

CS FOR HOUSE BILL NO. 217(L&C) am(efd fld)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Amended: 5/3/95

Offered: 5/1/95

Sponsor(s): REPRESENTATIVE IVAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to teacher tenure, teacher layoff and rehire rights, public access
2 to information on public school collective bargaining, and to the right of tenured
3 teachers to judicial review of decisions of nonretention or dismissal; and relating
4 to retirement for certain employees of school districts, regional resource centers,
5 the state boarding school, and regional educational attendance areas."

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

7 * **Section 1.** AS 14.20.147(b) is amended to read:

8 (b) When a school operated by a federal agency is transferred to or absorbed
9 into a new or existing school district, the teachers shall also be transferred if mutually
10 agreed by the teacher or teachers and the school board of the new or existing district.
11 A teacher transferred from a federal agency school that [, WHICH] does not have an
12 official salary schedule or teacher tenure in the same manner as a public school district
13 in the state [,] shall be placed on a position on the salary schedule of the absorbing

1 district; the salary may not be less than the teacher would have received in the federal
2 agency school. If the teacher taught **four** [TWO] or more years in the federal agency
3 school and, at the time of transfer, had a valid Alaska teaching certificate, that teacher
4 shall be placed on tenure in the absorbing district.

5 * **Sec. 2.** AS 14.20.150 is amended to read:

6 Sec. 14.20.150. ACQUISITION OF TENURE RIGHTS. (a) A teacher
7 acquires tenure rights in a district when the teacher

8 (1) possesses a standard teaching certificate; **and**

9 (2) has been employed as a teacher in the same district continuously
10 for **four** [TWO] full school years and is reemployed for the school year immediately
11 following the **four** [TWO] full school years; **or has been employed as a teacher in**
12 **the same district continuously for a period equal in length to four full school**
13 **years, whether or not the period begins on the first day of the school year, and**
14 **is reemployed on the school year day immediately following completion of the**
15 **four-consecutive-school-year period.**

16 (b) The tenure rights acquired under (a) of this section become effective on the
17 first day the teacher performs teaching services in the district during the school year
18 immediately following the **four-consecutive-school-year period** [TWO FULL SCHOOL
19 YEARS].

20 (c) **by the end of the second year of employment, the district will provide**
21 **a non-tenured teacher a written evaluation and, if necessary, will develop a plan**
22 **for improvement in cooperation with the teacher, established mentors and**
23 **appropriate administrators.**

24 * **Sec. 3.** AS 14.20.160 is amended to read:

25 Sec. 14.20.160. LOSS OF TENURE RIGHTS. Tenure rights are lost when the
26 teacher's employment in the district is interrupted or terminated. **However, a teacher**
27 **on layoff status does not lose tenure rights during the period of layoff except as**
28 **provided under AS 14.20.177.**

29 * **Sec. 4.** AS 14.20.175(b) is amended to read:

30 (b) A teacher who has acquired tenure rights is subject to nonretention for the
31 following school year only for the following causes:

1 (1) incompetency, which is defined as the inability or the unintentional
2 or intentional failure to perform the teacher's customary teaching duties in a
3 satisfactory manner;

4 (2) immorality, which is defined as the commission of an act that,
5 under the laws of the state, constitutes a crime involving moral turpitude; or

6 (3) substantial noncompliance with the school laws of the state, the
7 regulations or bylaws of the department, the bylaws of the district, or the written rules
8 of the superintendent [; OR

9 (4) A NECESSARY REDUCTION OF STAFF OCCASIONED BY A
10 DECREASE IN SCHOOL ATTENDANCE].

11 * **Sec. 5.** AS 14.20 is amended by adding a new section to read:

12 Sec. 14.20.177. LAYOFFS. (a) A school district may place a teacher who has
13 acquired tenure rights on layoff status but only after the district has nonretained all
14 nontenured teachers and only if it is necessary for the district to reduce the number of
15 tenured teachers because of a decrease in school attendance or because of a financial
16 emergency verified by the commissioner of education. The commissioner's
17 determination is not subject to review or appeal. This section does not apply to a
18 teacher who has not acquired tenure rights.

19 (b) For a period of three years after layoff, a teacher is on layoff status and
20 is entitled to a hiring preference in the district or regional educational attendance area
21 where the teacher had been employed. The hiring preference applies only to vacant
22 teaching positions for which the teacher is qualified. If a teacher is offered a teaching
23 position under this subsection and the teacher declines the offer, the teacher is no
24 longer considered to be on layoff status and is no longer entitled to a hiring preference
25 under this section unless the teacher declines the offer because the teacher is
26 contractually obligated to provide professional services to another private or public
27 educational program in Alaska.

