

SB

95

ALASKA STATE LEGISLATURE



Interim:
600 East Railroad Avenue
Wasilla, Alaska 99654
(907) 376-3370
(907) 376-3157 Fax

Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-6600
(907) 465-3805 Fax

SENATOR LYDA GREEN SENATE DISTRICT G

MEMORANDUM

TO: Senator Fred Dyson, Chair
Senate Health, Education and Social Services Committee

FROM: Senator Lyda Green

DATE: March 14, 2003

RE: Senate Bill 95, 72-Hour Notice of Teacher Strike

Thank you for scheduling a hearing on SB 95, 72-Hour Notice of Teacher Strike, for Monday, March 17. Attached for the committee's information are the following:

- Senate Bill 95
- Sponsor Statement
- Sectional Analysis; and
- Copy of pertinent Alaska Statutes and Administrative Code

If you have any questions, please call my office at 465-6600. Thank you.

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SENATOR LYDA GREEN SENATE DISTRICT G

SPONSOR STATEMENT

Senate Bill 95

"AN ACT RELATING TO MANDATORY 72 HOURS WRITTEN NOTICE BY PUBLIC SCHOOL EMPLOYEES OF THE DATE AND TIME WHEN A STRIKE WILL BEGIN."

Senate Bill 95 would require public school employees to provide a school district with written notice of an impending strike at least 72 hours prior to any labor action. This bill would protect students and give parents adequate time to be notified of a change in the school schedule.

Current labor regulations allow public school employees to strike without prior warning to the school district or the community. Without a provision mandating proper notice, student safety is severely compromised. School districts would be unable to alert parents to the possible closure of schools. Students could possibly arrive to near-empty school buildings, buses may not arrive to pick up waiting students, and parents may not have been informed of these circumstances.

Seventy-two hours gives parents sufficient time to make alternative arrangements if schools are actually going to be closed. In order for school district personnel to assure the safety and well being of students during a change of work status, there must be adequate time to prepare for changes to the school day.

The primary purpose of Senate Bill 95 is to allow time for a school district to make the best decision and to inform students, parents and the community of that decision. I urge your support of the legislation.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 6, 2003

SUBJECT: Sectional Summary of Bill on 72-hour notice of teacher strikes
(Work Order No. 23-LS0670\A)

TO: Senator Lyda Green
Attn: Jacqueline

FROM: Barbara R. Craver *BRC*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. This section amends AS 23.40.200(d) by removing the process to be used by schools when they reach an impasse in collective bargaining negotiations. This process is moved and reorganized in a new subsection (g), which is the subject of Section 2.

Section 2. A new subsection, (g), is added to AS 23.40.200 by this section. Here is a summary of the required process:

1. Schools and employees engage in collective bargaining negotiations.
2. If an impasse or deadlock in negotiations is reached the parties must submit to advisory arbitration. The process of determining the arbitrator is set out.
3. If advisory arbitration fails, and the employees vote to hold a strike, (under subsection (d)) then at least a 72-hour prior notice must be given to the school. The 72-hour notice must include a least one in-session school day.

If I may be of further assistance, please advise.

BRC:med
03-255.med

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Sec. 23.40.180. Penalty for violation of order or decision. A person who violates a provision of an order or decision of the labor relations agency is guilty of a misdemeanor and is punishable by a fine of not more than \$500. (§ 2 ch 113 SLA 1972)

NOTES TO DECISIONS

Applied in *Hafing v. Inlandboatmen's Union*, 585 P2d 870 (Alaska 1978).

Sec. 23.40.190. Mediation. If, after a reasonable period of negotiation over the terms of a collective bargaining agreement, a deadlock exists between a public employer and an organization, the labor relations agency may appoint a competent, impartial, disinterested person to act as mediator in any dispute either on its own initiative or on the request of one of the parties to the dispute. The parties may also select a mediator by agreement or mutual consent. It is the function of the mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the labor relations agency has any power of compulsion in mediation proceedings. (§ 2 ch 113 SLA 1972)

Sec. 23.40.200. Classes of public employees; arbitration. (a) For purposes of this section, public employees are employed to perform services in one of the three following classes:

- (1) those services which may not be given up for even the shortest period of time;
- (2) those services which may be interrupted for a limited period but not for an indefinite period of time; and
- (3) those services in which work stoppages may be sustained for extended periods without serious effects on the public.

