

ALASKA LEGISLATURE

1350

HOUSE and SENATE FINANCE COMMITTEE FILES, 1995-1996

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

EDUCATION WEEK

American Education's Newspaper of Record

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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.

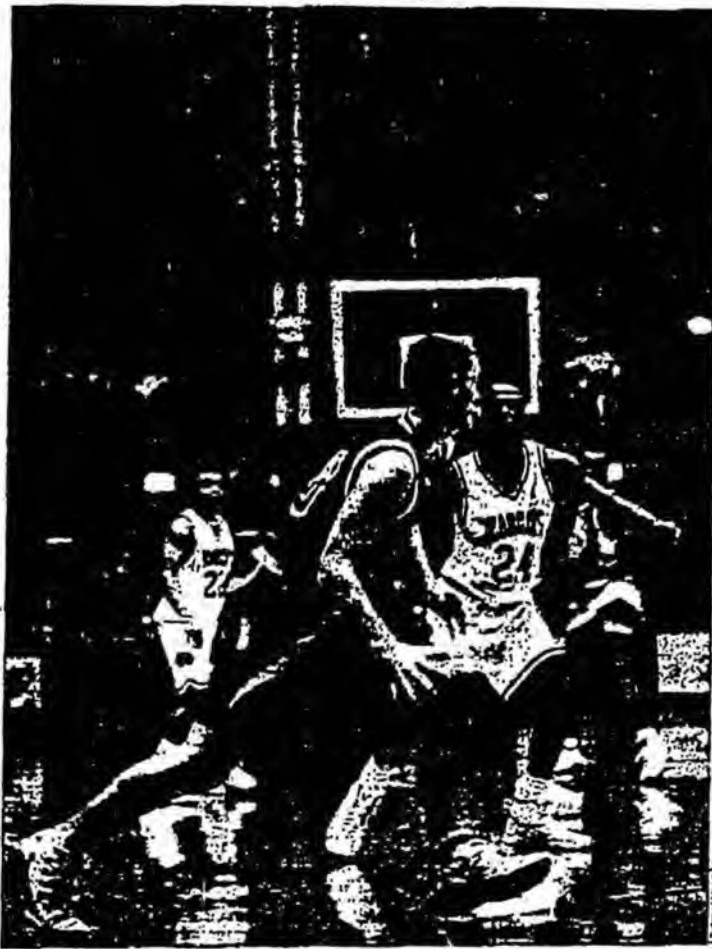
"I think this has been coming for quite a while," said Kathy Christie, the director of the Education Commission of the States' information clearinghouse. The Denver-based group has tracked changes throughout the country in laws providing tenure—sometimes known by terms such

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 wages—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 Schrak, 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 Groesmont 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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file - SB 37

Janesville woman
wins jobless benefit
ruling. Page 3B.

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.

MILWAUKEE

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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.

HB

219

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: March 27, 1995

FURTHER REFERRALS:

Date of Committee Action: 4/20/95

The FINANCE Committee considered:

HB 219

HOUSE BILL NO. 219

PAROLE OF TERMINALLY ILL PRISONERS

"An Act authorizing special medical parole for terminally ill prisoners."

recommends it be replaced with the following committee substitute CS HB 219 (Fin) the same title a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) DOC by HFC zero fiscal note(s) DOA 3/27/95

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Mark Hanley</i>	Hanley	X			
<i>Mark Mulder</i>	Mulder	X			
<i>Tom Martin</i>	Martin	X			
<i>Ben Grossendorf</i>	Grossendorf	X			
<i>Jim Brown</i>	Brown	✓			
<i>Pat Kelly</i>	Kelly	✓			
<i>Jim Theriault</i>	Theariault	X			
<i>Richard Foster</i>		X			

CHAIR'S SIGNATURE *Mark Hanley* *Richard Foster*
 Hanley Foster

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSHB 219 (FIN)

Title: Relating to medical care for prisoners
on probation.

Sponsor: Mulder, Foster

Requestor: _____

Dept. Affected Corrections

BRU: Statewide Operations

Components: All

Serial # 694

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
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	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	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	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (THOUSANDS OF DOLLARS)

General Fund	0.0	0.0	0.0	0.0	0.0	0.0
Federal Fund	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS :

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

see attached analysis

Prepared by: House Finance Committee

Rep. Mark Hanley, Co-Chair *MH*

Rep. Richard Foster, Co-Chair *RF*

Date: 4/20/95

Phone: 465-4939

Phone: 465-3789

FISCAL NOTE

(No. 1

Bill Version: CSHB 219 (JUD)

(H) Publish Date: 3/27/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: _____
Title: "An Act authorizing special medical parole for terminally ill prisoners."
Sponsor: Rep. Mulder
Requestor: JE

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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	0	0	0	0	0	0
CHANGE IN REVENUES ()	0	0	0	0	0	0

FUND SOURCE: (Thousands of Dollars)

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

Estimate of any current year (FY 95) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill will not have a fiscal impact on the Public Defender Agency.

Prepared by: John Salemi, Director
Division: Public Defender Agency

Phone: 264-4400
Date: _____

Approved by Commissioner: Mark Bover
Agency: Department of Administration

Date: 3/20/95

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSHB 219(JUD)

Revision Date: 3/27/95 Dept. Affected: Corrections
 Title: An Act relating to medical care for prisoners; BRU: Statewide Operations
relating to drug testing for persons in prisons, on probation, etc., etc.... Component: All
 Sponsor: Representative Mulder, Foster
 Requester: Finance COMPONENT SERIAL NO. #0694

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	149.5	155.1	160.9	166.8	173.1	179.6
TRAVEL	8.0	8.0	8.5	8.5	9.0	9.0
CONTRACTUAL	68.6	68.6	68.6	69.0	69.0	69.0
SUPPLIES	11.2	11.2	11.2	11.7	11.7	12.0
EQUIPMENT	20.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	257.3	242.9	249.2	256.0	262.8	269.6

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	256.4	256.4	256.4	256.4	256.4	256.4
------------------------	-------	-------	-------	-------	-------	-------

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	256.4	256.4	256.4	256.4	256.4	256.4
1006 GF/MHTIA						
Other						
TOTAL	256.4	256.4	256.4	256.4	256.4	256.4

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	4	4	4	4	4	4
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The impact on the Department of Corrections from this bill would be as follows:

(A)
 This bill would allow "special medical parole" for severely medically disabled or quadriplegic prisoners who were not severely medically disabled or a quadriplegic at the time they committed the offense or parole or probation violation for which they were presently incarcerated. Severely medically disabled is defined as a person who has a medical condition that requires the person suffering from the condition to be confined to bed and the person is likely to (A) be confined to bed throughout the entire period of parole, or (B) to die from the condition. The Inmate Health Care component does not anticipate a fiscal impact from this section of the bill. Prisoners that fall into this category are already dispatched into parole or other non-institutional settings as quickly as possible. Currently the state does not have persons incarcerated that would fall into this category.

Continued on page 2

Prepared by: Jerry Shriner
 Division: Office of the Commissioner
 Approved by Commissioner: Margaret Pugh
 Agency: Department of Corrections

Phone: 465-4640
 Date: 4/10/95
 Date: 4/10/95

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B)

This bill also includes amending language which requires the department to develop a program to require all prisoners, to the extent each prisoner has the ability to pay, to reimburse the department for all costs associated with drug testing.

For FY 95 the department has the following budgeted for substance abuse/urinalysis testing:

Institutions-Statewide	9,000 Tests (Appro	\$ 90,000
Northern Region Probation	4,000 Tests	5,294
Southcentral Region Probation	13,200 Tests	\$ 148,896
Southeast Region Probation	<u>1,948 Tests</u>	<u>\$ 28,210</u>
Total	28,148 Tests	\$ 312,400

or \$ 11.10 per test Average

If this bill passes, the department will still need all the above funds to contract out the testing for each area. In addition, the department estimates that one Accounting Clerk III will need to be authorized for each of the three (3) regional probation offices and one (1) Accounting Clerk III within the Institutions Director's Office to handle Institutional billings testing, etc. For FY96 the additional funding required to implement this action is as follows:

Personal Services:

Accounting Clerk III Northern Region Prob. (Fairbanks)	\$ 38.2
Accounting Clerk III Southcentral Region (Anchorage)	\$ 37.1
Accounting Clerk III Southeast Region (Juneau)	\$ 37.1
Accounting Clerk III Institution Director's Office (Anchorage)	<u>\$ 37.1</u>
Total	\$ 149.5

Travel:

Transportation to Institutions, Probation Offices for testing development, employee training, etc. \$ 2.0 X 4 PFT=	\$ 8.0
--	--------

(Continued on Page 3)

Contractual Services		
Professional Services: RSA LAW	= \$ 52.0	
Communications, FAX, etc.	\$ 1.2 X 4 = \$ 4.8	
DP Hookup Annual Fees	\$ 1.2 X 4 = \$ 4.8	
Printing/Binding	\$.5 X 4 = \$ 2.0	
Minor Repair & Maintenance	\$ 1.0 X 4 = \$ 4.0	
Other Miscellaneous Costs	= \$ 1.0	
Total		\$ 68.6
Supplies		
Office/Library Supplies	\$ 1.5 X 4 = \$ 6.0	
Misc. Small Office Equip.	\$ 1.0 X 4 = \$ 4.0	
Data Processing Supplies	\$.3 X 4 = \$ 1.2	
Total		\$ 11.2
Equipment (One-Time)		
Desks, Chairs, Computer Tables, Cabinets	\$ 1.0 X 4 = \$ 4.0	
Computers/Printers	\$ 4.0 X 4 = \$ 16.0	
Total		\$ 20.0
GRAND TOTAL		\$ 257.3

With the above stated needs and the basic contractual budget of \$ 312.4. The total program costs would increase to \$ 569.7 for FY96 and would increase slightly in subsequent years due to inflation and personal services increases due to merit adjustments.

