

SENATE CS FOR CS FOR HOUSE BILL NO. 465(RLS) am S

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE

Amended: 4/25/96

Offered: 4/24/96

Sponsor(s): REPRESENTATIVE IVAN

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to employment of teachers and school administrators and to**
2 **public school collective bargaining; and providing for an effective date."**

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

4 *** Section 1.** AS 14.20.140 is amended to read:

5 Sec. 14.20.140. NOTIFICATION OF NONRETENTION. (a) If a teacher who
6 has acquired tenure rights is **to be laid off under AS 14.20.177 or is** not to be
7 retained for the following school year, the employer shall notify the teacher of the
8 **layoff or** nonretention by writing, delivered before March 16, or by registered mail
9 postmarked before March 16.

10 (b) If a teacher who has not acquired tenure rights is **to be laid off under**
11 **AS 14.20.177 or is** not to be retained for the following school year the employer shall
12 notify the teacher of the **layoff or** nonretention by writing delivered on or before the
13 last day of the school term or by registered mail postmarked on or before the last day
14 of the school term.

(c) Notwithstanding a teacher's right to continued employment under AS 23.10.500 - 23.10.550, a school district may notify a teacher of **layoff or** nonretention under this section for the following school year for a permissible reason.

* **Sec. 2.** AS 14.20.145 is amended to read:

Sec. 14.20.145. AUTOMATIC REEMPLOYMENT. If notification of nonretention **or layoff** is not given according to AS 14.20.140, a teacher is entitled to be reemployed in the same district for the following school year on the contract terms the teacher and the employer may agree upon, or, if no terms are agreed upon, the provisions of the previous contract are continued for the following school year, subject to AS 14.20.158. **Except as provided in AS 14.20.177(e), the** [THE] right to **automatic reemployment under** [BE REEMPLOYED ACCORDING TO] this section expires if the teacher does not accept reemployment within 30 days after the date on which the teacher receives a contract of reemployment. A teacher who is on family leave under AS 23.10.500 - 23.10.550 must comply with the 30-day deadline in this section to retain the teacher's reemployment rights under this section.

* **Sec. 3.** AS 14.20.147(b) is amended to read:

(b) When a school operated by a federal agency is transferred to or absorbed into a new or existing school district, the teachers shall also be transferred if mutually agreed by the teacher or teachers and the school board of the new or existing district. A teacher transferred from a federal agency school **that** [, WHICH] does not have an official salary schedule or teacher tenure in the same manner as a public school district in the state [,] shall be placed on a position on the salary schedule of the absorbing district; the salary may not be less than the teacher would have received in the federal agency school. If the teacher taught **three** [TWO] or more years in the federal agency school and, at the time of transfer, had a valid Alaska teaching certificate, that teacher shall be placed on tenure in the absorbing district.

* **Sec. 4.** AS 14.20 is amended by adding a new section to read:

Sec. 14.20.149. EMPLOYEE EVALUATION. (a) A school board shall adopt by July 1, 1997, a certificated employee evaluation system for evaluation and improvement of the performance of the district's teachers and administrators. The evaluation system applies to all the district's certificated employees except the district's superintendent. A school board shall consider information from students, parents,

community members, classroom teachers, affected collective bargaining units, and administrators in the design and periodic review of the district's certificated employee evaluation system. An evaluation of a certificated employee under this section must be based on observation of the employee in the employee's workplace.

(b) The certificated employee evaluation system must

(1) establish district performance standards for the district's teachers and administrators that are based on professional performance standards adopted by the department by regulation;

(2) require at least two observations for the evaluation of each nontenured teacher in the district each school year;

(3) require at least an annual evaluation of each tenured teacher in the district who met the district performance standards during the previous school year;

(4) permit the district to limit its evaluations of tenured teachers who have consistently exceeded the district performance standards to one evaluation every two school years;

(5) require the school district to perform an annual evaluation for each administrator;

(6) require the school district to prepare and implement a plan of improvement for a teacher or administrator whose performance did not meet the district performance standards, except if the teacher's or administrator's performance warrants immediate dismissal under AS 14.20.170(a); and

(7) provide an opportunity for students, parents, community members, teachers, and administrators to provide information on the performance of the teacher or administrator who is the subject of the evaluation to the evaluating administrator.

(c) A person may not conduct an evaluation under this section unless the person holds a type B certificate or is a site administrator under the supervision of a person with a type B certificate, is employed by the school district as an administrator, and has completed training in the use of the school district's teacher evaluation system.

(d) Once each school year, a school district shall offer in-service training to the certificated employees who are subject to the evaluation system. The training must address the procedures of the evaluation system, the standards that the district uses in evaluating the performance of teachers and administrators, and other information that the

1 district considers helpful.

