

# LEGAL SERVICES

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## MEMORANDUM

January 16, 2024

**SUBJECT:** Bonus payments to teachers (HB106; Work Order 33-GH1073\A)

**TO:** Senator Löki Tobin  
Attn: Michael Mason

**FROM:** Margret Bergerud   
Legislative Counsel

You asked whether the bonus payments to teachers in HB 106 and SB 97 have any impact on collective bargaining agreements or create any other potential legal problems. Yes, the payments contemplated by HB 106 and SB 97 may impact collective bargaining agreements and present other potential legal problems as discussed below.

Equal protection. Under the bill, the Department of Education and Early Development's (department) 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. If challenged, a court may strike down the program on equal protection grounds, absent a legislative record that demonstrates why disparate treatment is necessary.<sup>1</sup>

Collective bargaining and unfair labor practices. The bill could affect teachers' collective bargaining agreements. Employee compensation is a "term and condition of employment," under AS 23.40.250(9), and it is a mandatory subject of bargaining.<sup>2</sup> If a

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<sup>1</sup> For a more in-depth analysis of the potential equal protection issues raised, please see memo 23-287.mis our office provided to you on April 11, 2023, relating to the same language in SB 97.

<sup>2</sup> AS 23.40.070(2); *State v. Pub. Safety Emps. Ass'n*, 93 P.3d 409, 417 (Alaska 2004) ("Alaska Statute 23.40.070(2) 'requir[es] public employers to negotiate with and enter into written agreements with employee organizations on matters of wages, hours, and other terms and conditions of employment.' These are the mandatory subjects of bargaining on which the parties must bargain in good faith, although they need not reach agreement."). *See also* AS 23.40.250(7) ("public employer' means the state or a political subdivision of the state, including without limitation, a municipality, district, school district, regional educational attendance area, board of regents, public and quasi-public corporation, housing authority, or other authority established by law, and a person

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school district unilaterally initiates payment incentives to members of a bargaining unit outside the bargaining process, this action could be an unfair labor practice. The preferred 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 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.

Please let me know if you have any additional questions.

MAB:mis

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designated by the public employer to act in its interest in dealing with public employees.")