

**CS FOR HOUSE BILL NO. 465(HES) am**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Amended: 3/26/96

Offered: 3/20/96

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."

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.

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

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

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

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

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

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

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

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

5 (b) The certificated employee evaluation system must

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

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

11 (3) require at least an annual evaluation of each tenured teacher in the  
12 district who received an acceptable evaluation during the previous school year;

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

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

18 (6) require the school district to prepare and implement a plan of  
19 improvement for a teacher or administrator whose performance is evaluated as less than  
20 acceptable, except if the teacher's or administrator's performance warrants immediate  
21 dismissal under AS 14.20.170(a); and

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

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

29 (d) Once each school year, a school district shall offer in-service training to the  
30 certificated employees who are subject to the evaluation system. The training must  
31 address the procedures of the evaluation system, the standards that the district uses in  
32 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 is found,  
3 after evaluation, to be less than acceptable with a plan of improvement. The evaluating  
4 administrator shall consult with the tenured teacher in setting clear, specific performance  
5 expectations to be included in the plan of improvement. The plan of improvement must  
6 address ways in which the tenured teacher's performance can be improved and shall last  
7 for not less than nine and not more than 12 months. The plan of improvement shall be  
8 based on the professional performance standards outlined in the locally adopted school  
9 district evaluation procedure. The school district must observe the teacher at least twice  
10 during the course of the plan. If, at the conclusion of the plan of improvement, the  
11 tenured teacher's performance is again evaluated to be less than acceptable, the district  
12 may nonretain the teacher under AS 14.20.175(b)(1).

13 (f) A school district may place an administrator whose performance, including  
14 performance as an evaluator under the district's certificated employee evaluation system,  
15 is less than acceptable on a plan of improvement. The plan must address ways in which  
16 the administrator's performance can be improved and shall last for not less than nine and  
17 not more than 12 months. The school district must observe the administrator at least  
18 twice during the course of the plan. If, at the conclusion of the plan of improvement,  
19 the administrator's performance is again evaluated to be less than acceptable, the district  
20 may terminate its employment contract with the administrator.

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

23 (h) Information provided to a school district under the school district's  
24 certificated employee evaluation system concerning the performance of an individual  
25 being evaluated under the system is not a public record and is not subject to disclosure  
26 under AS 09.25. However, the individual who is the subject of the evaluation is  
27 entitled to a copy of the information and may waive the confidentiality provisions of  
28 this subsection concerning the information.

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

30 Sec. 14.20.150. ACQUISITION OF TENURE RIGHTS. (a) Except as  
31 provided in (c) of this section, a teacher acquires tenure rights in a district when the  
32 teacher

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

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

6 (3) receives, under the district's evaluation system, an acceptable  
7 evaluation in the third year of any three-year period of continuous employment with  
8 the district; and

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

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

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

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

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

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:

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

3 (1) failure to meet performance objectives defined in the  
4 individual's plan of improvement which is based on locally adopted professional  
5 performance standards as identified in AS 14.20.149; however, a school district  
6 may not nonretain a tenured teacher under this paragraph unless the school  
7 district has fully complied with the requirements of AS 14.20.149 and unless the  
8 district demonstrates that the teacher's performance does not meet professional  
9 performance standards adopted by the school districts [INCOMPETENCY, WHICH  
10 IS DEFINED AS THE INABILITY OR THE UNINTENTIONAL OR INTENTIONAL  
11 FAILURE TO PERFORM THE TEACHER'S CUSTOMARY TEACHING DUTIES IN  
12 A SATISFACTORY MANNER];

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

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

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

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

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

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

25 (2) there has been a significant, demonstrated reduction in per-pupil  
26 expenditures due to a decrease in revenue from one year to the next.

27 (b) Before a school district lays off any tenured teacher, the school board shall  
28 adopt a layoff plan. The plan must identify academic and other programs that the district  
29 intends to maintain in implementing the layoff plan. The plan must also include  
30 procedures for layoff and recall of tenured teachers consistent with this section.

31 (c) Except as provided in this subsection, a school district may place a tenured  
32 teacher on layoff status only after the district has given notice of nonretention to all

1 nontenured teachers. However, a school district may retain a nontenured teacher and  
2 place on layoff status a tenured teacher if there is no tenured teacher in the district who  
3 is qualified to replace the nontenured teacher. The school district shall comply with the  
4 notice requirements set out in AS 14.20.140 in placing a tenured or nontenured teacher  
5 on layoff status.

