SB

354

To: Legislators and interested others
From: League of Women Voters, AAUW (American Association of University Women), NAEYC (National Association for the Education of Young Children), the Alaska Women's Lobby

Re: SB 354, HB 514 An Act relating to the regulation of private schools.

Requesting: An ammendment defining the term "pre-elementary school" in Sec. 2. AS 14.07.020. (8)..."pre-elementary schools is this paragraph means schools for children ages three through five years when the schools' primary function is educational and the program operates for four or fewer hours per day."

Problem: Without this ammendment a loophole is created in Alaska statute that permits any program offering care to children up to 10 hours or more a day to exempt itself from health and safety regulations governing all Alaskan day care centers - even though that program is not functionally different from a day care program.

Issues: (1) Education of pre-elementary children is different than the academic emphasis of elementary education, due to shorter attention spans and the need for more physical movement.

(2) All quality childcare programs at the pre-elementary level have educational components which include teaching basic life skills including self-sufficiency, socialization, and basic cognitive skills. Based on content there is no functional difference between a full day "pre-school" and a good day care center.

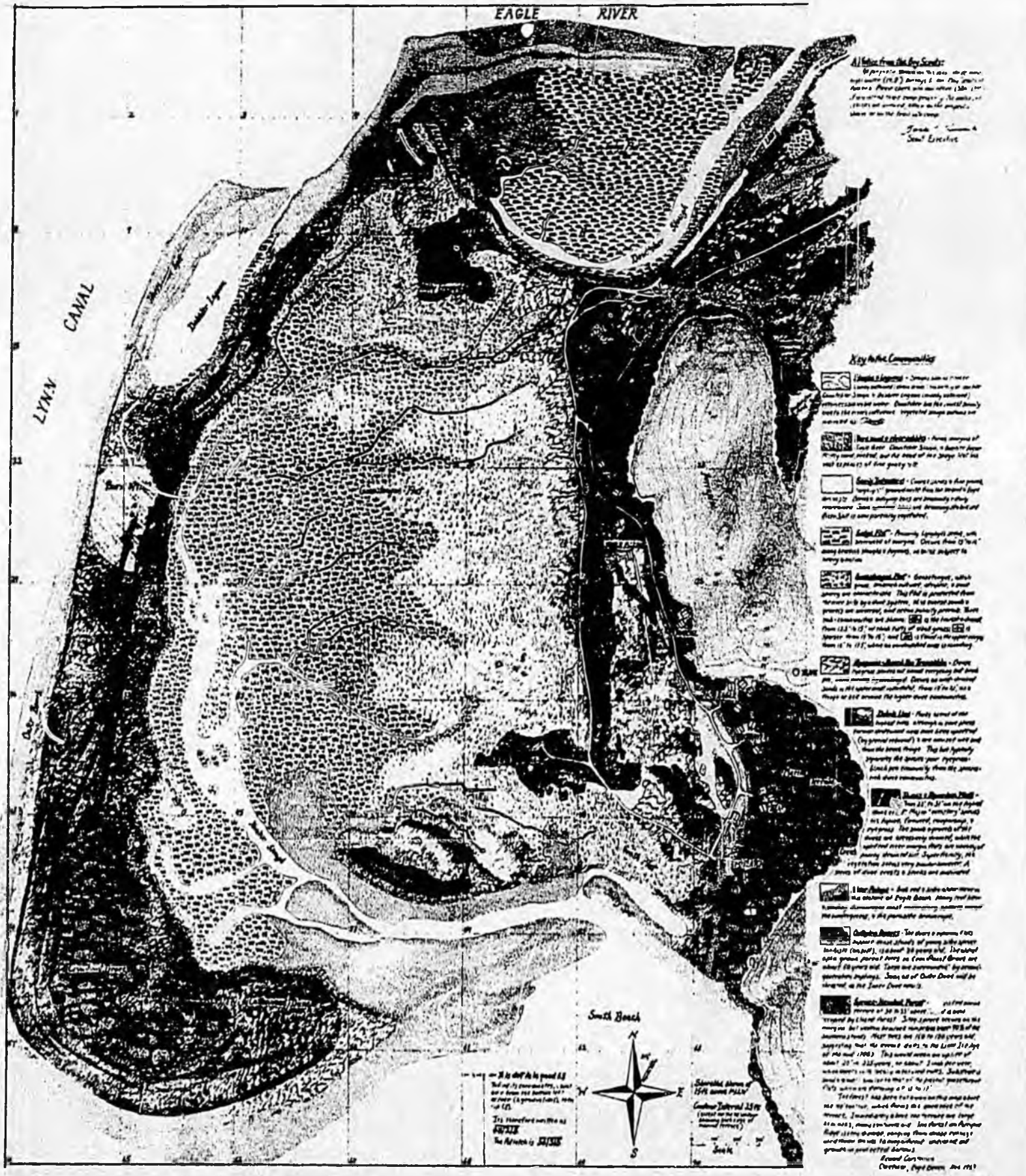
(3) When a young child is in care for all day every day, the program ceases to be solely a "school" and must include attention to nutritional needs, health of the staff, supervision with at least one staff person to 10 pre-schoolers so that the staff can attempt to meet the individual needs of each child, and enough space to meet the needs to be physically active.

(4) Most legitimate pre-schools operate from two and a half to four hours a day. Even kindergarten limits 6 year olds to two and a half to three hours.