Because the language of the bill says that "all the costs of drug testing...." is to be paid by the defendants, the average cost of testing would climb from \$ 11.10 per test to \$ 20.24 per test or almost double the current costs of drug testing.

The language of the bill states that the defendant, to the extent the defendant has the ability to pay, is to reimburse the Department of Corrections (DOC). This agency would implement every means to have the defendants cover these costs. Attachments would go towards Inmate Accounts in facilities and billings to individuals on Parole/Probation. A Reimbursable Services Agreement will also be entered into with the State Department of Law's Collection Unit for the

paralegal assistant to pursue payments on tests not covered by defendants, up to and including attachment of the defendants **Alaska Permanent Dividend Fund** check for the due amounts. The department currently has an agreement with them to pursue DWI penalties and we could ask them to expand it for that portion of the additional 28,148 drug testing defendants who can't or won't pay the costs of this imposed test.

Actual collections will be far below the total cost of the program. This program is aimed at the least responsible segment of the population. Some will not be eligible for a permanent fund. Many will simply not apply for a PFD knowing it will be attached by the State. Legislation currently under consideration which would make many offenders ineligible because of their offender status and would reduce the revenues available to this collection process. Other interested parties will sometimes attach the PFD before DOC.

PFDs are not the sole source of funds considered and some will pay through more normal collection procedures from other resources. It is counterproductive to the fiscal goals of this bill to consider re-incarcerating those who will not pay the costs of their drug testing. A similar cost re-imbursment procedure was tried in Alaska with respect to collecting from offenders to offset the costs of probation and parole. The program failed because the cost of operation exceeded the benefits realized.

It is expected that less than half of the potential revenues will be collected. The Department will necessarily have to continue the drug testing regardless of the collection success. If the collection rate falls below forty-five percent, there is a net increase in the Department's operating budget.

CS FOR HB 219 SECTIONAL ANALYSIS

- Section 1.** Amends AS 11.61.127(b) to accommodate number change in Section 12 of the bill. No substantive effect.
- Section 2.** Requires a prisoner to reimburse the Department of Corrections for drug testing during probation, to the extent the person can pay.
- Section 3.** Adds "special medical parole" to those subject to the conditions of parole imposed under AS 33.16.150.
- Section 4.** Adds prisoners eligible for special medical parole to those who the Parole Board may release.
- Section 5.** Adds consideration of special medical parole to the duties of the Parole Board.
- Section 6.** Permits special medical parole for prisoners who become severely disabled or a quadriplegic after the time they committed the offense for which they are incarcerated. A person convicted of a child sex offense would have to be a quadriplegic to qualify for special medical parole. Sets out the rights of the victims to be informed of the parole hearing, to be present and comment at the hearing, and to be informed of the decision to grant or deny parole.
- Section 7.** Requires conditions for special medical parole to be provided to the prisoner.
- Section 8.** Includes prisoners on special medical parole in the required general conditions for parole. Requires prisoners pay the cost of drug testing as a condition of parole, to the extent the prisoner can pay.
- Section 9.** Includes prisoners on special medical parole in those who may be required to abide by other conditions of parole imposed by the Parole Board. The Parole Board may set special conditions of prisoners on special medical parole if they have a communicable disease.
- Section 10.** Includes special medical parolees in those under custody of the Parole Board.
- Section 11.** Provides that "special medical parole" is not "discretionary parole"

Section 12. Defines severely medically disabled as a condition that requires a person to be confined to bed and likely to remain so through the parole period or die from the condition

Defines special medical parole as release on parole of a person who is medically disabled.

Section 13. Requires the Commissioner of Corrections to develop a charge system for drug testing of prisoners, considering their ability to pay.

Section 14 Makes any other coverage available to a prisoner primary to the Department of Corrections. For those prisoners without other coverage, the Commissioner shall develop a program for the prisoners to pay a fee for medical and psychological services, based on the prisoner's ability to pay.

Section 15. Requires the Commissioner of Public Safety to implement a program requiring other coverage of the prisoner to pay for medical services provided in community jails. This will change to the Commissioner of Corrections if HB 200 (moving Community Jails to Corrections) passes.

ALASKA SENTENCING COMMISSION



**1992 ANNUAL REPORT TO THE GOVERNOR
AND THE ALASKA LEGISLATURE**

December 1992

eligibility for discretionary parole be extended to some Class A presumptively sentenced offenders on the condition that they have served one-half the presumptive sentence and have successfully completed all court-required treatment or are being released into an appropriate program. The commission made the further recommendation that if budget conditions require downsizing of the prison population, eligibility for discretionary parole could be expanded to all presumptively sentenced first offenders on the same conditions. See Table 1, at the end of this section, for an estimate of the number of prison beds that could be saved by these changes.

2. Commission Recommendations on Parole

On the basis of its discussions, the commission adopted the following recommendations on parole:

1. **Discretionary parole should not be abolished.** A number of states have abolished discretionary parole. Some have done so in conjunction with shorter sentences in order to promote truth in sentencing.²⁴ Others have done so because of dissatisfaction with current parole practices or corruption on the parole board. However, a number of states which once abolished parole have since reinstated it, due to resultant prison overcrowding.

The commission recommends that discretionary parole be retained in Alaska. The Alaska Board of Parole historically has done an excellent job of screening offenders and setting conditions for release, carefully balancing public safety and rehabilitation considerations. The parole board has had written guidelines in place for over a decade to help the public and inmates understand their decisions. This recommendation passed unanimously.

2. **The term "mandatory parole" should be changed in the statute to "mandatory release."** The current terminology causes confusion with the public by giving the impression that release is in the control of the parole board, when in fact the offender is simply being credited for good time. Offenders, on the other hand, are told they are not eligible for parole, and therefore often fail to understand that the parole board will be setting conditions for release even when good time is earned. This recommendation passed unanimously.
3. **Parole statutes should be amended to allow special medical parole for terminally ill offenders.** Many offenders have serious medical problems that cost the Department of Corrections an extraordinary amount of money. The AIDS epidemic has not yet had a serious impact on Alaska prisons, but prison populations in some East Coast states are reported to be 40% HIV positive. In addition, there are a number of inmates serving long sentences who can be expected to grow old in prison.

²⁴ Truth in sentencing refers to the idea that offenders should serve the sentence envisioned by the legislature and imposed by the judge, rather than be released early through parole or emergency overcrowding procedures. In some states, felony offenders serve an average of two months in jail for every year imposed by the court, a practice that deceives the public and the victim, and leads to disrespect for the law. See 1990 Alaska Sentencing Commission Annual Report at p. 3; 1991 Alaska Sentencing Commission Annual Report at p. 10.

DOC currently can furlough a terminally ill person, but it still will be responsible for medical expenses. Medicare or Medicaid will pick up the person's medical costs only upon release from DOC custody. The parole board should be allowed to grant parole to terminally ill offenders. DOC should study the offender population and devise a system to achieve this objective. This recommendation passed unanimously.

4. **Eligibility for discretionary parole should be extended to all Class A presumptively sentenced first offenders, except those convicted of manslaughter and sex offenses, on two conditions. First, the offenders must have successfully completed all court-required treatment or be released into an appropriate program. Second, offenders should be required to serve one-half of the presumptive terms before becoming eligible. Offenders convicted of sex offenses and manslaughter should not be made eligible. AS 33.16.090 and .100, which set out the criteria to be followed by the parole board in granting parole, must be amended for this recommendation to be implemented.**

This issue raised the most intense debate and reconsideration among commission members. Data presented by the parole board showed that over the last several years, only 3% of offenders released on discretionary parole committed a new felony within the first year after release, and 3% committed a new misdemeanor. Another 24% of parolees had their parole revoked for failure to comply with parole conditions. See Appendix C of this report. The commission agreed that the parole board currently does an excellent job of screening applicants for discretionary parole.

Given this history, the commission concluded that there are a number of offenders in prison, not now eligible for discretionary parole, who could be released to parole supervision without increasing the risk to the public. However, it was difficult for the commission to agree on which presumptively sentenced offenders should be eligible for release.

Members of the parole board favored expanding eligibility for discretionary parole to include all presumptively sentenced first offenders,²⁵ if the offenders met certain conditions.²⁶ After much discussion and compromise, the commission agreed on a

²⁵ Most presumptively sentenced first offenders have been convicted of assault causing serious physical injury, robbery using a deadly weapon, sexual abuse of a minor (sexual penetration of a child under 13 or a son or daughter under 18), forcible rape, selling heroin to an adult, or manslaughter.

²⁶ Parole board members recommended that eligibility for discretionary parole be extended to all presumptively sentenced first offenders on the condition that they have successfully completed all court-required treatment or are being released into an appropriate program. Offenders also would have been required to serve one-third of their terms before becoming eligible. Proponents of this recommendation on the commission argued that it was a responsible step that would help reduce prison overcrowding without increasing risk to the public, and would reward participation in treatment programs. They believed that the parole board was capable of screening applicants with continued success. Opponents of this recommendation thought that it ran contrary to the intent of presumptive sentencing, that it would not meet with public or legislative approval, and that successful implementation depended on maintaining the current high quality of parole board members. They felt that the time to serve for most presumptively sentenced offenses is not disproportionate to the seriousness of the crimes, and that sex offenders should be excluded from eligibility.

