

HOUSE BILL NO. 398

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/8/96

Referred: Health, Education and Social Services, State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to teacher evaluation, teacher tenure, teacher continuing
2 employment status, teacher layoff and rehire rights, and the rights of teachers
3 to obtain review of decisions of nonretention or dismissal; relating to public
4 access to certain information on, and public participation in, public school
5 collective bargaining; and providing for an effective date."

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

7 * **Section 1.** FINDINGS AND PURPOSES. (a) The legislature finds that

8 (1) this state and its school districts and communities are challenged with
9 improving the quality of education;

10 (2) historically, Alaska's laws have provided job security to experienced
11 teachers in exchange for the development of a competent, professional staff that delivers an
12 excellent education to students;

13 (3) while a tenured teacher has always been subject to dismissal or

1 nonretention for unsatisfactory performance, tenure nevertheless connotes to many a right to
2 lifelong employment in a school district;

3 (4) not enough emphasis has been placed on evaluation of teachers before
4 acquisition of tenure and as a necessary and ongoing component of the right to continued
5 employment;

6 (5) in order to provide a continuous, quality educational program, school
7 districts need to be able to plan for an orderly response to declining enrollment or financial
8 emergency, including the possibility of a reduction in force; and

9 (6) the public has an interest in the improvement of schools and a need for
10 information in order to participate effectively in efforts to improve the schools.

11 (b) The purposes of this Act are to

12 (1) continue to provide the right to continuing employment in a school district
13 to teachers who have earned the right through satisfactory evaluations and satisfaction of other
14 requirements;

15 (2) replace the existing term "tenure" with "continuing employment status"
16 to describe the right to continued employment in a school district, with the understanding that
17 to the extent that existing Alaska case law on tenure addresses the nature of the right to
18 continued employment, it applies to continuing employment status as well;

19 (3) improve the effectiveness of teacher evaluations so that teachers are better
20 able to meet the learning needs of students by requiring

21 (A) adoption by school districts of assessment systems designed with
22 input from students, parents, community members, teachers, and administrators;

23 (B) training for evaluators in the use of the assessment systems; and

24 (C) training for teachers in order that they understand the basis on
25 which they will be evaluated;

26 (4) provide a mechanism for school districts to respond to the need for a
27 reduction in force while still providing some protection to teachers who have acquired
28 continuing employment status;

29 (5) provide that a probationary teacher has no expectation of continued
30 employment in a school district except as provided in AS 14.20.145 and the teacher's one-year
31 contract;

1 (6) provide three means by which a teacher who has acquired continuing
2 employment status may obtain post-termination review of a school district's dismissal or
3 nonretention of the teacher, only one of which may be pursued; and

4 (7) increase public confidence with and involvement in the collective
5 bargaining process by providing for public participation and access to information.

6 * **Sec. 2.** AS 14.14.060(g) is amended to read:

7 (g) State law relating to teacher salaries and **continuing employment status**
8 [TENURE], to financial support, to supervision by the department and other general
9 laws relating to schools, governs the exercise of the functions by the borough. The
10 school board shall appoint, compensate, and otherwise control all school employees
11 and administration officers in accordance with this title.

12 * **Sec. 3.** AS 14.16.050(a)(3) is amended to read:

13 (3) requirements relating to teacher employment and retirement:

14 (A) AS 14.14.105 and 14.14.107 (relating to sick leave);

15 (B) AS 14.20.095 - 14.20.215 (relating to the employment and
16 **continuing employment status** [TENURE] of teachers);

17 (C) AS 14.20.220 (relating to the salaries of teachers employed);

18 (D) AS 14.20.280 - 14.20.350 (relating to sabbatical leave
19 provisions for teachers);

20 (E) AS 23.40.070 - 23.40.260 (authorizing collective bargaining
21 by certificated employees), except with regard to teachers who are
22 administrators and except that the board may delegate some or all of its
23 responsibilities under those statutes;

24 (F) AS 14.25 (provisions regarding the teachers' retirement
25 system);

26 * **Sec. 4.** AS 14.20.140(a) is amended to read:

27 (a) If a teacher who has acquired **continuing employment status** [TENURE
28 RIGHTS] is not to be retained for the following school year, the employer shall notify
29 the teacher of the nonretention by writing, delivered before March 16, or by registered
30 mail postmarked before March 16.