2 (e) A school district shall provide a tenured teacher whose performance, after
3 evaluation, did not meet the district performance standards with a plan of improvement.
4 The evaluating administrator shall consult with the tenured teacher in setting clear,
5 specific performance expectations to be included in the plan of improvement. The plan
6 of improvement must address ways in which the tenured teacher's performance can be
7 improved and shall last for not less than 90 workdays and not more than 180 workdays
8 unless the minimum time is shortened by agreement between the evaluating administrator
9 and the teacher. The plan of improvement shall be based on the professional
10 performance standards outlined in the locally adopted school district evaluation
11 procedure. The school district must observe the teacher at least twice during the course
12 of the plan. If, at the conclusion of the plan of improvement, the tenured teacher's
13 performance again does not meet the district performance standards, the district may
14 nonretain the teacher under AS 14.20.175(b)(1).

15 (f) A school district may place an administrator who has previously acquired
16 tenure, whose performance, including performance as an evaluator under the district's
17 certificated employee evaluation system, does not meet the district performance standards
18 on a plan of improvement. The plan must address ways in which the administrator's
19 performance can be improved and shall last for not less than 90 workdays and not more
20 than 210 workdays unless the minimum time is shortened by agreement between the
21 evaluating administrator and the administrator being evaluated. The school district must
22 observe the administrator being evaluated at least twice during the course of the plan.
23 If, at the conclusion of the plan of improvement, the administrator's performance again
24 does not meet the district performance standards, the district may terminate its
25 employment contract with the administrator. This subsection does not restrict the right
26 of a school district to reassign an administrator to a teaching position consistent with the
27 terms of an applicable collective bargaining agreement.

28 (g) The department may request copies of each school district's certificated
29 employee evaluation systems and changes the district makes to the systems.

30 (h) Information provided to a school district under the school district's
31 certificated employee evaluation system concerning the performance of an individual
32 being evaluated under the system is not a public record and is not subject to disclosure

1 under AS 09.25. However, the individual who is the subject of the evaluation is
2 entitled to a copy of the information and may waive the confidentiality provisions of
3 this subsection concerning the information.

4 * **Sec. 5.** AS 14.20.150 is repealed and reenacted to read:

5 Sec. 14.20.150. ACQUISITION OF TENURE RIGHTS. (a) Except as
6 provided in (c) or (d) of this section, a teacher acquires tenure rights in a district when
7 the teacher

8 (1) possesses a valid teaching certificate that authorizes the teacher to
9 be employed as a certificated teacher or as an administrator under regulations adopted
10 by the department;

11 (2) has been employed as a teacher in the same district continuously
12 for three full school years;

13 (3) receives, in the third year of any three-year period of continuous
14 employment with the district, an evaluation under the district's evaluation system
15 stating that the teacher's performance meets the district performance standards; and

16 (4) on or before October 15 of the school year,

17 (A) accepts a contract for employment as a teacher in the
18 district for a fourth consecutive school year; and

19 (B) performs a day of teaching services in the district during
20 that school year.

21 (b) In this section, a full school year of employment means employment that
22 begins on or before the first student count day required by the department in a school
23 year or October 15, whichever occurs first, and continues through the remainder of the
24 school year.

25 (c) A superintendent may not acquire or maintain tenure in a district.

26 (d) A teacher who has acquired tenure in a school district in the state and who
27 loses tenure in the district because of a break in service may acquire tenure in that
28 school district or another school district under this subsection if the break in service
29 was not the result of a dismissal under AS 14.20.170 or nonretention under AS
30 14.20.175 and did not last longer than one year. A break in service that begins on or
31 after the last day of a school district's instructional days for a school year but before

1 the first instructional day of the next school year will be considered to have lasted no
2 longer than one year if the teacher is employed on the first instructional day of the
3 school year that begins more than 12 but not more than 16 months after the beginning
4 of the break in service. A previously tenured teacher acquires tenure in a school
5 district under this subsection when the teacher

6 (1) possesses a valid teaching certificate that authorizes the teacher to
7 be employed as a certificated teacher or as an administrator under regulations adopted
8 by the department;

9 (2) has been employed as a teacher in the district continuously for one
10 full school year after a break in service that does not exceed the time limits set out in
11 this subsection;

12 (3) receives, under the district's evaluation system, an acceptable
13 evaluation from the district; and

14 (4) on or before October 15 of the school year,

15 (A) accepts a contract for employment as a teacher in the district
16 for a second consecutive school year; and

17 (B) performs a day of teaching services in the district during
18 that school year.

19 * **Sec. 6.** AS 14.20.155(a) is amended to read:

20 (a) **Except as otherwise provided in this chapter, a** [A] teacher who has
21 acquired tenure rights has the right to employment within the district during continuous
22 service.