28 (c) In making layoff and rehire decisions under this section, a school district
29 may give preference to a primary school teacher who has less seniority than a
30 secondary school teacher in order to preserve the primary school program. The district
31 may also give preference to a secondary school teacher over a primary school teacher

1 with more seniority in order to preserve secondary school programs.

2 (d) Notwithstanding any provision of AS 23.40, the terms of a collective
3 bargaining agreement entered into between a school district or regional educational
4 attendance area and a bargaining organization representing teachers on or after the
5 effective date of this section may not be inconsistent with the provisions of this
6 section.

7 (e) A teacher on layoff status is not entitled to be reemployed under
8 AS 14.20.145 and does not accrue leave. However, layoff status does not constitute
9 a break in service for

10 (1) retaining acquired tenure rights; or

11 (2) retaining accrued sick leave.

12 (f) A teacher on layoff status may choose whether or not to treat the layoff as
13 a termination for purposes of receiving a refund of the balance of the teacher's member
14 contribution account in the teachers' retirement system under AS 14.25.150.

15 * **Sec. 6.** AS 14.20.180(b) is amended to read:

16 (b) The tenured teacher may, within 15 days immediately following receipt of
17 the notification, notify the employer in writing that a hearing before the school board is
18 requested **or, within 60 days after receipt of the notification, bring suit in superior**
19 **court. If the tenured teacher notifies the school board that the teacher is requesting**
20 **a hearing before the school board, the** [. THE TENURED] teacher may require in the
21 notification that the hearing be either public or private and that the hearing be under oath
22 or affirmation. The notification may also require that the right of cross-examination be
23 provided and that the tenured teacher be represented by counsel and have the right to
24 subpoena a person who has made allegations that are used as a basis for the decision of
25 the employer.

26 * **Sec. 7.** AS 14.20.205 is amended to read:

27 Sec. 14.20.205. JUDICIAL REVIEW. If a school board reaches a decision
28 unfavorable to a teacher **after a hearing under AS 14.20.180**, the teacher is entitled to
29 **judicial review based on the record** [A DE NOVO TRIAL] in the superior court.
30 However, a teacher who has not attained tenure rights is not entitled to judicial review
31 **under** [ACCORDING TO] this section.

32 * **Sec. 8.** AS 23.40 is amended by adding a new section to read:

1 Sec. 23.40.185. INITIAL PROPOSALS AND FINAL AGREEMENTS OF
2 SCHOOL NEGOTIATIONS ARE PUBLIC DOCUMENTS. The initial proposals
3 exchanged by the parties to negotiations between a school district or a regional
4 educational attendance area and a bargaining organization representing its employees and
5 the final agreements reached by the parties are public records.

6 * **Sec. 9.** FINDINGS AND PURPOSE AS TO SECTIONS 10 - 17. Many school districts
7 are facing the need to restructure their operations and their work forces in order to reduce
8 expenditures and balance budgets. Retirement incentives are management tools that have been
9 used extensively by the private sector, the federal government, and other state and local
10 governments across the country. The purpose of secs. 10 - 17 of this Act is to make this
11 management tool temporarily available to the public schools and regional resource centers of the
12 state. Sections 10 - 17 of this Act will enable these entities to be more efficient and cost-
13 effective by eliminating certain nonessential positions, and producing a net reduction in
14 personnel costs.

15 * **Sec. 10.** RETIREMENT INCENTIVE PROGRAM. (a) A school district, regional
16 educational attendance area, regional resource center, or the state boarding school may adopt a
17 retirement incentive plan under sec. 11 of this Act and designate categories of employees eligible
18 to participate in that plan. An employer need not extend the incentive plan to all employees who
19 would otherwise be eligible, but may choose to extend the plan only to employees

- 20 (1) in specific budget or administrative components of the employer;
21 (2) in specific job classifications;
22 (3) in specific geographic locations; or
23 (4) on the basis of any combination of factors under (1) - (3) of this subsection.

