

CS FOR SENATE BILL NO. 132(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 4/7/95

Referred: Judiciary

Sponsor(s): SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to teacher tenure, teacher layoff and rehire rights, review of
2 decisions of school boards concerning teachers, and to a retirement incentive
3 program for employees of school districts and regional educational attendance
4 areas; and providing for an effective date."

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

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

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

1 school and, at the time of transfer, had a valid Alaska teaching certificate, that teacher
2 shall be placed on tenure in the absorbing district.

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

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

6 (1) possesses a standard teaching certificate;

7 (2) has been employed as a teacher in the same district continuously
8 for **five** [TWO] full school years and is reemployed for the school year immediately
9 following the **five** [TWO] full school years.

10 (b) The tenure rights acquired under (a) of this section become effective on the
11 first day the teacher performs teaching services in the district during the school year
12 immediately following the **five** [TWO] full school years.

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

14 Sec. 14.20.160. LOSS OF TENURE RIGHTS. Tenure rights are lost when the
15 teacher's employment in the district is interrupted or terminated. **However, a teacher**
16 **on layoff status does not lose tenure rights during the period of layoff except as**
17 **provided by regulation adopted under AS 14.20.177.**

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

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

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

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

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

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

31 * **Sec. 5.** AS 14.25 is amended by adding a new section to read:

1 Sec. 14.20.177. LAYOFFS. (a) A school district may place a teacher who has
2 acquired tenure rights on layoff status but only if it is necessary for the district to
3 reduce the number of teachers

4 (1) because of a decrease in school attendance or school district
5 revenue; or

6 (2) to better meet the academic program needs of the district.

7 (b) The department shall adopt regulations to establish

8 (1) procedures under which a district may lay off tenured teachers;

9 (2) the length of time that a teacher retains rehire rights after a layoff;

10 (3) the circumstances under which a teacher may lose rehire rights after
11 a layoff; and

12 (4) other provisions to implement this section.

13 * **Sec. 6.** AS 14.20.205 is amended to read:

14 Sec. 14.20.205. JUDICIAL REVIEW. If a school board reaches a decision
15 unfavorable to a **tenured** teacher, the **tenured** teacher is entitled to **appeal the**
16 **decision to** [A DE NOVO TRIAL IN] the superior court. **The scope of judicial**
17 **review shall be the same as an appeal from a decision of an administrative agency**
18 **under AS 44.62 (Administrative Procedure Act).** A [HOWEVER, A] teacher who
19 **is not tenured** [HAS NOT ATTAINED TENURE RIGHTS] is not entitled to judicial
20 review **under** [ACCORDING TO] this section.

21 * **Sec. 7.** AS 23.40 is amended by adding a new section to read:

22 Sec. 23.40.185. SCHOOL DISTRICT NEGOTIATIONS OPEN TO THE
23 PUBLIC. Negotiations between a school district or regional educational attendance
24 area and a bargaining organization representing its employees shall be conducted at
25 meetings that are open to the public.

26 * **Sec. 8.** FINDINGS AND PURPOSE OF RETIREMENT INCENTIVE PROGRAM.

27 Many school districts are facing the need to restructure their operations and their work forces
28 in order to reduce expenditures and balance budgets. Retirement incentives is a management
29 tool that has been used extensively by the private sector, the federal government, and other
30 state and local governments across the country. The purpose of secs. 8 - 17 of this Act is to
31 make that management tool temporarily available to school districts of the state. Sections 8 -

1 17 of this Act will enable school districts to be more efficient and cost-effective by
2 eliminating certain non-essential positions, and producing a net reduction in personnel costs.

3 * **Sec. 9. RETIREMENT INCENTIVE PROGRAM.** (a) A school district may adopt a
4 retirement incentive plan under secs. 10 and 11 of this Act and designate categories of
5 employees eligible to participate in the plan. A school district need not extend the incentive
6 plan to all employees who would otherwise be eligible, but may choose to extend the plan
7 only to employees

- 8 (1) in specific budget or administrative components of the school district;
- 9 (2) in specific job classifications;
- 10 (3) in specific geographic locations; or
- 11 (4) on the basis of any combination of factors set out in (1) - (3) of this
12 subsection.

13 (b) An employee is eligible to participate in a retirement incentive plan under secs. 8 -
14 17 of this Act only if

- 15 (1) the employee is a vested member of the public employees' retirement
16 system or the teachers' retirement system;
- 17 (2) the employee will be qualified to retire under AS 14.25.110 or
18 AS 39.35.370 after receipt of the credit described in (f) of this section;
- 19 (3) the savings to the school district in personal services costs for the
20 employee's position will exceed the costs to the school district for that position within three
21 years after the employee is appointed to retirement.

