

HB

217

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 5/5/95

FURTHER:

DATE TURNED INTO OFFICE: 5-6-95

Finance Committee considered CS FOR HOUSE BILL NO. 217(L&C) am(efd fld)
 Teacher tenure, teacher layoff and rehire rights.

and recommends:

- be replaced with 3 CS CS HB 217 (Fin)
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical change
 - new: SCR# _____

SCS (Fin) coming

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Steve Krier</i>	<input checked="" type="checkbox"/>	<i>ROD & ACC</i>			
<i>Bert Stump</i>	<input checked="" type="checkbox"/>	<i>Chad F. Zhauff</i>		<input checked="" type="checkbox"/>	
Co-Chair: <i>[Signature]</i>	<input checked="" type="checkbox"/>	Co-Chair:			
Co-Chair: <i>[Signature]</i>	<input checked="" type="checkbox"/>	Co-Chair:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
<i>DOA (R+B)</i>	<i>5/5/95</i>		<i>315.5</i>

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>#2 DOE</i>	<i>4/21/95</i>	<input checked="" type="checkbox"/>	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSHB 217 (L&C) a.m
(EFD FLD)

Revision Date: _____
 Title: An Act relating to teacher tenure, teacher layoff and rehiring rights . . . and to retirement incentive programs . . .
 Sponsor: Representative Ivan
 Requestor: _____

Department Affected: Administration
 BRU: Retirement & Benefits
 Component: Retirement & Benefits
 COMPONENT SERIAL NO. 64

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	225.8	225.8	51.5	51.5	51.5	51.5
TRAVEL	3.0	3.0	0.0	0.0	0.0	0.0
CONTRACTUAL	12.9	11.4	2.8	2.8	2.8	2.8
SUPPLIES	6.0	1.5	.3	.3	.3	.3
EQUIPMENT	67.8	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	315.5	241.7	54.6	54.6	54.6	54.6
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	315.5	241.7	54.6	54.6	54.6	54.6
TOTAL	315.5	241.7	54.6	54.6	54.6	54.6

Estimate of any current year (FY 95) cost: \$ zero _____

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME	0	0	0	0	0	0
TEMPORARY	5	5	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

The actuarial costs to participating employers due to this program are to be paid up front and no additional costs to the systems are anticipated. An administrative charge for participating employers will cover the increased costs of administering the retirement incentive program.

Prepared by: Robert F. Stalnaker *Robert F. Stalnaker* Phone: 465-4470
 Division: Retirement & Benefits Date: _____

Approved by Commissioner: Mark Boyer *Mark Boyer*
 Agency: Department of Administration Date: 5/5/95

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSHB 217 (L&C) am
(EFD FLD)

ANALYSIS: (continued)

This bill creates a retirement incentive program for the Public Employees' (PERS) and Teachers' (TRS) Retirement System employees of school districts. Active school district employees could retire on an accelerated basis with an increased benefit under the following conditions: at age 47, if vested; with 17 years of service as a teacher or with 27 years of credited service in the PERS. Before qualifying for an accelerated benefit, however, the member must pay a lump sum indebtedness payment or take an actuarial reduction from their lifetime benefit for the indebtedness amount.

We estimate that one permanent full-time employee will be needed to manage the operations of the program and increased service demands into the future. Five long-term non-permanent employees will also be needed over the next two fiscal years. Personnel will handle increased counseling, address and beneficiary changes, account maintenance, and other services. Subsequent increases in the number of retirees will necessitate increased permanent employees to handle the increased demand for information and services.

We estimate that we will need to increase our normal number of counseling trips by two trips over the next two fiscal years to assure that members understand the options and requirements of the program.

The total estimated administrative cost to the division by fiscal year is as follows:

	<u>FY 1996</u>	<u>FY 1997</u>	<u>FY 1998</u>
PERSONAL SERVICES			
	<u>FY 1996</u>		
1 Retirement & Benefits Specialist I	\$ 51.5		
3 Retirement & Benefits Tech I/II (NP)	111.6		
1 Accounting Clerk III (NP)	33.6		
1 Admin Clerk I (NP)	<u>29.1</u>		
TOTAL FY 1996 COSTS		\$225.8	
	<u>FY 1997</u>		
1 Retirement & Benefits Specialist I	\$ 51.5		
3 Retirement & Benefits Tech I/II (NP)	111.6		
1 Accounting Clerk III (NP)	33.6		
1 Admin Clerk I (NP)	<u>29.1</u>		
TOTAL FY 1997 COSTS		\$225.8	
	<u>FY 1998</u>		
1 Retirement & Benefits Specialist I	\$ 51.5		
TOTAL FY 1998 COSTS			\$51.5

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSHB 217 (L&C) am
(EFD FLD)

	<u>FY 1996</u>	<u>FY 1997</u>	<u>FY 1998</u>
TRAVEL			
Traveling to various locations throughout the state to counsel prospective retirees and give seminars.	3.0	3.0	0.0
CONTRACTUAL			
Communication (Telephone, Postage)	6.6	6.6	1.6
Mainframe Computer Time	4.4	4.4	.8
Software Maintenance	1.5		
Training/Risk Management	<u>.4</u>	<u>.4</u>	<u>.4</u>
Total Contractual	12.9	11.4	2.8
SUPPLIES			
Office Supplies, Calculators, software	6.0	1.5	.3
EQUIPMENT			
Computer Workstations	20.0	0.0	0.0
File Cabinets (1)	.8	0.0	0.0
Office Chairs (5)	3.0	0.0	0.0
Microfiche Viewers (5)	3.0	0.0	0.0
Office Workstations	5.0	0.0	0.0
Computer/Network Printers	12.0	0.0	0.0
Computer Network Upgrades	21.4	0.0	0.0
Telephone Unit (5)	<u>3.0</u>	<u>0.0</u>	<u>0.0</u>
Total Equipment	<u>67.8</u>	<u>0.0</u>	<u>0.0</u>
TOTAL OPERATIONS COST	\$315.5	\$241.7	\$54.6

The retirement technicians, retirement specialists, and accounting clerks need constant access to the PERS and TRS computer files. We do not have any excess terminals, microfiche viewers, or calculators. Our equipment request will satisfy our equipment needs for the duration of this program. We propose the purchase of personal computers to be used as terminals because they will be compatible with the division's local area network.

We are also proposing the purchase of two additional computer printers. The previous RIPs put a great demand on our existing printers and we were always in a state of backlog. Our current day-to-day printer needs maximize the capacity of our existing printers. After comparing the cost of leasing printers for two years, coupled with our existing needs, purchasing new printers would be more cost effective.

All administrative costs of the program will be paid in advance by participating employers as required by the bill.

Funding Source Breakdown for FY 1996:

1029	PERS	\$126.2
1034	TRS	<u>189.3</u>
		\$315.5

FISCAL NOTE

No. 2

Bill Version: CSHB 217 (JUD)

(H) Publish Date: 4/22/95

STATE OF ALASKA

1995 LEGISLATIVE SESSION

Revision Date: April 21, 1995

Title: Employment Rights of Teachers

Sponsor: Representative Ivan

Requester: (H) HESS Committee

Department Affected: Education

BRU: Executive Administration

Component: Commissioner's Office

COMPONENT SERIAL NO. 185

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY95) impact: \$ 0.0

ANALYSIS: (Attach a separate page if necessary.)

This legislation addresses the issue of teacher tenure, teacher layoff and rehire rights, and review of decisions of school boards concerning teachers. As written, this legislation will have no fiscal impact on the department.

The Section 7 of CSHB 217 (JUD) states if a school board reaches a decision unfavorable to a teacher, the teacher is entitled to mandatory, advisory arbitration and, then to judicial review based on the record instead of a de novo trial. This provision may result in savings to the local school districts.

Prepared by: Sheila Peterson, Special Assistant

Division: Commissioner's Office

Approved by Commissioner: _____

Agency: Education

Phone: 465-2803

Date: April 21, 1995

Shirley J. Holloway, Ph. D.

Date: April 21, 1995

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A FAX

Alaska State Legislature

Date: 5-6-95

To: Legal Services Attn: Peggy

Fax #: 2029 Phone #: 3867

From: Kathy - Senate Finance

Phone #: 2618

Re: Please incorporate the attached amendment into work draft 9-LS0821 D to produce a final SCS CSHB 217 (Fix) and return to Rm. 520, Capitol Bldg.

Following this page, please find 1 page(s). If this does not reach you in full, please inform us ASAP.



THANK YOU

*Fixed
7:00pm*

Adopted + #8

Amended By Rieger
5/6/95

Amendment

Page 2, Lines 20-23

Delete all material and replace with:

" (c) The district shall provide an evaluation of a non-tenured teacher in each year of employment. For purposes of this subsection, "evaluation" includes at least two formal observations and one written evaluation. ~~and, if necessary, shall include~~ ^{should} a plan for improvement ^{if necessary,} it shall be developed in cooperation with the teacher, established mentors, and appropriate administrators
 if any

✓
if any,

SENATE FINANCE
 COMMITTEE
 Amendment Number: CS-1
 Bill Number: HB 217
 Sponsor: Helfferich Date: 5/5/95
 Logged In By: [Signature]

9-LS0821ND
 Cramer
 5/5/95

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:
 Referred:

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 in 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 t' e 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 (c) By the end of the second year of employment, the district shall provide
21 a non-tenured teacher a written evaluation and, if necessary, shall develop a plan
22 for improvement in cooperation with the teacher, established mentors and
23 appropriate administrators.

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

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

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

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

32 (1) incompetency, which is defined as the inability or the unintentional

1 or intentional failure to perform the teacher's customary teaching duties in a
2 satisfactory manner;

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

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

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

10 * Sec. 5. AS 14.20 is amended by adding a new section to read:

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

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

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

32 (d) Notwithstanding any provision of AS 23.40, the terms of a collective

1 bargaining agreement entered into between a school district or regional educational
2 attendance area and a bargaining organization representing teachers on or after the
3 effective date of this section may not be inconsistent with the provisions of this section.

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

7 (1) retaining acquired tenure rights; or

8 (2) retaining accrued sick leave.

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

12 * Sec. 6. AS 14.20.180(b) is amended to read:

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

23 * Sec. 7. AS 14.20.205 is amended to read:

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

29 * Sec. 8. AS 14.20.220 is amended by adding new subsections to read:

30 (h) A school district may establish a career path for teachers that includes
31 advancement based on teaching performance. An evaluation under this subsection may
32 be performed by other teachers employed in the same school district and by the school

1 district.

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

5 * Sec. 9. AS 23.40 is amended by adding a new section to read:

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

11 * Sec. 10. FINDINGS AND PURPOSE AS TO SECTIONS 11 - 18. Many school districts
12 are facing the need to restructure their operations and their work forces in order to reduce
13 expenditures and balance budgets. Retirement incentives are management tools that have been
14 used extensively by the private sector, the federal government, and other state and local
15 governments across the country. The purpose of secs. 11 - 18 of this Act is to make this
16 management tool temporarily available to the public schools and regional resource centers of the
17 state. Sections 11 - 18 of this Act will enable these entities to be more efficient and cost-
18 effective by eliminating certain nonessential positions, and producing a net reduction in
19 personnel costs.

20 * Sec. 11. RETIREMENT INCENTIVE PROGRAM. (a) A school district, regional
21 educational attendance area, regional resource center, or the state boarding school may adopt a
22 retirement incentive plan under sec. 12 of this Act and designate categories of employees eligible
23 to participate in that plan. An employer need not extend the incentive plan to all employees who
24 would otherwise be eligible, but may choose to extend the plan only to employees

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

26 (2) in specific job classifications;

27 (3) in specific geographic locations; or

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

29 (b) An employee is eligible to participate in a retirement incentive plan under secs. 10 -
30 18 of this Act only if the

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

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

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

6 (c) An employer shall file its proposed retirement incentive plan with the commissioner
7 of administration. The commissioner shall approve the plan if the plan meets the requirements
8 of secs. 10 - 18 of this Act. A proposed plan filed under this section must

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

11 (2) include a reimbursement agreement that

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

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

20 (ii) an appropriate share of the administrative costs of the
21 program; and

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

24 (d) A member of the teachers' retirement system who participates in an approved
25 retirement incentive plan under secs. 10 - 18 of this Act is indebted to that system for an amount
26 calculated under this subsection. The indebtedness is 25.95 percent of the member's actual
27 compensation for the school year in which the member terminates employment, or the calculated
28 school year compensation for a member who works less than the entire school year. An
29 outstanding indebtedness at the time a member is appointed to retirement under an approved
30 retirement incentive plan requires an actuarial adjustment to the benefits payable to that member.

31 (e) A member of the public employees' retirement system who participates in an
32 approved retirement incentive plan under secs. 10 - 18 of this Act is indebted to that system for

1 an amount calculated under this subsection. The indebtedness is 20-1/4 percent of the member's
2 actual annual compensation for the year in which the member terminates employment, or the
3 calculated annual compensation for a member who works fewer than 12 months. An outstanding
4 indebtedness at the time a member is appointed to retirement under an approved retirement
5 incentive plan requires an actuarial adjustment to the benefits payable to that member.