24 (b) An employee is eligible to participate in a retirement incentive plan under secs. 9 -
25 17 of this Act only if the

- 26 (1) employee is a vested member of the public employees' retirement system or
27 the teachers' retirement system;
28 (2) employee will be qualified to retire under AS 14.25.110 or AS 39.35.370
29 after receipt of the credit described in (f) of this section;
30 (3) savings to the employer in personal services costs for the employee's position
31 will exceed the costs to the employer for that position within three years after the employee is
32 appointed to retirement.

1 (c) An employer shall file its proposed retirement incentive plan with the commissioner
2 of administration. The commissioner shall approve the plan if the plan meets the requirements
3 of secs. 9 - 17 of this Act. A proposed plan filed under this section must

4 (1) identify job classifications of employees, and specific budget or
5 administrative components, eligible to participate in the plan;

6 (2) include a reimbursement agreement that

7 (A) requires the employer, for each employee who retires under the plan,
8 to reimburse the appropriate retirement system, within three years after the end of the
9 fiscal year in which the employee is appointed to retirement, in an amount equal to

10 (i) the actuarial equivalent of the difference between the benefits
11 the participant receives after the addition of the credit under (f) of this section
12 and the amount the participant would have received without the credit, less the
13 amount the participant has paid on the indebtedness determined under (d) or (e)
14 of this section; and

15 (ii) an appropriate share of the administrative costs of the
16 program; and

17 (B) provides that contributions from the employer under this section take
18 priority over other obligations of the employer to the maximum extent permitted by law.

19 (d) A member of the teachers' retirement system who participates in an approved
20 retirement incentive plan under secs. 9 - 17 of this Act is indebted to that system for an amount
21 calculated under this subsection. The indebtedness is 25.95 percent of the member's actual
22 compensation for the school year in which the member terminates employment, or the calculated
23 school year compensation for a member who works less than the entire school year. An
24 outstanding indebtedness at the time a member is appointed to retirement under an approved
25 retirement incentive plan requires an actuarial adjustment to the benefits payable to that member.

26 (e) A member of the public employees' retirement system who participates in an
27 approved retirement incentive plan under secs. 9 - 17 of this Act is indebted to that system for
28 an amount calculated under this subsection. The indebtedness is 20-1/4 percent of the member's
29 actual annual compensation for the year in which the member terminates employment, or the
30 calculated annual compensation for a member who works fewer than 12 months. An outstanding
31 indebtedness at the time a member is appointed to retirement under an approved retirement
32 incentive plan requires an actuarial adjustment to the benefits payable to that member.

1 (f) An employee who participates in an approved retirement incentive plan under secs. 9
2 - 17 of this Act receives a credit of three years. The three years must be applied in the follow-
3 ing order until exhausted:

4 (1) to meet the age or service required for eligibility for normal retirement under
5 AS 14.25.110 or AS 39.35.370, as appropriate;

6 (2) to meet the age required for early retirement under AS 14.25.110 or
7 AS 39.35.370, as appropriate;

8 (3) to reduce the actuarial adjustment required for early retirement under
9 AS 14.25.110 or AS 39.35.370, as appropriate;

10 (4) as years of credited service for calculating retirement benefits.

11 * **Sec. 11. AUTHORIZATION FOR RETIREMENT INCENTIVE.** (a) An employer may
12 adopt, and file with the commissioner of administration for approval, a proposed retirement
13 incentive plan for its employees. A plan adopted under this section must provide that the
14 application period for participation in the retirement incentive plan is June 30, 1995, through
15 December 31, 1995.

16 (b) The commissioner of administration may not accept the application of an employee
17 to participate in an approved retirement incentive plan adopted under this section unless the
18 employee will be appointed to retirement on or before August 1, 1996. The employer, in a plan
19 adopted under this section, may set an earlier date by which an employee must be appointed to
20 retirement in order to participate in the plan.

21 * **Sec. 12. RECOVERY OF EMPLOYER DELINQUENCIES.** To recover a delinquency
22 owed by an employer other than the state under an agreement entered into under sec. 10(c)(2)
23 of this Act, the Department of Administration may

24 (1) direct that the amount of the delinquency or a lesser amount be withheld
25 from any money payable to the employer by a state department or agency and that the amount
26 withheld be credited to the delinquency; and

27 (2) bring an action against the employer.