For more information call:

L.W.V.	Paula Ziegler	586-9439/586-2660(h)
AAUW	Susan R. Clark	586-6952
NAEYC	Marjorie Fields	789-4408/789-0109(h)
Ak. W.L.	Janna Varatti	364-3487(h)

EAGLE RIVER
FIELD BIOLOGY CAMP



PROPOSAL FOR FUNDING

EAGLF RIVER FIELD BIOLOGY CAMP

Contact person:

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(907) 586-9713

Project abstract

The Eagle Beach Field Biology Camp is a pilot summer program which will provide Alaskan elementary, junior high and high school students from all economic, social and ethnic backgrounds with intensive training in field investigational techniques and familiarize them with the vegetation and wildlife of our area. To do this, we intend to focus on the wetlands and forest at the mouth of the Eagle River, equipping students with the skills needed by competent naturalists. Daily activities will include identifying, collecting, mapping and sampling of plants and animals, and wilderness, navigational and survival skills. This instruction will b a valuable supplement to high school biology courses.

Camp sessions will be held at the Eagle Beach Boy Scout Camp, an area 30 miles north of Juneau and approximately 280 acres, from July 1 through August 10. There will be three 10-day sessions for 35 students each. Camp activities will be conducted by a staff of 5-6 persons, who are experienced in the areas of field biology and outdoor recreation. Students will range from grades 5-12. During each session, there will be an optional 3-day segment spent learning kayaking or backpacking skills with a local guiding company, Alaska Discovery, Inc.

The projected operating budget for the camp is $36,381. With additional funding, the projected fee schedule will be $200 per participant. The deficit between the projected budget and the ideal fee schedule is $15,381.

Need for the camp

At present, there is no field biology/outdoor education camp in Southeast Alaska. The Eagle River Field Biology Camp will serve as an educational tool, as well as a place for Alaskan youth to meet and enjoy the outdoors. We envision the program expanding into a year-round field biology center, serving as a resource for school districts and community groups.

Juneau Summer Adventure was a pilot outdoor education day camp, begun in the summer of 1983 and run through the Juneau Parks and Recreation Department. The program was aimed at 6-13 year-olds and was extremely successful, both in terms of enrollment and community involvement. The camp will run again next summer. In large part, the success of the program was due to the targeted age group. The program's last session was aimed at an older group, 12-14 year-olds, and did not fill. We feel that this age group, and older, demands a more adventurous and intensive overnight experience: the Eagle River Field Biology Camp is designed to meet such a need.

Objectives and methods

We plan to cover the following:

(1) Observational skills
   (a) how to develop a personal field notetaking system
   (b) basic wildlife and vegetation sampling techniques
   (c) collection and preservation of specimens
   (d) mapping skills

(2) The dynamics of natural communities
   (a) species identifications
   (b) species interactions (eg. predation, symbiosis)
   (c) recognition of the important communities of Southeast Alaska; their characteristic flora and fauna, abiotic influences (eg. tide, wind)

(3) Wilderness travel and camping skills
   Optional guided tours by Alaska Discovery, Inc will be offered for three of the ten days in each session. This will introduce students to methods of kayaking, backpacking and glacier travel.

Camp Outline

The camp sessions will run for ten days each. The dates are: July 1-10, July 14-23, and July 27-August 6. Each 10-day session as follows:

Day 1	meet at Cope Park hike Blackerby Ridge - alpine community evening at Eagle Beach Boy Scout Camp
Day 2	morning orientation afternoon rocky and sandy intertidal communities
Day 3	littoral flats communities
Day 4	hike to Herbert Glacier - succession studies
Day 5	dune and riparian flats communities
Day 6, 7 and 8	optional backpack, kayak or glacier trip with Alaska Discovery, Inc. those remaining - Eagle Glacier
Day 9	forest community
Day 10	summary, completion of projects, picnic with parents

Daily Activities

Each community day at Eagle Beach will proceed from collective (all 30 students, or 15 and 15) to group activities (6-10 students) activities. The day begins with a talk about the dynamics of the community. Next, the entire group participates in a walk through the community, during which all birds and mammals spotted are identified, as well as selected plants from each stratum. This structure will enable everyone to gain the facts and concepts needed to begin the investigative portion of the day.

7-8	wake-up and organizing time
8-9	breakfast
9-10	talk on selected community
10-11	identification hikes and recreation activities
12-1	lunch
1-3	group investigative activities
3-4	personal observations, collections, etc.
4-6	pool data, recreation activities
6-7	dinner
8-10	recreation activities
10-11	campfire

Instructors' Backgrounds

Sharon Raymond, 23
* directed Juneau Summer Adventure, city-sponsored environmental and outdoor education program
* volunteer work with elementary and high school outdoor education field trips in Juneau area
* assistant manager, Alaska Discovery, Gustavus office

Natalie Hill, 30
* secondary biology teacher
* taught 5-8th grade in Alaska bush; taught junior high life and earth science in Venezuela
* Co-director of field biology camp, three years

Joe Lacy, 34
* member Juneau Mountain Rescue; certified Emergency Trauma Training (ETT); avalanche training
* amateur naturalist and botanist
* avid outdoors person

Richard Carstensen, 32
* naturalist, working towards publication of "a natural history of Eagle Beach"
* caretaker, Eagle Beach Boy Scout Camp, 3 years
* teaching assistant with elementary, high school and Cub Scout outdoor education field trips

Dick Ellsworth, 37
* member Juneau Mountain Rescue; certified Emergency Trauma Training (ETT)
* member Alaskan Association of Mountain Guides; member McGuire Polar Expedition
* Taught Rock and Alpine climbing for Alaska Discovery Inc., Guided kayak trips in Southeast Alaska

BUDGET

lodging		
$100/night x 10 nights		$1000
food		
$8/day x 10 days x 45 persons		3600
salaries		
cook: $65/day x 1 x 10 days	650	
instructors: $100/day x 5 x 10 days	5000	5,650
insurance (very rough estimate)		
$2/person/day x 10 days x 35 persons		700
first aid equipment		30
advertising		
postage, brochures, photography	80	
Eagle Beach text and map ($200-3)	67	147
program supplies		200
contingency fund		800
TOTAL per session		12,127
TOTAL BUDGET for summer		36,381
Total Budget at $200/person, w th 105 participants		21,000
BUDGET DEFICIT		15,381

7. Colleges and Universities ⇐8.1(5)

Failure of University of Alaska tenure committee to give teacher adequate notice of tenure committee's meetings deprived him of his statutory right to request open discussion of meetings at which his application for tenure was discussed. AS 44.62.310(c)(2).