6 (f) An employee who participates in an approved retirement incentive plan under
7 secs. 10 - 18 of this Act receives a credit of three years. The three years must be applied in the
8 following order until exhausted:

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

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

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

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

16 * Sec. 12. AUTHORIZATION FOR RETIREMENT INCENTIVE. (a) An employer may
17 adopt, and file with the commissioner of administration for approval, a proposed retirement
18 incentive plan for its employees. A plan adopted under this section must provide that the
19 application period for participation in the retirement incentive plan is June 30, 1995, through
20 December 31, 1995.

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

26 * Sec. 13. RECOVERY OF EMPLOYER DELINQUENCIES. To recover a delinquency
27 owed by an employer other than the state under an agreement entered into under sec. 11(c)(2)
28 of this Act, the Department of Administration may

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

32 (2) bring an action against the employer.

1 * Sec. 14. REEMPLOYMENT INDEBTEDNESS; PROHIBITION ON REEMPLOYMENT.

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

17 (b) An individual who was appointed to retirement under secs. 10 - 18 of this Act may
18 not be employed by, or enter into a contract for personal services with, a state agency or the
19 University of Alaska within the three years after the date of appointment to retirement, except
20 that

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

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

26 (c) Notwithstanding the prohibition in (b) of this section, a state agency or the
27 University of Alaska may enter into a personal services contract with an individual who was
28 appointed to retirement under secs. 10 - 18 of this Act if the Board of Regents, for the
29 University of Alaska, or the commissioner of administration, for a state agency, determines that
30 there is a compelling reason to do so because of the individual's specialized or extensive
31 experience that relates to a particular program or project of the state agency or university.

32 * Sec. 15. OFFICE OF MANAGEMENT AND BUDGET. The office of management and

1 budget shall submit a report to the legislature on the retirement incentive program under secs. 10
2 - 18 of this Act on April 15, 1997. The report must provide the information necessary for the
3 legislature to evaluate the effectiveness of the programs in achieving their objectives.

4 * Sec. 16. PROGRAM CHANGES. (a) An individual employee does not have a vested or
5 contractual right to a benefit under secs. 10 - 18 of this Act until an agreement is executed with
6 the administrator that specifically authorizes that employee to participate in the retirement
7 incentive program under secs. 10 - 18 of this Act. The legislature reserves the right to change
8 any aspect of the retirement incentive program as it relates to employees for whom participation
9 agreements have not yet been executed with the administrator or with the commissioner of
10 administration.

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

14 * Sec. 17. REGULATIONS. The commissioner of the Department of Administration may
15 adopt regulations under AS 44.62 (Administrative Procedure Act) to implement and interpret
16 secs. 10 - 18 of this Act.

17 * Sec. 18. DEFINITIONS. (a) Unless provided otherwise in secs. 10 - 18 of this Act, the
18 definitions set out in AS 14.25.220 apply to provisions in secs. 11- 14 of this Act that relate to
19 the teachers' retirement system and members of the teachers' retirement system.

20 (b) Unless provided otherwise in secs. 10 - 18 of this Act, the definitions set out in
21 AS 39.35.680 apply to provisions in secs. 11 - 14 of this Act that relate to the public employees'
22 retirement system and members of the public employees' retirement system.

23 (c) In secs. 10 - 18 of this Act,

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

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

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

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

32 * Sec. 19. The amendments made by secs. 1 and 2 of this Act apply to teachers first hired

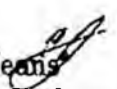
- 1 by a school district on or after the effective date of this Act.
- 2 * Sec. 20. Sections 11 and 12 of this Act are repealed July 1, 1997.

MEMORANDUMState of Alaska
Department of Education

To: Thomas Wright
Representative Ivan Ivan

Date: April 26, 1995

File:

From: Eddy Jean 
Project Assistant

Subject: Foundation Program
Basic Need

This is a follow-up to our telephone conversation regarding the foundation program and the types of revenues included in "Basic Need." Alaska Statute 14.17.021(a) indicates that to arrive at state foundation aid, the required local contribution under AS 14.17.025(a) and 90 percent of the eligible federal impact aid for that year is subtracted from basic need. Basic need is the product of all instructional units times the district's area cost differential times the unit value as established by AS 14.17.056.

(Basic Need) - (Required Local Effort) - (90% Eligible Federal Impact Aid) = State Aid

(Instructional Units) x (Area Cost Differential) x (Unit Value) = Basic Need

failed ①
5/6/95

AMENDMENT

OFFERED IN THE SENATE
SCS CSHB 217(fin) ~~am(cfd=fd)~~

BY ZHAROFF

Page 5, line 20 through Page 9, line 31

Delete all material

Page 10, line 2

Delete all material

jaib 5/6/95 (2)

AMENDMENT

OFFERED IN THE SENATE
SCSHB 217(L&C) ~~am(efd-fld)~~
(FW)

BY ZHAROFF

Page 1, line 7, through page 2, line 4:

Delete all material.

Page 2, line 5:

Delete "Sec. 2. AS 14.20.150 is amended to read:"

Insert "Sec. 1. AS 14.20.150(a) is amended to read:"

Page 2, line 10:

Delete "four [TWO]"

Insert "two"

Page 2, line 11:

Delete "four [TWO]"

Insert "two"

Page 2, line 11 after the word years through line 15

Delete all material

Insert after the word years "."

Page 2, line 18-19:

Delete "four-consecutive-school-year period [TWO FULL SCHOOL YEARS]

Insert "two full school years"

AMENDMENT

Failed (3)
5/6/95

OFFERED IN THE SENATE
SCSHB 217(L&C) am(ed) =
(FIN)

BY ZHAROFF

Page 1, line 7, through page 2, line 4:

Delete all material.

Page 2, line 5:

Delete "Sec. 2. AS 14.20.150 is amended to read:"

Insert "Sec. 1. AS 14.20.150(a) is amended to read:"

Page 2, line 6:

Delete "Sec. 14.20.150. ACQUISITION OF TENURE RIGHTS. (a) A"

Insert "(a) Unless the school board votes to extend the period of nontenure as provided in (c) - (i) of this section, a

Page 2, line 10:

Delete "four [TWO]"

Insert "two"

Page 2, line 11:

Delete "four [TWO]"

Insert "two"

Page 2, line 11 after the word "years" through line 15

Delete all material

Insert after the word years "."

Page 2, lines 16 - 19:

Delete all material.

Insert a new bill section to read:

"*Sec. 2. AS 14.20.150 is amended by adding new subsections to read:

(c) A school district that has a nontenured teacher evaluation program that satisfies the requirements of this section may extend the probationary period of a nontenured teacher by one year if the district finds, after observation, that the teacher is not performing at a level that warrants granting tenure but the district evaluator believes that the teacher's performance may improve sufficiently after an additional year of nontenured status to warrant granting the teacher tenure at that time.

(d) A school district shall establish procedures for evaluating procedures for evaluating the performance of nontenured teachers. The procedures must provide the teacher with at least two evaluations each year. An evaluation under this subsection consists of a preobservation conference, a formal observation at the teacher's instruction site to observe the teacher while the teacher is teaching, and a post-observation conference to discuss the teacher's instructional delivery, planning, interpersonal skills, knowledge of the subject matter, and other professional qualities and abilities. the evaluation shall be conducted by an evaluator who meets the requirements of (g) of this section.

(e) The provisions of (a) and (b) of this section apply to nontenured teachers whose nontenured status has been extended under (c) of this section, except that the teacher does not acquire tenure rights unless the teacher is reemployed for the school year immediately following the three full continuous school years of employment.

(f) If an evaluator determines that a nontenured teacher is not performing successfully, the evaluator shall identify specific measurable and relevant objectives that the nontenured teacher must achieve before being granted tenure.

(g) To qualify as an evaluator under this section, the person shall demonstrate that the person received in-service training on the evaluation policy and procedure of the school district.

(h) A school district shall invite, obtain, and consider community comments and suggestions, including the comments and suggestions of students, parents, teachers, and administrators, in the design of the procedures for and the content of teacher evaluations."

Withdrawn (4)
5/6/95

AMENDMENT

OFFERED IN THE SENATE
S CSHB 217(L&C) ~~amended~~
(FIN)

BY ZHAROFF

Page 2, line 24, Insert new subsection:

(d) Notwithstanding AS 14.20.150 a school district may withhold full tenure for up to two years, for a teacher whose performance has been formally observed and evaluated as needing improvement. Nothing in this section prohibits a school board from granting tenure to a teacher after two years of satisfactory service. If in the third year, the teacher's evaluation indicates satisfactory performance, tenure will be offered. If the teacher is retained for a fourth year, but the teacher is not fully tenured, tenure rights become effective as prescribed in AS 14.20.150 (b). Non-retention during this second two year period may only be for just cause.

AMENDMENTFailed
5/6/95

OFFERED IN THE SENATE

TO: SCSHB 217(^{FIN}~~ESCS~~ am-~~ted~~-fld)

- 1 Page 3, line ¹¹~~12~~, after "(a)":
- 2 Insert "A school district may place a nontenured teacher on layoff status."
- 3 Page 3, line ¹²~~13~~, after "^{non retained}nontenured":
- 4 Insert "or placed on layoff status"
- 5 Page 3, lines ¹⁶⁻¹⁷~~17-18~~:
- 6 Delete "^{" A non-tenured teacher is not entitled to layoff rights under this section."}~~This section does not apply to a teacher who has not acquired tenure rights."~~
- 7 Page 3, line ²⁷~~28~~, through page 4, line ³~~4~~
- 8 Delete all material and insert:
- 9 "(c) A tenured teacher placed on layoff status has the same rights to a hearing
- 10 and appeal under AS 14.20.180 and 14.20.205 as if the teacher had been nonretained."
- 11 Reletter the following subsections accordingly.

This amendment will allow a school district to layoff a non tenured teacher instead of flatly non retaining non tenured teachers

Provides for a hearing and appeal of the layoff decision as currently provided a teacher when there is a decrease in ~~student~~ school attendance.

Provides an opportunity for a tenured teacher to question layoff before a neutral decision maker.

6

Failed
5/6/95

AMENDMENT

OFFERED IN THE SENATE
SCSHB 217(L&C) ~~am(efd-Hd)~~
FIN

BY ZHAROFF

Page 4, line 7, after "(e)"

Insert "A teacher on layoff status accrues credited service under the teachers' retirement system (AS 14.25) during the period of layoff."

⑦

Withdrawn
5/6/95

AMENDMENT

OFFERED IN THE SENATE
SCSHB 217(L&C) ~~am(cfd=ftd)~~
(FIN)

BY ZHAROFF

Page 4, line 8:

Delete "However, layoff"

Insert " A teacher on layoff status is entitled to have the teacher's health benefits continued during the period of layoff at the expense of the school district. Layoff"

#8

Amendment

By Rieger

Page 2, Lines 20 - 23

Delete all material and replace with:

"(c) The district shall provide an evaluation of a non-tenured teacher in each year of employment. For purposes of this subsection, "evaluation" includes at least two formal observations and one written evaluation and, if necessary, shall include a plan for improvement in cooperation with the teacher, established mentors, and appropriate administrators.

SENATE FINANCE
COMMITTEE

9-LS0821ND
Cramer
5/5/95

Amendment Number: CS-1
Bill Number: HB 217
Sponsor: Holtzclaw Date: 5/5/95
Logged In By: [Signature]

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:
Referred:

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 (c) By the end of the second year of employment, the district shall provide
21 a non-tenured teacher a written evaluation and, if necessary, shall develop a plan
22 for improvement in cooperation with the teacher, established mentors and
23 appropriate administrators.

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

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

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

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

32 (1) incompetency, which is defined as the inability or the unintentional

1 or intentional failure to perform the teacher's customary teaching duties in a
2 satisfactory manner;

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

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

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

10 * Sec. 5. AS 14.20 is amended by adding a new section to read:

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

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

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

32 (d) Notwithstanding any provision of AS 23.40, the terms of a collective

1 bargaining agreement entered into between a school district or regional educational
2 attendance area and a bargaining organization representing teachers on or after the
3 effective date of this section may not be inconsistent with the provisions of this section.

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

7 (1) retaining acquired tenure rights; or

8 (2) retaining accrued sick leave.

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

12 * Sec. 6. AS 14.20.180(b) is amended to read:

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

23 * Sec. 7. AS 14.20.205 is amended to read:

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

29 * Sec. 8. AS 14.20.220 is amended by adding new subsections to read:

30 (h) A school district may establish a career path for teachers that includes
31 advancement based on teaching performance. An evaluation under this subsection may
32 be performed by other teachers employed in the same school district and by the school

1 district.

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

5 * Sec. 9. AS 23.40 is amended by adding a new section to read:

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

11 * Sec. 10. FINDINGS AND PURPOSE AS TO SECTIONS 11 - 18. Many school districts
12 are facing the need to restructure their operations and their work forces in order to reduce
13 expenditures and balance budgets. Retirement incentives are management tools that have been
14 used extensively by the private sector, the federal government, and other state and local
15 governments across the country. The purpose of secs. 11 - 18 of this Act is to make this
16 management tool temporarily available to the public schools and regional resource centers of the
17 state. Sections 11 - 18 of this Act will enable these entities to be more efficient and cost-
18 effective by eliminating certain nonessential positions, and producing a net reduction in
19 personnel costs.