EXPENSIVE HOSPITALIZATIONS FY95

- Inmate # 1 Diagnosis: Lung Cancer \$ 22,981.87
Had diagnostic work up and expired in hospital.
- # 2 Diagnosis: Osteomyelitis of the elbow. \$ 171,296.38
Street person/drug addict, in and out of jail. Left hospital against medical advice several times when not incarcerated, never followed up with his doctors. On last remand the bone infection was severe and required hospitalization and extensive treatment, to include long-term IV therapy and surgery.
- # 3 Diagnosis: HIV/AIDS \$ 587,749.46
Long time HIV pos. inmate, was sent to the hospital with significant rectal bleeding requiring transfusions and surgery for his bleeding hemorrhoids. Subsequently developed a severe infection, leading to septic shock requiring extensive therapy and life support. Expired.
- # 4 Diagnosis: Chronic Large Ulcer of the Heel \$ 58,936.46
Subsequently developed osteomyelitis (bone inf.). This required incision and drainage, then cross leg skin grafting and subsequent re-admission to the hospital to free the skin graft.
- # 5 Diagnosis: Myocardial Infarct (heart attack) \$ 112,107.72
Kidney transplant (prior to remand), on extensive immuno-therapy. Second coronary infarct, resulting in coronary bypass surgery.
- # 6 Diagnosis: Cancer of the Pancreas \$ 125,159.83
Chronic pancreatitis prior to remand. When jailed was diagnosed, hospitalized and received extensive therapy for this. Released from jail and subsequently died.
- # 7 Diagnosis: Ascending Familial Paralysis \$ 77,541.11
Subsequent to this disease process, patient developed pressure sores, osteomyelitis resulting in colostomy, hip disarticulation, above the knee amputation and extensive skin grafting. All requiring extensive care. Was cared for by orthopedic, plastic surgery, and infectious disease specialists. Most bills have not been received.
- # 8 Diagnosis: Angina
Required one vessel bypass. Bills have not begun to come in.

DRAFT

by Dept. of Corrections

1994

THE CORRECTIONS YEARBOOK

*INSTANT ANSWERS
TO KEY QUESTIONS IN CORRECTIONS*

Adult Corrections



Published by
Criminal Justice Institute, Inc.

CJ

How much did agencies spend per inmate per day during 1993? What were food and health care costs per day?

In 1993, 52 agencies averaged spending \$52.38 per inmate per day. An average of \$3.45 was spent on food service by 44 agencies and \$5.90 on health care by 44 agencies.

	Total	Food	Health		Total	Food	Health
AL	25.54	1.24	2.59	MT ^{1,6}	44.00	2.67	6.28
AZ ¹	43.21	3.61	5.34	NE	50.16	3.46	6.14
AR	31.43	1.26	4.42	NV	38.83		
CA ²	56.87	4.10	7.48	NH	47.40	3.10	7.03
CO	52.87			NJ	71.83	5.48	8.29
CT	63.90	3.89	8.28	NM ⁷	75.21	5.14	8.21
DE	61.89	2.67	5.83	NY	67.40	2.59	5.78
DC	60.44	5.04	5.45	NC ⁸	57.58		
FL	42.58	2.35	8.93	ND	50.80	3.42	3.50
GA ³	51.74	3.58	7.38	OH	35.02	2.41	3.73
HI	73.25	6.51	6.47	OK	32.35	2.48	2.58
ID	38.28	3.08	4.84	OR ⁹	50.06	4.05	5.75
IL ¹	43.22	4.50	6.58	PA	54.56	4.41	6.40
IN	43.62	3.00		RI	94.64		
IA ⁴	53.83	4.02	2.98	SC	33.69	2.52	3.97
KS	57.89	4.11	7.43	SD ¹	34.86	3.79	4.85
KY	34.39			TN	48.10	2.59	6.10
LA ⁵	33.01	2.63	3.37	TX	45.70		
ME	71.42	5.24	8.92	UT	54.80		11.45
MD	51.13	1.88	4.88	VT	63.85	3.43	4.98
MA	63.01	2.74	6.80	VA	44.37		
MI	55.21	2.35	3.73	WA	61.62	2.58	7.87
MN	73.55	4.19	7.06	WV	39.73	3.58	4.93
MS	27.57	1.30	2.62	WI	55.32	3.63	3.69
MO	25.03	1.84	3.72	WY	68.77	1.73	10.23
				FED ¹⁰	57.22	2.69	4.48

¹FY '83. ²Food in feeding service; med. incl. dental & psych. ³Food incl. food prep. (personnel), food production (farm) & equip. ⁴Food incl. food, labor & supplies. ⁵Food, med. costs for supplies only. ⁶Food costs for food only. ⁷Med. incl. mental health. ⁸FY 92-'93. ⁹Total based on extended cap.; incl. 120 inmate program beds at OR State Hosp. ¹⁰On 9/30/93 (FY 93). Food/Med. excl. salaries, contract facilities.

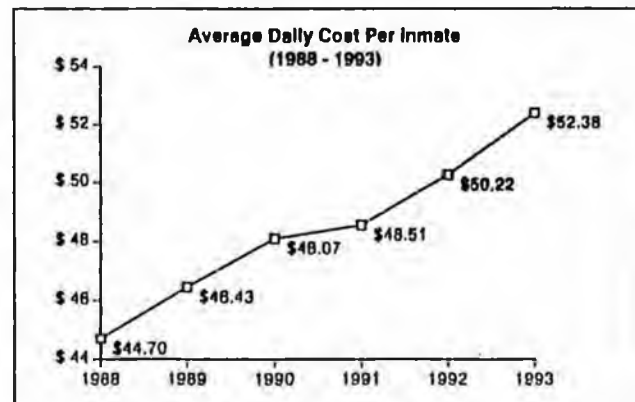
Which agencies are contracting for food and health services?

On January 1, 1994, 16 agencies contracted for food services in 40 institutions and 28 for health services in 413 institutions.

	Food Service		Health Service	
	Prisons	Inmates	Prisons	Inmates
Alabama ¹			30	18,411
Arizona	5	9,540	15	8,024
Arkansas			17	
Colorado ²			21	13,324
Connecticut ³	2	1,562	6	3,878
Delaware			1	1,968
Florida ⁴	6	5,764		

Contracting	Food Service		Health Service	
	Prisons	Inmates	Prisons	Inmates
Georgia ⁴	2	4,400	14	20,000
Illinois	1	1,047	23	32,333
Indiana	2	89		
Iowa			1	810
Kansas			9	5,884
Kentucky ⁵	3	900	8	5,500
Louisiana ²			20	
Michigan			3	1873
Minnesota	4	2,492	8	4,098
Mississippi ⁶	3	8,297	3	8,297
Missouri			14	15,022
Montana			7	1,595
Nebraska	1	150		
Nevada	1	88		
North Carolina			81	21,993
North Dakota ⁷			2	485
Ohio	1	245	1	948
Oregon	3	929		
Pennsylvania			22	28,060
South Carolina			7	5,488
South Dakota ⁸			7	1,570
Tennessee			9	7,128
Texas ⁹	2	590	57	70,127
Virginia			1	2,400
Washington			14	9,528
West Virginia	2	1,500	2	960
Federal ¹⁰	2	787		
Total	40	38,380	413	285,280

¹Reported "all." ²Each inst. contr. for portion of health care. ³Health Services is State employees & contr. svcs. ⁴Food svc. inmates and health svcs. figures est. Contr. provides health care. ⁵Health svc. inmates avg. ⁶Inmate figures incl. 1,227 inmates from crmty. work cns. ⁷Health svc. is dental. ⁸All inst. contr. for health care. ⁹Physician pos. on all units are contr. ¹⁰Figures for main fac.; excl. contr. fac. All inst. use consultant specialists.



Alaska State Legislature

Representative Brian S. Porter

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DISTRICT 20

Sponsor Statement HB 65 Assistive Technology Loan Guarantees

What is the program?

An emerging public-private sector partnership to establish a loan guarantee and interest subsidy program which will enable persons with disabilities to purchase assistive technologies necessary to their independence.

Who will be affected?

Persons with disabilities, their families, employers and businesses.

What is Assistive Technologies?

Simply put, these devices and services that can help people live, learn, work and play within their communities. These tools range from simple eyeglasses, hearing aids and walkers to computers that talk and lift-equipped vans.

Why do we need this fund?

From a '93 study by the University of Alaska, over half of all middle-income persons with disabilities (58%) in the state do not have access to the equipment which can help them live more sufficient lives.

What are the benefits?

- Through the program, low-interest loans will be repaid and funds will continue to stimulate economic growth for years to come. According to other enacted states, on average, the overall default rate as of December 1993 is 5.2%
- Businesses will improve accessibility of their facilities through these loans and expand customer and labor markets.
- Employment of disabled workers will be promoted, reducing workers' compensation costs and developing additional work force that can be tapped.
- Need for public support will be reduced
- Persons with disabilities will make valuable contributions to their community

How will the program work?

The State of Alaska will guarantee up to 90% of the loan principal amount or subsidize the interest of a loan to a financial institution. Persons with disabilities will directly apply to their local bank for an assistive technology loan.

What about the cost?

Anticipated federal funding of \$100,000 will "seed" this initiative with no impact on the current state budget.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSHB 219 (FIN)

Title: Relating to medical care for prisoners
on probation.