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

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

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

10 (A) an elementary endorsement;

11 (B) a middle school endorsement; or

12 (C) a secondary certificate with a subject area endorsement in the  
13 area of assignment in which the teacher filling the position will spend at least 40  
14 percent of the teacher's time or the teacher has received an evaluation of  
15 acceptable or better in the subject or subjects; or

16 (3) grades 9 - 12 and the teacher has an endorsement for each subject  
17 area in which the teacher filling the position will spend at least 40 percent of the  
18 teacher's time or the teacher has received an evaluation of acceptable or better in the  
19 subject or subjects.

20 (e) For a period of three years after layoff, a teacher is on layoff status and is  
21 entitled to a hiring preference in the district where the teacher had been employed. The  
22 hiring preference applies only to vacant teaching positions for which the teacher is  
23 qualified. If a teacher is offered a teaching position under this subsection and the teacher  
24 declines the offer or fails to accept it within 30 days, the teacher is no longer considered  
25 to be on layoff status and is no longer entitled to a hiring preference under this section  
26 unless the teacher declines the offer because the teacher is contractually obligated to  
27 provide professional services to another private or public educational program.

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

32 (g) A teacher on layoff status is not entitled to be reemployed under

1 AS 14.20.145 and does not accrue leave. However, layoff status does not constitute a  
2 break in service for retaining tenure rights and accrued sick leave.

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

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

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

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

19 (c) Within 15 days after receipt of a decision of dismissal under (a) of this  
20 section or nonretention under (b) of this section, a teacher may notify the employer in  
21 writing that the teacher is requesting a hearing before the school board. Upon receipt  
22 of a request for a hearing, the employer shall immediately schedule a hearing and notify  
23 the teacher in writing of the date, time, and place of the hearing. The teacher may elect  
24 to have either a public or a private hearing, and to have the hearing under oath or  
25 affirmation. The parties have a right to be represented by counsel and to cross-examine  
26 witnesses. The teacher has the right to subpoena a person who has made statements that  
27 are used as a basis for the employer's decision to dismiss or nonretain. A written  
28 transcript, tape, or similar recording of the proceedings shall be kept. A copy of the  
29 recording shall be furnished to the teacher, for cost, upon request of the teacher. A  
30 decision of the school board requires a majority vote of the membership, by roll call.  
31 The board's decision shall be in writing and must contain specific findings of fact and  
32 conclusions of law. A copy of the decision shall be furnished to the teacher within 10

1 days after the date of the decision. If the school board sustains the dismissal or  
2 nonretention, the teacher may appeal the decision to the superior court, in accordance  
3 with applicable rules of court, for a judicial review based on the record.

4 (d) A teacher who has acquired tenure who is dismissed or nonretained may  
5 waive the right to a hearing under (c) of this section and, within 60 days after receipt of  
6 the employer's decision to dismiss or nonretain the teacher, file an action in superior  
7 court.

8 \* **Sec. 12.** AS 23.40 is amended by adding a new section to read:

9 Sec. 23.40.235. PUBLIC INVOLVEMENT IN SCHOOL DISTRICT  
10 NEGOTIATIONS. Before beginning bargaining, the school board of a city or borough  
11 school district or a regional educational attendance area shall provide opportunities for  
12 public comment on the issues to be addressed in the collective bargaining process. Initial  
13 proposals, last-best-offer proposals, tentative agreements before ratification, and final  
14 agreements reached by the parties are public documents and are subject to inspection and  
15 copying under AS 09.25.110 - 09.25.140.

16 \* **Sec. 13.** AS 14.20.205 is repealed.

17 \* **Sec. 14.** APPLICABILITY TO INDIVIDUALS. The amendments to AS 14.20.147(b) and  
18 14.20.150, made by secs. 3 and 5 of this Act, apply only to an individual

19 (1) first hired as a teacher by a school district or regional educational attendance  
20 area, including Mt. Edgecumbe High School, on or after the effective date of this Act; or

21 (2) rehired as a teacher by a school district or regional educational attendance  
22 area, including Mt. Edgecumbe High School, on or after the effective date of this Act and  
23 following an interruption in continuous service that resulted in

24 (A) a loss of tenure rights under AS 14.20.160; or

25 (B) failure to acquire tenure rights under AS 14.20.150.

26 \* **Sec. 15.** APPLICABILITY TO CONTRACTS. Nothing in this Act affects a collective  
27 bargaining agreement in effect on the effective date of this Act.