20 * Sec. 11. RETIREMENT INCENTIVE PROGRAM. (a) A school district, regional
21 educational attendance area, regional resource center, or the state boarding school may adopt a
22 retirement incentive plan under sec. 12 of this Act and designate categories of employees eligible
23 to participate in that plan. An employer need not extend the incentive plan to all employees who
24 would otherwise be eligible, but may choose to extend the plan only to employees

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

26 (2) in specific job classifications;

27 (3) in specific geographic locations; or

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

29 (b) An employee is eligible to participate in a retirement incentive plan under secs. 10 -
30 18 of this Act only if the

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

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

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

6 (c) An employer shall file its proposed retirement incentive plan with the commissioner
7 of administration. The commissioner shall approve the plan if the plan meets the requirements
8 of secs. 10 - 18 of this Act. A proposed plan filed under this section must

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

11 (2) include a reimbursement agreement that

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

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

20 (ii) an appropriate share of the administrative costs of the
21 program; and

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

24 (d) A member of the teachers' retirement system who participates in an approved
25 retirement incentive plan under secs. 10 - 18 of this Act is indebted to that system for an amount
26 calculated under this subsection. The indebtedness is 25.95 percent of the member's actual
27 compensation for the school year in which the member terminates employment, or the calculated
28 school year compensation for a member who works less than the entire school year. An
29 outstanding indebtedness at the time a member is appointed to retirement under an approved
30 retirement incentive plan requires an actuarial adjustment to the benefits payable to that member.

31 (e) A member of the public employees' retirement system who participates in an
32 approved retirement incentive plan under secs. 10 - 18 of this Act is indebted to that system for

1 an amount calculated under this subsection. The indebtedness is 20-1/4 percent of the member's
2 actual annual compensation for the year in which the member terminates employment, or the
3 calculated annual compensation for a member who works fewer than 12 months. An outstanding
4 indebtedness at the time a member is appointed to retirement under an approved retirement
5 incentive plan requires an actuarial adjustment to the benefits payable to that member.

6 (f) An employee who participates in an approved retirement incentive plan under
7 secs. 10 - 18 of this Act receives a credit of three years. The three years must be applied in the
8 following order until exhausted:

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

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

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

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

16 * Sec. 12. AUTHORIZATION FOR RETIREMENT INCENTIVE. (a) An employer may
17 adopt, and file with the commissioner of administration for approval, a proposed retirement
18 incentive plan for its employees. A plan adopted under this section must provide that the
19 application period for participation in the retirement incentive plan is June 30, 1995, through
20 December 31, 1995.

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

26 * Sec. 13. RECOVERY OF EMPLOYER DELINQUENCIES. To recover a delinquency
27 owed by an employer other than the state under an agreement entered into under sec. 11(c)(2)
28 of this Act, the Department of Administration may

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

32 (2) bring an action against the employer.

1 * Sec. 14. REEMPLOYMENT INDEBTEDNESS; PROHIBITION ON REEMPLOYMENT.

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

17 (b) An individual who was appointed to retirement under secs. 10 - 18 of this Act may
18 not be employed by, or enter into a contract for personal services with, a state agency or the
19 University of Alaska within the three years after the date of appointment to retirement, except
20 that

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

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

26 (c) Notwithstanding the prohibition in (b) of this section, a state agency or the
27 University of Alaska may enter into a personal services contract with an individual who was
28 appointed to retirement under secs. 10 - 18 of this Act if the Board of Regents, for the
29 University of Alaska, or the commissioner of administration, for a state agency, determines that
30 there is a compelling reason to do so because of the individual's specialized or extensive
31 experience that relates to a particular program or project of the state agency or university.

32 * Sec. 15. OFFICE OF MANAGEMENT AND BUDGET. The office of management and

1 budget shall submit a report to the legislature on the retirement incentive program under secs. 10
2 - 18 of this Act on April 15, 1997. The report must provide the information necessary for the
3 legislature to evaluate the effectiveness of the programs in achieving their objectives.

4 * Sec. 16. PROGRAM CHANGES. (a) An individual employee does not have a vested or
5 contractual right to a benefit under secs. 10 - 18 of this Act until an agreement is executed with
6 the administrator that specifically authorizes that employee to participate in the retirement
7 incentive program under secs. 10 - 18 of this Act. The legislature reserves the right to change
8 any aspect of the retirement incentive program as it relates to employees for whom participation
9 agreements have not yet been executed with the administrator or with the commissioner of
10 administration.

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

14 * Sec. 17. REGULATIONS. The commissioner of the Department of Administration may
15 adopt regulations under AS 44.62 (Administrative Procedure Act) to implement and interpret
16 secs. 10 - 18 of this Act.

17 * Sec. 18. DEFINITIONS. (a) Unless provided otherwise in secs. 10 - 18 of this Act, the
18 definitions set out in AS 14.25.220 apply to provisions in secs. 11- 14 of this Act that relate to
19 the teachers' retirement system and members of the teachers' retirement system.

20 (b) Unless provided otherwise in secs. 10 - 18 of this Act, the definitions set out in
21 AS 39.35.680 apply to provisions in secs. 11 - 14 of this Act that relate to the public employees'
22 retirement system and members of the public employees' retirement system.

23 (c) In secs. 10 - 18 of this Act,

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

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

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

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

32 * Sec. 19. The amendments made by secs. 1 and 2 of this Act apply to teachers first hired

1 by a school district on or after the effective date of this Act.

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



Official Business

Alaska State Legislature

Chairman - International Trade & Tourism

REPRESENTATIVE
BEVERLY MASEK

Willow
H.C. 89, Box 251
Willow, Alaska 99688
(907) 495-6812

State Capitol
Juneau, AK 99801-1182
(907) 465-2679

COMMITTEES:
Vice-Chairman, Transportation
Member:
Labor & Commerce

MEMORANDUM

TO: SUZANNE LOWELL / CHIEF CLERK
FROM: REP. BEVERLY MASEK *BM*
DATE: MAY 6, 1995
RE: CSHB-217

For the record I am documenting via this memo that I was not present at the Committee hearing when CSHB-217 passed out of Committee.

I signed my recommendation on the Committee Report after it passed out of Committee and I do not want that signature to be construed as my being present when the bill passed out.

Having done extensive work on this legislation while it was in Committee I feel my recommendation is entirely appropriate and seek only to eliminate any confusion my signing the report might have caused.



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

A G E N D A

SATURDAY, MAY 6, 1995

9:00 A.M.

- HELD SB 167 - DAY FINES & INFO FOR COLLECTING FINES
- ↓ HB 159 - DWI LAWS/ MINOR IN POSSESSION LAWS
- HB 191 - MANAGEMENT OF STATE LAND AND RESOURCES
- HB 32 - PFD ADMINISTRATIVE PROCEEDINGS
- HB 107 - RESTRICTED LIMITED ENTRY PERMITS
- HB 44 - GAMING PROCEEDS/DEFINE CHARITABLE ORG'NS
- HB 315 - FINANCING TECHNOLOGICAL PROJECTS
- HB 217 - EMPLOYMENT RIGHTS OF TEACHERS
- HB 78 - PUBLIC ASSIST. DEMO PROJECT & DECREASE
- SB 71 - DEEP FREEZE CLASSIC
- HB 38 - SENTENCING; 3RD SERIOUS FELONY OFFENDER
- BILLS PREVIOUSLY SCHEDULED

Alaska State House of Representatives
House District 39



Session
Alaska State Capital
Juneau, Alaska 99801-1182
Phone: (907) 465-4942

Interim
P.O. Box 137
Akiak, Alaska 99552
Phone: (907) 765-7526

Representative Ivan M. Ivan

SPONSOR STATEMENT - CSHB 217 (L&C) am

I introduced House Bill 217 to allow our school districts some flexibility when dealing with increased costs associated with our educational system.

Committee Substitute for House Bill 217 (L&C) am would allow school districts to lay off teachers who have acquired tenure rights, but only if the school district finds it necessary to reduce the number of teachers due to declining enrollment or declining revenues.

The bill also increases tenure from two to four years and removes the costly trial de novo portion of our statutes which allows a school district employee who, if not satisfied with a district led investigation, to go to the court system to begin an entirely new trial. The district's investigation, most often, must be recreated. The deletion of the trial de novo provides our educators the same protections as provided to other state employees. Tenured teachers are given the option of bypassing the school board and bring suit in superior court if a decision is made to dismiss or nonretain. The other option available is to ask for a hearing in front of the school board if a decision of nonretention or dismissal is made and then to superior court if the school board upholds the decision. However, the record established during the school board hearings will be available for use if a suit is filed in superior court.

A retirement incentive program is included in the bill. This program is optional for school districts and if a teacher or school employee decides to take advantage of the program, a cost savings over a three year period must be shown before an early retirement is given. A plan must be submitted to the Department of Administration and approved by the commissioner before implementation.

Sections 1 and 2 of CSHB 217 (L&C) am apply only to those teachers who are hired after the bill is signed into law. The remaining sections of the bill dealing with loss of tenure rights, layoffs and elimination of trial de novo go into effect after the bill is signed and will have an effect on all teachers.

Alaska State House of Representatives
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Representative Ivan M. Ivan

SECTIONAL ANALYSIS - CSHB 217 (L&C) am

The following is a sectional analysis of Committee Substitute for House Bill 217 (L&C) am :

Section 1: Amends AS 14.20.147(b), Transfer or absorption of attendance area or federal agency school. Changes tenure from two to four years for those teachers who taught in a school operated by a federal agency and has transferred to or is absorbed into a new or existing school district.

Section 2: Amends AS 14.20.15C, Acquisition of tenure rights. Changes tenure from two to four years. The teacher gains tenure after completing four full years of employment with the same school district, whether or not the period begins on the first day of the school year and is reemployed on the school year day immediately following completion of the four consecutive year period. The district must also provide a non-tenured teacher with a written evaluation by the end of the second year of employment. If necessary, the district will develop a plan for improvement in cooperation with the teacher, established mentors and appropriate administrators.

Section 3: Amends AS 14.20.160, Loss of tenure rights. Clarifies that a teacher on layoff status does not lose tenure rights during the layoff period except as provided by AS 14.20.177 (Section 5 of this bill).

Section 4: Amends AS 14.20.175(b), Non retention. Removes subsection (b)(4) which allows non retention of a teacher due to a decrease in school attendance and places it in Section 5.

Section 5: Amends AS 14.20, Teachers' Retirement, by adding a new section. This new section provides for layoff of a tenured teacher when there is a decrease in school attendance or because of a financial emergency verified by the commissioner of education. Procedures under which a district may layoff tenured teachers, the length of time that a teacher retains hire rights after a layoff, the circumstances

under which a teacher may lose rehire rights after a layoff and other provisions are provided under this section. This section also allows a teacher on layoff status to receive a refund of the balance of the teacher's member contribution account in the teachers' retirement system. In the event a teacher is offered a teaching position in another school district while on layoff status, the teacher may remain on the layoff list for retention within the school district where tenure was acquired.

Section 6: Amends 14.20.180(b), Procedure and hearing upon notice of dismissal or nonretention. Allows a tenured teacher, following receipt of notification of dismissal or nonretention, to request a hearing before the school board or to bring suit before superior court without the school board hearing.

Section 7: Amends AS 14.20.205, Judicial review. Eliminates a de novo trial whenever a school district reaches an unfavorable decision to a teacher. This section adds language which allows judicial review of the decision based on the previously established record if the school board reaches a decision unfavorable to the teacher after a hearing under AS 14.20.180.

Section 8: Adds a new section to AS 23.40, Labor Organizations. States the initial proposals exchanged by the parties to negotiations between a school district or a regional educational attendance area and a bargaining organization representing its employees and final agreements reached by the parties are public records.

Section 9: Findings and purpose for Sections 10-17, Retirement Incentive Programs. States the purpose of these sections is to make retirement incentives available as a management tool to assist local school districts in restructuring their operation and work forces in order to most appropriately reduce expenditures and balance budgets.

Section 10: Retirement Incentive Program. Authorizes school districts, REAA's, a regional resource center and a state boarding school to adopt a retirement incentive program and designate categories of employees eligible to participate in the program. The program may be extended, at the employer's discretion, to employees:

- (1) in specific budget or administrative components of the employer,
- (2) in specific job classifications,
- (3) in specific geographic locations, or
- (4) on the basis of any combination of these factors.

The intent of this language is to allow school districts to design a RIP which is tailored to their budget and staffing requirements, if an across the board RIP does not meet their needs. Subsection (b) also states requirements for employees to be eligible

to participate in a RIP. these requirements are similar to the prior RIP programs, except the savings to the employer for a participating employee must exceed the costs of the RIP within three years.

This section also mandates contributions by both employers and employees participating in the RIP to the retirement systems to pay for the additional retirement benefits provided by the RIP. These payments include the contributions for the retirement incentive years and actuarial adjustments to the benefit. A share of the program's administrative costs is also assigned to the employer.

This section provides the same retirement incentive as prior programs: three years of age or service credit under the TRS and PERS retirement plan.

Section 11: Authorization for RIP. Authorizes school districts, REAA's, an educational resource center and a state boarding school to establish a RIP, with an application period of June 30, 1995, through December 31, 1995. Employees must retire by August 1, 1996.

Section 12: Recovery of Employer Delinquencies. Provides for recovery of delinquent amounts owed by employers participating in the RIP.

Section 13: Reemployment Indebtedness. Requires individuals who participate in the RIP and then return to work under PERS, TRS or judicial retirement systems to forfeit the incentive credit and repay 110% of the amount received under the RIP.

Also prohibits participants in the RIP from being employed or hired under contract by a state agency or the university for three years with certain exceptions.