31 * **Sec. 5.** AS 14.20.140(b) is amended to read:

1 (b) If a **probationary** teacher [WHO HAS NOT ACQUIRED TENURE
2 RIGHTS] is not to be retained for the following school year the employer shall notify
3 the teacher of the nonretention by writing delivered on or before the last day of the
4 school term or by registered mail postmarked on or before the last day of the school
5 term.

6 * **Sec. 6.** AS 14.20.145 is amended to read:

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

19 * **Sec. 7.** AS 14.20.147(a) is amended to read:

20 (a) When an attendance area is transferred from a currently operating district
21 to, or absorbed into, a new or existing school district, **a teacher** [THE TEACHERS]
22 for the attendance area also shall be transferred unless otherwise mutually agreed by
23 the teacher [OR TEACHERS] and the chief school administrator of the **receiving**
24 [NEW] district. Accumulated or earned benefits, including [BUT NOT LIMITED TO,]
25 seniority, salary level, **continuing employment status** [TENURE], leave, and
26 retirement, accompany the teacher who is transferred.

27 * **Sec. 8.** AS 14.20 is amended by adding a new section to read:

28 Sec. 14.20.149. TEACHER EVALUATION PROCESS. (a) Except as
29 provided in (e) of this section, a school board shall adopt by July 1, 1997, a
30 professional assessment system for evaluation and improvement of the performance of
31 the district's teachers. The professional assessment system must include

1 (1) evaluation criteria based on professional performance standards
2 adopted by the department in regulation;

3 (2) a component designed for the assessment of a first-year teacher
4 who is new to the profession, including appropriate data collection, multiple
5 observations, at least one evaluation during the school year, and appropriate
6 intervention strategies; and

7 (3) an annual observation and evaluation for teachers who are not first-
8 year teachers new to the profession.

9 (b) A school board shall ensure that students, parents, community members,
10 classroom teachers, and administrators collaborate in the design and periodic review
11 of the professional assessment system.

12 (c) A school board shall ensure that each person who evaluates a teacher is
13 first trained in the use of that district's professional assessment system. A district shall
14 provide inservice training to all teachers on the purposes and components of the
15 district's professional assessment system before the employees are evaluated under the
16 system.

17 (d) A district shall submit its professional assessment system and any
18 subsequently adopted revisions of the system to the department.

19 (e) A district need not evaluate its superintendent under the district's
20 professional assessment system.

21 * **Sec. 9.** AS 14.20.150 is repealed and reenacted to read:

22 Sec. 14.20.150. ACQUISITION OF CONTINUING EMPLOYMENT
23 STATUS. (a) Except as provided in (c) of this section, a probationary teacher acquires
24 continuing employment status in a district when the teacher

25 (1) possesses a valid teaching certificate that authorizes the teacher to
26 be employed as a regular classroom teacher or as an administrator under regulations
27 adopted by the department;

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

30 (3) receives, under the district's professional assessment system, a
31 satisfactory evaluation in the third year of any three-year period of continuous

1 employment with the district;

2 (4) on or before October 15 of the school year, accepts a contract
3 for employment as a teacher in the district for a fourth consecutive school year; and

4 (5) performs a day of teaching services in the district during a fourth
5 consecutive school year.

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

10 (c) A superintendent may not acquire or maintain continuing employment
11 status in a district.

12 * **Sec. 10.** AS 14.20.155 is amended to read:

13 Sec. 14.20.155. EFFECT OF CONTINUING EMPLOYMENT STATUS
14 [TENURE RIGHTS]. (a) A teacher who has acquired continuing employment status
15 [TENURE RIGHTS] has the right to employment within the district during continuous
16 service.

17 (b) The right to continued employment in a district under (a) of this
18 section expires if a teacher does not accept reemployment within 30 days after the
19 date on which the teacher receives a contract of employment. A teacher who has
20 acquired continuing employment status [TENURE RIGHTS] may agree to a new
21 contract at any time. If a continuing employment status teacher accepts
22 reemployment but [HOWEVER, IF THE TEACHER] fails to agree to the terms of
23 the [A] new contract, the provisions of the previous contract are continued subject to
24 AS 14.20.158.

