Internet; Alaska Department of Administration, Retirement and Benefits, "About the Division of Retirement and Benefits [:] History," found at http://doa.alaska.gov/drb/help/about.html#.WdHDm2hSzIV on the Internet; and *State of Alaska Supplement Annuity Plan 2014 Plan Information*, pp. 1, 3, available at http://doa.alaska.gov/drb/pdf/sbs_ap/2014sbsPlanBooklet.pdf on the Internet.

[41] *See* AS 23.40.070-.260.

[42] *See* AS 39.90.140(2).

[43] *See State of Alaska v. City of Petersburg*, 538 P. 2d 263, 267 (Alaska 1975); and *Kodiak Island Borough v. State Department of Labor, Labor Relations Agency*, 853 P.2d 1111, 1114 (Alaska 1993).

[44] Jack M. Beermann, "The Public Pension Crisis," 70 *Washington and Lee Law Review* 3, 5 (2013).

[45] See Jack M. Beermann, "The Public Pension Crisis," 70 *Washington and Lee Law Review* 3, 5 (2013).

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[47] Rachel Greszler, "Not Your Grandfather's Pension: Why Defined Benefit Pensions Are Failing," May 4, 2017, found at https://www.heritage.org/jobs-and-labor/report/not-your-grandfathers-pension-why-defined-benefit-pensions-are-failing on the Internet.

[48] State of Alaska, Department of Administration, *Comprehensive Annual Financial Report (CAFR) of the Public Employees' Retirement System (PERS) (System) for the fiscal year ended June 30, 2002*, December 16, 2002, p. 11, found at http://doa.alaska.gov/drb/pdf/pers/cafr/2002_pers_final_cafr_NO-Cover.pdf on the Internet; and State of Alaska, Department of Administration, *Comprehensive Annual Financial Report (CAFR) of the Teachers' Retirement System (TRS) (System) for the fiscal year ended June 30, 2002*, December 16, 2002, p. 11, found at http://doa.alaska.gov/drb/pdf/trs/cafr/2002_trs_cafr_NO-cover.pdf on the Internet.

[49] "Actuaries reveal retirement fund time bomb," *Alaska Budget Report*, March 5, 2003, p. 2. These announcements and recommendations in January of 2003 provided by Mercer to the boards administering PERS and TRS came approximately three months after another consulting actuary—Milliman, Inc.—had presented a report of an audit of Mercer's work. The Milliman report issued in October of 2002 concluded that Mercer had made actuarial assumptions in calculating expected health care costs that were not "reasonable and appropriate" and alleged other errors in Mercer's work. (The previous two sentences are based on the pleading "Answer and Affirmative Defenses" filed in *Alaska Retirement Management Board v. Mercer (US), Inc. et*

al., U.S. District Court for the District of Alaska, Case No. 01:08CV-00002-JWS, January 29, 2008, pp. 20-23. Filed in Alaska state court in December of 2007, this case was transferred to federal court in January of 2008 before being returned to Alaska state court in December of 2008. *Alaska Retirement Management Board v. Mercer (US), Inc. et al.*, U.S. District Court for the District of Alaska, U.S. District Court Civil Docket, Case No. 01:08CV-00002-JWS.)

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[56] State of Alaska, Department of Administration*, Comprehensive Annual Financial Report (CAFR) of the Public Employees' Retirement System (PERS) (System) for the fiscal year ended June 30, 2003*, December 16, 2003, p. 16, found at http://doa.alaska.gov/drb/pdf/pers/cafr/2003_pers_final_cafr_NO-Cover.pdf on the Internet.

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[294] Gunnar Knapp, "Resource Revenues and Fiscal Sustainability," *Economic Development Journal*, Spring, 2015, Volume 14, Number 2, p. 2, found at http://www.iser.uaa.alaska.edu/Publications/2015-ResourceRevenuesAndFiscalSustainability.pdf on the Internet.

[295] Alaska Department of Revenue, Tax Division, "Alaska Oil Production[:] Production History FY 1959-2017 (Average in Thousands of Barrels per Day)," December 19, 2017, found at http://www.tax.alaska.gov/sourcesbook/AlaskaProduction.pdf on the Internet (footnotes omitted).

[296] Alaska Department of Revenue, Tax Division, "Crude Oil and Natural Gas Prices," found at http://tax.alaska.gov/programs/oil/dailyoil/dailyoil.aspx on the Internet.