28 * **Sec. 13. REEMPLOYMENT INDEBTEDNESS; PROHIBITION ON REEMPLOYMENT.**
29 (a) If an individual is reemployed as a member of the public employees' retirement system
30 under AS 39.35, the teachers' retirement system under AS 14.25, the judicial retirement system
31 under AS 22.25, or the optional university retirement program under AS 14.40.661 - 14.40.799
32 after appointment to retirement under secs. 9 - 17 of this Act, that individual forfeits the

1 incentive credit received under sec. 10(f) of this Act and is indebted to the system under which
2 the individual took retirement. The indebtedness is 110 percent of the amount the individual
3 received as a result of participation in a retirement incentive plan under secs. 9 - 17 of this Act
4 and to which the individual would not otherwise have been entitled, including the cost of health
5 insurance. The amount that the individual has paid under sec. 10(d) or (e) of this Act will be
6 applied as a credit toward the reemployment indebtedness. Interest on the reemployment
7 indebtedness accrues from the date of reemployment until the date that the individual either is
8 appointed to retirement and accepts an actuarial adjustment to the individual's future benefits or
9 repays the indebtedness in full. The rate of interest is that established by regulation for the
10 public employees' retirement system by the public employees' retirement board and for the
11 teachers' retirement system by the teachers' retirement board.

12 (b) An individual who was appointed to retirement under secs. 9 - 17 of this Act may
13 not be employed by, or enter into a contract for personal services with, a state agency or the
14 University of Alaska within the three years after the date of appointment to retirement, except
15 that

16 (1) the University of Alaska may enter into a personal services contract with the
17 individual for teaching or research; and

18 (2) the individual may accept employment with the legislature during a
19 legislative session if the employment is on an hourly basis and does not entitle the individual
20 to receive retirement, health, or leave benefits.

21 (c) Notwithstanding the prohibition in (b) of this section, a state agency or the
22 University of Alaska may enter into a personal services contract with an individual who was
23 appointed to retirement under secs. 9 - 17 of this Act if the Board of Regents, for the University
24 of Alaska, or the commissioner of administration, for a state agency, determines that there is a
25 compelling reason to do so because of the individual's specialized or extensive experience that
26 relates to a particular program or project of the state agency or university.

27 * **Sec. 14. OFFICE OF MANAGEMENT AND BUDGET.** (a) The office of management
28 and budget shall submit a report to the legislature on the retirement incentive program under
29 secs. 9 - 17 of this Act on April 15, 1997. The report must provide the information necessary
30 for the legislature to evaluate the effectiveness of the programs in achieving their objectives.

31 * **Sec. 15. PROGRAM CHANGES.** (a) An individual employee does not have a vested or
32 contractual right to a benefit under secs. 9 - 17 of this Act until an agreement is executed with

1 the administrator that specifically authorizes that employee to participate in the retirement
2 incentive program under secs. 9 - 17 of this Act. The legislature reserves the right to change any
3 aspect of the retirement incentive program as it relates to employees for whom participation
4 agreements have not yet been executed with the administrator or with the commissioner of
5 administration.

6 (b) In this section, "administrator" means the administrator of the public employees'
7 retirement system for employees who are members of that system, and the administrator of the
8 teachers' retirement system for employees who are members of that system.

9 * **Sec. 16. REGULATIONS.** The commissioner of the Department of Administration may
10 adopt regulations under AS 44.62 (Administrative Procedure Act) to implement and interpret
11 secs. 9 - 17 of this Act.

12 * **Sec. 17. DEFINITIONS.** (a) Unless provided otherwise in secs. 9 - 17 of this Act, the
13 definitions set out in AS 14.25.220 apply to provisions in secs. 10- 13 of this Act that relate to
14 the teachers' retirement system and members of the teachers' retirement system.

15 (b) Unless provided otherwise in secs. 9 - 17 of this Act, the definitions set out in
16 AS 39.35.680 apply to provisions in secs. 10 - 13 of this Act that relate to the public employees'
17 retirement system and members of the public employees' retirement system.

18 (c) In secs. 9 - 17 of this Act,

19 (1) "employer" means a school district, regional educational attendance area,
20 regional resource center, or the state boarding school;

21 (2) "office of management and budget" means the office of management and
22 budget in the Office of the Governor;

23 (3) "public employees' retirement system" means the Public Employees'
24 Retirement System of Alaska (AS 39.35);

25 (4) "teachers' retirement system" means the Teachers' Retirement System of
26 Alaska (AS 14.25).

27 * **Sec. 18.** The amendments made by secs. 1 and 2 of this Act apply to teachers first hired
28 by a school district on or after the effective date of this Act.

29 * **Sec. 19.** Sections 10 and 11 of this Act are repealed July 1, 1997.