25 * **Sec. 11.** AS 14.20.160 is amended to read:

26 Sec. 14.20.160. LOSS OF CONTINUING EMPLOYMENT STATUS
27 [TENURE RIGHTS]. A teacher loses continuing employment status [TENURE
28 RIGHTS ARE LOST] when the teacher's employment in the district is interrupted or
29 terminated. As provided in AS 14.20.177, a teacher on layoff status does not lose
30 continuing employment status during the period of layoff status.

31 * **Sec. 12.** AS 14.20.165 is amended to read:

1 Sec. 14.20.165. RESTORATION OF CONTINUING EMPLOYMENT
2 STATUS [TENURE RIGHTS]. A teacher who had continuing employment status
3 [HELD TENURE RIGHTS] and who was retired due to disability under AS 14.25.130,
4 but whose disability (1) has been removed, and the removal of that disability is
5 certified by a competent physician following a physical or mental examination, or (2)
6 has been compensated for by rehabilitation or other appropriate restorative education
7 or training, and that rehabilitation or restoration to health has been certified by the
8 division of vocational rehabilitation of the department, shall be restored to full
9 continuing employment status [TENURE RIGHTS] in the district from which the
10 teacher was retired, at such time as an opening for which the teacher is qualified
11 becomes available.

12 * **Sec. 13.** AS 14.20.170(a) is amended to read:

13 (a) A teacher, including a teacher who has acquired continuing employment
14 status [TENURE RIGHTS], may be dismissed at any time only for the following
15 causes:

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

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

21 (3) substantial noncompliance with the school laws of the state, the
22 regulations or bylaws of the department, the bylaws of the district, or the written rules
23 of the superintendent.

24 * **Sec. 14.** AS 14.20.175 is amended to read:

25 Sec. 14.20.175. NONRETENTION. (a) A probationary teacher [WHO HAS
26 NOT ACQUIRED TENURE RIGHTS] is subject to nonretention for the school year
27 following the expiration of the teacher's contract for any cause that the employer
28 determines to be adequate. However, at the teacher's request, the teacher is entitled
29 to a written statement of the cause for nonretention. A school board [THE BOARDS
30 OF CITY AND BOROUGH SCHOOL DISTRICTS AND REGIONAL
31 EDUCATIONAL ATTENDANCE AREAS] shall provide by regulation or bylaw a

1 procedure under which a nonretained teacher may request and receive an informal
2 hearing by the board.

3 (b) A teacher who has acquired continuing employment status [TENURE
4 RIGHTS] is subject to nonretention for the following school year only for the
5 following causes:

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

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

11 (3) substantial noncompliance with the school laws of the state, the
12 regulations or bylaws of the department, the bylaws of the district, or the written rules
13 of the superintendent; [OR

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

16 * **Sec. 15.** AS 14.20 is amended by adding a new section to read:

17 Sec. 14.20.177. LAYOFF STATUS. (a) A school district may place on layoff
18 status a teacher who has acquired continuing employment status if

19 (1) it is necessary for the district to reduce the number of teachers
20 because of a decrease in school attendance or because the school board has determined
21 that a financial emergency exists; and

22 (2) except as provided in (b) of this section, the district has first given
23 notice of nonretention to all probationary teachers.

24 (b) A school district may retain a probationary teacher and place on layoff
25 status a continuing employment status teacher only if there is no qualified continuing
26 employment status teacher to replace the probationary teacher.

27 (c) A school district must have a reduction-in-force plan. The plan must be
28 consistent with this section and must include procedures for layoff and recall and for
29 determining who is a qualified teacher for purposes of layoff and recall. If the
30 reduction-in-force plan required by this section is provided for entirely or partially in
31 a district's collective bargaining agreement, the district shall inform the department of

1 that fact and the terms of the agreement constitute the relevant portion of the district's
2 plan. If the negotiated plan does not contain all of the procedures required by this
3 section, or if there is no negotiated reduction-in-force plan, the school board shall
4 adopt a plan, or the necessary portion of a plan, that meets the requirements of this
5 section and shall file the plan or portion of the plan and any subsequent revisions with
6 the department. Nothing in this section prohibits a school district from negotiating or
7 adopting a reduction-in-force plan that contains terms in addition to those required by
8 this subsection.