22 (c) A school district shall file its proposed retirement incentive plan with the
23 commissioner of administration. The commissioner shall approve the plan if the plan meets
24 the requirements of secs. 8 - 17 of this Act. A proposed plan filed under this section must

- 25 (1) identify job classifications of employees, and specific budget or
26 administrative components, eligible to participate in the plan;
- 27 (2) include a reimbursement agreement that
 - 28 (A) requires the school district, for each employee who retires under
29 the plan, to reimburse the appropriate retirement system, within three years after the
30 end of the fiscal year in which the employee is appointed to retirement, in an amount
31 equal to

1 (i) the actuarial equivalent of the difference between the benefits
2 the participant receives after the addition of the credit under (f) of this section
3 and the amount the participant would have received without the credit, less the
4 amount the participant has paid on the indebtedness determined under (d) or (e)
5 of this section; and

6 (ii) an appropriate share of the administrative costs of the
7 program; and

8 (B) provides that contributions from the school district under this
9 section take priority over other obligations of the employer to the maximum extent
10 permitted by law.

11 (d) A member of the teachers' retirement system who participates in an approved
12 retirement incentive plan under secs. 8 - 17 of this Act is indebted to that system for an
13 amount calculated under this subsection. The indebtedness is 25.95 percent of the member's
14 actual compensation for the school year in which the member terminates employment, or the
15 calculated school year compensation for a member who works less than the entire school year.
16 An outstanding indebtedness at the time a member is appointed to retirement under an
17 approved retirement incentive plan requires an actuarial adjustment to the benefits payable to
18 that member.

19 (e) A member of the public employees' retirement system who participates in an
20 approved retirement incentive plan under secs. 8 - 17 of this Act is indebted to that system
21 for an amount calculated under this subsection. The indebtedness is 20-1/4 percent of the
22 member's actual annual compensation for the year in which the member terminates
23 employment, or the calculated annual compensation for a member who works fewer than 12
24 months. An outstanding indebtedness at the time a member is appointed to retirement under
25 an approved retirement incentive plan requires an actuarial adjustment to the benefits payable
26 to that member.

27 (f) An employee who participates in an approved retirement incentive plan under
28 secs. 8 - 17 of this Act receives a credit of three years. The three years shall be applied in
29 the following order until exhausted:

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

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

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

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

6 * **Sec. 10.** AUTHORIZATION FOR RETIREMENT INCENTIVE FOR SCHOOL
7 DISTRICT EMPLOYEES IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM. (a)
8 The school board of a school district that has elected to participate in the public employees'
9 retirement system under AS 39.35.550 - 39.35.650 may adopt, and file with the commissioner
10 of administration for approval, a proposed retirement incentive plan for its employees. A plan
11 adopted under this section must provide that the application period for participation in the
12 retirement incentive plan is December 31, 1995 through June 30, 1996.

13 (b) The commissioner of administration may not accept the application of an employee
14 to participate in an approved retirement incentive plan adopted under this section unless the
15 employee will be appointed to retirement on or before February 1, 1997. In a plan adopted
16 under this section, a school board may set an earlier date by which an employee must be
17 appointed to retirement in order to participate in the plan.

18 * **Sec. 11.** AUTHORIZATION FOR RETIREMENT INCENTIVE FOR SCHOOL
19 DISTRICT EMPLOYEES IN THE TEACHERS' RETIREMENT SYSTEM. (a) A school
20 board may adopt, and file with the commissioner of administration for approval, a proposed
21 retirement incentive plan for employees of the school district who are members of the
22 teachers' retirement system. A plan adopted under this section must provide that the
23 application period for participation in the retirement incentive plan is June 30, 1995 through
24 December 31, 1995.

25 (b) The commissioner of administration may not accept the application of an employee
26 to participate in an approved retirement incentive plan adopted under this section unless the
27 employee will be appointed to retirement on or before August 1, 1996. The school board, in
28 a plan adopted under this section, may set an earlier date by which an employee must be
29 appointed to retirement in order to participate in the plan.

30 * **Sec. 12.** RECOVERY OF EMPLOYER DELINQUENCIES. To recover a delinquency
31 owed by a school district under an agreement entered into under sec. 9(c)(2) of this Act, the

1 Department of Administration may

2 (1) direct that the amount of the delinquency or a lesser amount be withheld
3 from any money payable to the school district by a state department or agency and that the
4 amount withheld be credited to the delinquency; and

5 (2) bring an action against the school district.