[297] Alaska Department of Labor and Workforce Development, Research and Analysis, "2017 Population Estimates by Borough, Census Area, and Economic Region," found at http://live.laborstats.alaska.gov/pop/ on the Internet.

[298] Alaska Permanent Fund Corporation, *Annual Report 2017*, p. 28, found at https://apfc.org/financial-and-performance-reports/ on the Internet.

[299] Alaska Permanent Fund Corporation, *Annual Report 2017*, p. 28, found at

https://apfc.org/financial-and-performance-reports/ on the Internet; and Alaska Constitution, Article IX, Section 15.

300 11 U.S.C. 109(c); "Municipal Bankruptcy Authorization Under Chapter 9," 34 *Saint Louis University Public Law Review* 215, 221-222 (2014), found at http://law.slu.edu/sites/default/files/Journals/tom_hoffmann_article.pdf on the Internet; and "Municipal Bankruptcy: State Authorization Under the Federal Bankruptcy Code," PLRI Public Law Research Institute, found at https://gov.uchastings.edu/public-law/docs/plri/muniban.pdf on the Internet.

301 Cabot Christianson, "What you need to know about Chapter 9 whether you are a bankruptcy or a municipal lawyer," Alaska Bar Association, Bankruptcy Section, February 24, 2015, found at https://www.alaskabar.org/servlet/download?id=3137 on the Internet.

302 Article IX, § 24 of Michigan's Constitution provides:

> 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.

http://www.legislature.mi.gov/(S(dnffgdelsnx0ridqzyqetmck))/mileg.aspx?page=getObject&objectName=mcl-Article-IX-24 on the Internet.

303 Opinion Regarding Eligibility, *In re: City of Detroit, Michigan, Debtor*, U.S. Bankruptcy Court, Eastern District of Michigan, Southern Division, December 5, 2013, pp. 1, 73-75, available at http://www.mieb.uscourts.gov/apps/courtOpinions/opinions/OPINION%20REGARDING%20ELIGIBILITY%2012.5.131.pdf on the Internet.

304 Opinion Regarding Eligibility, *In re: City of Detroit, Michigan, Debtor*, U.S. Bankruptcy Court, Eastern District of Michigan, Southern Division, December 5, 2013, p. 74, available at http://www.mieb.uscourts.gov/apps/courtOpinions/opinions/OPINION%20REGARDING%20ELIGIBILITY%2012.5.131.pdf on the Internet.

305 Jack M. Beermann, "Resolving the Public Pension 'Crisis,'" 41 *Fordham Urban Law Journal* 999, 1002 (2014).

306The Pew Charitable Trusts, "The State Pension Funding Gap: 2015," April 20, 2017, found at http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/04/the-state-pension-funding-gap-2015 on the Internet.

307 Julie Roin, "Planning Past Pensions," 46 *Loyola University Chicago Law Journal* 747, 811-812 (2015); and Scott Metzger, "Making Sausage No One Wants to Eat: Options for Restructuring Illinois's Pension Debt," 2013 *University of Illinois Law Review* 1251, 1290-1291 (2013).

[308] Eric Madiar, "Illinois Public Pensions: Where to from Here?," *ITT Chicago-Kent School of Law and the University of Illinois School of Labor and Employment Illinois Public Employee Relations Report*, Volume 33, Issues 1 & 2, Winter/Spring 2016, p. 15, found at https://www.scribd.com/document/318552997/Illinois-Public-Employee-Relations-Report#from_embed on the Internet.

[309] Eric Madiar, "Illinois Public Pensions: Where to from Here?," *ITT Chicago-Kent School of Law and the University of Illinois School of Labor and Employment Illinois Public Employee Relations Report*, Volume 33, Issues 1 & 2, Winter/Spring 2016, pp. 15-16, found at https://www.scribd.com/document/318552997/Illinois-Public-Employee-Relations-Report#from_embed on the Internet.

[310] Alaska Constitution, Article XII, Section 7.

[311] *Duncan v. Retired Public Employees of Alaska, Inc.*, 71 P.3d 882, 886 (Alaska 2003). Note also that that "[T]he vested benefits protected by Alaska Const. Art. XII, Sec. 7, necessarily include not only the dollar amount of the benefits payable, but the requirements for eligibility as well." *Hammond v. Hoffbeck*, 627 P.2d 1052, 1058 (Alaska 1981).
[312] *Duncan v. Retired Public Employees of Alaska, Inc.*, 71 P.3d 882, 887 (Alaska 2003).

