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MEMORANDUM

January 13, 2024

SUBJECT: Education bill
(HCS CSSB 140(); Work Order No. 33-LS0687|R)

TO: Representative Craig Johnson
Attn: Tom Wright

FROM: Margret Bergerud
Legislative Counsel

Attached is your requested committee substitute (bill) for SB 140. Please note the following questions and concerns that arose during drafting.

Title change resolution. This bill, if adopted, will change the title. Because the measure is in the second house, that would require a title change resolution. Please let us know if you would like one drafted.

Equal protection. Under the draft bill, the Department of Education and Early Development's payment of incentives to a teacher will vary based on the teacher's location and performance. This disparate treatment may raise an equal protection challenge. The Alaska Constitution provides more protection of individual rights to non-discriminatory treatment than does the federal constitution. The Alaska Constitution requires that, absent sufficient state interest for the disparate treatment, similarly situated groups of people must be treated similarly. I recommend you build a legislative record that demonstrates why disparate treatment is necessary.

Collective bargaining. The draft bill could affect teachers' collective bargaining agreements. You may wish to speak with the Department of Education and Early Development about how the draft bill may affect existing employment contracts. If existing employment contracts would be affected, it may be necessary to add a section to the bill to specify that the new requirements apply only to contracts signed on or after the effective date of the bill.

Also, the draft bill provides payment incentives to teachers at Mt. Edgecumbe High School. It is my understanding that teachers at Mt. Edgecumbe High School are state employees. The Teachers' Education Association of Mt. Edgecumbe represents the teachers of Mt. Edgecumbe High School. If the legislature unilaterally initiates payment incentives to members of a bargaining unit outside the bargaining process, this action could be an unfair labor practice. The better practice would be to follow the typical collective bargaining process and allow the executive branch and bargaining unit to bargain for payment incentives.

Under AS 23.40.110(a), it is an unfair labor practice for a public employer or an agent of a public employer to "discriminate in regard to hire or tenure of employment or a term or

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condition of employment to encourage or discourage membership in an organization," or "refuse to bargain collectively in good faith with an organization that is the exclusive representative of employees in an appropriate unit . . ." If the state unilaterally imposes a payment incentive on a bargaining unit for certain employees that is higher than the payment incentive the state provides to other employees, the disparate treatment may "discriminate in regard to a term or condition of employment." However, it may be difficult for a complainant to prove that the discrimination would "encourage or discourage membership" in an organization representing that bargaining unit, or that the employer intended it to have that effect.

The unilateral action by the employer might also be seen as an unfair labor practice by the state for refusing "to bargain collectively in good faith." Employee compensation is a mandatory subject of bargaining. In addition to the prohibition against refusing to bargain in good faith under AS 23.40.110(a), the Alaska Labor Relations Board has interpreted AS 23.40.070 as also requiring the state to bargain collectively in good faith with organizations representing bargaining units. Employee compensation is a "term and condition of employment," under AS 23.40.250(9). The legislature's unilateral payment of an incentive would circumvent the state's requirement to bargain collectively in good faith with organizations representing bargaining units.

Charter schools. Should proposed sec. 14.03.254 include provisions like those found in AS 14.03.250, which governs the process for charter school applications to a local school board? For example, would you like to require that an application include a proposed form of a contract between a charter school and the local school board and that applicants receive a written decision from the board within 60 days of application? Would you like to require a right to appeal to the commissioner of the Department of Education and Early Development if the application is denied?

Retroactivity provision. Because of the requested effective date of July 1, 2024, I removed the provision found in sec. 9 of Work Order No. 33-LS0687\U, which made the repeal and reenactment of AS 14.09.010(a) retroactive to July 1, 2023. Please let me know if you would like to retain the retroactivity provision.

Authority to immediately adopt regulations. The attached document you provided relating to charter schools included a provision granting the board immediate authority to adopt regulations. Based on the request, this committee substitute only gives the board immediate authority to adopt regulations regarding the authorization of charter schools by the board. Would you like to give the board early regulatory authority regarding any other provisions? Please note that the current July 1, 2024, effective date may not give the board much time to develop regulations before the remainder of the bill takes effect.

Please let us know if any further changes are needed.

MAB:mis
24-016.mis

Attachment