(b) The class in (a)(1) of this section is composed of police and fire protection employees, jail, prison, and other correctional institution employees, and hospital employees. Employees in this class may not engage in strikes. Upon a showing by a public employer or the labor relations agency that employees in this class are engaging or about to engage in a strike, an injunction, restraining order, or other order which may be appropriate shall be granted by the superior court in the judicial district in which the strike is occurring or is about to occur. If an impasse or deadlock is reached in collective bargaining between the public employer and employees in this class, and mediation has been utilized without resolving the deadlock, the parties shall submit to arbitration to be carried out under AS 09.43.030.

(c) The class in (a)(2) of this section is composed of public utility, snow removal, sanitation, and educational institution employees other than employees of a school district, a regional educational attendance area, or a state boarding school. Employees in this class may engage in a strike after mediation, subject to the voting requirement of (d) of this section, for a limited time. The limit is determined by the interests of the health, safety, or welfare of the public. The public employer or the labor relations agency may apply to the superior court in the judicial district in which the strike is occurring for an order enjoining the strike. A strike may not be enjoined unless it can be shown that it has begun to threaten the health, safety, or welfare of the public. A court, in deciding whether or not to enjoin the strike, shall consider the total equities in the particular class. "Total equities" includes not only the impact of a strike on the public but also the extent to which employee organizations and public employers have met their statutory obligations. If an impasse or deadlock still exists after the issuance of an injunction, the parties shall submit to arbitration to be carried out under AS 09.43.030.

(d) The class in (a) (3) of this section includes all other public employees who are not included in the classes in (a) (1) or (2) of this section. Employees in this class may engage in a strike if a majority of the employees in a collective bargaining unit vote by secret

ballot to do so. However, if an impasse or deadlock is reached in collective bargaining negotiations between a municipal school district, a regional educational attendance area, or a state boarding school and its employees, the parties shall submit to advisory arbitration before the employees may engage in a strike. The arbitrator selected to conduct the advisory arbitration must be a member of the American Arbitration Association Panel of Labor Arbitrators or the Federal Mediation and Conciliation Service. In selecting the arbitrator, the parties shall request a list of arbitrators who have knowledge of and recent experience in the local conditions in the school district, regional educational attendance area, or state boarding school. A list containing at least five nominees who meet the qualifications of this subsection is a complete list for the purpose of striking names and selecting the arbitrator.

(e) Notwithstanding the provisions of (b), (c) and (d) of this section, the employees with the concurrence of the employer may agree in writing to submit a dispute arising from interpretation or application of a collective bargaining agreement to arbitration.

(f) The parties to a collective bargaining agreement may provide in the agreement a contract for arbitration to be conducted solely according to AS 09.43.010 — 09 43.180 (Uniform Arbitration Act) if the Act is incorporated into the agreement or contract by reference. (§ 2 ch 113 SLA 1972; am §§ 3, 4 ch 1 SLA 1992; am §§ 17, 18 ch 113 SLA 1997)

Effect of amendments. — The 1992 amendment, effective March 26, 1992, in subsection (c), deleted "public school and other" preceding "educational institution" and added "other than employees of a school district, a regional educational attendance area, or the state boarding school" in the first sentence, and, in subsection (d), added the last four sentences.

The 1997 amendment, effective September 30, 1997, made minor stylistic changes in subsections (c) and (d).

Opinions of attorney general. — Fish hatchery employees and area management biologists have a right to strike under paragraph (a)(3) and subsection (d). May 18, 1987 Op. Att'y Gen.

NOTES TO DECISIONS

- I. General Consideration.
- II. Arbitration.

I. GENERAL CONSIDERATION.

Certain teachers not covered by section. — Teachers, who are not "public employees" for purposes of this article, are not covered by this section. *Anchorage Educ. Ass'n v. Anchorage Sch. Dist.*, 648 P.2d 993 (Alaska 1982) (decided under former law).

Strikes by teachers. — Issuance of injunction to end teachers' strike, without separate finding of irreparable harm was not error, since by making these strikes illegal, the legislature has decided that a teachers' strike would cause irreparable harm. *Anchorage Educ. Ass'n v. Anchorage Sch. Dist.*, 648 P.2d 993 (Alaska 1982) (decided under former law).

"Impasse" in negotiations. — The state may implement unilateral contract changes when negotiations reach an impasse. For Class II employees, an impasse is reached when the parties have reached a good faith impasse and the mediation process has been exhausted. For Class III employees, an impasse is reached when negotiations are deadlocked. *Alaska Pub. Employees Ass'n v. State, Dep't of Admin.*, 776 P.2d 1030 (Alaska 1989).