8. Colleges and Universities ⇐8.1(5)

Under Public Meetings Act, University of Alaska was under implied statutory obligation to inform teacher of time and place at which his application for tenure would be considered and to inform him that he had right to request that such meetings be open to the public. AS 44.62.310(c)(2).

9. Colleges and Universities ⇐8.1(5)

University of Alaska tenure committee meetings to discuss teacher's tenure application were not "quasi-judicial" proceedings and thus, did not come within exception to Public Meetings Act for meetings of quasi-judicial bodies meeting solely to make decision in adjudicatory proceeding. AS 44.62.310(d)(1).

10. Colleges and Universities ⇐8.1(7)

Where University of Alaska tenure committee violated Public Meetings Act in considering teacher's tenure application, such committee's recommendation to deny teacher's requested tenure was void, and thus, teacher would be reinstated for 1983–1984 academic year and would have option of making application for tenure following such period, and, if he then applied for tenure, his application should be considered by then-current tenure committee rather than by ad hoc committee composed in part of members who served on committee in 1979–1980 when he originally applied for tenure. AS 44.62.310, 44.62.310(f).

Terrance A. Turner, Owens & Turner, P.C., Anchorage, for appellants, cross-appellees.

John B. Patterson, Strachan, Kelly & Patterson, Anchorage, for appellee, cross-appellant.

Before BURKE, C.J., RABINOWITZ, MATTHEWS, and COMPTON, JJ.

OPINION

RABINOWITZ, Justice.

The University of Alaska brings this appeal from the superior court's grant of summary judgment in favor of Geistauts. The superior court ruled that the actions of the University of Alaska tenure committee with respect to Geistauts' application for tenure in 1979–80 were void because the committee failed to comply with the requirements of the Alaska Public Meetings Act (PMA), AS 44.62.310–.312. The superior court ordered that the same committee be reconvened to consider Geistauts' application, this time in compliance with PMA dictates.

The University argues on appeal that the PMA was not intended to regulate University tenure committee meetings. It first contends that the statute applies only to the Board of Regents of the University, and that, even if it does apply broadly to the University system, the tenure committee meetings in this case fell within certain statutory exceptions to the open meeting requirements.

Geistauts, on cross-appeal, asserts that the superior court erred in fashioning a remedy. The superior court ordered that the original tenure committee that considered Geistauts' application be reconvened to make a new recommendation. Geistauts argues that he is entitled to a *de novo* consideration by a new committee, as if the 1979–80 proceedings had never been instituted. He further claims that he is entitled to the full benefits of University employment until the time the new decision is reached, because he has not been properly terminated by the University.

George Geistauts had been a member of the faculty of the University of Alaska at Anchorage for five years when he elected to stand for tenure in the academic year of 1979–80. Under University regulations a faculty member is generally considered for tenure in his seventh year of service, but

candidates with prior experience at another university may elect to stand after their fifth year. Geistauts had taught for four years at Washington State University, so the option to stand was available to him in 1979–80. He chose to do so rather than wait an additional year.

The tenure procedure began with an evaluation of Geistauts' tenure file by the local tenure committee for the University of Alaska at Anchorage. The function of the tenure committee was to examine Geistauts' qualifications based upon his file, and to make a recommendation to the Chancellor of the University regarding the candidate's application. The tenure committee met a number of times in closed session to consider Geistauts' application. The committee notified neither Geistauts nor the public of the meetings. Furthermore, the committee did not inform Geistauts that he had the option of requesting that the meetings be open.

Following consideration of Geistauts' file, the tenure committee recommended to the Chancellor that the application be denied. In accordance with University regulations, the Chancellor met with the tenure committee and formed his own recommendation regarding Geistauts' application. The Chancellor's meeting with the committee was not public, and no notice of it was given to Geistauts. Again, Geistauts was not made aware of any right on his part to request that the meeting take place openly.

The Chancellor recommended to the President of the University, who held ultimate authority over the grant or denial of tenure, that Geistauts' application be denied. The President subsequently informed Geistauts that he would not be granted tenure.

Geistauts challenged the adverse decision through University grievance procedures. The University Grievance Committee recommended to the President that Geistauts' application be reconsidered. Accordingly, the President returned Geistauts' file to the tenure committee for a second evaluation. The committee reconvened under protest and met in closed session, with no notice to Geistauts. Upon reconsideration, the committee again recommended that Geistauts not be granted tenure, this time unanimously. Once more, the Chancellor's recommendation was for denial. For a second time, the President informed Geistauts of his decision to deny tenure.