[313] *Municipality of Anchorage v. Gallion*, 944 P.2d 436, 440-441 (Alaska 1997).

[314] T. Leigh Anenson, Alex Slabaugh, and Karen Eilers Lahey, "Reforming Public Pensions," 33 *Yale Law & Policy Review* 1, 23 (2014).

[315] *Municipality of Anchorage v. Gallion*, 944 P.2d 436, 444 (Alaska 1997).

[316] *Duncan v. Retired Public Employees of Alaska, Inc.*, 71 P.3d 882, 886 (Alaska 2003).
[317] *Duncan v. Retired Public Employees of Alaska, Inc.*, 71 P.3d 882, 886 (Alaska 2003); and *Hammond v. Hoffbeck*, 627 P.2d 1052, 1057 (Alaska 1981).
[318] *Duncan v. Retired Public Employees of Alaska, Inc.*, 71 P.3d 882, 886 (Alaska 2003). The Alaska Supreme Court has held that Article XII, Section 7 applies to health insurance benefits, but has ruled that the calculation on diminishment of benefits in the context of health insurance "must be made from a group rather than an individual perspective." *Duncan v. Retired Public Employees of Alaska, Inc.*, 71 P.3d 882, 886-892 (Alaska 2003).
[319] *Duncan v. Retired Public Employees of Alaska, Inc.*, 71 P.3d 882, 889 n. 26 (Alaska 2003) (quoting *Allen v. City of Long Beach*, 287 P.2d 765, 767 (Cal. 1955).
[320] *See Duncan v. Retired Public Employees of Alaska, Inc.*, 71 P.3d 882, 889 n. 25 (Alaska 2003).
[321] Honor Moore, "The Public Pension Reform Problem," 21 *Elder Law Journal* 249, 252 at n. 15 (2014).

[322] "Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." Illinois Constitution 1970, Article XIII, Section 5, cited in *Jones v. Municipal Employees' Annuity & Benefit Fund*,

50 N.E.3d 596, 598 (Ill. 2016).

[323] In late 2013, the Illinois Legislature adopted legislation restructuring State-funded retirement systems that the Illinois Supreme Court stated was described by the legislation itself "as an attempt to address the State's large debts and deficits, plummeting credit ratings, and imperiled discretionary spending programs 'that are essential to the people of Illinois' and to help shore up the long-term fiscal stability of both the State and its retirement systems." *In re Pension Reform Litigation*, 32 N.E.3d 1, 10 (Ill. 2015).

[324] *In re Pension Reform Litigation*, 32 N.E. 3d 1, 28-29 (Ill. 2015); and *Jones v. Municipal Employees' Annuity & Benefit Fund*, 50 N.E.3d 1, 28-29 (Ill. 2016).

[325] *In re Pension Reform Litigation*, 32 N.E.3d 1, 18-29 (Ill. 2015).

[326] *In re Pension Reform Litigation*, 32 N.E.3d 1, 22 (Ill. 2015).

[327] *In re Pension Reform Litigation*, 32 N.E.3d 1, 22 (Ill. 2015).

[328] *Jones v. Municipal Employees' Annuity & Benefit Fund*, 50 N.E.3d 596, 607 (Ill. 2016).

[329] *Jones v. Municipal Employees' Annuity & Benefit Fund*, 50 N.E.3d 596, 607 (Ill. 2016). Note that two states without such constitutional provisions explicitly protecting public pension rights—New Jersey and California—have recently seen appellate court decisions going against pensioners' claims. *See Berg v. Christie*, 137 A.3d 1143 (N.J. 2016); *Marin Association of Public Employees v. Marin County Employees' Retirement Association*, 2 Cal. App. 5th 674, 206 Cal. Rptr. 3d 365, 2016 Cal. App. LEXIS 693; and *Cal Fire Local 2881 v. California Public Employees' Retirement System*, 7 Cal. App. 5th 115, 212 Cal. Rptr. 3d 471, 2016 Cal. App. LEXIS 1151.