Sponsor: Mulder, Foster

Requestor: _____

Dept. Affected Corrections

BRU: Statewide Operations

Components: All

Serial # 694

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
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	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	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	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
----------------	------------	------------	------------	------------	------------	------------

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	0.0	0.0	0.0	0.0	0.0	0.0
Federal Fund	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS :

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

see attached analysis

Prepared by: House Finance Committee

Rep. Mark Hanley, Co-Chair *MH*

Rep. Richard Foster, Co-Chair *RF*

Date: 4/20/95

Phone: 465-4939

Phone: 465-3789

*Adopted
4/20/95*

9-LS0810M ✓
Luckhaupt
4/19/95

CS FOR HOUSE BILL NO. 219()

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES MULDER, Foster

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to medical care for prisoners; and authorizing special medical
2 parole for severely medically disabled or quadriplegic prisoners."

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

4 * Section 1. AS 11.61.127(b) is amended to read:

5 (b) This section does not apply to persons providing plethysmograph
6 assessments in the course of a sex offender treatment program that meets the minimum
7 standards under AS 33.30.011(a)(5) [AS 33.30.011(6)].

8 * Sec. 2. AS 33.16.010(d) is amended to read:

9 (d) A prisoner released on special medical, discretionary, or mandatory parole
10 is subject to the conditions of parole imposed under AS 33.16.150. Parole may be
11 revoked under AS 33.16.220.

12 * Sec. 3. AS 33.16.010 is amended by adding a new subsection to read:

13 (e) A prisoner eligible under AS 33.16.085 may be released on special medical
14 parole by the Parole Board.

1 * Sec. 4. AS 33.16.060 is amended to read:

2 Sec. 33.16.060. DUTIES OF THE BOARD. (a) The board shall

3 (1) serve as the parole authority for the state;

4 (2) upon receipt of an application, consider the suitability for parole of
5 a prisoner who is eligible for special medical or discretionary parole;

6 (3) impose parole conditions on all prisoners released under
7 discretionary or mandatory parole;

8 (4) under AS 33.16.210, discharge a person from parole when custody
9 is no longer required;

10 (5) maintain records of the meetings and proceedings of the board;

11 (6) recommend to the governor and the legislature changes in the law
12 administered by the board;

13 (7) recommend to the governor or the commissioner changes in the
14 practices of the department and of other departments of the executive branch necessary
15 to facilitate the purposes and practices of parole;

16 (8) upon request of the governor, review and recommend applicants for
17 executive clemency; and

18 (9) execute other responsibilities prescribed by law.

19 (b) The board shall adopt regulations under the Administrative Procedure Act
20 (AS 44.62)

21 (1) establishing standards under which the suitability of a prisoner for
22 special medical or discretionary parole shall be determined;

23 (2) providing for the supervision of parolees and for recommitment of
24 parolees; and

25 (3) governing procedures of the board.

26 * Sec. 5. AS 33.16 is amended by adding new sections to read:

27 Sec. 33.16.085. SPECIAL MEDICAL PAROLE. (a) Notwithstanding a
28 presumptive, mandatory, or mandatory minimum term a prisoner may be serving or
29 any restriction on parole eligibility under AS 12.55, a prisoner who is serving a term
30 of at least 181 days, may, upon application by the prisoner or the commissioner be
31 released by the board on special medical parole if the board determines

1 (1) for a prisoner convicted of

2 (A) an offense other than a violation of AS 11.41.434 -
3 11.41.438, that the prisoner is severely medically disabled or a quadriplegic as
4 certified in writing by a physician licensed under AS 08.64, was not severely
5 medically disabled or a quadriplegic at the time the prisoner committed the
6 offense or parole or probation violation for which the prisoner is presently
7 incarcerated; or

8 (B) a violation of AS 11.41.434 - 11.41.438, that the prisoner
9 is a quadriplegic as certified by a physician licensed under AS 08.64 and was
10 not a quadriplegic at the time the prisoner committed the offense or parole or
11 probation violation for which the prisoner is presently incarcerated; and

12 (2) that a reasonable probability exists that

13 (A) the prisoner will live and remain at liberty without violating
14 any laws or conditions imposed by the board;

15 (B) because of being severely medically disabled or a
16 quadriplegic, the prisoner will not pose a threat of harm to the public if
17 released on parole; and

18 (C) release of the prisoner on parole would not diminish the
19 seriousness of the crime.

20 (b) If the board finds a change in circumstances or discovers new information
21 concerning a prisoner who has been granted a special medical parole release date, the
22 board may rescind or revise the previously granted parole release date.

23 (c) The board shall issue its decision to grant or deny special medical parole,
24 or to rescind or revise the release date of a prisoner granted special medical parole, in
25 writing and provide a basis for the decision. A copy of the decision shall be provided
26 to the prisoner.

27 Sec. 33.16.087. RIGHTS OF CERTAIN VICTIMS IN CONNECTION WITH
28 SPECIAL MEDICAL PAROLE. (a) If the victim of a crime against a person or
29 arson in the first degree requests notice of a scheduled hearing to review or consider
30 special medical parole for a prisoner convicted of that crime, the board shall send
31 notice of the hearing to the victim at least 30 days before the hearing. The notice

1 must be accompanied by a copy of the prisoner's or commissioner's application for
2 parole submitted under AS 33.16.085. However, the copy of the application sent to
3 the victim may not include the prisoner's proposed residence and employment
4 addresses.

5 (b) A victim who requests notice under this section shall maintain a current,
6 valid mailing address on file with the board. The board shall send the notice required
7 by this section to the last known address of the victim. The victim's address may not
8 be disclosed to the prisoner or the prisoner's attorney.

9 (c) The victim has a right to attend meetings of the parole board in which the
10 status of the prisoner convicted of the crime against that victim is officially
11 considered and to comment, in writing or in person, on the proposed action of the
12 board. Copies of any written comments shall be provided to the prisoner and the
13 prisoner's attorney before action by the board.

14 (d) The board shall consider the comments presented under (c) of this section
15 in deciding whether to release the prisoner on special medical parole.

16 (e) If the victim requests, the board shall make every reasonable effort to
17 notify the victim as soon as practicable in writing of its decision to grant or deny
18 special medical parole. The notice under this subsection must include the expected
19 date of the prisoner's release, the geographic area in which the prisoner is required to
20 reside, and other pertinent information concerning the prisoner's conditions of parole
21 that may affect the victim.

22 * Sec. 6. AS 33.16.140 is amended to read:

23 Sec. 33.16.140. ORDER FOR PAROLE. An order for parole issued by the
24 board, setting out the conditions imposed under AS 33.16.150(a) and (b) [,] and the
25 date parole custody ends, shall be furnished to each prisoner released on special
26 medical, discretionary, or mandatory parole.

27 * Sec. 7. AS 33.16.150(a) is amended to read:

28 (a) As a condition of parole, a prisoner released on special medical,
29 discretionary, or mandatory parole

30 (1) shall obey all state, federal, or local laws or ordinances, and any
31 court orders applicable to the parolee;

1 (2) shall make diligent efforts to maintain steady employment or meet
2 family obligations;

3 (3) shall, if involved in education, counseling, training, or treatment,
4 continue in the program unless granted permission from the parole officer assigned to
5 the parolee to discontinue the program;

6 (4) shall report

7 (A) upon release to the parole officer assigned to the parolee;

8 (B) at other times, and in the manner, prescribed by the board
9 or the parole officer assigned to the parolee;

10 (5) shall reside at a stated place and not change that residence without
11 notifying, and receiving permission from, the parole officer assigned to the parolee;

12 (6) shall remain within stated geographic limits unless written
13 permission to depart from the stated limits is granted the parolee;

14 (7) may not use, possess, handle, purchase, give, distribute, or
15 administer a controlled substance as defined in AS 11.71.900 or under federal law or
16 a drug for which a prescription is required under state or federal law without a
17 prescription from a licensed medical professional to the parolee;

18 (8) may not possess or control a firearm; in this paragraph, "firearm"
19 has the meaning given in AS 11.81.900;

20 (9) may not enter into an agreement or other arrangement with a law
21 enforcement agency or officer that will place the parolee in the position of violating
22 a law or parole condition without the prior approval of the board;

23 (10) may not contact or correspond with anyone confined in a
24 correctional facility of any type serving any term of imprisonment or a felon without
25 the permission of the parole officer assigned to a parolee;

26 (11) shall agree to waive extradition from any state or territory of the
27 United States and to not contest efforts to return the parolee to the state.

28 * Sec. 8. AS 33.16.150(b) is amended to read:

29 (b) The board may require as a condition of special medical, discretionary, or
30 mandatory parole, or a member of the board acting for the board under (e) of this
31 section may require as a condition of mandatory parole, that a prisoner released on

1 parole

2 (1) not possess or control a defensive weapon, a deadly weapon other
3 than an ordinary pocket knife with a blade three inches or less in length, or
4 ammunition for a firearm, or reside in a residence where there is a firearm capable of
5 being concealed on one's person or a prohibited weapon; in this paragraph, "deadly
6 weapon," "defensive weapon," and "firearm" have the meanings given in
7 AS 11.81.900, and "prohibited weapon" has the meaning given in AS 11.61.200;

8 (2) refrain from possessing or consuming alcoholic beverages;

9 (3) submit to reasonable searches and seizures by a parole officer, or
10 a peace officer acting under the direction of a parole officer;

11 (4) submit to appropriate medical, mental health, or controlled
12 substance or alcohol examination, treatment, or counseling;

13 (5) submit to periodic examinations designed to detect the use of
14 alcohol or controlled substances;

15 (6) make restitution ordered by the court according to a schedule
16 established by the board;

17 (7) refrain from opening, maintaining, or using a checking account or
18 charge account;

19 (8) refrain from entering into a contract other than a prenuptial contract
20 or a marriage contract;

21 (9) refrain from operating a motor vehicle;

22 (10) refrain from entering an establishment where alcoholic beverages
23 are served, sold, or otherwise dispensed;

24 (11) refrain from participating in any other activity or conduct
25 reasonably related to the parolee's offense, prior record, behavior or prior behavior,
26 current circumstances, or perceived risk to the community, or from associating with
27 any other person that the board determines is reasonably likely to diminish the
28 rehabilitative goals of parole, or that may endanger the public; in the case of special
29 medical parole, for a prisoner diagnosed with a communicable disease, comply
30 with conditions set by the board designed to prevent the transmission of the
31 disease.

