

SENATE CS FOR CS FOR HOUSE BILL NO. 217(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 5/6/95

Referred: Rules

Sponsor(s): REPRESENTATIVE IVAN

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to teacher tenure, teacher layoff and rehire rights, public access**
2 **to information on public school collective bargaining, and to the right of tenured**
3 **teachers to judicial review of decisions of nonretention or dismissal; and relating**
4 **to retirement for certain employees of school districts, regional resource centers,**
5 **the state boarding school, and regional educational attendance areas."**

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

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

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

1 district; the salary may not be less than the teacher would have received in the federal
2 agency school. If the teacher taught **four** [TWO] or more years in the federal agency
3 school and, at the time of transfer, had a valid Alaska teaching certificate, that teacher
4 shall be placed on tenure in the absorbing district.

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

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

8 (1) possesses a standard teaching certificate; **and**

9 (2) has been employed as a teacher in the same district continuously
10 for **four** [TWO] full school years and is reemployed for the school year immediately
11 following the **four** [TWO] full school years; **or has been employed as a teacher in**
12 **the same district continuously for a period equal in length to four full school**
13 **years, whether or not the period begins on the first day of the school year, and**
14 **is reemployed on the school year day immediately following completion of the**
15 **four-consecutive-school-year period.**

16 (b) The tenure rights acquired under (a) of this section become effective on the
17 first day the teacher performs teaching services in the district during the school year
18 immediately following the **four-consecutive-school-year period** [TWO FULL SCHOOL
19 YEARS].

20 * **Sec. 3.** AS 14.20.150 is amended by adding a new subsection to read:

21 (c) The district shall provide an evaluation of a nontenured teacher in each year
22 of employment. For purposes of this subsection, an evaluation includes at least two
23 formal observations and one written evaluation. Should a plan for improvement be
24 necessary, it shall be developed in cooperation with the teacher, established mentors, if
25 any, and appropriate administrators.

26 * **Sec. 4.** AS 14.20.160 is amended to read:

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

31 * **Sec. 5.** AS 14.20.175(b) is amended to read:

32 (b) A teacher who has acquired tenure rights is subject to nonretention for the

1 following school year only for the following causes:

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

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

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

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

12 * **Sec. 6.** AS 14.20 is amended by adding a new section to read:

13 Sec. 14.20.177. LAYOFFS. (a) A school district may place a tenured teacher
14 on layoff status but only after the district has nonretained all nontenured teachers and
15 only if the district needs to reduce the number of teachers because of a decrease in
16 school enrollment or because the basic need of a school district determined under
17 AS 14.17.021(b) and adjusted under AS 14.17.225(b) decreases by one percent or more
18 from the previous year. A nontenured teacher is not entitled to layoff rights under this
19 section.

20 (b) 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 or regional educational attendance area
22 where the teacher had been employed. The hiring preference applies only to vacant
23 teaching positions for which the teacher is qualified. If a teacher is offered a teaching
24 position for which the teacher is qualified under this subsection and the teacher declines
25 the offer, the teacher is no longer considered to be on layoff status and is no longer
26 entitled to a hiring preference under this section unless the teacher declines the offer
27 because the teacher is contractually obligated to provide professional services to another
28 private or public educational program in Alaska.

29 (c) In making layoff and rehire decisions under this section, a school district may
30 give preference to a primary school teacher who has less seniority than a secondary
31 school teacher in order to preserve the primary school program. The district may also
32 give preference to a secondary school teacher over a primary school teacher with more

1 seniority in order to preserve secondary school programs.

2 (d) Notwithstanding any provision of AS 23.40, the terms of a collective
3 bargaining agreement entered into between a school district or regional educational
4 attendance area and a bargaining organization representing teachers on or after the
5 effective date of this section may not be inconsistent with the provisions of this section.

6 (e) A teacher on layoff status is not entitled to be reemployed under
7 AS 14.20.145 and does not accrue leave. However, layoff status does not constitute a
8 break in service for retaining

9 (1) acquired tenure rights; or

10 (2) accrued sick leave.

11 (f) A teacher on layoff status may choose whether or not to treat the layoff as
12 a termination for purposes of receiving a refund of the balance of the teacher's member
13 contribution account in the teachers' retirement system under AS 14.25.150.

14 * **Sec. 7.** AS 14.20.180(b) is amended to read:

15 (b) The tenured teacher may, within 15 days immediately following receipt of
16 the notification, notify the employer in writing that a hearing before the school board is
17 requested **or, within 60 days after receipt of the notification, bring suit in superior**
18 **court. If the tenured teacher notifies the school board that the teacher is requesting**
19 **a hearing before the school board, the** [. THE TENURED] teacher may require in the
20 notification that the hearing be either public or private and that the hearing be under oath
21 or affirmation. The notification may also require that the right of cross-examination be
22 provided and that the tenured teacher be represented by counsel and have the right to
23 subpoena a person who has made allegations that are used as a basis for the decision of
24 the employer.