6 * **Sec. 13. REEMPLOYMENT INDEBTEDNESS; PROHIBITION ON**
7 **REEMPLOYMENT.** (a) If an individual is reemployed as a member of the public employees'
8 retirement system under AS 39.35, the teachers' retirement system under AS 14.25, the judicial
9 retirement system under AS 22.25, or the optional university retirement program under
10 AS 14.40.661 - 14.40.799 after appointment to retirement under secs. 8 - 17 of this Act, that
11 individual forfeits the incentive credit received under sec. 9(f) of this Act and is indebted to
12 the system under which the individual took retirement. The indebtedness is 110 percent of
13 the amount the individual received as a result of participation in a retirement incentive plan
14 under secs. 8 - 17 of this Act and to which the individual would not otherwise have been
15 entitled, including the cost of health insurance. The amount that the individual has paid under
16 sec. 9(d) or (e) of this Act will be applied as a credit toward the reemployment indebtedness.
17 Interest on the reemployment indebtedness accrues from the date of reemployment until the
18 date that the individual either is appointed to retirement and accepts an actuarial adjustment
19 to the individual's future benefits or repays the indebtedness in full. The rate of interest is that
20 established by regulation for the public employees' retirement system by the public employees'
21 retirement board and for the teachers' retirement system by the teachers' retirement board.

22 (b) An individual who was appointed to retirement under secs. 8 - 17 of this Act may
23 not be employed by, or enter into a contract for personal services with, a state agency or the
24 University of Alaska within the three years after the date of appointment to retirement, except
25 that

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

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

31 (c) Notwithstanding the prohibition in (b) of this section, a state agency or the

1 University of Alaska may enter into a personal services contract with an individual who was
2 appointed to retirement under secs. 8 - 17 of this Act if the Board of Regents, for the
3 University of Alaska, or the commissioner of administration, for a state agency, determines
4 that there is a compelling reason to do so because of the individual's specialized or extensive
5 experience that relates to a particular program or project of the state agency or university.

6 * **Sec. 14.** OFFICE OF MANAGEMENT AND BUDGET. (a) The office of management
7 and budget shall submit to the legislature annual reports on the retirement incentive program
8 under secs. 8 - 17 of this Act beginning January 15, 1997, and continuing through January 15,
9 1999, and shall submit a final report January 15, 2000. Each report must provide the
10 information necessary for the legislature to evaluate the effectiveness of the program in
11 achieving its objectives. The report must include information on the designated employee
12 categories under the incentive program, including the cost of each incentive program per
13 participant, the cost to the school district, the cost to the employee, the number of positions
14 deleted or left vacant, and the projected or actual net savings over the three-year period.

15 * **Sec. 15.** PROGRAM CHANGES. An individual employee does not have a vested or
16 contractual right to a benefit under secs. 8 - 17 of this Act until an agreement is executed with
17 the commissioner of administration that specifically authorizes that employee to participate
18 in the retirement incentive program under secs. 8 - 17 of this Act. The legislature reserves
19 the right to change any aspect of the retirement incentive program as it relates to employees
20 for whom participation agreements have not yet been executed with the commissioner of
21 administration.

22 * **Sec. 16.** REGULATIONS. The commissioner of administration may adopt regulations
23 under AS 44.62 (Administrative Procedure Act) to implement and interpret secs. 8 - 17 of this
24 Act.

25 * **Sec. 17.** DEFINITIONS. (a) Unless provided otherwise in secs. 8 - 17 of this Act, the
26 definitions set out in AS 14.25.220 apply to provisions in secs. 8 - 13 of this Act that relate
27 to the teachers' retirement system and members of the teachers' retirement system.

28 (b) Unless provided otherwise in secs. 8 - 17 of this Act, the definitions set out in
29 AS 39.35.680 apply to provisions in secs. 8 - 13 of this Act that relate to the public
30 employees' retirement system and members of the public employees' retirement system.

31 (c) In secs. 8 - 17 of this Act,

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

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

5 (3) "school district" means a city or borough school district or a regional
6 educational attendance area;

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

9 * **Sec. 18.** The amendments made by secs. 1 - 6 of this Act apply to teachers first hired
10 by a school district on or after the effective date of this Act.

11 * **Sec. 19.** Section 9 of this Act is repealed July 1, 1999.

12 * **Sec. 20.** Sections 10 and 11 of this Act are repealed July 1, 1997.

13 * **Sec. 21.** This Act takes effect immediately under AS 01.10.070(c).