1 * Sec. 9. AS 33.16.200 is amended to read:

2 Sec. 33.16.200. CUSTODY OF PAROLEE. Except as provided in
3 AS 33.16.210, the board retains custody of special medical, discretionary, and
4 mandatory parolees until the expiration of the maximum term or terms of
5 imprisonment to which the parolee is sentenced.

6 * Sec. 10. AS 33.16.900(6) is amended to read:

7 (6) "discretionary parole" means the release of a prisoner by the board
8 before the expiration of a term, subject to conditions imposed by the board and subject
9 to its custody and jurisdiction; "discretionary parole" does not include "special
10 medical parole";

11 * Sec. 11. AS 33.16.900 is amended by adding new paragraphs to read:

12 (11) "severely medically disabled" means that a person has a medical
13 condition that requires the person suffering from the condition to be confined to bed
14 and the person is likely to

15 (A) be confined to bed throughout the entire period of parole;

16 or

17 (B) to die from the condition;

18 (12) "special medical parole" means the release by the board before the
19 expiration of a term, subject to conditions imposed by the board and subject to its
20 custody and jurisdiction, of a prisoner who is severely medically disabled or a
21 quadriplegic.

22 * Sec. 12. AS 33.30.011 is amended to read:

23 Sec. 33.30.011. DUTIES OF COMMISSIONER. The commissioner shall

24 (1) establish, maintain, operate, and control correctional facilities
25 suitable for the custody, care, and discipline of persons charged or convicted of
26 offenses against the state or held under authority of state law;

27 (2) classify prisoners;

28 (3) for persons committed to the custody of the commissioner, establish
29 programs, including furlough programs that are reasonably calculated to

30 (A) protect the public;

31 (B) maintain health;

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(C) create or improve occupational skills;
(D) enhance educational qualifications;
(E) support court-ordered restitution; and
(F) otherwise provide for the rehabilitation and reformation of prisoners, facilitating their reintegration into society;

(4) provide necessary

(A) medical services for prisoners in correctional facilities or who are committed by a court to the custody of the commissioner, including examinations for communicable and infectious diseases;

(B) [(5) PROVIDE NECESSARY] psychological or psychiatric treatment if a physician or other health care provider, exercising ordinary skill and care at the time of observation, concludes that

(i) [(A)] a prisoner exhibits symptoms of a serious disease or injury that is curable or may be substantially alleviated; and

(ii) [(B)] the potential for harm to the prisoner by reason of delay or denial of care is substantial;

(5) [(6)] establish minimum standards for sex offender treatment programs offered to persons who are committed to the custody of the commissioner; and

(6) [(7)] provide for fingerprinting in correctional facilities in accordance with AS 12.80.060.

* Sec. 13. AS 33.30 is amended by adding a new section to read:

Sec. 33.30.028. RESPONSIBILITY FOR COSTS OF MEDICAL CARE. (a)

Notwithstanding any other provision of law, the liability for payment of the costs of medical, psychological, and psychiatric care provided or made available to a prisoner committed to the custody of the commissioner is, subject to (b) of this section, the responsibility of the prisoner and the

(1) prisoner's insurer if the prisoner is insured under existing individual health insurance, group health insurance, or any prepaid medical coverage;

(2) Department of Health and Social Services if the prisoner is eligible for assistance under AS 47.07 or AS 47.25.120 - 47.25.310;

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(3) United States Department of Veterans Affairs if the prisoner is eligible for veterans' benefits that entitle the prisoner to reimbursement for the medical care or medical services;

(4) United States Public Health Service, the Indian Health Service, or any affiliated group or agency if the prisoner is a Native American and is entitled to medical care from those agencies or groups; and

(5) parent or guardian of the prisoner if the prisoner is under the age of 18.

(b) The commissioner shall require prisoners who are without resources under (a) of this section to pay the costs of medical, psychological, and psychiatric care provided to them by the department. At a minimum, the prisoner shall be required to pay a portion of the costs based upon the prisoner's ability to pay.

* Sec. 14. AS 33.30.071(a) is amended to read:

(a) Notwithstanding AS 33.30.011(1), the commissioner of public safety shall provide for the custody, care, and discipline of prisoners pending arraignment, commitment by a court to the custody of the commissioner of corrections, or admission to a state correctional facility. Except as provided in (c) of this section, the responsibility for providing necessary medical services for prisoners remains with the commissioner of corrections under AS 33.30.011(4), subject to the responsibility for payment under AS 33.30.028. The commissioner of corrections and the commissioner of public safety are not responsible for providing custody, care, and discipline for a person detained under AS 47.30.705 or AS 47.37.170 [,] unless the person is admitted into a state correctional facility.

SPONSOR STATEMENT HOUSE BILL 219

House Bill 219 provides the Department of Corrections additional "tools" to control spiraling inmate health care costs by allowing special medical parole for terminally ill and severely disabled prisoners and charging for medical services and drug testing.

This legislation creates a new category of parole called "special medical parole" for inmates who are suffering from terminal diseases or are severely disabled. The classification only allows parole -- it does not guarantee parole. The judgment will still rest with the Parole Board.

The Alaska Sentencing Commission has recommended that parole statutes be amended to allow special medical parole for terminally ill offenders. The Commission's report found that many offenders have serious medical problems that cost the Department of Corrections significant amounts of money each year. The Commission expressed concern that as the inmate population ages and as the number of HIV infected inmates increase, the Department will face even higher inmate health costs. A recent case cost the Department of Corrections over \$500,000 for two months of medical care before the inmate died.

"Special medical parole" should not pose a risk to public safety. Those who qualify will do so because they are debilitated to an extent that they cannot present any risk to the general public. Should the person have a communicable disease, the condition of parole would certainly include appropriate containment. If a prisoner becomes a

quadriplegic while in prison, the risk to society is likely to be substantially reduced.

Currently, the Department of Corrections can furlough a terminally ill or severely disabled inmate, but the Department remains responsible for medical expenses. Medicare and Medicaid will step in only after the Department of Corrections releases the person from its custody. If the offender can secure Medicaid or Medicare eligibility, those programs will help fund the cost of medical care.

We believe that there may, in the past year or so, be 5-10 prisoners that would be eligible for this program. It could save the Department of Corrections and the State of Alaska a few million dollars in a very short time.

The Department of Corrections also needs the ability to bill any "other coverage" a prisoner has and to charge for medical care and drug testing. This is especially important when a prisoner is on work furlough, or in a half way house and working in the community. If they have insurance, it should be primary, not the Department of Corrections.

Today, prisoners in our institutions receive health care at no cost to themselves. I believe that a nominal fee associated with "sick call" will act as a deductible does in the insured population. It will encourage users to consider if there is a real health care need.

This bill allows the department to establish charges for the health care it provides. It also requires insurance or any other coverage available to the individual to be primary rather than the Department of Corrections. It is true that we may have a problem with some federal programs paying for prisoner's health care in institutions. However, those prisoners in community settings can go to their own providers and get the coverage they are entitled to.

The bill requires the department to charge prisoners, parolees and those on probation for the cost of drug testing. The Commissioner is directed to consider the person's financial situation when charging for the testing.

HB 219 will reduce some of the costs of inmate health care and allow the Department of Corrections to focus its limited budget on its true mission.

HB

220

HFIN

FILE

USE COMMITTEE REPORT

(11)

Date Referred: March 8, 1995

FURTHER REFERRALS:

Date of Committee Action: 3/15/95

The FINANCE Committee considered:

HB 220

HOUSE BILL NO. 220

ALASKA TOURISM MARKETING COUNCIL

"An Act relating to the duties of the commissioner of commerce and economic development concerning the Alaska Tourism Marketing Council; relating to the per diem travel expenses of the council's board of directors; relating to the powers and duties of the council; extending the termination date of the council; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 220 (LTC) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) CED 3/8/95

zero fiscal note(s) _____ zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Mark Hanley</i>	Hanley	<input checked="" type="checkbox"/>			
<i>Mike Navarre</i>	Navarre			<input checked="" type="checkbox"/>	
<i>Terra Martin</i>	Martin			<input checked="" type="checkbox"/>	
<i>Sean Parnell</i>	Parnell			<input checked="" type="checkbox"/>	
<i>Vic Kohring</i>	Kohring			<input checked="" type="checkbox"/>	
<i>John Brown</i>	Brown	<input checked="" type="checkbox"/>			
<i>Mike Kelly</i>	Kelly	<input checked="" type="checkbox"/>			
<i>Ben Grussendorf</i>	Grussendorf	<input checked="" type="checkbox"/>			
<i>Glen Mulder</i>	Mulder	<input checked="" type="checkbox"/>			
<i>Gene Therriault</i>	Therriault	<input checked="" type="checkbox"/>			
<i>Richard Foster</i>	Foster	<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE *Mark Hanley* *Richard Foster*
 Hanley Foster