25 * **Sec. 8.** AS 14.20.205 is amended to read:

26 Sec. 14.20.205. JUDICIAL REVIEW. If a school board reaches a decision
27 unfavorable to a teacher **after a hearing under AS 14.20.180**, the teacher is entitled to
28 **judicial review based on the record** [A DE NOVO TRIAL] in the superior court.
29 However, a teacher who has not attained tenure rights is not entitled to judicial review
30 **under** [ACCORDING TO] this section.

31 * **Sec. 9.** AS 14.20.220 is amended by adding new subsections to read:

32 (h) A school district may establish a career path for teachers that includes

1 advancement based on teaching performance. An evaluation under this subsection may
2 be performed by other teachers employed in the same school district and by the school
3 district.

4 (i) A school district may establish teaching positions that have instructional
5 mentoring responsibilities to other teachers and may allow reduced direct instructional
6 workloads for those positions.

7 * **Sec. 10.** AS 23.40 is amended by adding a new section to read:

8 Sec. 23.40.185. INITIAL PROPOSALS AND FINAL AGREEMENTS OF
9 SCHOOL NEGOTIATIONS ARE PUBLIC DOCUMENTS. The initial proposals
10 exchanged by the parties to negotiations between a school district or a regional
11 educational attendance area and a bargaining organization representing its employees and
12 the final agreements reached by the parties are public records.

13 * **Sec. 11.** FINDINGS AND PURPOSE AS TO SECTIONS 12 - 19. Many school districts
14 are facing the need to restructure their operations and their work forces in order to reduce
15 expenditures and balance budgets. Retirement incentives are management tools that have been
16 used extensively by the private sector, the federal government, and other state and local
17 governments across the country. The purpose of secs. 12 - 19 of this Act is to make this
18 management tool temporarily available to the public schools and regional resource centers of the
19 state. Sections 12 - 19 of this Act will enable these entities to be more efficient and cost-
20 effective by eliminating certain nonessential positions, and producing a net reduction in
21 personnel costs.

22 * **Sec. 12.** RETIREMENT INCENTIVE PROGRAM. (a) A school district, regional
23 educational attendance area, regional resource center, or the state boarding school may adopt a
24 retirement incentive plan under sec. 13 of this Act and designate categories of employees eligible
25 to participate in that plan. An employer need not extend the incentive plan to all employees who
26 would otherwise be eligible, but may choose to extend the plan only to employees

27 (1) in specific budget or administrative components of the employer;

28 (2) in specific job classifications;

29 (3) in specific geographic locations; or

30 (4) on the basis of any combination of factors under (1) - (3) of this subsection.

31 (b) An employee is eligible to participate in a retirement incentive plan under secs. 11 -
32 19 of this Act only if the

1 (1) employee is a vested member of the public employees' retirement system or
2 the teachers' retirement system;

3 (2) employee will be qualified to retire under AS 14.25.110 or AS 39.35.370
4 after receipt of the credit described in (f) of this section;

5 (3) savings to the employer in personal services costs for the employee's position
6 will exceed the costs to the employer for that position within three years after the employee is
7 appointed to retirement.

8 (c) An employer shall file its proposed retirement incentive plan with the commissioner
9 of administration. The commissioner shall approve the plan if the plan meets the requirements
10 of secs. 11 - 19 of this Act. A proposed plan filed under this section must

11 (1) identify job classifications of employees, and specific budget or
12 administrative components, eligible to participate in the plan;

13 (2) include a reimbursement agreement that

14 (A) requires the employer, for each employee who retires under the plan,
15 to reimburse the appropriate retirement system, within three years after the end of the
16 fiscal year in which the employee is appointed to retirement, in an amount equal to

17 (i) the actuarial equivalent of the difference between the benefits
18 the participant receives after the addition of the credit under (f) of this section
19 and the amount the participant would have received without the credit, less the
20 amount the participant has paid on the indebtedness determined under (d) or (e)
21 of this section; and

22 (ii) an appropriate share of the administrative costs of the
23 program; and

24 (B) provides that contributions from the employer under this section take
25 priority over other obligations of the employer to the maximum extent permitted by law.

26 (d) A member of the teachers' retirement system who participates in an approved
27 retirement incentive plan under secs. 11 - 19 of this Act is indebted to that system for an amount
28 calculated under this subsection. The indebtedness is 25.95 percent of the member's actual
29 compensation for the school year in which the member terminates employment, or the calculated
30 school year compensation for a member who works less than the entire school year. An
31 outstanding indebtedness at the time a member is appointed to retirement under an approved
32 retirement incentive plan requires an actuarial adjustment to the benefits payable to that member.