Section 14: Office of Management and Budget. Requires the Office of Management and Budget to evaluate the effectiveness of the RIP programs and report to the legislature by April 15, 1997.

Section 15: Program Changes. Provides that employees do not have a vested or contractual right to a benefit under the act until an agreement for their participation is approved. Also reserves the legislature's right to change any aspect of the program in the future.

Section 16: Allows the commissioner of administration to adopt regulations to implement the act.

Section 17: Definitions. Defines terms used in the act.

Section 18: States that the changes made in sections 1 and 2 of this bill apply to teachers first hired on or after the effective date of the bill.

Section 19: Repealer. The RIP enabling provisions of this act are limited to July 1, 1997.

Section 20: Establishes an immediate effective date for Sections 9 through 17.

ASSOCIATION OF ALASKA SCHOOL BOARDS

316 W. 11th St. • Juneau, Alaska 99801-1510
(907) 586-1083 • Fax (907) 586-2995

POSITION PAPER

TENURE ACQUISITION

For public school educators

The Association of Alaska School Boards recommends to the Legislature that AS 14.20.150 (a) and (b) be amended to require five years of probation to obtain tenure in the school systems of the State of Alaska.

The quality of teaching is important in the development of strong educational programs for our children. Within a two year time frame, which is in current statute, school districts must evaluate teachers, help improve their skills, and determine whether or not to retain them. Two years is simply insufficient time to comprehensively evaluate teachers and allow for their successful improvement.

With districts under increased pressure to reduce administrative costs, not only will there be fewer administrators to conduct teacher evaluations but with an added workload, administrators will be under greater pressure to evaluate and determine whether or not to retain a teacher, and will have much less time to develop the skills of a potentially good teacher.

Extending tenure acquisition would allow districts time to provide a comprehensive plan for improvement which would help strengthen and develop the employee's teaching skills. With five years, new teachers would have the opportunity to grow in an environment conducive to professional development rather than under the pressure of deadlines of notice of non-retention.

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TENURE ACQUISITION MAJOR ISSUES & KEY POINTS

School districts have shared their concerns about how difficult it is to conduct sound evaluations of their teachers within the current two year period of time in which teachers can be awarded tenure.

INSUFFICIENT TIME FOR EVALUATION

1. FAIRNESS TO TEACHERS

- Two years is too short for meaningful evaluation and improvement.
- Forces the non-retention question of a non-tenured teacher rather than encouraging a district to work with the individual to develop their potential talent.

2. FAIRNESS TO KIDS

- Forces a district to tenure marginal teachers who later may prove unsatisfactory.
- To tenure marginal teachers who can't or won't improve—cheats kids.

3. ADMINISTRATIVE WORKLOAD

- Budget cuts force remaining administrators to take on more responsibilities, and makes less time available for quality teacher evaluations.

FIVE-YEAR TENURE WILL

1. Grant sufficient time to evaluate non-tenured staff by moving from two to five years.
2. Not add increased costs to the districts to implement.
3. Not mandate increased statutory requirements on local school districts.
4. Grant sufficient time for professional improvement.

FIVE YEAR TENURE SERVES THE NEEDS OF SCHOOL DISTRICTS, TEACHERS, AND ULTIMATELY CHILDREN.

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POSITION PAPER

NONRETENTION REVISION

LAYOFF PROVISIONS DUE TO FISCAL CIRCUMSTANCES

The Association of Alaska School Boards supports amending AS 14.20.175 (b) to layoff tenured staff for budgetary and fiscal reasons.

If reductions in the work force are required in Alaska's schools due to fiscal circumstances, layoff provisions must allow the educational program needs of our youth, and not tenure, to be the primary determining factor.

Current law allows nonretention of tenured staff for reasons of: (1) incompetence, (2) immorality, (3) substantial noncompliance, and (4) a decrease in enrollment. Schools may NOT layoff tenured employees due to funding shortfalls (not associated with declining enrollments).

AASB supports legislation for layoff that addresses fiscal circumstances with rehire provisions to accommodate district program needs.

AASB believes program needs of students should drive the staffing patterns of schools. Current law leaves schools in a position of having to make program cuts and fill the remaining positions with teachers who may be less qualified but are guaranteed employment because of tenure. It often places teachers in grade levels or subject areas for which they have insufficient preparation. Legislation should direct the State Board of Education to adopt subject area endorsements to improve the quality of instruction.

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An Educational Perspective Support for Non-retention in the Event of a Reduction in Revenue

Under current law, even if a reduction in revenue to a school district necessitates programmatic cutbacks, including reductions in the number of certificated teaching positions, tenured teachers cannot be non-retained for the following school year unless one of the four categories set forth in A.S. 14.20.175 can be proven. Basically, those categories are incompetency, immorality, substantial non-compliance, and a reduction in force required by a decrease in school attendance.

Apparently, the rationale for protecting tenured teachers—even in the face of funding reductions—appears to be that reductions in the number of certificated teachers can be accomplished by attrition and/or the non-retention of non-tenured teachers.

However, that argument is not logical, reasonable, or appropriate when viewed from an educational perspective. Some examples will prove that point:

1. As a result of decreased funding, a school district is required to reduce some music/art elective high school courses. A third year teacher in the district, hired to teach music, and with no prior experience teaching English, is reassigned to teach high school English while an exceptional first year teacher, heavily recruited because of his or her prior teaching experience in English and/or education background in English, must be non-retained.
2. A disproportionate number of the district's non-tenured (first and second year) teachers are special ed. Because the tenured teacher ranks are protected from non-retention because of decreased funding in the absence of decreased enrollment, non-retentions must come from the non-tenured staff. Cutbacks in the number of special ed teachers jeopardizes the district's ability to comply with the Individualized Educational Plan (IEP) requirements of state and federal law.
3. Because more Alaska Natives are graduating from the University of Alaska, a school district has hired most of its Alaska Native teachers over the past two years. Those Alaska Native teachers will be non-retained.
4. A large influx of non-English speaking students has required a district to hire many English-as-a-Second-Language (ESL) teachers over the past two years. Those teachers must now be non-retained.
5. The district has expended substantial money over the past two years recruiting well-qualified chemistry and physics teachers. Those teachers are non-tenured, and must be non-retained.
6. A ten year physical education teacher who has never taught high school math is reassigned to teach high school math.

In all of these examples, staffing decisions are being made on the basis of whether a teacher is tenured or non-tenured. Those decisions are not being made on what is in the best educational interests of students.

When revenues decline, a school board must ultimately make budgetary decisions regarding the allocation of resources. Unfortunately, under A.S. 14.20.175(b), a school board acts with the proverbial one hand tied behind its back. Decisions regarding the allocation of human resources are not based upon who is the best, brightest, most competent, most energetic, most qualified, and most effective teacher, but rather on whether someone has taught for only one or two years in the district as opposed to having taught for three, four or more years.

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POSITION PAPER

DE NOVO TRIALS

JUDICIAL REVIEW OF DECISIONS OF SCHOOL BOARDS
RELATING TO NON-RETENTION OR DISMISSAL OF TEACHERS

Under AS 14.20.205 JUDICIAL REVIEW a school district is obligated to submit to a trial de novo (a new trial) if a decision by the school board is unfavorable to a teacher, and the teacher appeals the decision by the board to non-retain or dismiss them. This is an extraordinary standard that has not been extended to any other group of employees.

When a teacher appeals the findings of a district hearing, the school district must repeat the process again before the court, usually at a much later date, and incur the financial cost once again.

AASB views this requirement to be both duplicative and extremely costly. The history of de novo trials in various school districts has established a pattern of unnecessary legal expenses. In addition, de novo law has a substantial chilling effect on school districts, due to costs, when deciding whether or not to attempt the dismissal of a tenured teacher.

The judicial review of dismissal proceedings should be treated no differently than other State agencies. Review should be "on the record" pursuant to the Administrative Procedures Act. This would provide an opportunity for the superior court to review the established record of the local hearing.

Furthermore, a teacher will still be able to appeal a school board's decision to the superior court.

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DE NOVO TRIALS SAMPLE COSTS

On March 22, 1994 the House HESS Committee took testimony from representatives of five school districts in support of legislation affecting de novo trials. School officials offered testimony on seven recent cases of non-retention—total cost \$721,453.

NORTH SLOPE BOROUGH SCHOOL DISTRICT

Tom Everitt, Director of Personnel

Example 1: A teacher was terminated for striking a child. The board incurred costs of \$126,000 in addition to hearing costs for the "de novo" trial

Example 2: A tenured teacher was terminated for incompetence. As in the first example, the teacher requested and received a hearing. The legal fees for the district attorney and hearing officer were substantial. The preparation for the trial and settlement negotiations involved another \$29,000 in legal fees. In addition, the district's insurance company paid the ex-teacher \$59,500 as a settlement to avoid the legal expenses of a trial.

Total legal expense to the district: \$217,500.

FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT

Barbara M. Martin, Assistant Superintendent

Example 1: A case is currently being appealed to the Alaska Supreme Court by a terminated employee. Hearing costs in this case were \$44,512 and the trial costs to date are \$38,095, for a total of \$82,607.

Example 2: Another case is scheduled for trial in superior court in January 1995. Hearing costs in this case were \$82,920 and the trial costs to date are \$30,010, for a total of \$112,930.

Total combined costs to the district: \$195,537.

ANCHORAGE SCHOOL DISTRICT

Larry Wiget, Director of Government

In a recent case in Anchorage the district spent roughly \$20,000 to prevail before a hearing officer. It was forced to expend an additional \$100,000 to achieve the same result in the Superior court.

Total cost to the district: \$120,000.

KENAI PENINSULA BOROUGH SCHOOL DISTRICT

Richard Swarner, Executive Director of Business Management

Kenai has recently gone through a trial de novo for the non-retention of a tenured teacher and the district's legal costs were \$74,000. This is an exorbitant, but normal, price to pay for an employee who's performance is not satisfactory.

Total cost to the district: \$74,000.

SITKA SCHOOL DISTRICT

John Holst, Superintendent

In a recent termination case in the Sitka School District the district paid \$39,963. This included the original hearing before the board. At that point an attorney and legal firm was appointed by our insurance carrier and handled the case from that point on. The cost of the de novo trial was \$ 50,386 and the cost associated with the appeal to the Supreme Court was another \$ 42,067. Since this case has been remanded to Superior Court, we do not know at this time what the cost will be to process the next step.

Total cost to the district: \$114,416.

Sec. 14.17.225

CONSTRUCTION AND IMPLEMENTATION OF CHAPTER.

(a) This chapter does not create a debt of the state. Each district shall establish, maintain, and operate under a balanced budget. The state is not responsible for the debts of a school district.

(b) Money to carry out the provisions of AS 14.17.010 - 14.17.190 may be appropriated annually by the legislature into the public school foundation account. If amounts in the account are insufficient to meet the allocations authorized under AS 14.17.010 - 14.17.190 for a fiscal year, each district's basic need shall be reduced pro rata as necessary to make the funds available sufficient to meet the allocations for that fiscal year.

History -

(Sec. 8 ch 95 SLA 1969; am Sec. 1 ch 79 SLA 1971; am Sec. 12 ch 90 SLA 1977; am Sec. 51 ch 6 SLA 1984; am Sec. 17 ch 91 SLA 1987)

Sec. 14.17.021

STATE FOUNDATION AID.

(a) The amount of state foundation aid for which a school district may qualify in a fiscal year is calculated by subtracting from the basic need defined in (b) of this section the required local contributions under AS 14.17.025(a) and 90 percent of eligible federal impact aid for that fiscal year. The department may make adjustments to a district's state foundation aid for a fiscal year to correct underpayments made in previous fiscal years.

(b) The basic need of a school district is determined by multiplying the area cost differential of the district under AS 14.17.051 by the number of instructional units in the district under AS 14.17.031 and then multiplying that product by the instructional unit value in AS 14.17.056.

History -

(Sec. 4 ch 238 SLA 1970; am Sec. 1, 2 ch 81 SLA 1975; am Sec. 1, 2 ch 173 SLA 1976; am Sec. 2, 3 ch 90 SLA 1977; am Sec. 3, 4 ch 26 SLA 1980; am Sec. 2 ch 75 SLA 1986; am Sec. 2 ch 91 SLA 1987; am Sec. 1 ch 149 SLA 1990)

Amendment Notes -

The 1990 amendment, effective June 22, 1990, added the second sentence in subsection (a).

Decisions -

That the legislature has seen fit to delegate certain educational functions to local boards - in order that Alaska schools might be adapted to meet the varying conditions of different localities does not diminish constitutionally mandated state control over education under Alaska Const., art. VII, Sec. 1. *Macaulay v. Hildebrand*, 491 P.2d 120 (Alaska 1971).

Sec. 14:20.150

ACQUISITION OF TENURE RIGHTS.

(a) A teacher acquires tenure rights in a district when the teacher

- (1) possesses a standard teaching certificate;
- (2) has been employed as a teacher in the same district continuously for two full school years and is reemployed for the school year immediately following the two full school years.

(b) The tenure rights acquired under (a) of this section become effective on the first day the teacher performs teaching services in the district during the school year immediately following the two full school years.

History -

(Sec. 1 ch 92 SLA 1960; am Sec. 17 ch 98 SLA 1966)

Decisions -

Purpose of tenure laws. - Tenure laws are intended to give job security to experienced teachers and to ensure that they will not be discharged for inadequate reasons. *State v. Redman*, 491 P.2d 157 (Alaska 1971).