FISCAL NOTE

(No. 1
 Bill Version: CS HB 220 (L&C)
 (H) Publish Date: 3/8/95

**STATE OF ALASKA
 1995 LEGISLATIVE SESSION**

Revision Date: March 3, 1995 Department: Commerce and Economic Development
 Title: An act relating to: duties of the Commissioner; BRU: Alaska Tourism Marketing Council
per diem expenses; powers & duties of ATMC; extension. Component: Alaska Tourism Marketing Council
 Sponsor: Kott, Thernault, Vezey, Toohey
 Requestor: Labor and Commerce, Finance COMPONENT SERIAL NO. 1026

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES			193.4	193.4	193.4	193.4
TRAVEL			55.1	55.1	55.1	55.1
CONTRACTUAL			6,735.4	6,735.4	6,735.4	6,735.4
SUPPLIES			4.0	4.0	4.0	4.0
EQUIPMENT			5.0	5.0	5.0	5.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	6,992.9	6,992.9	6,992.9	6,992.9
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						
1003 GF Match						
1004 General Fund			4,604.5	4,604.5	4,604.5	4,604.5
1005 GF/Program Receipts			2,388.4	2,388.4	2,388.4	2,388.4
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	6,992.9	6,992.9	6,992.9	6,992.9

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS

FULL-TIME	0	0	3	3	3	3
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

The council is due to sunset on December 30, 1996. This bill extends the council until December 30, 1999. Current operating costs would not be affected by HB220. If the bill is enacted, expenditures and revenue projections for FY98-FY01 are reflected as being consistent with the council's current operating budget.

Prepared by: Kathleen Dunn Phone: 907-563-2289
 Division: Alaska Tourism Marketing Council Date: March 3, 1995
 Approved by Commissioner: William L. Hensley *Guy Bell for* Date: 3/3/95
 Agency: Commerce and Economic Development

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Sustainable recreation and tourism for a quality future

P.O. Box 1353
Valdez, AK 99686
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Fax: 907.835.5679

To: Rep. Hanley and House Finance Committee
From: Nancy R. Lethcoe
Date: March 10, 1995

RE: HB 220 Reauthorization of the Alaska Tourism Marketing Council

On behalf of AWRTA's more than 250 members I am writing to solicit the help of the House Finance Committee in obtaining some amendments to HB 220 which we believe will help correct an imbalance in representation of the types of tourism and geographic areas on the ATMC. Improving the geographic and type of tourism representation on ATMC seems the most appropriate and least disruptive way of bringing a wider range of marketing expertise to the ATMC marketing program.

The changes we would appreciate receiving your help on are:

1. Add section amending the definition of "qualified trade organization:" (5) "qualified trade association" means a private, nonprofit organization whose primary purpose is the promotion of tourism to and within the state and which has a statewide membership comprised of representatives of all major sectors of the visitor industry, including without limitation hotels, lodges, bed & breakfasts, airlines, cruise lines, tour and charter boats, wholesale and retail travel agencies, visitor attractions, (AND) convention and visitors bureaus, and hunting, sport fishing, and wilderness outfitters and guides. (This expands the definition of "qualified trade organization," to include types of tourism not mentioned in the current definition.)
2. Section 2. AS 44.33.705(c): change line 17: the number 11 to 8 so the line reads "the contract shall provide that the trade association may select up to 8 board members; then change line 21: change 10 to 12, so the line reads "the governor shall appoint 12 other board members." (This gives the governor the ability to balance the ATMC more if the trade association's appointees do not reflect the various types of tourism and geographical areas).
3. Section 2. AS 44.33.705(c) (2) (line 17); amend to insert after the words to 10 (8) board members; these must members must be representative of the sectors of the visitor industry

3/15/95
Attachment

as defined in "qualified trade organization:" (This the trade organization to make appointments that reflect all types of tourism and geographic areas).

4. Section 2. AS 44.33.705(c) (3) (line 23); change SHALL to must; "paragraph, the governor must (SHALL) ensure that the board . . . (This strengthens the chances that appointments will be made which reflect all types of tourism and geographic areas).

Background: The ATMC currently has seven members from the cruise/tour boat industry or 35% of the council members represents just one type of tourism, whereas there are no representatives for hunting, sport fishing, or wilderness guides and outfitters. There are three representatives from CVBs, but all from major population areas. Geographically, 6 (30%) are from out-of-state; 9 (45%) from the greater Anchorage area; 5 from various communities in SE Alaska; and 1 from Fairbanks. AWRTA appreciates the expertise marketing representatives from large companies bring to ATMC; however, we have noted that ATMC lacks expertise in the marketing of small, rural Alaskan businesses that make up AWRTA's membership. This is reflected in the *Alaska Visitor Statistics Program*, *ATMC's 1993 Conversion Study*, and in the drop in narrative ads in the *Alaska Vacation Planner*.

Obtaining greater depth in marketing expertise seems to be the best way to approach solving problems which have been highlighted by the *Alaska Visitor Statistics Program*, *ATMC's 1993 Conversion Study*, and in the drop in narrative ads in the *Alaska Vacation Planner*. These include:

1) although the average visitor age is 48, the average visitor age of the marketing program is 58, which gives an unintentional bias towards marketing businesses attractive to older visitors rather than to younger ones;

2) only 20% of the visitors requested a *Vacation Planner* and only 25% of the independent travelers who purchased trips in Alaska used the *Vacation Planner*; since the *Vacation Planner* is meant to be a primary marketing tool for small, and especially rural, Alaskan businesses, it is not reaching the majority of their market;

3) between 1989 and 1993, the Inde-package (independent visitors who purchase a package trip in Alaska) lost 6% of its market share. In-state package trips, owned and operated by Alaskans, circulate tourism dollars within the local and statewide economy;

4) when the legislature increased the percentage the industry must contribute to the cooperative marketing program, ATMC increased the narrative advertising rates (those used by small Alaskan businesses) 100%. This was the largest increase in any advertising

AWRTA, P.O. Box 1353, Valdez, AK 99686

p. 3

category. As a result, there was an approximately 30% drop in advertisers indicating that businesses did not find the number of inquiries generated by the *Vacation Planner's* to be cost effective. This, in turn, reflects on ATMC's program for marketing the *Vacation Planner*, which is unintentionally biased towards older travelers.

We believe the ATMC program can be improved by some fine tuning to bring broader marketing expertise for the types of tourism and geographic areas to the council.

by certified mail to the department
 contract with an operator with whom
 activities subject to this chapter
 ements of this section. The department
 the contract. If the contract is disapp
 roval shall be provided in writing to the
 be conducted under the contract before
 osequent amendments to an approved
 il the amendments are approved by the
 1988; am § 3 ch 24 SLA 1991; am § 14
 16 SLA 1994)

991 tences, and deleted the former last
 , in tence, which required a permittee to sub
 clas- mit a copy of the contract.
 The 1994 amendment, effective April
 une 30, 1994, inserted "canned salmon can
 "by sics," in the second sentence in subsection
 the (c).
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for permit. An applicant shall be a
 nization to be eligible for a permit. (§ 1
 h 27 SLA 1982)

TO DECISIONS

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license. (a) A person, municipality, or
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 qualified organization has received an
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 \$500;

persons employed by the applicant in a
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satisfactory to the department in the
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 tered by the department at least four

times a year; or, if a municipality or qualified organization, has designat
 ed a municipal employee or member of the organization who has
 passed this test.

(c) [Repealed, § 37 ch 70 SLA 1993.]

(d) [Repealed, § 37 ch 70 SLA 1993.] (§ 14 ch 99 SLA 1988; am
 §§ 15, 37 ch 70 SLA 1993)

Effect of amendments. — Section 15, ch 70, effective June 26, 1993, repealed
 ch. 70, SLA 1993, effective January 1, 1995, added paragraph (b)(6), making re-
 lated grammatical changes. Section 37 of subsections (c) and (d).
 Editor's notes. — Paragraph (b)(6) is not effective until January 1, 1995.

Sec. 05.15.124. Municipal regulation of operators or vendors.
 A municipality may by ordinance prohibit an operator or a vendor
 from conducting activities under this chapter within the municipality.
 § 14 ch 99 SLA 1988; am § 16 ch 70 SLA 1993)

Effect of amendments. — The 1993
 amendment, effective June 26, 1993, in-
 serted "or a vendor."

Multi-Beneficiary Permits

Sec. 05.15.128. Revocation of operator's license. (a) The de-
 partment shall revoke the license of an operator who does not

(1) report an adjusted gross income of at least 15 percent of gross
 income annually based on the total operation of the operator; or

(2) pay to each authorizing permittee annually at least 30 percent
 of the adjusted gross income, as determined under (1) of this subsec-
 tion, from a pull-tab activity or at least 10 percent of the adjusted
 gross income, as determined under (1) of this subsection, from a gam-
 ing activity other than pull-tabs, received from activities conducted on
 behalf of the authorizing permittee.