State's unilateral contract changes upheld. — Unilateral contract changes imposed by the state during an impasse in negotiations with public employees, which changes included an extension of work hours, did not deprive the employees of a property interest protected by Alaska Const., art. I, § 18. *Alaska Pub. Employees Ass'n v. State, Dep't of Admin.*, 776 P.2d 1030 (Alaska 1989).

Applied in *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

II. ARBITRATION.

Not exclusive remedy. — The fact that an arbitrator cannot grant the relief afforded by a statute is an indication that holding arbitration to provide an exclusive remedy would conflict with the statutory purpose. *Public Safety Employees Ass'n v. State*, 658 P.2d 769 (Alaska 1983).

Applicability of Uniform Arbitration Act. — Even though this section does provide that interest arbitration shall be conducted under AS 09.43.030, the section of the Uniform Arbitration Act (UAA) providing for appointment of arbitrators by agreement of the parties, or, in the absence of an agreement, by the superior court, the entire UAA is not applicable to this section. *State v. Public Safety Employees Ass'n*, 798 P.2d 1281 (Alaska 1990).

Applicability of legislative approval. — The legislative appropriation requirement of AS 23.40.215(a) applies to arbitration awards under subsection (b). *Fairbanks Police Dep't Chapter v. City of Fairbanks*, 920 P.2d 273 (Alaska 1996).

Matter for courts. — Arbitrability is a question for the courts unless the parties clearly and unmistakably provide otherwise. *State v. Public Safety Employees Ass'n*, 798 P.2d 1281 (Alaska 1990).

Only nonstriking employees entitled to compulsory arbitration. — This section unambiguously

8 AAC 97.260. Petition for strike class determination

(a) A public employer or public employee representative may file a petition with the labor relations agency seeking agency determination of the strike classification under AS 23.40.200 of members of a bargaining unit.

(b) The petition for strike class determination must contain the following information:

(1) the name or description of the bargaining unit;

(2) the date of certification or recognition of the bargaining representative;

(3) the expiration date of the collective bargaining agreement;

(4) the name of the bargaining unit members for whom classification under AS 23.40.200 is petitioned and the proposed classification;

(5) name, address, telephone and facsimile machine numbers, and affiliation, if any, of the petitioner;

(6) a declaration by the person signing the petition that its contents are true and correct to the best of that person's knowledge and belief;

(7) the signature, title, and telephone and facsimile machine numbers of the petitioner's representative.

(c) The petitioner shall serve a copy of the petition on the public employer or employee representative and on any employee whose position is the subject of the petition. Proof of service is required in accordance with 8 AAC 97.015.

(d) Fifteen days after service of the petition, the public employer, employee representative, or an employee whose position is the subject of the petition may file an objection to the petition and request a hearing under 8 AAC 97.330 - 8 AAC 97.480.

History: Eff. 7/22/93, Register 127

Authority: AS 23.05.380

AS 23.40.170

AS 23.40.200

8 AAC 97.270. Mediation

(a) If the labor relations agency determines that negotiations between the railroad corporation and employee representative have reached an impasse, the agency will appoint a mediator in accordance with AS 42.40.840. The mediator shall end the mediation if the mediator determines that an impasse exists after attempting mediation. The mediator's decision to end mediation must be delivered in writing to the parties and the labor relations agency.

(b) If, in accordance with AS 23.40.190, the labor relations agency finds that negotiations between a public employer and an employee representative have reached an impasse, the agency may request a mediator appointed by the Federal Mediation and Conciliation Service.

History: Eff. 7/22/93, Register 127; am 5/18/2002, Register 162

Authority: AS 23.05.380

AS 23.40.170

AS 23.40.190

AS 42.40.820

AS 42.40.840

AS 42.40.850

8 AAC 97.280. Advisory arbitration

(a) Upon a finding of impasse by the labor relations agency or a stipulation of impasse between a public employer and the employee representative of a municipal school district, regional educational attendance area or state boarding school employees subject to advisory arbitration under AS 23.40.200, the labor relations agency will order the parties to advisory arbitration. If the parties are unable to agree on the selection of an arbitrator within ten days of the issuance of the agency's order to arbitrate, the agency will refer the parties to an advisory arbitrator. The parties will present their positions to the arbitrator at a time mutually agreed to or, if no agreement is reached, at a time determined by the arbitrator. The parties may submit to the arbitrator reports of proceedings to date, any mediation reports, and any other relevant materials. The advisory arbitrator shall review the issues and make a report, including any recommendations. The advisory arbitrator shall serve the report upon the parties and upon the agency in accordance with 8 AAC 97.015. The report of the advisory arbitrator is not binding.