[330] Kirk Jenkins, "Illinois Supreme Court Unanimously Strikes Down Chicago Pension Reform Act," *The Appellate Strategist*, March 24, 2016, found at http://www.appellatestrategist.com/2016/03/articles/jurisdictions/illinois/illinois-supreme-court-unanimously-strikes-down-chicago-pension-reform-act/ on the Internet.

[331] Amy B. Monahan, "When a Promise Is Not a Promise: Chicago-Style Pensions," 64 *UCLA Law Review* 356, 380 (2017).

[332] Amy Monahan, "Understanding the legal limits on public pension reform," *American Enterprise Institute*, May, 2013, p. 4, and p. 2, footnote 8, found at https://www.aei.org/wp-content/uploads/2013/05/-understanding-the-legal-limits-on-public-pension-reform_104816268458.pdf on the Internet.

[333] Julie Roin, "Planning Past Pensions," 46 *Loyola University Chicago Law Journal* 747, 754-755, 800-801 (2015); and *see Moro v. Oregon*, 351 P.3d 1, 17-39 (Ore. 2015) (legislation reducing cost-of-living-adjustment (COLA) for pensions can only be applied under the Oregon Contracts Clause prospectively, not retroactively regarding benefits already earned).

[334] Julie Roin, "Planning Past Pensions," 46 *Loyola University Chicago Law Journal* 747, 810 (2015).

[335] Julie Roin, "Planning Past Pensions," 46 *Loyola University Chicago Law Journal* 747, 801-802, 809-810 (2015).

[336] Amy Monahan, "Understanding the legal limits on public pension reform," *American Enterprise Institute*, May, 2013, p. 3, found at https://www.aei.org/wp-content/uploads/2013/05/-understanding-the-legal-limits-on-public-pension-reform_104816268458.pdf on the Internet.

[337] Amy Monahan, "Understanding the legal limits on public pension reform," *American Enterprise Institute*, May, 2013, p. 3, found at https://www.aei.org/wp-content/uploads/2013/05/-understanding-the-legal-limits-on-public-pension-reform_104816268458.pdf on the Internet.

[338] *United States Trust Co. v. New Jersey*, 431 U.S. 1, 31 (1977).

[339] S*ee Moro v. Oregon*, 351 P.3d 1, 38-39 (Ore. 2015); and *Baltimore Teachers Union, American Federation of Teachers Local 340, AFL-CIO v. Mayor and City Council of Baltimore*, 6 F. 3d 1012, 1020-1021 (4th Cir. 1993).

[340] S*ee Moro v. Oregon*, 351 P.3d 1, 39 (Ore. 2015) (record establishing that state taxes per capita in Oregon are 11.8 percent below the national average and that Oregon's taxes per capita expressed as a percent of gross state product are 14.8 percent below the national average do not help the state make out a public purpose defense against a Contracts Clause challenge to a COLA reduction for pension benefits).

[341] John S. Kiernan, "2017's Tax Rates by State," *WalletHub*, March 14, 2017, found at https://wallethub.com/edu/best-worst-states-to-be-a-taxpayer/2416/ on the Internet.

[342] Julie Roin, "Planning Past Pensions," 46 *Loyola University Chicago Law Journal* 747, 754-755, 803-809 (2015).

[343] This proposal for a constitutional amendment to change the definition of "accrued benefits" to mean only those benefits earned through services provided prior to the date of the constitutional amendment would resemble a proposed constitutional amendment discussed—but not adopted—in Illinois. Eric Madiar, "Illinois Public Pensions: Where to from Here*?," ITT Chicago-Kent School of Law and the University of Illinois School of Labor and Employment Illinois Public Employee Relations Report*, Volume 33, Issues 1 & 2, Winter/Spring 2016, p. 15, found at https://www.scribd.com/document/318552997/Illinois-Public-Employee-Relations-Report#from_embed on the Internet.

[344] Jack M. Beermann, "The Public Pension Crisis," 70 *Washington & Lee Law Review* 3, 45 (2013).

[345] Jack M. Beermann, "The Public Pension Crisis," 70 *Washington & Lee Law Review* 3, 7 (2013). State employees and some municipal employees in PERS do not participate in Social Security, and members of TRS also do not participate in Social Security. "About the Division of Retirement and Benefits," found at http://doa.alaska.gov/drb/help/about.html#.V2h6T_krKt8 on the Internet.