(b) A person, municipality, or qualified organization whose opera-
 tor's license has been revoked under this section may appeal the revo-
 cation if the person, municipality, or qualified organization submits to
 and pays for a complete audit of the operator's financial records by the
 department. The results of the audit are conclusive. (§ 14 ch 99 SLA
 1988; am § 17 ch 70 SLA 1993)

Effect of amendments. — The 1993 "for two consecutive quarters" in two
 amendment, effective January 1, 1994, in places and rewrote paragraph (a)(2).
 subsection (a), substituted "annually" for

Sec. 05.15.130. Department may impose additional require-
 ments. The department may supplement the definitions of qualified
 organizations and activities by regulations adopted under this chapter
 adding to the definitions additional requirements that the department
 considers necessary for the best interests of the public or for the proper

Alaska State Legislature House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE, CHAIRMAN
MILITARY & VETERANS AFFAIRS, CHAIRMAN
COMMUNITY & REGIONAL AFFAIRS
RESOURCES
INTERNATIONAL TRADE / TOURISM
LEGISLATIVE COUNCIL



INTERIM:
10928 EAGLE RIVER ROAD, SUITE 141
EAGLE RIVER, AK 99577
PHONE (907) 694-8944
FAX 694-8949

SESSION:
STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE (907) 465-3777
FAX (907) 465-2819

SPONSOR STATEMENT HB 220

There is no doubt that tourism is an important and expanding element in Alaska's economy. With declining production in oil and continued instability in market prices, alternative sources of state revenue and private sector diversity and expansion become more important.

House Bill 220 is legislation that greatly assists in tourism expansion and greater diversification of the state's economy. This legislation calls on the Commissioner of the Department of Commerce & Economic Development to contract with a qualified in state trade association to promote Alaska as a visitor destination through a cooperative marketing effort. The contract term would be four years in order that the promotion has stability and a chance to impact the market place.

I urge your support for expansion of Alaska tourism and this legislation which will help it to continue to succeed in a very competitive industry.



Representative Pete Kott



HB

220

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

RETURNED TO FINANCE FROM THE FLOOR

REPORTED OFFICE
SFC 5/06/96

DATE: 4/25/95

FURTHER:

DATE TURNED INTO OFFICE: 6 May 1996

The Finance Committee considered **CS FOR HOUSE BILL NO. 220(L&C)**

Duties of the commissioner of commerce and economic development concerning the Alaska Tourism Marketing Council; powers and duties of the council; extending the termination date of the council; efd.

and recommends:

- | | |
|--|---|
| <p><input type="checkbox"/> be replaced with <u>S</u> CS <u>CS HB 220</u> (<u>FIN</u>)</p> <p><input type="checkbox"/> adopt previous _____ CS _____ (_____)</p> <p><input type="checkbox"/> attached amendment(s)</p> <p><input type="checkbox"/> adopt Letter of Intent by _____ Committee</p> <p><input type="checkbox"/> further referral to the _____ Committee</p> | <p>Senate Bill:</p> <p><input type="checkbox"/> same title</p> <p><input type="checkbox"/> new title</p> <p>House Bill:</p> <p><input type="checkbox"/> same title</p> <p><input type="checkbox"/> technical change</p> <p><input type="checkbox"/> new: SCR# _____</p> |
|--|---|

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓	<i>[Signature]</i>	✓		
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
Co-Chair: <i>[Signature]</i>	✓				
Co-Chair: <i>[Signature]</i>	✓				

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Comm. & Ec. Dev. / ATM	1/17/96	0	

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB220

Revision Date: January 16, 1996
 Title: An act relating to: duties of the commissioner;
per-diem expenses; powers & duties of ATMC; extension of ATMC
 Sponsor: Kott
 Requestor: Senate Rules

Department: Commerce and Economic Development
 BRU: Alaska Tourism Marketing Council
 Component: Alaska Tourism Marketing Council
 COMPONENT SERIAL NO. 1026

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY00	FY 01	FY 02
PERSONAL SERVICES		195.8	195.8	195.8		
TRAVEL		55.1	55.1	55.1		
CONTRACTUAL		5,058.4	5,058.4	5,058.4		
SUPPLIES		4.0	4.0	4.0		
EQUIPMENT		5.0	5.0	5.0		
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		5,318.3	5,318.3	5,318.3		

CAPITAL EXPENDITURES		0.0	0.0	0.0		
-----------------------------	--	------------	------------	------------	--	--

CHANGE IN REVENUES		1,429.4	1,429.4	1,429.4		
---------------------------	--	----------------	----------------	----------------	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund		3,888.9	3,888.9	3,888.9		
1005 GF/Program Receipts		1,429.4	1,429.4	1,429.4		
1006 GF/MHTIA						
Other						
TOTAL		5,318.3	5,318.3	5,318.3		

Estimate of any current year (FY 96) cost: \$ 0.0

POSITIONS

FULL-TIME		3	3	3		
PART-TIME		0	0	0		
TEMPORARY		0	0	0		

ANALYSIS: (Attach a separate page if necessary)

The council is due to sunset on December 30, 1996. This bill extends the council until December 30, 1999. The Governor's FY 97 operating budget includes the above amounts to fund the ATMC. Current operating costs would not be affected by HB220. If the bill is enacted, expenditures and revenue projections for FY97-FY99 would be consistent with the council's current operating budget.

These are not new costs. Rather, they reflect current operating costs for the agency.

Prepared by: David Karp, Executive Director
 Division: Alaska Tourism Marketing Council
 Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Phone: (907) 269-8180
 Date: January 17, 1996
 Date: 1-17-96

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FISCAL NOTE

No. 1
 Bill Version: CS HB 220 (L&C)
 (H) Publish Date: 3/8/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: March 3, 1995 Department: Commerce and Economic Development
 Title: An act relating to: duties of the Commissioner: BRU: Alaska Tourism Marketing Council
per diem expenses; powers & duties of ATMC; extension. Component: Alaska Tourism Marketing Council
 Sponsor: Kott, Therriault, Vezey, Toohey
 Requestor: Labor and Commerce, Finance COMPONENT SERIAL NO. 1026

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES			193.4	193.4	193.4	193.4
TRAVEL			55.1	55.1	55.1	55.1
CONTRACTUAL			6,735.4	6,735.4	6,735.4	6,735.4
SUPPLIES			4.0	4.0	4.0	4.0
EQUIPMENT			5.0	5.0	5.0	5.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	6,992.9	6,992.9	6,992.9	6,992.9
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						
1003 GF Match						
1004 General Fund			4,604.5	4,604.5	4,604.5	4,604.5
1005 GF/Program Receipts			2,388.4	2,388.4	2,388.4	2,388.4
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	6,992.9	6,992.9	6,992.9	6,992.9

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS

FULL-TIME	0	0	3	3	3	3
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

The council is due to sunset on December 30, 1996. This bill extends the council until December 30, 1999. Current operating costs would not be affected by HB220. If the bill is enacted, expenditures and revenue projections for FY98-FY01 are reflected as being consistent with the council's current operating budget.

Prepared by: Kathleen Dunn Phone: 907-563-2289
 Division: Alaska Tourism Marketing Council Date: March 3, 1995
 Approved by Commissioner: William L. Hensley *Guy Bellor* Date: 3/3/95
 Agency: Commerce and Economic Development

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COMMITTEE COPY

SENATE RULES COMMITTEE REPORT

DATE: 4/21/95

DATE TURNED INTO OFFICE: 4.24.95

The Rules Committee considered CS FOR HOUSE BILL NO. 220(L&C)

Duties of the commissioner of commerce and economic development concerning the Alaska Tourism Marketing Council; per diem travel expenses of the council's board of directors; powers and duties of the council; extending the termination date of the council; efd.

and recommends it be placed on the calendar:

replace with _____ CS _____ (RULES)

attaches amendment(s)

adopts _____ Letter of Intent

- same title
- new title
- technical title change (HB only)

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

MEMBERS SIGNING FOR PLACEMENT ON THE CALENDAR

Kenice

Mike Miller

Chair: Signature and Recommendation

less

OTHER RECOMMENDATIONS:

J. E. Salo

Calendar on: 4.25.95 (Tues)

Approved by: Kenice

SENATE COMMITTEE REPORT

DATE: 4/12/95

FURTHER:

DATE TURNED INTO OFFICE: 4/21/95

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 220(L&C)

Duties of the commissioner of commerce and economic development concerning the Alaska Tourism Marketing Council; relating to the per diem travel expenses of the council's board of directors; efd.

and recommends:

- be replaced with SEN. CS HB 220 (L&C)
- 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# _____

added "and"

SIGNING <u>DO PASS</u>	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Mico Miller</i>	<input checked="" type="checkbox"/>	<i>Judith E. Seld</i>	<input checked="" type="checkbox"/>		
<i>John Ferguson</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>T. Kelly</i>	<input checked="" type="checkbox"/>				

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

<i>CED</i>	<i>3/3</i>		<input checked="" type="checkbox"/>

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

04/11/95

HOUSE JOURNAL

PAGE 1244

THE QUESTION BEING: "SHALL CSHB 220(L&C) PASS THE HOUSE?" THE ROLL WAS TAKEN WITH THE FOLLOWING RESULT:

CSHB 220(L&C)
THIRD READING
FINAL PASSAGE

YEAS: 35 NAYS: 0 EXCUSED: 2 ABSENT: 3

YEAS: AUSTERMAN, BARNES, BRICE, BROWN, BUNDE, DAVIES, B.DAVIS, G.DAVIS, ELTON, FINKELSTEIN, GREEN, GRUSSENDORF, HANLEY, JAMES, KELLY, KOHRING, KOTT, KUBINA, MACKIE, MACLEAN, MASEK, MULDER, NAVARRE, NICHOLIA, OGAN, PARNELL, PHILLIPS, PORTER, ROBINSON, ROKEBERG, SANDERS, THERRIAULT, TOOHEY, VEZEY, WILLIS