A system of tenure has as its objective the retention of able personnel after they have undergone an adequate period of probation with the concomitant result that more talented personnel will be attracted to enter the teaching profession. *State v. Redman*, 491 P.2d 157 (Alaska 1971).

The law does not require that teachers shall teach every day, - or every hour of every day. *State v. Redman*, 491 P.2d 157 (Alaska 1971).

The supreme court fails to find any provision of Alaska statutes concerning education which requires, or to perceive of any persuasive policy reasons why, a teacher must work full days throughout the school year in order to attain tenure rights. No legislative intent to exclude a teacher who works less than full days is manifest from a study of the applicable statutes. *State v. Redman*, 491 P.2d 157 (Alaska 1971).

Duties regular and substantial enough to afford intelligent evaluation are sufficient. - When a teacher's duties are regular and substantial enough to afford intelligent evaluation, there is little in the way of persuasive policy considerations for excluding such service from the ambit of Alaska tenure laws. *State v. Redman*, 491 P.2d 157 (Alaska 1971).

"Sequential fractions" regulation, - adopted by the department of education for the purpose of protecting teachers who had taught in a particular school district for various fractions of the school year and entitling teachers who had taught for periods totaling more than the equivalent of two regular school terms to tenure, conflicted with the unambiguous language of this section. *Fairbanks N. Star Borough Sch. Dist. v. NEA-Alaska, Inc.*, 817 P.2d 923 (Alaska 1991).

Use of the word "full" in this section indicates the legislature's intent to preclude a teacher from counting a portion of a year toward the two-year

probationary period required for tenure. Fairbanks N. Star Borough Sch. Dist v. NEA-Alaska, Inc., 817 P.2d 923 (Alaska 1991).

Cited in Skagway City Sch. Bd. v. Davis, 543 P.2d 218 (Alaska 1975); Crisp v. Kenai Peninsula Borough Sch. Dist., 587 P.2d 1168 (Alaska 1978).
Collateral Refs -

What amounts to waiver of status or rights under teachers' tenure statute. 145 ALR 1078.

Construction and effect of tenure provisions of contract or statute governing employment of faculty member by college or university. 66 ALR3d 1018.

Who is "teacher" for purposes of tenure statute. 94 ALR3d 141.

Sec. 14.20.147

TRANSFER OR ABSORPTION OF ATTENDANCE AREA OR FEDERAL AGENCY SCHOOL

(a) When an attendance area is transferred from a currently operating district to, or absorbed into, a new or existing school district, the teachers for the attendance area also shall be transferred unless otherwise mutually agreed by the teacher or teachers and the chief school administrator of the new district. Accumulated or earned benefits, including but not limited to, seniority, salary level, tenure, leave, and retirement, accompany the teacher who is transferred.

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

(c) On the first day of service in the absorbing school district, a teacher transferred from a federal agency school shall be allowed the actual number of days of accumulated sick leave that the teacher has earned while teaching in the state. Consistent with the established district policy the absorbing district may allow credit for any other type of leave. Credit for retirement shall be allowed in accordance with AS 14.25.060.

History -

(Sec. 1 ch 53 SLA 1972; am Sec. 1 ch 150 SLA 1975)

Decisions -

Back pay is not a benefit for the purpose of subsection (a) of this section. - Aleutian Region R.E.A.A. v. Wolansky, 630 P.2d 529 (Alaska 1981).

Quoted in Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, 591 P.2d 1292 (Alaska 1979), overruled on other grounds, Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast, 715 P.2d 707 (Alaska 1986).

Stated in Parliment v. Yukon Flats Sch. Dist., 760 P.2d 513 (Alaska 1988).

Sec. 14.20.160

LOSS OF TENURE RIGHTS.

Tenure rights are lost when the teacher's employment in the district is interrupted or terminated.

History -

(Sec. 1 ch 92 SLA 1960; am Sec. 1 ch 104 SLA 1965; am Sec. 20 ch 98 SLA 1966; am Sec. 22 ch 37 SLA 1986)

Sec. 14.20.175

NONRETENTION.

(a) A teacher who has not acquired tenure rights is subject to nonretention for the school year following the expiration of the teacher's contract for any cause that the employer determines to be adequate. However, at the teacher's request, the teacher is entitled to a written statement of the cause for nonretention. The boards of city and borough school districts and regional educational attendance areas shall provide by regulation or bylaw a procedure under which a nonretained teacher may request and receive an informal hearing by the board.

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

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

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

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

(4) a necessary reduction of staff occasioned by a decrease in school attendance.

History -

(Sec. 22 ch 98 SLA 1966; am Sec. 1 ch 11 SLA 1968; am Sec. 13 ch 46 SLA 1970; am Sec. 15 ch 124 SLA 1975)

Decisions -

Section exceeds federal constitutional requirements. - This section, in requiring a statement of cause and an opportunity to be heard, exceeds federal constitutional requirements. *Shatting v. Dillingham City Sch. Dist.*, 617 P.2d 9 (Alaska 1980).

Discretion of school boards. - 4 AAC 19.010, which provides that formal evaluations shall serve as a method for gathering data relevant to subsequent employment status decisions pertaining to the person evaluated, cannot operate to limit the broad discretion that was intentionally given to local school boards by the legislature, and a school board's decision not to renew the contract of a nontenured teacher may be "for any cause which the employer determines to be adequate." *Shatting v. Dillingham City Sch. Dist.*, 617 P.2d 9 (Alaska 1980).

Despite the broad language of subsection (a), the board's discretion is subject to certain limitations; for example, a school board may not deny continued employment to a teacher because of the teacher's exercise of first amendment rights, nor may a school board deny continued employment

to a teacher if to do so would deprive the teacher of other rights that are guaranteed by constitution or statute. *Shatting v. Dillingham City Sch. Dist.*, 617 P.2d 9 (Alaska 1980).

Rights of nonretained, nontenured teachers are limited. - The rights of a nontenured teacher who is simply not retained at the end of his period of employment are relatively limited. A non-

retained, nontenured teacher has no constitutionally protected interest in public employment. *Gorder v. Matanuska-Susitna Borough Sch. Dist.*, 513 P.2d 1094 (Alaska 1973); *Shatting v. Dillingham City Sch. Dist.*, 617 P.2d 9 (Alaska 1980).

Probationary employees who are otherwise lawfully discharged cannot obtain permanent status through grievance procedures - which do not purport to modify the statutory provisions concerning tenure and termination of employees. *Gorder v. Matanuska-Susitna Borough Sch. Dist.*, 513 P.2d 1094 (Alaska 1973).

The grievance procedure may be of value to a nontenured teacher - in attempting to persuade the hiring authority that he should be retained. The process might on occasion bring forth evidence and argument by which the termination of the nontenured teacher might be reconsidered. *Gorder v. Matanuska-Susitna Borough Sch. Dist.*, 513 P.2d 1094 (Alaska 1973).

But any such results and action would be a matter within the discretion of the hiring authority, - and thereby a matter of grace rather than legal right. *Gorder v. Matanuska-Susitna Borough Sch. Dist.*, 513 P.2d 1094 (Alaska 1973).

Nonretention of tenured teacher for substantial noncompliance with district regulations affirmed. - See *Fisher v. Fairbanks N. Star Borough Sch. Dist.*, 704 P.2d 213 (Alaska 1985).

Submission of alleged breach of collective bargaining agreement to arbitration. - Where procedures concerning the nonretention of teachers are negotiated by a school district and a teachers' union and are included within a collective bargaining agreement, a nontenured teacher who is not retained by the school district can submit an alleged breach of the collective bargaining agreement to arbitration, though the arbitrator's latitude in fashioning an appropriate remedy is restricted by the language of subsection (a). *Jones v. Wrangell Sch. Dist.*, 696 P.2d 677 (Alaska 1985).

Quoted in *Matanuska-Susitna Borough v. Lum*, 538 P.2d 994 (Alaska 1975); *Jerrel v. Kenai Peninsula Borough Sch. Dist.*, 567 P.2d 760 (Alaska 1977).

Collateral Refs -

Right to dismiss public school teacher on ground that services are no longer needed. 100 ALR2d 1141.

Sec. 14.20.180

PROCEDURE AND HEARING UPON NOTICE OF DISMISSAL OR NONRETENTION.

(a) An employer shall include in a notification of dismissal of a teacher who has not acquired tenure rights, or of nonretention or dismissal of a tenured teacher, a statement of cause and a complete bill of particulars.

(b) The tenured teacher may, within 15 days immediately following receipt of the notification, notify the employer in writing that a hearing before the school board is requested. The tenured teacher may require in the notification that the hearing be either public or private and that the hearing be under oath or affirmation. The notification may also require that the right of cross-examination be provided and that the tenured teacher be represented by counsel and have the right to subpoena a person who has made allegations that are used as a basis for the decision of the employer.

(c) Upon receipt of the notification requesting a hearing, the employer shall immediately arrange for a hearing, and shall notify the tenured teacher or administrator in writing of the date, time, and place of the hearing. A written transcript, tape, or similar recording of the proceedings shall be kept. Transcribed copies shall be furnished to the tenured teacher for cost upon request of the tenured teacher. A final decision of the school board requires a majority vote of the membership. The vote shall be by roll call. The final decision shall be written and contain specific findings of fact and conclusions of law. A written notification of the decision shall be furnished to the tenured teacher within 10 days of the date of the decision.

History -

(Sec. 3a ch 92 SLA 1960; am Sec. 23 ch 98 SLA 1966; am Sec. 2, 3 ch 11 SLA 1968; am Sec. 14 ch 46 SLA 1970; am Sec. 16, 17 ch 124 SLA 1975)
Decisions -

Section describes procedure. - This section describes the administrative procedure, which includes a hearing, when a tenured teacher has been given a notice of dismissal or nonretention. *Corso v. Commissioner of Educ.*, 563 P.2d 246 (Alaska 1977).

Reference to section in AS 14.20.170 does not extend hearing rights to nontenured teachers. - The reference to this section in AS 14.20.170 cannot reasonably be interpreted to extend the hearing rights given to tenured teachers under this section to nontenured teachers. *Nichols v. Eckert*, 504 P.2d 1359 (Alaska 1973).

But constitutional due process requirements overcome any statutory rule. - Even though a hearing is not accorded to nontenured teachers by statute, the constitutional requirements of due process overcome any statutory rule. *Nichols v. Eckert*, 504 P.2d 1359 (Alaska 1973).

And nontenured teachers are entitled to hearing upon dismissal. - Where a mid-year dismissal is at issue, clearly the teachers have been deprived of an interest in property, namely, their present teaching post.

This is an interest protected by the 14th amendment to the United States Constitution and by the first article of the Alaska Constitution, and thus they are entitled to a hearing. *Nichols v. Eckert*, 504 P.2d 1359 (Alaska 1973).

When dismissal effective. - The "notification of dismissal" is a notice that the board has voted in favor of dismissal, but the dismissal cannot be effective until the teacher has had an opportunity to request a hearing if one is desired. *Kenai Peninsula Borough Bd. of Educ. v. Brown*, 691 P.2d 1034 (Alaska 1984).

Since this section gives the teacher 15 days in which to request a hearing, the termination is not effective until at least 15 days following the notification of dismissal. *Kenai Peninsula Borough Bd. of Educ. v. Brown*, 691 P.2d 1034 (Alaska 1984).

If the teacher does not request a hearing, the dismissal becomes effective immediately following the expiration of the 15 day period; if the teacher does request a hearing, the dismissal can only be effective after a final majority vote following the hearing. *Kenai Peninsula Borough Bd. of Educ. v. Brown*, 691 P.2d 1034 (Alaska 1984).

Meeting resulted in a dismissal prior to a hearing in violation of teacher's due process rights where the teacher was notified that the Board of Education had approved a recommendation for his immediate dismissal and that his pay was terminated effective the day of the meeting, and he was told that he could request a hearing, but the dismissal was nonetheless effective prior to the hearing. *Kenai Peninsula Borough Bd. of Educ. v. Brown*, 691 P.2d 1034 (Alaska 1984).

A hearing is the procedure most likely to lead to a fair determination - regarding the dismissal of a nontenured teacher. The stigma which attaches to a discharge for incompetence is sufficiently injurious to call for this type of safeguard. *Nichols v. Eckert*, 504 P.2d 1359 (Alaska 1973).

A full judicial hearing is not necessary, - but a hearing that allows the administrative authority to examine both sides of the controversy will protect the interests and rights of all who are involved. *Nichols v. Eckert*, 504 P.2d 1359 (Alaska 1973).

But nontenured teachers must be given opportunity to present defense by testimony. - *Nichols v. Eckert*, 504 P.2d 1359 (Alaska 1973).

Hearing complied with section and teacher's due process rights. - See *Kenai Peninsula Borough Bd. of Educ. v. Brown*, 691 P.2d 1034 (Alaska 1984).

Bill of particulars applicable to judicial review. - The bill of particulars provision of this section operates as a limitation on the scope of the de novo trial guaranteed by AS 14.20.205. Thus, a school district may not deviate from the original bill of particulars and show other grounds during a de novo review. *Linstad v. Sitka Sch. Dist.*, 863 P.2d 838 (1993).