(b) The parties shall undertake negotiations following receipt of the advisory arbitrator report or 90 days from the appointment of the arbitrator, whichever occurs first. The parties shall bear the costs of the advisory arbitration as directed by the arbitrator. Unless the parties agree otherwise, the requirement for advisory arbitration is met if the parties have not resolved the dispute 30 days following service of the report of the advisory arbitrator or 90 days following the appointment of the arbitrator, whichever occurs first.

(c) After a mutually recognized impasse following advisory arbitration or upon meeting the advisory arbitration requirement in (b) of this section, a municipal school district, regional educational attendance area, or state boarding school may implement its last, best offer, and the employees may engage in a strike if a majority of the employees in a collective bargaining unit have voted by secret ballot to do so.

History: Eff. 7/22/93, Register 127; am 4/14/95, Register 134; am 5/18/2002, Register 162

Authority: AS 23.05.380

AS 23.40.110

AS 23.40.170

AS 23.40.200

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 95
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: 72-Hour Notice of Teacher Strike BRU: Office of the Commissioner
 Component: Alaska Labor Relations Agency
 Sponsor: Senator Green
 Requester: Senate HES Component Number: 1200

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

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|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2003) cost: None

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill would amend AS 23.40.200(d) and add new subsection (g) to the Public Employment Relations Act (PERA) by requiring labor organizations who represent school district employees to provide school districts with at least 72 hours advance notice before a strike may begin. The bill's intent is to give school districts at least three days to prepare for the effects that a strike would have on schools, students, and parents, and to prepare contingency plans.

Prepared by: Mark Torgerson, Hearing Examiner Phone: 269-4895
 Division: Office of the Commissioner Date/Time: 3/14/03 1:53 PM
 Approved by: Greg O'Claray, Commissioner Date: 03/14/03
 Agency: Department of Labor and Workforce Development

For distribution information, call the Governor's Legislative Office

D-8 Saturday, January 16, 1999

OPINION

Anchorage Daily News

WINNER PULITZER PRIZE 1981
GOLD MEDAL FOR PUBLIC SERVICE 1976

Fulkor A. Cowell
Publisher

Patrick Dougherty
Editor

Michael Carey, Editorial Page Editor

Gerald E. Grilly, Publisher, 1964-1983
Kathenna Fanning, Editor and Publisher, 1971-1983
Lawrence Fanning, Editor and Publisher, 1987-1971
Founded in 1946 by Norman C. Brown



School strike

Few days' grace would have helped

Anchorage parents of public-school children woke up to an ambush Friday morning. School district office workers and teacher aides voted 788-102 Thursday night to strike,

Parents who have paid attention knew a strike and school closing were possible. They didn't expect to learn of a strike at the school doors or the bus stop, or while they were getting their children ready for school.

then on a voice vote called the strike for Friday. The decision came too late for the evening news, and the Anchorage School District, which had warned that a strike would close schools, didn't get the word until 10:40 Thursday night that the strike would begin Friday.

Many parents and students didn't get the word until Friday morning. That left them scrambling for child care and disrupted work and transportation schedules.

Parents who have paid attention knew a strike and school closing were possible. They didn't expect to learn of a strike at the school doors or the bus stop, or while they were getting their children ready for school.

While the union's timing got the community's attention, it's no way to win community support.

Ellen Gamel, president of Totem Association, apologized Friday afternoon for the disruption. She said union members are tired and frustrated at the district's stand in their contract dispute. The decision to walk out Friday reflects the depth of that frustration.

But the union would have served its own cause and the community better by giving Anchorage parents a weekend's warning and time to make child care, work and transportation arrangements. The strike could have begun Tuesday, after the King holiday. Blindsiding thousands of families Friday morning served no one's interests.

Flynt is just followi

It has been so many years since I visited Larry Flynt in his offices at Hustler magazine that I can no longer remember what we talked about or, really, why I interviewed him.