Following the second denial, Geistauts brought suit in the superior court. By stipulation of the parties, Judge Johnstone dismissed all of Geistauts' claims save those based upon the public meeting statute. On that count the superior court granted summary judgment in favor of Geistauts. The superior court ruled that the meetings of the tenure committee had taken place in violation of AS 44.62.310 and AS 14.40.160 because they were not made open to the public.[1] All actions taken by the committee were therefore deemed void, and the court ordered that the committee be reconstituted as it existed in 1979–80 to consider for a third time Geistauts' credentials. The court, however, did not order that the meetings automatically take place in public. Rather, it required that Geistauts be given an opportunity to

1. *See infra* note 2 for the text of AS 44.62.310. AS 14.40.160 expressly provides that AS 44.62.310 is applicable to the board of Regents, stating in relevant part that:

> (a) The provision[s] of AS 44.62.310 apply to meetings of the Board of Regents. All meetings of the board, its committees or subcommittees, are open to the public and press except as otherwise provided in AS 44.62.310(c). The findings of an executive session shall be made a part of the record of the proceedings of the Board of Regents. All records of the meetings and proceedings shall be open to inspection by the public and the press at reasonable times.
>
> (b) The Board of Regents may determine the time and place of its meetings. However, 30 days notice is required for all regular meetings and 10 days notice is required for special meetings of the Board of Regents, its committees or subcommittees called under the bylaws or rules of procedure of the Board of Regents. Emergency meetings may be called without notice.

The superior court's reliance upon AS 14.40.160 was misplaced, since the statute applies only to the Board of Regents. Thus, we consider here only the merits of the superior court's decision that AS 44.62.310 applies directly to the decision-making process of the tenure committee.

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an opportunity to request public meetings under AS 44.62.310(c)(2). In the event that Geistauts made such a request, the court ordered that the meetings should be opened as required by AS 44.62.310(a). This appeal followed.

I. *Is the University of Alaska Subject to the Public Meetings Act?*

[1] The first issue raised by this appeal is whether the local tenure committee which met to consider Geistauts' application is one of the governmental units subject to the open meeting requirements of AS 44.62.310.[2] We have concluded that the local tenure committee of the University of Alaska comes within the ambit of the public meetings statute and thus affirm the superior court's ruling on this question.[3]

[2, 3] AS 44.62.310(a) contains a broad description of all the entities covered by the statute. Under the literal terms of the statute, the University of Alaska's local tenure committee can be considered either a subordinate unit of the state, or an advisory board, or council, supported in whole or in part by public money.[4] In reaching our conclusion that the clear and unambiguous

2. AS 44.62.310 provides:

Agency meetings public. (a) All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. This section does not apply to any votes required to be taken to organize the afore-mentioned bodies.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. No action may be taken at the executive session.

(c) The following excepted subjects may be discussed in an executive session:

(1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;

(2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;

(3) matters which by law, municipal charter, or ordinance are required to be confidential.

(d) This section does not apply to

(1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff; or

(5) meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

(e) Reasonable public notice shall be given for all meetings required to be open under this section.

(f) Action taken contrary to this section is void.

3. The tenure committee is a subordinate unit of the University, which is a state organization. In *University of Alaska v. National Aircraft Leasing, Ltd.*, 536 P.2d 121 (Alaska 1975), we held that "the University of Alaska is an integral part of the state government and an instrumentality of the state in performing its educational function." *Id.* at 128. Because of this, we held that suits against the University were governed by the Alaska Tort Claims Act, AS 09.50.250-.300. *Id.* at 128-29. *See also Cathcart v. Andersen*, 85 Wash.2d 102, 530 P.2d 313 (Wash.1975) (en banc) (University of Washington and its law school held to be agencies of the state). Other cases where state "sunshine laws" were found applicable to committees within state university systems include *Courier-Journal and Louisville Times Co. v. University of Louisville Board of Trustees*, 596 S.W.2d 374 (Ky.App.1979); *Cooper v. Arizona Western College Dist. Governing Bd.*, 125 Ariz. 463, 610 P.2d 465 (Ariz.App.1980); *Arkansas Gazette Co. v. Pickens*, 258 Ark. 69, 522 S.W.2d 350 (Ark.1975); *Greene v. Athletic Council of Iowa State University*, 251 N.W.2d 559 (Iowa 1977).

4. *See supra* note 2 for the text of AS 44.62.310(a).

UNIVERSITY OF ALASKA and Edward B. Rasmuson, Jeffry Cook, Don Abel, Jr., Herbert Lang, Mildred H. Banfield, Tim Burgess, Hugh B. Fate, Jr., Margaret J. Hall, Sam Kito, Jr., Thomas Miklautsch, and John Shively, Regents of the University of Alaska, in their Official Capacity, Appellants, Cross-Appellees,

v.

George A. GEISTAUTS, Appellee, Cross-Appellant.

Nos. 6749, 6771.

Supreme Court of Alaska.

June 17, 1983.

University faculty member brought action seeking to void university's denial of his tenure application on ground that Public Meetings Act was violated. The Superior Court, Third Judicial District, Anchorage, Karl S. Johnstone, J., entered summary judgment for faculty member, and university appealed. Faculty member cross-appealed, asserting error in fashioning a remedy. The Supreme Court, Rabinowitz, J., held that: (1) University of Alaska tenure committee is subject to Public Meetings Act; (2) failure of tenure committee to consider the tenure application at open public meetings was not harmless error; (3) provision of Public Meetings Act that closed executive sessions may be held to discuss subjects that tend to prejudice reputation and character of any person, provided person may request public discussion applies to University Tenure Committee meetings; (4) university's failure to give faculty member adequate notice of tenure committee's meeting deprived him of his right to request open discussion of his tenure application; (5) Public Meetings Act exception for quasi-judicial bodies did not apply; and (6) tenure committee's failure to comply with Public Meetings Act rendered its recommendation concerning faculty member's tenure application void; and (7) faculty member was entitled to reinstatement for 1983–84 year and would have option of making application for tenure following such period, and if he then applied for tenure, his application should be considered by then-current tenure committee rather than by ad hoc committee composed in part of members who served on committee when he originally applied for tenure.