9 (d) A teacher on layoff status is not entitled to reemployment under
10 AS 14.20.145, does not accrue leave, and, except as provided for in the district's
11 reduction-in-force plan, is not entitled to continuation of other employee benefits.
12 However, layoff status does not constitute termination or an interruption in service for
13 purposes of retaining acquired continuing employment status or retaining accrued sick
14 leave.

15 * **Sec. 16.** AS 14.20.180 is repealed and reenacted to read:

16 Sec. 14.20.180. PROCEDURES UPON NOTICE OF DISMISSAL OR
17 NONRETENTION. (a) Before a teacher is dismissed and before a continuing
18 employment status teacher is nonretained, the teacher must be given (1) oral or written
19 notice of the proposed dismissal or nonretention, and (2) a pre-termination hearing.
20 A pre-termination hearing under this section must comport with the minimum
21 requirements of due process, including an explanation of the employer's evidence and
22 basis for the proposed dismissal or nonretention and an opportunity for the teacher to
23 respond. If, following a pre-termination hearing, an employer determines that
24 dismissal or nonretention is appropriate, the provisions of (b) - (d) of this section
25 apply.

26 (b) An employer shall provide written notice of a decision to dismiss a teacher.
27 As provided in AS 14.20.140(a), an employer shall provide written notice of a decision
28 not to retain a continuing employment status teacher. Along with a notice of dismissal
29 or nonretention under this subsection, the employer shall include a statement of cause
30 and a complete bill of particulars.

31 (c) Within 15 days after receipt of a notice of dismissal or nonretention under

1 (b) of this section, a teacher may notify the employer in writing that a post-termination
2 hearing before the school board is requested. Upon receipt of a notice requesting a
3 hearing, the employer immediately shall arrange for a hearing, and shall notify the
4 teacher in writing of the date, time, and place of the hearing. The teacher may elect
5 to have either a public or a private hearing, and to have the hearing under oath or
6 affirmation. The parties have a right to be represented by counsel and to cross-
7 examine witnesses. The teacher has the right to subpoena a person who has made
8 statements that are used as a basis for the employer's decision to dismiss or nonretain.
9 A written transcript, tape, or similar recording of the proceedings shall be kept. A
10 transcribed copy of the recording shall be furnished to the teacher, for cost, upon
11 request of the teacher. A decision of the school board requires a majority vote of the
12 membership, by roll call. The board's decision shall be written and must contain
13 specific findings of fact and conclusions of law. A written notification of the decision
14 shall be furnished to the teacher within 10 days after the date of the decision. If the
15 school board sustains the dismissal or nonretention, the teacher, in accordance with
16 applicable rules of court, may appeal the decision to the superior court for a judicial
17 review based on the record.

18 (d) A continuing employment status teacher who is dismissed or nonretained
19 may waive the post-termination procedures set out in (c) of this section and

20 (1) within 60 days after receipt of the notice of dismissal or
21 nonretention, file an original action in superior court, which has jurisdiction under
22 AS 22.10.020(d); or

23 (2) within 15 days after receipt of the notice of dismissal or
24 nonretention, notify the school board in writing of the teacher's request to invoke and
25 follow the grievance procedures contained in that district's collective bargaining
26 agreement; if the school board does not agree to follow the grievance procedures, the
27 teacher may, within (A) 15 days after receipt of the school board's written notice of
28 nonagreement, follow the procedures in (c) of this section to request a post-termination
29 hearing, or (B) 60 days after receipt of the school board's written notice of
30 nonagreement, file an original action as described in (1) of this subsection; a school
31 board's failure to respond in writing within 30 days to a teacher's request under this

1 paragraph is considered to be the school board's agreement to invoke and follow the
2 district's grievance procedures.

3 * **Sec. 17.** AS 14.20.210 is amended to read:

4 Sec. 14.20.210. AUTHORITY OF SCHOOL BOARD OR DEPARTMENT TO
5 ADOPT BYLAWS OR REGULATIONS. A school board [OR THE
6 DEPARTMENT] may adopt [TEACHER TENURE] bylaws, **and the department may**
7 **adopt regulations, relating to continuing employment status so long as the bylaws**
8 **or regulations do** not [IN] conflict with [THE REGULATIONS OF THE
9 DEPARTMENT OR] state law.