When time for appeal begins to run. - In light of the provision in subsection (c) of this section that the final decision of the school board must be "written and contain specific findings of fact and conclusions of law," the time for appeal from the board's determination did not begin to run until the written decision was mailed or delivered to the teacher. *Jerrel v. Kenai Peninsula Borough Sch. Dist.*, 567 P.2d 760 (Alaska 1977).

Applied in *Renfroe v. Green*, 626 P.2d 1068 (Alaska 1980).

Collateral Refs -

Request for hearing, sufficiency under statute requiring hearing on request before discharge. 89 ALR2d 1018.

Sufficiency of notice of intention to discharge teacher or not to renew contract under statutes requiring such notice. 92 ALR2d 751.

Elements and measure of damages in action by schoolteacher for wrongful discharge. 22 ALR3d 1047.

Sufficiency of notice of intention to discharge or not to rehire teacher, under statutes requiring such notice. 52 ALR4th 301.

Sec. 14.20.205

JUDICIAL REVIEW.

If a school board reaches a decision unfavorable to a teacher, the teacher is entitled to a de novo trial in the superior court. However, a teacher who has not attained tenure rights is not entitled to judicial review according to this section.

History -

(Sec. 24 ch 98 SLA 1966; am Sec. 1 ch 148 SLA 1966; am Sec. 4 ch 11 SLA 1968; am Sec. 18 ch 124 SLA 1975)

Decisions -

This section, granting a trial de novo to teachers, does not violate the separation of powers. - *Matanuska-Susitna Borough v. Lum*, 538 P.2d 994 (Alaska 1975).

On its face, this section bears no relation to the general provisions governing judicial appeals, - which is covered by Title 22. *Matanuska-Susitna Borough v. Lum*, 538 P.2d 994 (Alaska 1975).

AS 22.10.020 does not supersede this section. - AS 22.10.020, which provided in Sec. 17(1), ch. 50, SLA 1959, that "All hearings on appeal from any final order or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, shall grant a trial de novo, in whole or in part," does not supersede this section, which expressly mandates de novo reviews for tenured teachers.

Matanuska-Susitna Borough v. Lum, 538 P.2d 994 (Alaska 1975).

In reenacting AS 22.10.020 in 1970 the legislature has not unequivocally expressed any intent to deny tenured teachers de novo review nor was the reenactment part of a comprehensive revision.

Matanuska-Susitna Borough v. Lum, 538 P.2d 994 (Alaska 1975).

Since this section and AS 22.10.020 are not irreconcilably conflicting, but can be intelligently read as conterminous expressions of a general rule and an exception to it, nothing in the edicts of statutory construction requires us to find that this section has been rendered inoperative by the reenactment of AS 22.10.020. *Matanuska-Susitna Borough v. Lum*, 538 P.2d 994 (Alaska 1975).

A policy factor militating in favor of a full application of this section - is that a tenured teacher against whose favor a decision has been reached is faced with the loss of a very important right: his source of income. In this connection, it is not necessary to indulge in such classificatory labels as "vested right" or "property right," for it is enough that the right be recognized as important for it to act as a guide to decision in the interpretation of this section. *Matanuska-Susitna Borough v. Lum*, 538 P.2d 994 (Alaska 1975).

De novo trial required, not mere appellate review. - The superior court erred in making the teacher choose between a de novo trial and an appellate

review of the record. The statute provides tenured teachers the right to a de novo trial, and makes no mention of other available levels of review. Further, the de novo requirement is not satisfied by a de novo mere review on the evidence presented in the administrative hearing. *Linstad v. Sitka Sch. Dist.*, 863 P.2d 838 (1993).

Bill of particulars requirement. - The bill of particulars provision of AS 14.20.180 operates as a limitation on the scope of the de novo trial guaranteed by this section. Thus, a school district may not deviate from the original bill of particulars and show other grounds during a de novo review. *Linstad v. Sitka Sch. Dist.*, 863 P.2d 838 (1993).

Rights of nonretained, nontenured teachers are limited. - The rights of a nontenured teacher who is simply not retained at the end of his period of employment are relatively limited because such a teacher has no constitutionally protected interest in public employment. *Gorder v. Matanuska-Susitna Borough Sch. Dist.*, 513 P.2d 1094 (Alaska 1973).

Probationary employees who are otherwise lawfully discharged cannot obtain permanent status through grievance procedures - which do not purport to modify the statutory provisions concerning tenure and termination of employees. *Gorder v. Matanuska-Susitna Borough Sch. Dist.*, 513 P.2d 1094 (Alaska 1973).

The grievance procedure may be of value to a nontenured teacher - in attempting to persuade the hiring authority that he should be retained. The process might on occasion bring forth evidence and argument by which the termination of the nontenured teacher might be reconsidered. *Gorder v. Matanuska-Susitna Borough Sch. Dist.*, 513 P.2d 1094 (Alaska 1973).

But any such results and action would be a matter within the discretion of the hiring authority, - and thereby a matter of grace rather than legal right. *Gorder v. Matanuska-Susitna Borough Sch. Dist.*, 513 P.2d 1094 (Alaska 1973).

Right of nontenured teacher to judicial review. - While this section does not extend the tenured teacher's right to a trial de novo to a nontenured teacher, neither does it preclude a more limited form of judicial review of the school board decision; therefore a nontenured teacher has a right to judicial review, on the record, of a school board's nonretention, and although a review on the record is all that is required, in its discretion the superior court may grant a trial de novo. *Shatting v. Dillingham City Sch. Dist.*, 617 P.2d 9 (Alaska 1980).

Courts granted fact-finding role. - While courts normally feel constrained to defer to the fact-finding role which the legislature has given to a particular agency, no such constraint logically should exist where the legislature itself has granted the courts a fact-finding role in their review of administrative action. This section seemingly does just that, for it expressly grants a tenured teacher a "trial de novo" following an unfavorable school

board decision. *Matanuska-Susitna Borough v. Lum*, 538 P.2d 994 (Alaska 1975).

When time for appeal begins to run. - In light of the provision in AS 14.20.180(c) that the final decision of the school board must be "written and contain specific findings of fact and conclusions of law," the time for appeal from the board's determination did not begin to run until the written decision was mailed or delivered to the teacher. *Jerrel v. Kenai Peninsula Borough Sch. Dist.*, 567 P.2d 760 (Alaska 1977).

Applied in *Renfroe v. Green*, 626 P.2d 1068 (Alaska 1980); *Jones v. Wrangell Sch. Dist.*, 696 P.2d 677 (Alaska 1985).

Quoted in *Sjong v. State, Dep't of Revenue*, 622 P.2d 967 (Alaska 1981); *Fedpac Int'l, Inc. v. State*, 646 P.2d 240 (Alaska 1982); *Fisher v. Fairbanks N. Star Borough Sch. Dist.*, 704 P.2d 213 (Alaska 1985).

Sec. 14.25.150

REFUND UPON TERMINATION.

(a) Except as provided in (b) of this section, a terminated member is entitled to a refund of the balance of the member contribution account. A member is not entitled to a refund of supplemental contributions except as provided in AS 14.25.160(a).

(b) A member who is terminated and is a vested member, deferred vested member, or who is entitled to benefits under AS 14.25.125, and who is married at the time of application for a refund or whose rights to a refund are subject to a qualified domestic relations order is entitled to receive a refund of the balance of the member contribution account only if the member's present spouse and each person entitled under the order consent to the refund in writing on a form provided by the administrator. The administrator may waive written consent from the person entitled under the order if the administrator determines that the person cannot be located or for other reasons established by regulation. The administrator may waive written consent from the spouse if the administrator determines that

- (1) the member was not married to the spouse during any period of the member's employment with an employer;
- (2) the spouse has no rights to benefits under this chapter because of the terms of a qualified domestic relations order;
- (3) the spouse cannot be located;
- (4) the member and spouse have been married for less than two years and the member establishes that they are not cohabiting; or
- (5) another reason established by regulation exists.

History -

(Sec. 16 ch 145 SLA 1955; am Sec. 6 ch 142 SLA 1957; am Sec. 4 ch 78 SLA 1962; am Sec. 7 ch 86 SLA 1963; am Sec. 12 ch 151 SLA 1966; am Sec. 5 ch 84 SLA 1969; am Sec. 21 - 23 ch 56 SLA 1973; am Sec. 8 ch 128 SLA 1977; am Sec. 14 ch 137 SLA 1982; am Sec. 5, 6 ch 117 SLA 1986)

To: Representative Pete Kott and Members of the House Labor and Commerce
Committee
From: Kathi Gillespie, President of the Anchorage Council of PTAs
Date: 4/28/95

SUBJECT: HB 217 DISCUSSION AT 7:00 PM TONIGHT

After the public hearing today, I spoke with Marti Hughes about our information regarding tenure. According to the Education Commission of the States (a well respected organization that researches statistics on educational issues), statutes regarding tenure are as follows:

Colorado - eliminated tenure in 1989

Florida - eliminated tenure, goes with professional, annually renewable contracts

Maine - continuing contracts based on performance

Massachusetts - eliminated tenure in 1993

New Mexico - no provision for tenure

Oklahoma - no provision for tenure

South Carolina - no provision for tenure

Vermont - no provision for tenure

Mississippi - no provision for tenure

North Carolina - no provision for tenure

North Dakota - continuing contract based on performance - it is interesting to note that North Dakota has some of the highest test scores and the lowest cost per student in the nation

Please let us know if we can provide any other information and please pass this out of committee today.

The Trend: Tenure Headlines **"STATES SEEK TO OVERHAUL TENURE LAWS"**

- **Alaska**

Bills seek to extend tenure acquisition, allow for layoff when revenues decline, streamline a costly nonretention process.

- **California**

Governor's proposal would specifically eliminate tenure. Says the Governor, "Good teachers don't need tenure, [and] our children can't afford a teacher who is just punching the clock." He also proposes to abolish California's entire education code and start over.

- **Connecticut**

In 1993 the Connecticut legislature tried to amend teacher tenure laws that would have added new causes for dismissing a tenured teacher: The failure to demonstrate performance that promotes student achievement or the failure to take part in activities that enhance professional growth. Members of the legislature's Joint Education Committee are now proposing that Connecticut require five years of service for tenure instead of three.

- **New Jersey**

Governor has introduced a proposal requiring teachers to undergo periodic recertification to keep their licenses.

- **New York**

Legislature has already streamlined its procedures for disciplining teachers, but a new bill has been drafted that would require teachers to be licensed every three years and undergo a tenure review every five years.

- **Ohio**

Governor's proposal would require teachers to teach at least four of the past six years in the same district to achieve a "continuing contract" status. Also proposes a state education licensing board that would evaluate, remediate, and, if performance is judged unsatisfactory, release teachers.

- **South Dakota**

Governor is introducing legislation that would give school boards more flexibility to nonretain ineffective teachers.

- **Texas**

Senate Education Committee proposal would make it easier to dismiss teachers: They could be fired after two consecutive unsatisfactory reviews. Governor has praised the bill for encouraging innovation and increasing local control of schools.

- **Wisconsin**

Senate lawmakers recently passed a bill repealing tenure. Governor supports the bill, and has previously introduced similar bills. The Republican-led legislature is expected to pass the bill into law soon. Other bills would repeal de novo type laws that recently cost the state \$200,000 to nonretain two school employees.

STATES THAT HAVE AMENDED TENURE LAWS IN THE PAST FEW YEARS

• **COLORADO** (Repealed tenure) • **MASSACHUSETTS** • **NEW YORK**
• **FLORIDA** • **MICHIGAN** • **OKLAHOMA**

SOURCE: EDUCATION WEEK, MARCH 1, 1995, WSBA APRIL 18, 1995, EDUCATION COMMISSION OF THE STATES, 1995

States Weigh Plans To Dismantle All or Part of Tenure Laws

States seek to overhaul tenure laws

Senate targets teacher tenure

Action sought by Fuller affects Milwaukee County districts

By RICHARD P. JONES of the Journal Sentinel staff

Madison — The state Senate voted Thursday to repeal teacher tenure in Milwaukee County, one of the reforms sought by Milwaukee School

our contracts spelled out how to fire (bad teachers). "We hope it doesn't hurt people unduly," Howard add-

The bill applies to Milwaukee Public Schools and 17 suburban school districts in the county. It would not affect teachers who already hold tenure in those districts.

After Senate action, Sen. Berna Darling (R-River Hill) said the tenure law pro-

Critics Target State Teacher-Tenure Laws

Calif. Governor Seeks To Dismantle System

Who Wants tenure repealed? You might be surprised!

by Susan K. Maciak, assistant editor

Teachers against tenure? It may surprise you, but some are. Frustrated by having to put up with peers who are not properly preparing students for the next grade level, some Michigan teachers would like to see tenure repealed. Patricia Lane, retired

before tenure hearings here won't be enough with this

"We want to be able to assure the public that qualifications for classroom instruction are the first consideration for employment and not necessarily seniority."

— Carl Rose, Association of Alaska School Boards

"School districts want to help teachers get the experience, supervision and professional development they need to be successful. Extending tenure acquisition will give districts the time they need to do just that."

— Carl Rose, Association of Alaska School Boards

"Tenure reform, a growing sentiment"

— Education Week, American Education's Newspaper of Record

"I think this has been coming for quite a while."

— Education Commission of the States

"If [teachers] are smart, they'll look at this as an opportunity to elevate the profession. I don't know anyone who's more upset about a bad teacher than a good teacher."