EXCUSED: FOSTER, IVAN

ABSENT: MARTIN, MOSES, WILLIAMS

SELECTION=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU		PRINT	BWD	FWD		FIRST	LAST	QUIT

HB

226

HFFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: April 26, 1995

FURTHER REFERRALS:

Date of Committee Action: 1/30/96

The FINANCE Committee considered:

HB 226

HOUSE BILL NO. 226

MARITAL STATUS AND RETIREMENT BENEFITS

"An Act permitting the provision of different retirement and health benefits to employees based on marital status."

recommends it be replaced with the following committee substitute 25 HB 226 (FIN) the same title a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

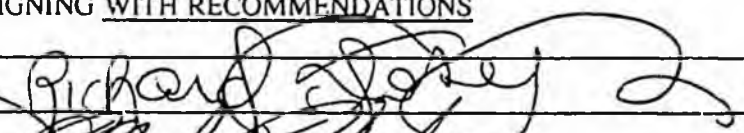
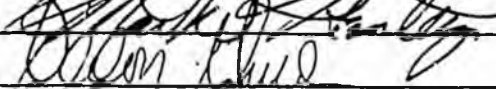
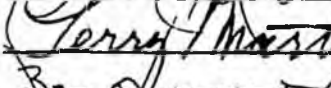
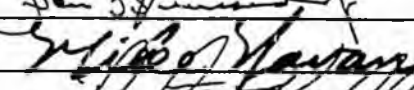
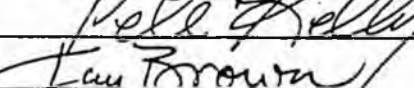
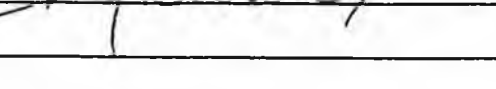
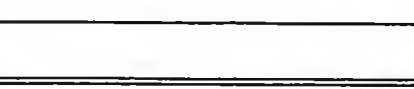

APPROVES PREVIOUS: _____ (Dept/Date)



fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) DU A

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
	Foster	X			
	Hanky	X			
	Mulden	X			
	Martin	X			
	Grussendorf			X	
	Navarre				X
	Kelly	X			
	Brown		X		

CHAIR'S SIGNATURE  
Hanky FOSTER

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 226(FIN)

Revision Date: _____
 Title: An Act permitting the provision of different retirement and health benefits to certain employees by differentiating....
 Sponsor: Kelly, Rokeberg
 Requestor: State Affairs, Health, Education & Social Services....

Department Affected: All State Agencies
 BRU: All State Agencies
 Component: All State Agencies
 COMPONENT SERIAL NO. 64

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
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	0.0	0.0	0.0	0.0	0.0	0.0
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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						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ zero

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

The state's health insurance plan already extends coverage by statute [AS 39.30.090(a)(2)] to employees, their spouses, and their eligible dependent children.

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

Approved by Commissioner: Mark Boyer *M. Boyer*
 Agency: Department of Administration Date: 1/31/96

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Attachment #

1/30/96

Page 2029

NO 0131

Amendment R.1

adopted

Amendment

Offered in the House

To: CSHB 226(FIN) "R" Version dated 1/25/96

By Representative Kelly

- 1 Page 1, line 3, after "with spouses or":
- 2 Delete "legal dependents"
- 3 Insert "children"
- 4 Page 2, line 28, after "basis of marital"
- 5 Insert "or parental"
- 6 Page 2, line 30, after "with spouses or":
- 7 Delete "legal dependents"
- 8 Insert "children"
- 9 Page 3, line 2, after "with spouses or":
- 10 Delete "legal dependents"
- 11 Insert "children"

adopted

CS FOR HOUSE BILL NO. 226(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KELLY, Rokeberg

A BILL

FOR AN ACT ENTITLED

1 "An Act permitting the provision of different retirement and health benefits to
2 certain employees by differentiating between benefits provided to employees with
3 spouses or legal dependents and to other employees."

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

5 * Section 1. AS 18.80.220(a) is amended to read:

6 (a) Except as provided in (c) of this section, it [IT] is unlawful for

7 (1) an employer to refuse employment to a person, or to bar a person
8 from employment, or to discriminate against a person in compensation or in a term,
9 condition, or privilege of employment because of the person's race, religion, color, or
10 national origin, or because of the person's age, physical or mental disability, sex, marital
11 status, changes in marital status, pregnancy, or parenthood when the reasonable demands
12 of the position do not require distinction on the basis of age, physical or mental
13 disability, sex, marital status, changes in marital status, pregnancy, or parenthood;

14 (2) a labor organization, because of a person's sex, marital status,

1 changes in marital status, pregnancy, parenthood, age, race, religion, physical or mental
 2 disability, color, or national origin, to exclude or to expel a person from its membership,
 3 or to discriminate in any way against one of its members or an employer or an
 4 employee;

5 (3) an employer or employment agency to print or circulate or cause to
 6 be printed or circulated a statement, advertisement, or publication, or to use a form of
 7 application for employment or to make an inquiry in connection with prospective
 8 employment, that expresses, directly or indirectly, a limitation, specification, or
 9 discrimination as to sex, physical or mental disability, marital status, changes in marital
 10 status, pregnancy, parenthood, age, race, creed, color, or national origin, or an intent to
 11 make the limitation, unless based upon a bona fide occupational qualification;

12 (4) an employer, labor organization, or employment agency to discharge,
 13 expel, or otherwise discriminate against a person because the person has opposed any
 14 practices forbidden under AS 18.80.200 - 18.80.280 or because the person has filed a
 15 complaint, testified, or assisted in a proceeding under this chapter;

16 (5) an employer to discriminate in the payment of wages as between the
 17 sexes, or to employ a female in an occupation in this state at a salary or wage rate less
 18 than that paid to a male employee for work of comparable character or work in the same
 19 operation, business, or type of work in the same locality; or

20 (6) a person to print, publish, broadcast, or otherwise circulate a
 21 statement, inquiry, or advertisement in connection with prospective employment that
 22 expresses directly a limitation, specification, or discrimination as to sex, physical or
 23 mental disability, marital status, changes in marital status, pregnancy, parenthood, age,
 24 race, religion, color, or national origin, unless based upon a bona fide occupational
 25 qualification.

26 * Sec. 2. AS 18.80.220 is amended by adding a new subsection to read:

27 (c) Notwithstanding the prohibition against employment discrimination on the
 28 basis of marital status under (a) of this section,

29 (1) an employer may, without violating this chapter, provide different
 30 health and retirement benefits to employees who have a spouse or legal dependents than
 31 are provided to other employees;

32 (2) a labor organization may, without violating this chapter, negotiate

1
2

different health and retirement benefits for employees of an employer who have a spouse or legal dependents than are provided to other employees of the employer.

Testimony to the House Finance Committee
on HB-226 and the Amendment Proposed by Representative Kelly
30 January, 1996
by Mark A. Tumeo

I'd like to thank the co-chairs of the Committee for this opportunity to testify on House Bill 226 and the proposed amendment by Representative Kelly. This is doubly appreciated given the fact that I am currently conducting research here in Antarctica and was afraid that I would not have the opportunity to speak with you on a bill that was introduced partially because of me and one which directly affects me.

I hope you have received a copy of the document that I sent which provides many of the facts to respond to the numerous fallacies and misstatements that you may hear about domestic partnerships. As you know, the University of Alaska has already instituted domestic partner benefits without major administrative or economic impact. There has been less than a 0.5% increase in benefit costs. There has not been a mass enrollment of non-legitimate domestic partners. None of the horror stories of abuse and indecency so strongly touted by the proponents of this bill have occurred here, or in the more than 450 companies, 70 universities, and over 100 municipalities which provide domestic partnership benefits.

Very succinctly, providing health benefits to the domestic partner of an employee does not represent a threat to the state's economy, the social fabric, marriage or society. In reality, providing domestic partnership benefits has been shown time and time again to have the reverse affect --by attracting highly qualified, motivated and satisfied employees, strengthening long-term committed relationships, and removing individuals from publicly supported health care systems. You have received information to this affect from me and others before, and there are many people who will testify to these facts, so I will not belabor the point here.

In the brief time I have, I would instead like to discuss another, more subtle, and perhaps more important aspect of this bill - its political side. Make no mistake about it, this bill is controversial. Look at the number of people who have testified, on both sides of the issue, each time it is up for discussion. Listen to the emotion, listen to the rhetoric. It is a bill that deals with the definition of relationship; a bill that touches the core of every Alaskan's concept of fair play, justice, and morality.

The arguments presented to support the bill are emotional. Those pushing the bill use exaggerated claims that allowing individuals to be treated equally whether or not they are married demeans an institution we all hold dear —marriage— and will lead to legalized polygamy and child abuse. These images evoke fear and disgust and are strong motivators. Those opposing the bill are at a distinct disadvantage. All we have are plain facts and figures. Not the type of emotionalism that stirs the heart to action.

But is emotional moralism a proper, or even more pointedly, a politically successful basis for legislation ? We are a country that cherishes individual right —and this sense of individualism is very strong in Alaska. What this bill does is attempt to legislate in favor of one group of people —married people— over another group —non-married people— only because the sponsor, in his own word, holds his view of the traditional marriage in such great esteem, that he would even propose tax breaks for families that keep one partner in the home.

Because Alaskans are more traditional and conservative on many issues, there may be those who believe that this type of legislation will "sell well" in an election year. But the majority of Alaskans will see passage of this bill as another example of government intruding in our personal affairs. And this step would have been taken by a legislature that was elected to cut the budget and get government off our backs —not legislate how we live.