10 * **Sec. 18.** AS 14.20.215 is amended by adding new paragraphs to read:

11 (8) "financial emergency" means a significant demonstrated reduction
12 in per-pupil expenditures due to a decrease in revenue from one year to the next;

13 (9) "probationary teacher" means an individual who

14 (A) is providing services under a contract with a district for
15 employment as a teacher; and

16 (B) does not have continuing employment status with that
17 district.

18 * **Sec. 19.** AS 14.20.330(b) is amended to read:

19 (b) A sabbatical leave is not an interruption of the continuous service
20 necessary to attain or retain **continuing employment status** [TENURE] under
21 AS 14.20.150, 14.20.155, or 14.20.160. However, the time spent on sabbatical leave
22 may not be counted in determining when a teacher has sufficient service to enable the
23 teacher to acquire **continuing employment status** [TENURE RIGHTS].

24 * **Sec. 20.** AS 14.20.345(b) is amended to read:

25 (b) A leave of absence is not an interruption of the continuous service
26 necessary to attain or retain retirement or **continuing employment status** [TENURE
27 RIGHTS] under AS 14.20.150, 14.20.155, or 14.20.160. However, the time spent on
28 leave of absence may not be counted in determining when a teacher has sufficient
29 service to enable the teacher to acquire retirement or **continuing employment status**
30 [TENURE RIGHTS].

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

1 Sec. 23.40.235. PUBLIC INVOLVEMENT IN SCHOOL DISTRICT
2 NEGOTIATIONS. Before beginning bargaining, the school board of a city or borough
3 school district or a regional educational attendance area shall provide opportunities for
4 public comment on the issues to be addressed in the collective bargaining process.

5 Initial proposals, last-best-offer proposals, tentative agreements before ratification, and
6 final agreements reached by the parties are public records available for public review.

7 * **Sec. 22.** AS 14.16.050(b); AS 14.20.147(b), 14.20.147(c), and 14.20.205 are repealed.

8 * **Sec. 23.** TRANSITION. Notwithstanding sec. 28 of this Act, the Department of
9 Education immediately may proceed to adopt regulations to implement the changes made by
10 this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
11 before the effective date of secs. 1 - 22 of this Act.

12 * **Sec. 24.** APPLICABILITY TO INDIVIDUALS. (a) The amendments made by sec. 9
13 of this Act apply only to

14 (1) an individual first hired as a teacher by a school district, including Mt.
15 Edgecumbe High School, on or after the effective date of sec. 9 of this Act; and

16 (2) an individual rehired as a teacher by a school district, including Mt.
17 Edgecumbe High School, on or after the effective date of sec. 9 of this Act and following an
18 interruption in continuous service that resulted in

19 (A) a loss of tenure rights under AS 14.20.160, as that section
20 appeared on the day before the effective date of sec. 9 of this Act; or

21 (B) failure to acquire tenure rights under AS 14.20.150, as that section
22 appeared on the day before the effective date of sec. 9 of this Act.

23 * **Sec. 25.** APPLICABILITY TO COLLECTIVE BARGAINING AGREEMENTS.
24 Nothing in this Act affects a collective bargaining agreement in effect on the effective date
25 of secs. 1 - 22 of this Act.

26 * **Sec. 26.** EFFECT OF CHANGE IN TERMINOLOGY. (a) To the extent that existing
27 case law on tenure under AS 14.20 addresses the nature and importance of the right of a
28 teacher to continued employment in a school district, the case law applies to the nature and
29 importance of continuing employment status under AS 14.20, as amended by this Act.

30 (b) A teacher who had tenure under AS 14.20 in a district on the day before the
31 effective date of secs. 1 - 22 of this Act has continuing employment status in the district,

1 rather than tenure, on the effective date of secs. 1 - 22 of this Act.

2 (c) A teacher hired by a district before the effective date of sec. 9 of this Act and to
3 whom sec. 9 of this Act does not apply, acquires continuing employment status, rather than
4 tenure, in the district when the teacher meets the requirements of AS 14.20.150 as that section
5 appeared on the day before the effective date of sec. 9 of this Act.

6 * **Sec. 27.** Section 23 of this Act takes effect immediately under AS 01.10.070(c).

7 * **Sec. 28.** Except as provided in sec. 27 of this Act, this Act takes effect July 1, 1996.