Affirmed.

1. Colleges and Universities ⇐8.1(5)

Local tenure committee of University of Alaska comes within ambit of Public Meetings Act. AS 44.62.310.

2. Statutes ⇐190

Where statute's meaning appears clear and unambiguous, party asserting different meaning bears correspondingly heavy burden of demonstrating contrary legislative intent.

3. Constitutional Law ⇐70.3(4)

Wisdom underlying particular legislative enactment is not justiciable question.

4. Colleges and Universities ⇐8.1(6)

Failure of University of Alaska's local tenure committee to consider teacher's tenure application at open public meetings was not harmless error. AS 44.62.310, 44.62.310(a).

5. Colleges and Universities ⇐8.1(6)

Assuming that discussions remote to actual decision might be considered outside reach of public meetings statute, "harmless violation" doctrine would not apply where University of Alaska's local tenure committee failed to consider teacher's tenure application at open public meeting, in that it was apparent that tenure committee recommendations played significant role in final tenure decisions. AS 44.62.310.

6. Colleges and Universities ⇐8.1(5)

Provision of Public Meetings Act that closed executive sessions may be held to discuss subjects that tend to prejudice reputation and character of any person, provided the person may request public discussion applies to University of Alaska tenure committee meetings. AS 44.62.310(c)(2).

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Terrance A. Tur P.C., Anchorage, for

John B. Patterso Patterson, Anchorag appellant.

language of AS 44.62.310 encompasses meetings of the University of Alaska's local tenure committee we find the University's arguments based upon legislative history and policy reasons unpersuasive.[5]

II. *Was the Failure of the University of Alaska's Local Tenure Committee to Consider Geistauts' Tenure Application at Open Public Meetings Harmless Error?*

The University bases its harmless error argument on *Hammond v. North Slope Borough*, 645 P.2d 750 (Alaska 1982). In *Hammond* one of the issues addressed by this court concerned the effect of AS 44.62.310(f) which provides: "Action taken contrary to [AS 44.62.310] is void."

In *Hammond* we held that although the Agency Advisory Committee on Leasing (AACL) and the Joint Federal/State Beaufort Sea Task Force had violated the notice provision of AS 44.62.310(e), the violation was harmless. 645 P.2d at 764–66. We concluded that the Commissioner of the Department of Natural Resources reached his decision independently of the AACL and Task Force recommendations, and received "substantial public input" from private sources and other state agencies. *Id.* at 765–66. We thus reasoned that there was insufficient ground upon which to declare the Commissioner's decision void under AS 44.62.310(f). *Hammond* presented a compelling fact situation in which a relatively insignificant violation of AS 44.62.310 was coupled with overwhelming prejudice which would have resulted from a conclusion that the five-year procedure leading up to the lease sale was void.

[4, 5] We reject the University's harmless error argument for the following reasons. First, AS 44.62.310(a) states that its provisions pertaining to public meetings shall apply to governmental units whether "advisory or otherwise." This language mandates rejection of a construction of AS 44.62.310(a) which would limit its scope to decision-making bodies only.[6] Second, in our view, the *Hammond* "harmless violation" doctrine should be invoked only in very limited circumstances. Third, assuming there is merit to the broad proposition that discussions remote to the actual decision might be considered outside the reach

5. Both parties recognize that there is no longer a plain meaning rule as such in Alaska law. Where a statute's meaning appears clear and unambiguous, however, the party asserting a different meaning bears a correspondingly heavy burden of demonstrating contrary legislative intent. *Municipality of Anchorage v. Sisters of Providence in Washington, Inc.*, 628 P.2d 22, 27 n. 6 (Alaska 1981); *State v. City of Haines*, 627 P.2d 1047, 1049 (Alaska 1981). Here the University has not met its burden.

Admittedly, the policy decision as to whether or not tenure committee meetings should be open is debatable. Nevertheless, the wisdom underlying a particular legislative enactment is not a justiciable question.

6. Compare *Pope v. Parkinson*, 48 Ill.App.3d 797, 6 Ill.Dec. 756, 363 N.E.2d 438 (Ill.App. 1977), where the Illinois appellate court decided that meetings between the Chancellor of the University of Illinois and a group of students and faculty members called the Assembly Hall Advisory Committee were not required to be open under the state sunshine law. The court relied on the facts that (1) the Committee was a purely advisory body with no power to bind the Chancellor and (2) the meetings dealt only with the internal affairs of the University. *Id.* 6 Ill.Dec. at 758-59, 363 N.E.2d at 440–41. Similarly, in *Daily Gazette Co. v. North Colonie Bd. of Ed.*, 67 A.D.2d 803, 412 N.Y.S.2d 494, 495 (N.Y.App.Div.1979), meetings of sub-committees of the board of education were held not within the coverage of New York's open meetings laws where the sub-committees were "not given any authority to make final decisions on any matters but merely [made] recommendations on various subjects to the entire board." The court found that, where no actual decision could be made, there was no transaction of "public business" as required for the invocation of the New York statute. *Id. See also Bennett v. Warden*, 333 So.2d 97, 100 (Fla.App. 1976) (college president's meetings with group of college employees not covered by Florida sunshine law where meetings constituted mere "fact-finding expeditions" and actual decision could not be made by that entity).