1 (e) A member of the public employees' retirement system who participates in an
2 approved retirement incentive plan under secs. 11 - 19 of this Act is indebted to that system for
3 an amount calculated under this subsection. The indebtedness is 20-1/4 percent of the member's
4 actual annual compensation for the year in which the member terminates employment, or the
5 calculated annual compensation for a member who works fewer than 12 months. An outstanding
6 indebtedness at the time a member is appointed to retirement under an approved retirement
7 incentive plan requires an actuarial adjustment to the benefits payable to that member.

8 (f) An employee who participates in an approved retirement incentive plan under
9 secs. 11 - 19 of this Act receives a credit of three years. The three years must be applied in the
10 following order until exhausted:

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

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

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

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

18 * **Sec. 13. AUTHORIZATION FOR RETIREMENT INCENTIVE.** (a) An employer may
19 adopt, and file with the commissioner of administration for approval, a proposed retirement
20 incentive plan for its employees. A plan adopted under this section must provide that the
21 application period for participation in the retirement incentive plan is June 30, 1995, through
22 December 31, 1995.

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

28 * **Sec. 14. RECOVERY OF EMPLOYER DELINQUENCIES.** To recover a delinquency
29 owed by an employer other than the state under an agreement entered into under sec. 12(c)(2)
30 of this Act, the Department of Administration may

31 (1) direct that the amount of the delinquency or a lesser amount be withheld
32 from any money payable to the employer by a state department or agency and that the amount

1 withheld be credited to the delinquency; and

2 (2) bring an action against the employer.

3 * **Sec. 15.** REEMPLOYMENT INDEBTEDNESS; PROHIBITION ON REEMPLOYMENT.

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

19 (b) An individual who was appointed to retirement under secs. 11 - 19 of this Act may
20 not be employed by, or enter into a contract for personal services with, a state agency or the
21 University of Alaska within the three years after the date of appointment to retirement, except
22 that

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

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

28 (c) Notwithstanding the prohibition in (b) of this section, a state agency or the
29 University of Alaska may enter into a personal services contract with an individual who was
30 appointed to retirement under secs. 11 - 19 of this Act if the Board of Regents, for the
31 University of Alaska, or the commissioner of administration, for a state agency, determines that
32 there is a compelling reason to do so because of the individual's specialized or extensive

1 experience that relates to a particular program or project of the state agency or university.

2 * **Sec. 16.** OFFICE OF MANAGEMENT AND BUDGET. The office of management and
3 budget shall submit a report to the legislature on the retirement incentive program under secs. 11
4 - 19 of this Act on April 15, 1997. The report must provide the information necessary for the
5 legislature to evaluate the effectiveness of the programs in achieving their objectives.

6 * **Sec. 17.** PROGRAM CHANGES. (a) An individual employee does not have a vested or
7 contractual right to a benefit under secs. 11 - 19 of this Act until an agreement is executed with
8 the administrator that specifically authorizes that employee to participate in the retirement
9 incentive program under secs. 11 - 19 of this Act. The legislature reserves the right to change
10 any aspect of the retirement incentive program as it relates to employees for whom participation
11 agreements have not yet been executed with the administrator or with the commissioner of
12 administration.

13 (b) In this section, "administrator" means the administrator of the public employees'
14 retirement system for employees who are members of that system, and the administrator of the
15 teachers' retirement system for employees who are members of that system.

16 * **Sec. 18.** REGULATIONS. The commissioner of the Department of Administration may
17 adopt regulations under AS 44.62 (Administrative Procedure Act) to implement and interpret
18 secs. 11 - 19 of this Act.

19 * **Sec. 19.** DEFINITIONS. (a) Unless provided otherwise in secs. 11 - 19 of this Act, the
20 definitions set out in AS 14.25.220 apply to provisions in secs. 12- 15 of this Act that relate to
21 the teachers' retirement system and members of the teachers' retirement system.

22 (b) Unless provided otherwise in secs. 11 - 19 of this Act, the definitions set out in
23 AS 39.35.680 apply to provisions in secs. 12 - 15 of this Act that relate to the public employees'
24 retirement system and members of the public employees' retirement system.

25 (c) In secs. 11 - 19 of this Act,

26 (1) "employer" means a school district, regional educational attendance area,
27 regional resource center, or the state boarding school;

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

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

32 (4) "teachers' retirement system" means the Teachers' Retirement System of

1 Alaska (AS 14.25).

2 * **Sec. 20.** The amendments made by secs. 1 - 3 this Act apply to teachers first hired by a
3 school district on or after the effective date of this Act.

4 * **Sec. 21.** Sections 12 and 13 of this Act are repealed July 1, 1997.