[346] Amy B. Monahan, "Public Pension Law Reform: The Legal Framework," University of Minnesota Law School Legal Studies Research Paper Series Research Paper No. 10-13, p. 36 n. 39 (2010), found at https://poseidon01.ssrn.com/delivery.php?ID=715101068095084092073101018070006010005085068040063064091025069069068094121065103126032054038038047007041079102081075016006030049023054028000118078092094026008003039087011064073099101107122064086030028090071096022070014103124012005095027126012116100&EXT=pdf on the Internet; and T. Leigh Anenson, Alex Slabaugh, and Karen Eilers Lahey, "Reforming Public Pensions," 33 *Yale & Policy Review* (2014) 1, 22 n. 115 (2014).

[347] *Municipality of Anchorage v. Gallion*, 944 P.2d 436, 440-441 (Alaska 1997).

[348] *Hammond v. Hoffbeck*, 627 P.2d 1052, 1057 (Alaska 1981).

[349] *Hammond v. Hoffbeck*, 627 P.2d 1052, 1056 (Alaska 1981).

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

[351] *Hammond v. Hoffbeck*, 627 P.2d 1052, 1055-1057 (Alaska 1981). The court also noted in passing that both sides to the litigation—the State of Alaska on one side and a public employee union and its president on the other—joined in urging the interpretation that the court adopted. *Hammond v. Hoffbeck*, 627 P.2d 1052, 1055 (Alaska 1981).

[352] *Khan v. State*, 278 P.3d 893, 896 (Alaska 2012) (internal quotation marks omitted).

[353] *Hammond v. Hoffbeck*, 627 P.2d 1052, 1056 n. 7 (Alaska 1981).

[354] Eric M. Madiar, *"Is Welching on Public Pension Promises an Option for Illinois? An Analysis of Article XIII, Section 5 of the Illinois Constitution,"* 48 *John Marshall Law Review* 167, 175-176, 176 n. 30 (2014).

[355] *Hammond v. Hoffbeck*, 627 P.2d 1052, 1057 n. 10 (Alaska 1981).

[356] *Hammond v. Hoffbeck*, 627 P.2d 1052, 1057 n. 10 (Alaska 1981).

[357] *Hammond v. Hoffbeck*, 627 P.2d 1052, 1057 n. 10 (Alaska 1981).

[358] *See* Conduent, State of Alaska Public Employees' Retirement System, Actuarial Valuation Report As of June 30, 2016, May, 2017, Section 4.6, p. 46, found at http://doa.alaska.gov/drb/pdf/pers/Alaska_rpt06302016_PERS.PDF on the Internet; Conduent, State of Alaska Teachers' Retirement System, Actuarial Valuation Report As of June 30, 2016, May, 2017, Section 4.6, p. 40, found at http://doa.alaska.gov/drb/pdf/trs/Alaska_rpt06302016_TRS.PDF on the Internet; and Alaska Department of Revenue, Tax Division, *Revenue Sources Book*, Spring, 2017, Table 2-5: Total Unrestricted General Fund Revenue, FY 2016 and FY 2017-2026 Forecast, p. 10.

[359] Two good sources to go to for materials on Alaska's continuing fiscal challenge are: the

papers and videotapes generated in association with "Building a Sustainable Future: Conversations with Alaskans," an event held by the Walker-Mallott administration at the University of Alaska Fairbanks campus in June of 2015 and found at https://gov.alaska.gov/administration-focus/building-a-sustainable-future/ on the Internet; and the videotapes of events produced by Alaska Common Ground in 2014, 2015, and 2016, found at http://akcommonground.org/programs/fiscal-policy/ and http://akcommonground.org/forums/ on the Internet. (Disclosures: The author was an invited participant at the "Building a Sustainable Future: Conversations with Alaskans" event and is Chair of Alaska Common Ground.)

[360] Dermot Cole, "Political leverage for taxes collides with Permanent Fund taboo," *Alaska Dispatch News*, April 15, 2017, found at https://www.adn.com/opinions/2017/04/15/political-leverage-for-taxes-collides-with-permanent-fund-taboo/ on the Internet.

[361] *Cf.* Dermot Cole, "Senate Finance didn't check finances of pension plans before proposing change," *Alaska Dispatch News*, April 7, 2016, found at https://www.adn.com/commentary/article/senate-finance-did-not-check-finances-pension-plans/2016/04/07/ on the Internet.