Modern public meetings statutes reject the argument that only the moment of ultimate decision must be subject to public scrutiny, and require that preliminary deliberations be open, as well. *See Town of Palm Beach v. Gradison*, 296 So.2d 473, 477 (Fla.1974); *Sacramento Newspaper Guild v. Sacramento Cty. Bd. of Supervisors*, 263 Cal.App.2d 41, 69 Cal.Rptr. 480, 485, 487 (Cal.App.1968).

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of the public meetings statute, we think the doctrine inapplicable in this case. It is apparent that tenure committee recommendations do play a significant role in final tenure decisions.

III. *Is the AS 44.62.310(c)(2) Exception to the Public Meetings Act Applicable?*

[6] AS 44.62.310(c)(2) provides that closed executive sessions may be held to discuss "subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion." We hold that AS 44.62.310(c)(2) is applicable to tenure committee meetings. A tenure committee meeting is likely to focus on perceived deficiencies in the candidate's qualifications. Tenure committee members may raise concerns for the purpose of discussion which would damage the applicant's reputation if aired publicly.[7] In *City of Kenai v. Kenai Peninsula Newspapers*, 642 P.2d 1316, 1325–26 (Alaska 1982) we held that the exception set out in AS 44.62.310(c)(2) permitted the Kenai City Council to meet in closed session to review the comparative qualifications of applicants for the job of city manager. We noted that "a discussion of personal characteristics and habits may well carry a risk that the applicant's reputation will be compromised." *Id.* at 1326.

[7, 8] We are in agreement with Geistauts' further contention that the University's failure to give him adequate notice of the tenure committee's meetings deprived him of his right to request an open discussion pursuant to the provisions of AS 44.62.310(c)(2). The sole purpose of a notice requirement under AS 44.62.310(c)(2) is to afford the employee with an opportunity to request a public discussion. In our view, requiring the governmental body to inform the individual only of the time and place of an upcoming meeting is inadequate notice. Some employees may not know of their right to request public discussions and thus, may neglect to invoke the statutory option for that reason alone. We therefore hold that the University was under the implied statutory obligation to inform Geistauts of the time and place of all meetings in which his application would be considered and to inform him that he had the right to request that the meetings be open to the public.[8]

IV. *Is the Quasi-Judicial Exception Provided for in AS 44.62.310(d)(1) Applicable Here?*

[9] AS 44.62.310(d)(1) provides that:

> (d) This section does not apply to
>
> (1) Judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding....

We reject the University's argument that the tenure committee meetings were "quasi-judicial" proceedings, and thus come within the exception to the public meeting requirements found in AS 44.62.310(d)(1). In our view, the tenure committee is not a "quasi-judicial body" and did not meet "solely to make a decision in an adjudicatory proceeding."[9]

7. Our reading of AS 44.62.310(c)(2) is that it was designed to serve the same function as the provisions in other states which exempt meetings concerning employment matters from sunshine law requirements. The reasoning behind the "personnel matters" exception in other jurisdictions appears to be the avoidance of embarrassment to employees whose strengths and weaknesses will be evaluated. *Rice v. Union Cty. Regional High School Bd. of Ed.*, 155 N.J. Super. 65, 382 A.2d 386, 390 (N.J.Super.1977); Comment, Open Meetings Statutes: The Press Fights for the "Right to Know," 75 Harv.L.Rev. 1199, 1208 (1962).

8. Such an implied notice requirement is necessary to give effect to AS 44.62.310(c)(2). The open meetings law is a technical regulation. It would be unrealistic to presume that public employees generally are familiar with their rights under subsection (c)(2). We conclude that the marginal additional burden upon state entities is mandated in order to ensure meaningful operation of the statute.

9. *But see Pierce v. Lake Stevens School Dist. No. 4, Snohomish Cty.*, 84 Wash.2d 772, 529 P.2d 810 (Wash.1974) (en banc); *Brazil v. Babb*, No. 805360 (Wash. King Cty.Super.Ct., June 15, 1976).

The Washington public meetings statute did not apply to

> [t]hat portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter

V. *The Effect of the University's Failure to Comply With the Public Meetings Law.*

As a consequence of its holding that all actions of the tenure committee were void because of the University's noncompliance with the public meetings law, the superior court ordered in part the following relief:

1. That, the U of A [University of Alaska] is ordered to reconvene the Committee as it was constituted during the time that it originally considered plaintiff's tenure application for the purposes of again reconsidering such application ....
2. Such reconsideration shall be based upon plaintiff's tenure file as it existed during the Committee's prior consideration of his tenure application; and plaintiff shall have no right to update or supplement his file prior to such reconsideration by the Committee.
3. Plaintiff shall be treated for the purposes of such tenure application reconsideration as if he were still a member of the UAA [University of Alaska at Anchorage] faculty and plaintiff shall not be prejudiced by his bringing or prosecuting this suit; but plaintiff shall have no right to actual reinstatement or any employee benefits pending such reconsideration and shall have service credits under the Alaska Teachers Retirement System for time that he has not actually been employed by the UAA [University of Alaska at Anchorage], only in the event that reconsideration results in granting of tenure.

In his cross-appeal, Geistauts argues that the relief granted by the superior court was inadequate and attacks the foregoing portions of the superior court's judgment.[10] The remedial provision of Alaska's public meetings law states that "[a]ction taken contrary to this section is void."[11] The parties agree that if a violation of the PMA is found in this case, the 1979-80 tenure committee recommendation is void. The dispute on cross-appeal involves the consequences of such voidness. Geistauts argues that the University must begin anew its review of his tenure application as if the flawed consideration had never taken place. He asserts that he is entitled to all the benefits of ongoing employment up until the time of a new consideration and that he should be entitled to update his tenure file with recent academic accomplishments.