— California Secretary of Child Development and Education

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Critics Target State Teacher-Tenure Laws

Calif. Governor Seeks To Dismantle System

By Joanne Richardson

In 1985, school officials in La Mesa, Calif., reached the end of their rope.

After documenting more than 400 reasons why the Grossmont Union school district deemed Juliet Ellery unfit to teach high school biology and English—including that she belittled students and ignored their questions—the school board there fired her. The teacher disagreed with the decision and appealed it.

Eight years and more than \$300,000 in fees later, the district finally saw the last of Ms. Ellery: In 1993, the teacher exhausted her last appeal.

That drawn-out scenario to fire a teacher who has tenure could change if Gov. Pete Wilson gets his way.

California is one of several states where school boards, legislators, or governors are hoping to dismantle all or part of their teacher-tenure laws. Opponents say the laws, which were designed to protect teachers from arbitrary firing, drive up districts' costs and require years of complicated legal maneuvers to dismiss incompetent teachers. Some also argue that the current laws require too little of teachers who achieve tenure.

Connecticut, Ohio, South Dakota, and Texas all have proposals in the works. Some would merely tinker with the tenure laws; others, such as California's proposal, would wipe out the concept altogether.

A Growing Sentiment

Some analysts said they expect to see more of that sentiment over the next few years. The political shift to the right in many states has left teachers' unions—the longtime defenders of such job protections—more vulnerable, they said.

Moreover, the movement to make schools more accountable could have an impact.

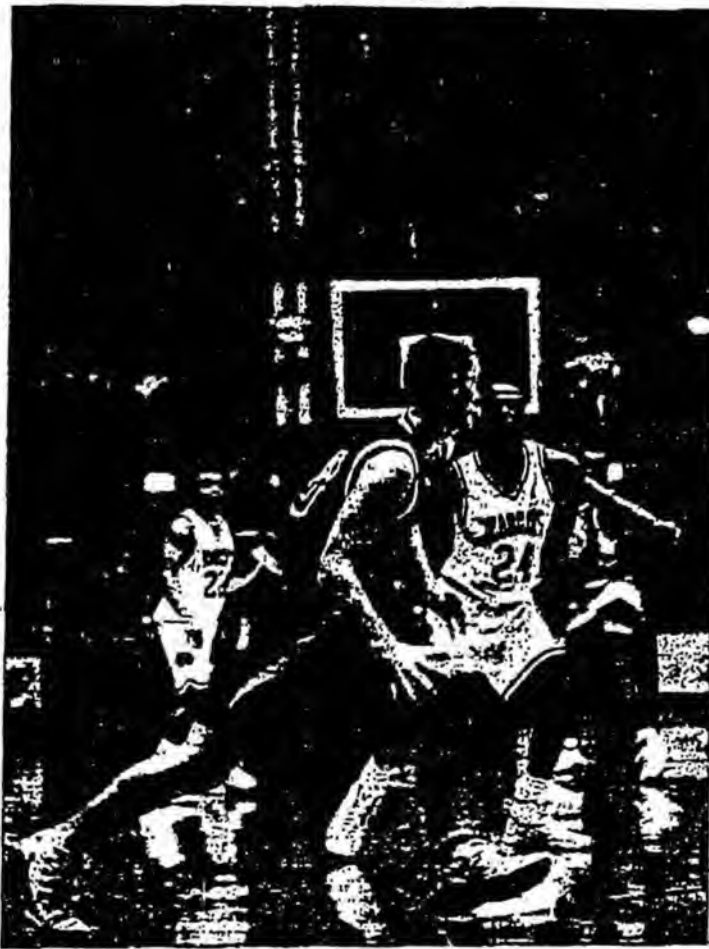
"I think this has been coming for quite a while," said Kathy Christie, the director of the Education Commission of the States' information clearinghouse. The Denver-based group has tracked changes throughout the country in laws providing tenure—sometimes known by terms such

Continued on Page 13

Glory Days

Post-It™ brand fax transmittal memo 7671 # of pages > 2

To: Tom Wright	From: Carl Rose
Co. Jo Ann Jones	Co. AASB
Dept. office	Phone #
Fax # 465-2228	Fax #



For more than a century, Indiana schoolboys knuckled the most diehard fans, packed gymnasiums, and fierce competition between well-known teams and their big-city neighbors. Above, Indiana's main teams Central and Anderson High take to the court for their 128th meeting. But as game after game wears—and the state considers a break with its one-class tournament tradition—many worry that "Hoosier Hysteria" may become a thing of the past. See Story, Page 24.

Accord Set in Desegregation Case in K.C.

Truce Called 'Historic Turning Point' for Mo.

By Peter Schmidt

A temporary truce has been declared in the long-running, bitterly contested Kansas City, Mo., school-desegregation case now pending before the U.S. Supreme Court.

A U.S. District Court judge approved the settlement last week within days after it was signed by state and district officials and the other parties in the case.

Although the agreement has no immediate impact on the case before the Supreme Court, it nonetheless was hailed by those involved as a critical step toward bringing an end to the dispute.

"This is a landmark agreement that could lead to a long-term and effective solution to the desegregation issue in Kansas City," Gov. Mel Carnahan said in a statement, calling the accord a "historic turning point for the state of Missouri."

Patricia A. Brannan, a lawyer representing the district, said the agreement does not resolve key points of contention, but instead provides an opportunity to negotiate out of court by setting a six-month ceasefire from legal skirmishing over the spring and summer.

Continued on Page 14

Districts Wonder If A.D.A. Efforts Will Satisfy Law

By Drew Lindsay

No one is going to call Fairfax County, Va., a slacker when it comes to providing people with disabilities access to schools.

At least, that is the hope of school officials there who have dedicated a construction fund solely to meeting the needs of the disabled. Should a student in a wheelchair need to use a second-floor laboratory, for example, the officials say they will tap that fund and act—within 45 days, there will be an elevator.

The Fairfax County school district's "quick response" fund is part of its strategy for meeting its obligations under the Americans With Disabilities Act, the 1990 federal civil-rights law that prohibits discrimination against people with disabilities. Schools nationwide are expected to spend \$8 billion in the next few years increasing accessibility to their programs.

But Fairfax County and thousands of other districts will spend this money knowing little about whether their plans will

Continued on Page 11

Scaling Up

The National Diffusion Network is seeking to remake itself in the hopes that it will gain a more solid footing in the school-improvement movement.

5

Are Schools Up to the Job?

Employers rank a student's school experience last among criteria they consider in hiring new workers, a survey finds.

16

Voucher Battle in Illinois

Lawmakers are set to debate a voucher bill that would make Illinois the first state to steer state funds to religious schools.

16

Welfare Reform Advances

A key House committee has cleared legislation that would replace child-care and school-meals programs with block grants to the states.

20

States Weigh Plans To Dismantle All or Part of Tenure Laws

Continued from Page 1

"continuing contracts"—for years.

Districts got used to just shifting people to another building or another position if they were not doing their job, Ms. Christie said. "Now it's time to see results."

Right to Due Process

In most states, the debate over tenure has focused on giving schools more freedom to remove ineffective teachers.

Some union officials have objected to claims that tenure laws protect incompetent teachers from the district's interventions.

"This is nothing more than the right to due process that's found in any workplace," Jewell Gould, the director of research for the American Federation of Teachers, said.

Going after teacher tenure is "a cheap slap at quality," he added, saying that states should focus instead on better professional support for beginning teachers. School administrators, he said, have to bear some of the burden, by letting teachers know if their performance is not up to par and helping them come up with ways to improve it.

Others have argued that evaluating seasoned teachers more fre-

quently and improving professional-development opportunities would identify teachers who need help earlier—and make tenure changes unnecessary.

But critics say tenure laws have outlived their purpose. "Tenure is one of the last dinosaurs in public education, said Maureen DiMarco, Governor Wilson's secretary of child development and education. "We check on the people who cut your hair more than the people who have your children's future in their hands."

Most states also give teachers the right to appeal such decisions in a court or before a state agency. Over the past few years, however, several states—including Colorado, Florida, Massachusetts, Michigan, New York, and Oklahoma—have amended their tenure laws while keeping some of the foundations intact, according to the E.C.S.

Looking to Change

Now, another wave of states is looking to change teacher-tenure laws. Most are trying to extend the

man of the Senate education committee, is sponsoring a bill that would force the state to rewrite much of its education code. (See story, page 17.)

Among other provisions, the proposal would make it easier for administrators to dismiss teachers: They could be fired after two consecutive unsatisfactory reviews.

Gov. George W. Bush, who promised education reform in his campaign last fall, has praised the bill for encouraging innovation and increasing local control of schools.

Another new Governor, William J. Jenklow of South Dakota, is introducing legislation that would give school boards more flexibility to fire ineffective teachers.

But the legislation—which would also eliminate portions of the state's education law—would keep intact most of the basic protections in the current law, said Karon Schack, the deputy secretary of the state education department.

In Ohio, Gov. George V. Voinovich has proposed extending the minimum teaching time required to become eligible for a continuing contract.

Teachers would have to have taught at least four of the past six years in the same district to achieve that status, Paul Palagyi, an education-policy adviser to Mr. Voinovich, said.

In addition, the Governor wants to create a state education-licensing board made up pri-

marily of teachers. It would oversee, among other tasks, the periodic evaluation of teachers, who would have a remediation period if their performance was judged unsatisfactory.

"We're saying teachers who are not meeting the standards of

ture to take part in activities that "enhance professional growth."

The proposal, however, drew heavy fire from both of the state teachers' unions, who argued that they were being asked to bear the burden for school reform. The bill eventually fell flat in the legislature.

Despite that failure, some lawmakers with the legislature's joint education committee are now proposing that Connecticut require five years of service for tenure instead of three.

And in New Jersey and New York, where the state school boards' associations have battled often with the unions over tenure, there is still talk of changing the laws. New York has already streamlined its procedures for disciplining teachers, but a new case involving a Long Island school district has reignited debate there about whether the state should go further.

Mr. Gould of the A.F.T. said he thinks the states are on the wrong track. Raising standards—not scrapping tenure—would do more to make teachers and schools accountable, he said.

But Ms. DiMarco of California said the unions should consider how changes in the laws could, in the end, benefit teachers.

"If they're smart, they'll look at this as an opportunity to elevate the profession," she said. "I don't know anyone who's more upset about a bad teacher than a good teacher."

"We check on the people who cut your hair more than the people who have your children's future in their hands."

Maureen DiMarco

California Secretary of Child Development and Education

their peers can be fired," Mr. Palagyi said.

Politics of Protection

State officials who support the changes acknowledge that while such proposals may have the backing of governors and lawmakers, the teachers' unions could be a tough sell.

In Connecticut, for example, the legislature tried to amend teacher-tenure laws in a 1993 bill that would have moved the state to a performance-based education system.

The state would have added new causes for dismissing a tenured teacher: the failure to demonstrate performance that promotes student achievement or the fail-

Teacher-tenure laws are "nothing more than the right to due process that's found in any workplace."

Jewell Gould

Director of Research, American Federation of Teachers

quently and improving professional-development opportunities would identify teachers who need help earlier—and make tenure changes unnecessary.

But critics say tenure laws have outlived their purpose.

"Tenure is one of the last dinosaurs in public education, said Maureen DiMarco, Governor Wilson's secretary of child development and education. "We check on the people who cut your hair more than the people who have your children's future in their hands."

Mary Jo McGrath, a lawyer who has represented the Grossmont Union schools and many other school boards in California, said: "These cases are about as tough as they get. They're much harder than anything in the private sector ever faces in wrongful-termination suits."

Ms. McGrath said the Juliet Ellery case was not atypical: cases can last up to a year or more.

Most districts also need an average of three years of documentation before dismissing a tenured teacher, she added, and if the termination is appealed, schools may use as many as 40 witnesses and more than 100 documents to support their case.

time it takes a teacher to achieve tenure, strengthen or put in place evaluation procedures for achieving such status, or shorten what is often a long and expensive appeals process when teachers contest a school board's dismissal decision.

"In his State of the State speech earlier this year, Governor Wilson said, "Good teachers don't need tenure, [and] our children can't afford a teacher who is just punching the clock."

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FRIDAY, APRIL 7, 1995

BILL GOES TO ASSEMBLY

Senate targets teacher tenure

Action sought by Fuller affects Milwaukee County districts

By RICHARD P. JONES
of the Journal Sentinel staff

Madison — The state Senate voted Thursday to repeal teacher tenure in Milwaukee County, one of the reforms sought by Milwaukee School Superintendent Howard Fuller.

Public school teachers in Milwaukee County now gain permanent employment status after three years on the job. Without discussion, the Senate passed a bill to repeal the tenure law and sent the measure to the Assembly.

Repealing the tenure law was on the wish list of reforms that Fuller sent Gov. Tommy G. Thompson and the Legislature earlier this year.

Reacting to the vote, Chuck Howard, president of the Milwaukee Teachers Association, said: "Obviously we're disappointed.

"We believe they (Senate) are mistaken in what they think it is going to do. Tenure is designed to save good teachers. We have methods in

our contracts spelled out how to fire (bad teachers).

"We hope it doesn't hurt people unduly," Howard added.

The bill applies to Milwaukee Public Schools and 17 suburban school districts in the county. It would not affect teachers who already hold tenure in those districts.

After Senate action, Sen. Alberta Darling (R-River Hills) said the tenure law protected incompetent teachers in the county districts. She said the tenure in all other districts across the state was repealed nearly 50 years ago.