RICHARD COHEN

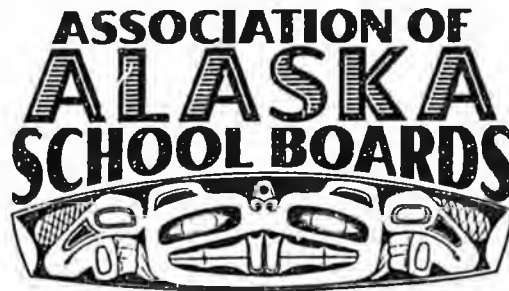
But I will never forget what the visit was like. I found a huge office, much like a law firm, in which ordinary-looking people worked with pornographic pictures of the sort that anywhere else would be hidden under a magazine like *The Atlantic*. Here, I bet, *The Atlantic* was hidden under the pictures of naked women.

I was discomfited. Was this wrong? If it was wrong, how could so many people be doing it out in the open? How come these same people were wearing suits and ties, just like me, and the women did not look in any way like the women in the magazine? Among other

Reading his carefully crafted denial, I suppress a small gleam.

At the same time, I am constrained to say that Flynt is a dirt bag and I deplore his journalism. It is really bad stuff, destructive of national life. I feel that inter-

Yet those of us who c...



Advocates for Alaska's Youth

Position Paper In Support of SB 95 Strike Notification

The Association of Alaska School Boards supports legislation which would require employees and/or their bargaining agency to give a school district a 72-hour advance notice when a strike to the district will occur, and that would require the district to give employees and/or their bargaining agency a 72-hour advance notice of its intent to impose a contract on the bargaining agency. (AASB Resolution #1.8)

Unannounced strikes undermine public confidence in public education and do not serve our communities. While it is arguable that announced strikes do the same, unannounced strikes invite chaos in the schools, a situation schools can ill afford. The school has many responsibilities that require preparation even during strikes to ensure the safety of students: Make sure students do not go unattended, arrange for pupil transportation so that students are not stranded, arrange for substitute teachers if the decision is made to continue to educate students during a strike, enhance school security, etc. Unannounced strikes impede these safety measures.

Unannounced strikes may require a school to close down and return students home. Will students be impeded from leaving the school? Will districts be prepared on a moment's notice to send children home from school in the event of an unannounced strike? Will parents be prepared to leave work and assume responsibility of their children at that time?

Finally, union members should also have equal advance notification in the event a district decides to impose a contract. Thus, AASB supports requiring the district to give employees and/or their bargaining agency a 72-hour advance notice of its intent to impose a contract on the bargaining agency.

Expiration: AASB seeks clarification on the current language in SB 95. Once the 72-hour notice of intent to strike has been given by the employee group, is there a time certain by which the strike shall take place? Or may the strike notification serve as notice of employee action that may take place at any time throughout the entire school year? AASB contends that a strike notification without expiration defeats the purpose of the bill.

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 3/3/03

FURTHER: Labor and Commerce

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 3.25.03

Health, Education and Social Services Committee considered SENATE BILL NO. 95

SB 95 72-HOUR NOTICE OF TEACHER STRIKE

"An Act relating to strikes by employees of a municipal school district, a regional educational attendance area, or a state boarding school, and requiring notice of at least 72 hours of a strike by those employees."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR # _____

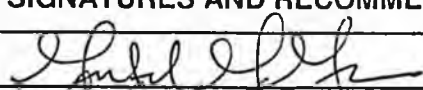
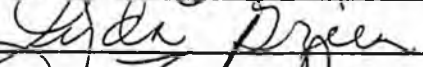
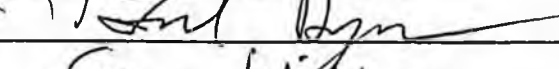
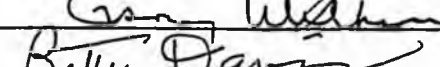
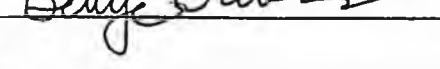
NEW FISCAL NOTE(S):

| Department | Date | Fiscal | Zero | FN# |
|------------|------|--------|------|-----|
| LWD | 3/14 | | X | |
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PREVIOUS FISCAL NOTE(S):

| Department | Date | Fiscal | Zero | FN# |
|------------|------|--------|------|-----|
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APPROPRIATION - no fiscal note

| SIGNATURES AND RECOMMENDATIONS: | | DO PASS | DO NOT PASS | NO REC | AMEND |
|---|--------|---------|-------------|--------|-------|
|  | Guess | ✓ | | ✓ | |
|  | Green | ✓ | | | |
|  | Dyson | | | ✓ | |
|  | Wilken | | | ✓ | |
|  | Davis | ✓ | | | |
| CHAIR: | | | | | |