In support of the superior court order, the University advances a different view of the appropriate remedy. It argues that the 1979-80 tenure committee evaluation should be repeated, and that Geistauts' denial should be allowed to stand if the replicated tenure review procedure—this time in accordance with the PMA—yields the same result reached in 1979-80.

[10] We find ourselves persuaded by Geistauts' argument regarding the consequences of voidness. The plain meaning of the statute disfavors the University. The word "void" is defined in Black's Law Dictionary as "[n]ull; ineffectual, nugatory; having no legal force or binding effect." Black's Law Dictionary 1745 (4th ed. 1957). We endorsed that definition in *Walters v. Cease*, 388 P.2d 263, 267 (Alaska 1964).

The consequences of our adopting Geistauts' theory of voidness, in the context of this litigation, is that the superior court's judgment should be modified in the following respects. Geistauts shall be reinstated for the 1983-84 academic year and shall have the option of making an application for tenure following this period. In the event that Geistauts applies for tenure, his application should be considered by the then-current tenure committee rather than by an *ad hoc* committee composed in part of members who served on the committee in 1979-80. In the event Geistauts does apply, his tenure file shall be brought current be-

between named parties as distinguished from a matter having general effect on the public or on a class or group ....
Pierce, 529 P.2d at 819.

10. In its appeal the University also questions the superior court's judgment as it relates to the vesting of pension rights for Geistauts.

11. AS 44.62.310(f).

fore the tenure committee considers his application.[12]

The superior court's judgment as modified by this opinion is AFFIRMED.

David Hoyle SPRINGER, Appellant,

v.

STATE of Alaska, Appellee.

No. 4930/6288.

Court of Appeals of Alaska.

June 24, 1983.

Defendant was convicted in the Superior Court, Third Judicial District, Anchorage, J. Justin Ripley, J., of robbery and shooting with intent to kill, wound, or maim, and he appealed. The Court of Appeals, Serdahely, Superior Court Judge, sitting by assignment, held that: (1) defendant was not denied speedy trial rights under constitution or under rule; (2) defendant was not denied effective assistance of counsel; and (3) because defendant was not denied effective assistance of counsel, he lacked standing to raise argument that method of appointing counsel for indigent defendants when public defender agency claims conflict violates equal protection.

Affirmed.

1. Criminal Law ⇐577.15(3)

Defendant was not denied rights under speedy trial rule by delay of 30 months between arrest and trial where, after deducting periods tolled between time defendant was indicted and bench warrant was issued for his arrest until his arraignment, between time his appointed counsel moved to withdraw and new counsel was appointed, and time for which defendant signed formal waiver, only 116 days of delay had elapsed. Rules Crim.Proc., Rule 45.

2. Criminal Law ⇐577.16(4)

Defendant was not denied constitutional speedy trial right by delay of 30 months between arrest and trial where defendant was not entitled to presumption of prejudice in that 18 months of delay were excluded for time defendant fought extradition and four months were excluded for continuances requested by his counsel, leaving only eight months not caused by defendant, and where defendant made no specific allegations of prejudice. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 11.

3. Criminal Law ⇐641.13(2)

In prosecution for armed robbery, defendant was not denied effective assistance of counsel by counsel's failure to look into issue of defendant's speedy trial rights where defendant's speedy trial rights were not violated. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 11.

4. Criminal Law ⇐641.13(6)

In prosecution for armed robbery, defendant was not denied effective assistance of counsel by counsel's failure to introduce results of polygraph test since results of polygraph tests were inadmissible. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 11.

5. Criminal Law ⇐641.13(6)

In prosecution for armed robbery, defendant was not denied effective assistance of counsel by counsel's failure to hire investigator to locate certain alibi witness where there was lack of information about witness from which she could be located. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 11.

6. Criminal Law ⇐641.13(6)

In prosecution for armed robbery, defendant was not denied effective assistance of counsel by counsel's failure to interview prosecution witnesses before trial where

12. Inherent in the foregoing is our affirmance of the portion of the superior court's judgment which relates to employee benefits and service credits under the Alaska Teachers Retirement System.

Introduced: 6/25/83
Referred: State Affairs
and Judiciary

IN THE SENATE

BY V.FISCHER, FAHRENKAMP, AND JOSEPHSON

SENATE BILL NO. 317

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to public meetings; and providing for an effective date."

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

* Section 1. AS 14.40.160(a) is amended to read:

(a) The provisions of AS 44.62.310 apply to meetings of the Board of Regents. All meetings of the board, its committees or subcommittees, are open to the public and press except as otherwise provided in AS 44.62.310(c) and (d). The findings of an executive session shall be made a part of the record of the proceedings of the Board of Regents. All records of the meetings and proceedings shall be open to inspection by the public and the press at reasonable times.

* Sec. 2. AS 44.62.310(d) is amended by adding a new paragraph to read:

(6) meetings of a subordinate unit of the University of Alaska, advisory or otherwise, held solely to act upon matters of professional qualifications, privileges, or discipline.

* Sec. 3. AS 44.62.310(f) is amended to read:

(f) Action taken contrary to this section is voidable. An action for violation of this section must be commenced within six months of the violation [VOID].

* Sec. 4. This Act takes effect immediately in accordance with AS 01.-10.070(c).

why Δ this wording?
Have there been problems here?

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SB 317.

← everything but take their vote in public.