"It's not fair to teachers throughout this state, it's not really fair to the good teachers in Milwaukee, who work side by side with teachers who are not carrying their load," she said in an interview.

Darling, a former teacher and chairwoman of the Senate Education Committee, cited a recent MPS audit, showing principals would rather give poor teachers a satisfactory rating and a transfer to another school than try to terminate them.

"Right now, it is almost impossible to fire a school employee unless there is evidence of a criminal act," Darling said.

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Whitman Challenges The Teachers

Governor Tells Union She Supports Retesting

By IVER PETERSON

Special to The New York Times

EAST BRUNSWICK, N.J., Feb. 5 — Gov. Christine Todd Whitman challenged the New Jersey public school teachers' union today with a recertification proposal that would attack teacher tenure and with a tuition-voucher plan for a troubled urban school district.

Her challenge to the all but unshakable tenure granted to public school teachers and to the state's support for public school financing is the first major political fight for Mrs. Whitman since she became Governor three weeks ago.

The union leadership immediately made clear that the teachers were prepared to use as much political force against the Whitman proposals as they did in forcing a repeal of Gov. Jim Florio's attempt to shift the cost of teacher pensions from the state budget to local school budgets. That fight led directly to the defeat of the Democratic majority in the State Legislature, and contributed to Mr. Florio's defeat last year.

Members of the New Jersey Education Association's Legislative and Political Action Conference groaned loudly amid a few muted boos when Mrs. Whitman challenged the teachers, who make up one of New Jersey's richest and most politically powerful unions, to support her plan to begin a voucher system in the Jersey City schools as early as this fall.

Fighting Words to Union

"Rather than attacking a very limited test of school vouchers in one city, you should lead the fight for magnet schools and other types of school choice programs," the Governor said during her luncheon speech.

Vincent Testa, the Education Association president, said the politics of the Governor's proposals were unambiguous.

"She pretty much challenged us," Mr. Testa said in an interview after the Governor's speech. "We would have wished that she would approach vouchers and recertification in terms of saying that all of the testimony is not in yet, but she did not."

Mr. Testa said the union was willing to discuss Mrs. Whitman's ideas on requiring teachers to undergo periodic recertification to keep their licenses, a measure that the Governor admitted after her speech would end the teaching careers of teachers who failed the tests. But the union president was unbending on publicly financed vouchers that could be spent at private schools.

"The issue of private-school vouchers is a tough one for us, because it's a 'yes or no' question," he said. "It is as important an issue to this union as the pension shifts were under Florio, and we are prepared to exert the same pressure on vouchers as we were on that issue."

Governor Whitman opened her speech to the union's political action arm with praise for the expanded roles teachers must play, calling teachers not only classroom instructors but also social workers, substitute parents and nutritionists. The Governor balanced each kind word with warnings that she would not be cowed by the union's political reputation. The association's membership, at 144,000, is second-largest in the country, after California's.

"Let me tell you what I often hear said about the N.J.E.A. in the State House," Mrs. Whitman said in a kind of backhanded compliment at one point. "People say the

leader of the New Jersey Education Association, and by extension the members who elect them, are more concerned about pensions, salary issues and fringe benefits than they are about education. I don't believe that."

Members of the audience said after the Governor's speech that there was indeed a hostility to public school teachers, who are among the highest paid in the country, in parts of New Jersey. They said the teachers were often viewed as only interested in preserving a "Nine-to-three and summer's free" system, another disparaging phrase that Mrs. Whitman first used, and then disavowed, in her speech.

It is because of that hostility that the union is opposed to the Governor's program of recertification, said James A. Bisling, a history teacher at Morris County Community College and a delegate to today's conference.

'Tremendous Hostility'

"We oppose recertification because it will be used to punish teachers," Mr. Bisling said. "There is tremendous hostility toward teachers on the part of some policy makers, and they would be very willing to use a recertification system to punish teachers for any reason."

Governor Whitman's speech dwelt on the problems of urban schools, and she made it clear that her initiatives, like the voucher plan for Jersey City, were aimed at restoring urban education, to make "our public schools a beacon of excellence not only in Princeton but in Paterson."

Teachers in New Jersey are initially certified after completing their formal educations, and while school districts have programs to further a teacher's graduate education, teachers are not required to prove periodically that they are still capable of classroom instruction.

Mrs. Whitman said her thinking on a plan for re-examining teaching abil-

ity, and weeding out those who do not pass the procedure, was still incomplete. She said after her speech that teachers who failed recertification would still be eligible for other jobs, in administration and the like.

Legislature Not Needed

A change in teacher licensing could probably be enacted through the State Board of Education and would

not need legislative approval, said Mr. Testa, the union president, who added that the union was willing to consider new ways of keeping teaching standards high that fall short of ending the tenure system.

The New Jersey teachers' union became a major force in the politics of public education in 1991, when it broke with a history of supporting mainly Democratic candidates and policies and backed a Republican counterattack against Governor Florio's \$2.8 billion tax increase. The veto-proof Republican majority that resulted repaid this support by reversing Mr. Florio's plan to make local districts responsible for teacher pensions. Since then the union, with a large political war chest and thousands of well-connected members, has shifted its support back and forth between the two parties.

New York Times, June 28, 1994, P. 2-1

Teacher Tenure: Rights vs. Discipline

By SAM DILLON

After Jay Dubner, a special education teacher in New York City, was arrested, convicted and sent to prison in 1990 for selling \$7,000 worth of cocaine to undercover police, school officials thought it would be easy to dismiss him.

Not so. While Mr. Dubner served his sentence in Sullivan Correctional Center in upstate New York, he collected his teacher's pay. And, after five years and more than \$135,000 spent by the Board of Education on disciplinary proceedings, Mr. Dubner has prevailed. He still has his job.

The story of New York City's failed effort to dismiss Mr. Dubner underlines how difficult it has become for school boards to get rid of tenured employees, even in extreme cases. As a result, in New York, as elsewhere, the processes supporting tenure have become the focus of a debate about balancing rights of academics against the need to discipline unethical or incompetent teachers or principals.

By and large, teachers' unions argue that the lengthy dismissal process is essential if academics are to get a fair hearing. But many school officials say the process has tipped too far. "There's something wrong when a teacher can be con-

vinced in a court of law for selling drugs, and the school system can't dismiss him," said Lawrence E. Becker, director of the board's Office of Legal Services.

Randi Weingarten, a lawyer for the teachers' union, the United Federation of Teachers, declined to comment on Mr. Dubner's case. The union's legal staff, which often defends teachers facing disciplinary action, did not represent Mr. Dubner. He hired his own lawyer.

Gov. Mario M. Cuomo has introduced legislation that would streamline state procedures by providing for hearings before a single arbitrator, rather than a three-person panel. An aide to the Governor said chances were good that the legislation would pass this year.

Legislators or advocacy groups in other states, including South Dakota, Michigan, Illinois and New Jersey, are also seeking to simplify the procedures for disciplining teachers, said Jay Butler, a spokesman for the National School Boards Association. In many states, regulations are so onerous that school districts often ignore all but the most egregious teacher misconduct, he said.

But in few states is the problem as serious as in New York. It costs school districts across the state an average of \$194,520 — including the cost of the arbitrators and the salary of the accused teacher and a substitute — and takes 476 days to fully prosecute each case, according to a survey by the New York State School Board Association.

"This law isn't designed to protect teachers," said Louis Grumet, the association's executive direc-

tor. "It's designed to drag out, delay and obfuscate."

In New Jersey, by contrast, the average discipline case lasts only a year and costs only about \$100,000 to adjudicate, said Frank Belluscio, a spokesman for the New Jersey School Boards Association.

In New York, the disciplinary process guarantees that tenured educators accused of wrongdoing have the right to a lawyer and the right to cross-examine witnesses in an administrative trial convened by a three-person panel they help choose. This is set out in Section 3020a of state education law.

"Certainly teachers do not want incompetents or perverts in the next classroom," said Susan Amlung, a spokesman for the United Federation of Teachers. "But the 3020a procedures provide a due process that is an American right."

A Range of Charges

The city currently has 158 teachers and 18 other tenured educators facing disciplinary hearings on charges ranging from sex crimes to chronic absence, Mr. Becker said. An arts teacher has been charged with help-

ing an immigrant student run away from home by harboring her in his apartment. A principal has been charged with stealing \$10,000 in school funds. A gym teacher has been charged with having sex with a teenage girl in the school weight room. Though all have been transferred to administrative posts, they continue to draw full salaries.

Since May 1989, when Mr. Dubner was arrested, the board has dismissed 28 tenured teachers for incompetence or wrongdoing, like theft of school property and sexual abuse of a student.

Even Mr. Dubner, speaking in a recent interview, criticized the complexity of the hearings that allowed him to keep his job. But he also criticized school officials whom he said had shown little compassion during his crisis.

"They never considered giving a guy a second chance," he said.

Katie R. Raab, the board lawyer who prosecuted Mr. Dubner, portrayed him as a street-smart cynic who had been given every legal consideration.

"Jay Dubner abused the school system and the taxpayers," she said.

Selling Cocaine on the Side

At the time of his arrest in 1989, Mr. Dubner, then a bearded, 38-year-old teacher, was responsible for explaining special education programs to parents. Assigned to an office in Public School 138, in the Flatbush section of Brooklyn, he earned \$40,000 a year.

More...

TENURE, continued...

But he was augmenting his salary by selling cocaine, sometimes arranging sales from his school office, law enforcement officials said. Although there is no evidence that he ever sold to students, a regular client was Andrew J. Morgan, a teacher at Canarsie High School.

On May 9, 1989, police officers arrested the two teachers in their cars, parked along Ocean Parkway, where moments earlier Mr. Dubner had sold Mr. Morgan half an ounce of cocaine, packaged in a Board of Education envelope. The police documented half a dozen other sales that spring.

The board, ruling that Mr. Morgan was untenured, discharged him. Despite his subsequent conviction on

176 educators face hearings on charges from sex crimes to chronic absence.

felony drug charges, he has since won a civil court decision overturning his dismissal. His lawyer is demanding \$35,000 in back pay for Mr. Morgan.

Because he had tenure Mr. Dubner was not immediately dismissed. Instead he was reassigned to board headquarters. There, after a five-week drug rehabilitation program, he drew his full salary until he pleaded guilty to felony drug charges in a June 1990 plea bargain.

Teacher's Pay in Prison

Sentenced to serve from two to six years in prison, he was sent to a minimum-security annex of the maximum-security Sullivan Correctional Facility in Fallsburg in July 1990, government records show. While he was in prison, he received his full 1990 summer teacher's pay, school officials said.

When the fall term began in September 1990, Mr. Dubner was still incarcerated and unable to show up for work, he took a leave, losing a few paychecks, though not for long. Because his status as a teacher ensured him employment in a work-release program, he was sent in November 1990 to the Lincoln Correctional Facility at 3133 West 110th Street in Manhattan. The early-release program let him work at his board job and spend weekend nights in jail.

Mr. Dubner returned to his desk at board headquarters in December 1990, and two days later, the seven-member board voted to charge him with "conduct unbecoming a teacher," school records show.

Early in 1991, a three-person hearing panel was formed in the usual

fashion, with the board and Mr. Dubner each picking one member and a chairman selected at random from a state list of arbitrators. The panel, operating at what officials said is about the normal pace, met for the first time five months later.

Then, in eight hearings over 10 months, the panel heard testimony from a dozen witnesses and produced 800 pages of transcripts. Mr. Dubner's lawyer, Neil Rosenberg, argued that his client was forced to sell cocaine to support a \$300-a-day cocaine habit. Mr. Rosenberg also argued that Mr. Dubner's dismissal was unjust because he had been rehabilitated after arrest. The panel found Mr. Dubner guilty. The board discharged him in May 1992.

If Mr. Dubner had been an untenured teacher applying for a job at that time he would have been disqualified because of his recent drug conviction, school officials said. Teachers receive tenure after three years in a licensed appointment.

Shortage of Lawyers

Teachers' union officials said the disciplinary process often moves as slowly as it did in Mr. Dubner's case because the Board of Education has too few staff lawyers. School officials say the board has seven lawyers to handle its 176 disciplinary cases, giving them a higher caseload than lawyers at other city agencies.

Mr. Rosenberg said some defense lawyers intentionally drag cases out

because their clients enjoy administrative reassignment. In one case a Brooklyn teacher reassigned in 1991 for hitting students acknowledged that he preferred his temporary job over classroom duties. After he was cleared on one charge, he struck another student, and a panel concluded that he had engineered the incident in order to return to a desk job.

Teachers' union officials said such cases are rare. Since the 1991 contract talks, when the union agreed to rule changes that allow accused educators to opt for a single arbitrator rather than a three-person panel, three out of four accused teachers are choosing the streamlined procedure, they said.

Mr. Dubner availed himself of every procedural opportunity, including the right to appeal his May 1992 dismissal to the education commissioner, Thomas Sobol.

In a ruling last fall, Mr. Sobol acknowledged that Mr. Dubner's conviction on drug charges had been a public relations disaster for the school system, but said dismissal was too harsh, given Mr. Dubner's rehabilitation. He reduced the penalty to two years' suspension without pay.

After the suspension ended last month, Mr. Dubner regained his status as a tenured board employee. He has begun negotiating with the board over posts that might be available to him in the fall.

"I can return anytime I want," he said.