23 * **Sec. 7.** AS 14.20.160 is amended to read:

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

28 * **Sec. 8.** AS 14.20.170 is amended by adding a new subsection to read:

29 (c) A teacher who is dismissed under this section is not entitled to a plan of
30 improvement under AS 14.20.149.

31 * **Sec. 9.** AS 14.20.175(b) is amended to read:

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

(1) the school district demonstrates that

(A) the district has fully complied with the requirements of AS 14.20.149 with respect to the tenured teacher;

(B) the teacher's performance, after completion of the plan of improvement, failed to meet the performance objectives set out in the plan; and

(C) the evaluation of the teacher established that the teacher does not meet the district performance standards [INCOMPETENCY, WHICH IS DEFINED AS THE INABILITY OR THE UNINTENTIONAL OR INTENTIONAL FAILURE TO PERFORM THE TEACHER'S CUSTOMARY TEACHING DUTIES IN A SATISFACTORY MANNER];

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

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

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

* **Sec. 10.** AS 14.20 is amended by adding a new section to read:

Sec. 14.20.177. REDUCTIONS IN FORCE. (a) A school district may implement a layoff plan under this section if it is necessary for the district to reduce the number of tenured teachers because

(1) school attendance in the district has decreased; or

(2) the basic need of the school district determined under AS 14.17.021(b) and adjusted under AS 14.17.225(b) decreases by three percent or more from the previous year.

(b) Before a school district lays off any tenured teacher, the school board shall adopt a layoff plan. The plan must identify academic and other programs that the district intends to maintain in implementing the layoff plan. The plan must also

1 include procedures for layoff and recall of tenured teachers consistent with this section.

2 (c) Except as provided in this subsection, a school district may place a tenured
3 teacher on layoff status only after the district has given notice of nonretention to all
4 nontenured teachers. However, a school district may retain a nontenured teacher and
5 place on layoff status a tenured teacher if there is no tenured teacher in the district
6 who is qualified to replace the nontenured teacher. The school district shall comply
7 with the notice requirements set out in AS 14.20.140 in placing a tenured or
8 nontenured teacher on layoff status.

9 (d) For purposes of this section, a tenured teacher is considered qualified for a
10 position if the position is in

11 (1) grades K - 8 and the teacher has an elementary endorsement;

12 (2) an established middle school and the teacher has

13 (A) an elementary endorsement;

14 (B) a middle school endorsement; or

15 (C) a secondary certificate with a subject area endorsement in the
16 area of assignment in which the teacher filling the position will spend at least 40
17 percent of the teacher's time or the teacher has, within the five years immediately
18 preceding the last date on which the teacher performed teaching services in the
19 district before being laid off, received an evaluation stating that the teacher's
20 performance in the subject or subjects meets the district performance standards;
21 or

22 (3) grades 9 - 12 and the teacher has an endorsement for each subject
23 area in which the teacher filling the position will spend at least 40 percent of the
24 teacher's time or the teacher has, within the five years immediately preceding the last
25 date on which the teacher performed teaching services in the district before being laid
26 off, received an evaluation stating that the teacher's performance in the subject or
27 subjects meets the district performance standards.

28 (e) For a period of three years after layoff, a teacher is on layoff status and is
29 entitled to a hiring preference in the district where the teacher had been employed. The
30 hiring preference applies only to vacant teaching positions for which the teacher is
31 qualified. If a teacher is offered a teaching position under this subsection and the teacher
32 declines the offer or fails to accept it within 30 days, the teacher is no longer considered

1 to be on layoff status and is no longer entitled to a hiring preference under this section
2 unless the teacher declines the offer because the teacher is contractually obligated to
3 provide professional services to another private or public educational program.

4 (f) Notwithstanding any provision of AS 23.40, the terms of a collective
5 bargaining agreement entered into between a school district and a bargaining organization
6 representing teachers on or after the effective date of this section may not be in conflict
7 with the provisions of this section.

8 (g) A teacher on layoff status is not entitled to be reemployed under
9 AS 14.20.145 and does not accrue leave. However, layoff status does not constitute a
10 break in service for retaining tenure rights and accrued sick leave.

11 (h) In this section, "school district" or "district" means a city or borough school
12 district or a regional educational attendance area.

13 * **Sec. 11.** AS 14.20.180 is repealed and reenacted to read:

14 Sec. 14.20.180. PROCEDURES UPON NOTICE OF DISMISSAL OR
15 NONRETENTION. (a) Before a teacher is dismissed, the employer shall give the
16 teacher written notice of the proposed dismissal and a pretermination hearing. A
17 pretermination hearing under this section must comport with the minimum requirements
18 of due process, including an explanation of the employer's evidence and basis for the
19 proposed dismissal and an opportunity for the teacher to respond. If, following a
20 pretermination hearing, an employer determines that dismissal is appropriate, the
21 employer shall provide written notice, including a statement of cause and a complete bill
22 of particulars, of the decision. The dismissal is effective when the notice is delivered
23 to the teacher.