[promotion, sabbatical, tenure committee going into executive session

[Scott Sterling]

#44 SYCOUNSEL Mon Jun 20 12:22 (37) U

TO: Wendy Redman
FROM: Astrid de Parry
RE: Open Meetings Law, AS 44.62.310

I just got my copy of the supreme court's opinion in the Geistauts case. The relevant paragraphs read as follows:

> "AS 44.62.310(a) contains a broad description of all the entities covered by the statute. Under the literal terms of the statute, the University of Alaska's local tenure committee can be considered either a subordinate unit of the State, or an advisory board, or council, supported in whole or in part by public money. In reaching our conclusion that the clear and unambiguous language of AS 44.62.310 encompasses meetings of the University of Alaska's local tenure committee, we find the University's arguments based upon legislative history and policy reasons unpersuasive. . . .
>
> (footnote 5) Both parties recognize that there is no longer a plain meaning rule as such in Alaska law. Where a statute's meaning appears clear and unambiguous, however, the party asserting a different meaning bears a correspondingly heavy burden of demonstrating contrary legislative intent (citations omitted). Here the University has not met its burden.
>
> Admittedly, the policy decision as to whether or not tenure committee meetings should be open is debatable. Nevertheless, the wisdom underlying a particular legislative enactment is not a justicible question."

END OF QUOTE< END OF THIS SECTION OF MESSAGE>
MESSAGE CONTINUES AS ANOTHER MAIL MESSAGE>

#45 SYCOUNSEL Mon Jun 20 12:32 (29) U Reg. - Acknowledgement sent.

CONTINUATION OF MESSAGE FROM Astrid de Parry:

In effect, the court has invited us to seek a legislative solution to the statute's literal overbreadth. The court has also created an enormous problem for us when they rejected our arguments for making an adverse decision have prospective effect only. We are now faced with countless numbers of "void" decisions rendered within the last two years period with no possibility of recourse, save through the legislature. Accordingly, I urge you to do your best to persuade concerned legislators to try to push through corrective legislation this year, before the session adjourns. I have three specific suggested amendments, the first of which would exempt the University altogether (but not the Board of Regents), the second alternative would create a similar exception to that for hospital committee meetings, the the third would be to drastically shorten the statute of limitations so as to preserve the integrity of any and all tenure, promotion, sabbatic leave, etc. decisions reached within the past two years. You may wish to alert concerned legislators that the court's ruling goes beyond the University of Alaska per se and could be relied upon by non-University-related litigants to challenge a vast array o f state government actions within the past two years that were based on committee/council/task force/etc. recommendations arrived at through meetings which were not duly publicly noticed.

WENDY, I'M NOT SURE HOW BIG OF A BITE THE COMPUTER WILL TAKE AS A MAIL MESSAGE, SO I'M GOING TO BREAK THIS UP AGAIN.
--TO BE CONTINUED ON MESSAGE 3:

#46 SYCOUNSEL Mon Jun 20 12:43 (35) U Reg. - Acknowledgement sent.

Astrid de Parry to Wendy Redman, CONTINUED:

The first suggested amendment would be to add a new subsection (d)(6) to AS 44.62.310, as follows: "The University of Alaska or any subordinate units thereof; provided, however, that the Board of Regents is not deemed to be a subordinate unit of the University of Alaska." The second alternative would be to create an alternative new subsection (d)(6), as follows: "Meetings of any subordinate unit of the University of Alaska, advisory or otherwise, when holding a meeting solely to act upon matters of professional qualifications, privileges, or discipline." [The third alternative would be to amend subsection (f), which currently reads, "Action taken contrary to this section is void" by changing the word "void" to "Voidable" and continuing with a new sentence to read, "No person may bring an action for a violation of this section unless commenced within six months."] If you could persuade someone that the six month statute of limitations is in fact too generous and that they should shorten it to onbe month, which is the usual limit for seeking judicial review from an adverse administrative decision, that, of course, would be all the better. Two years is a hell of a long time to allow people to wait before challenging an administrative determination arguably based upon a void committee recommendatuion. And, again, I must emphasize that the court's ruling extends to all of state government. In one fell swoop, the supreme court has Jeopardized the validity of countless administrative decisions reached over the last two years through some less than letter perfect group deliberative processes. - Surely this is not in the state's best interests.

If I can be of any further assistance in this regard, please don't hesitate to call me.

ADEP:LSD
cc: Jay Barton

#47 FNKDTONELLA Mon Jun 20 13:12 (3) U

well, guess what...Mr Cowper didn't show up as expected this morning... ihis office didn't know where he was...arggghhhhh!
love you madly

+
*BYE
**cost: $ 0.23 to date: $ 953.60= 53%
**on at 15.331 - off at 15.402 on 06/20/83

RNP DISCONNECTS

WORK ORDER REQUEST FORM

SB13-1490

KEYWORDS: universities/colleges
information
public meetings

ASSIGNED TO Levy

REQUEST FOR: BILL ☒ RESOLUTION ☐ RESEARCH ☐ OTHER ☐

SUBJECT U of A Exemptions from Public Meetings Act.

REQUESTED FOR Sen. Vic Fischer BY Sen. Vic Fischer EXT. 4954

* DELIVER TO Sen. Vic Fischer TAKEN BY Barnes

INSTRUCTIONS, EXPLANATIONS Draft bill exempting U of A faculty committees on tenure, promotion and sabbatical leave, from previsions of the Alaska Public Meetings Act. See attached. Call Ginger Baim (4954) if you have any questions.

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED ☐

AUTHORIZED TO CONFER WITH

RETURN

TO REQUESTER

APPROVED: BJB Director, Legal Services

REVIEWED

IN 6/23/83 DUE

TYPED - Draft DATE

Final DATE

PROOFED DELIVERED

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

Co-Sponsor Sen. Fahrenkamp

DRAFT ☒ FINAL ☐

LA-L 10