24 (b) An employer that has decided to nonretain a tenured teacher shall provide
25 the teacher with written notice, including a statement of cause and a complete bill of
26 particulars. The notice must comply with AS 14.20.140(a).

27 (c) Within 15 days after receipt of a decision of dismissal under (a) of this
28 section or nonretention under (b) of this section, a teacher may notify the employer in
29 writing that the teacher is requesting a hearing before the school board under (d) of this
30 section or that the teacher is invoking the grievance procedures under (e) of this section.

31 (d) Upon receipt of a request for a hearing, the employer shall immediately
32 schedule a hearing and notify the teacher in writing of the date, time, and place of the

1 hearing. The teacher may elect to have either a public or a private hearing, and to have
2 the hearing under oath or affirmation. The parties have a right to be represented by
3 counsel and to cross-examine witnesses. The teacher has the right to subpoena a person
4 who has made statements that are used as a basis for the employer's decision to dismiss
5 or nonretain. A written transcript, tape, or similar recording of the proceedings shall be
6 kept. A copy of the recording shall be furnished to the teacher, for cost, upon request
7 of the teacher. A decision of the school board requires a majority vote of the
8 membership, by roll call. The board's decision shall be in writing and must contain
9 specific findings of fact and conclusions of law. A copy of the decision shall be
10 furnished to the teacher within 10 days after the date of the decision. If the school board
11 sustains the dismissal or nonretention, the teacher may appeal the decision to the superior
12 court for judicial review based on the administrative record.

13 (e) Upon receipt of a notice invoking the grievance procedures, the school
14 board shall immediately schedule an informal hearing and notify the teacher in writing
15 of the date, time, and place of the hearing. The hearing is for the purpose of
16 reviewing the statement of cause and bill of particulars and not for the purpose of
17 taking evidence. The teacher may choose whether the informal hearing is held in
18 public or in private. A decision of the school board requires a majority vote of the
19 membership, by roll call. The board's decision shall be in writing. The board shall
20 promptly furnish a copy of the decision to the teacher. If the board sustains the
21 dismissal or nonretention, the teacher may, within 15 days after receipt of the decision,
22 give written notice to the school board and submit the matter to arbitration under the
23 rules of the American Arbitration Association. The decision of the arbitrator is final
24 and binding on the school board, the teacher, and the bargaining organization
25 representing the teacher, if any. If the school board and the teacher agree, they may
26 waive the informal hearing under this subsection and submit the matter directly to
27 arbitration.

28 * **Sec. 12.** AS 14.20.215 is amended by adding a new paragraph to read:

29 (8) "district performance standards" means evaluation criteria for the
30 district's teachers and administrators that are adopted by a school district under
31 AS 14.20.149 and that are based on the professional performance standards adopted
32 by the department.

1 * **Sec. 13.** AS 23.40 is amended by adding a new section to read:
2 Sec. 23.40.235. PUBLIC INVOLVEMENT IN SCHOOL DISTRICT
3 NEGOTIATIONS. Before beginning bargaining, the school board of a city or borough
4 school district or a regional educational attendance area shall provide opportunities for
5 public comment on the issues to be addressed in the collective bargaining process.
6 Initial proposals, last-best-offer proposals, tentative agreements before ratification, and
7 final agreements reached by the parties are public documents and are subject to
8 inspection and copying under AS 09.25.110 - 09.25.140.
9 * **Sec. 14.** AS 14.20.205 is repealed.
10 * **Sec. 15.** APPLICABILITY TO INDIVIDUALS. The amendments to AS 14.20.147(b)
11 and 14.20.150, made by secs. 3 and 5 of this Act, apply only to an individual
12 (1) first hired as a teacher by a school district or regional educational
13 attendance area, including Mt. Edgecumbe High School, on or after the effective date of this
14 Act; or
15 (2) rehired as a teacher by a school district or regional educational attendance
16 area, including Mt. Edgecumbe High School, on or after the effective date of this Act and
17 following an interruption in continuous service that resulted in
18 (A) a loss of tenure rights under AS 14.20.160; or
19 (B) failure to acquire tenure rights under AS 14.20.150.
20 * **Sec. 16.** APPLICABILITY TO CONTRACTS. Nothing in this Act affects a collective
21 bargaining agreement in effect on the effective date of this Act.
22 * **Sec. 17.** EFFECTIVE DATE FOR EMPLOYEE EVALUATIONS. Section 4 of this Act
23 takes effect July 1, 1997.