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Title 29—Labor

tive shall, after considering all pertinent matters presented, mail a letter to the employer and, where appropriate, to the apprenticeship agency or the responsible school official, setting out that representative's findings of specific pertinent facts and conclusions and that representative's order concerning the proposed annulment or withdrawal. In proceedings instituted for annulment, the order may provide for withdrawal instead of annulment if the proof warrants such withdrawal but fails to support adequately the annulment. Such an order shall be deemed issued and effective according to its terms when mailed.

(Secretary's Order No. 16-75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No. 76-2, dated Feb. 23, 1976 (41 FR 9016))

[43 FR 28469, June 30, 1978]

§ 528.6 Review.

Any employer and, when appropriate, any apprenticeship agency or responsible school official, who expressed timely objection to the proposed action prior to issuance of an order of annulment or withdrawal may obtain review, limited to the question of whether the findings of fact support the order under the regulations in this part. Application for such review shall be in writing addressed to the Administrator and mailed within 15 days after the order is issued. The Administrator may affirm, modify, or reverse the order, or may remand it for further proceedings. The order under review shall not be stayed in effect pending such review. Any aggrieved person may obtain such review of an order entered in proceedings instituted under paragraph (c) of § 528.3.

(21 FR 5316, July 17, 1956, as amended at 22 FR 5683, July 18, 1957)

§ 528.7 Effect of order of annulment or withdrawal.

Except as otherwise expressly provided in such order, any order of annulment or withdrawal under paragraph (a) or (c) of § 528.3 shall be effective to terminate all certifications to which the regulations in this part apply in effect at the establishment where the cause for withdrawal arose

or where the annulled certificate had effect. After such annulment or withdrawal, such employer shall be ineligible to obtain or exercise the privileges granted in such a certificate until he satisfies the issuing officer that he will not again give cause for annulment or withdrawal if a certificate is issued.

(Secretary's Order No. 16-75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No. 76-2, dated Feb. 23, 1976 (41 FR 9016))

[43 FR 28469, June 30, 1978]

PART 529—EMPLOYMENT OF PATIENT WORKERS IN HOSPITALS AND INSTITUTIONS AT SUBMINIMUM WAGES

Sec.

- 529.1 Statutory language and scope of regulations.
- 529.2 Definitions.
- 529.3 Advisory Committee on Sheltered Workshops.
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- 529.5 Application for certificates.
- 529.6 Criteria for consideration in issuance of certificates.
- 529.7 Issuance of certificates.
- 529.8 Terms and conditions of certificates.
- 529.9 Renewal of certificates.
- 529.10 Records to be kept.
- 529.11 Cancellation of a certificate.
- 529.12 Review.
- 529.13 Submission of information, investigations, and hearings.
- 529.14 Relation to other laws.
- 529.15 Issuance of certificates for experimental purposes.
- 529.16 Amendment of this part.
- 529.17 Review of regulations.

AUTHORITY: Sec. 14, 52 Stat. 1068, as amended (29 U.S.C. 214).

SOURCE: 40 FR 5776, Feb. 7, 1975, unless otherwise noted.

§ 529.1 Statutory language and scope of regulations.

(a) The Fair Labor Standards Act as amended, among other things, makes provision for the employment of handicapped persons at subminimum wages under certificate. This provision is now designated as section 14(c) of the Act. It reads as follows:

(c) (1) Except as otherwise provided by paragraphs (2) and (3) of this subsection, the Secretary of Labor, to the extent necessary in order to prevent curtailment of op-

Chapter V—Wage and

portunities for employment or order provide for under special certificates including individuals employed whose earning or productivity is impaired by age or physical or mental injury at wages which are less than the minimum wage applicable under section 6 of this Act but not less than 80 percent of such wage and commensurate with those paid to workers in industry in the same type, quality of work.

(2) The Secretary, pursuant to regulations he shall prescribe, may, in his discretion, authorize the issuance of special certificates for the employment of handicapped workers in industry in the same type, quality of work.

(A) handicapped workers whose earning or productivity is impaired by age or physical or mental injury at wages which are less than the minimum wage applicable under section 6 of this Act but not less than 80 percent of such wage and commensurate with those paid to workers in industry in the same type, quality of work.

(B) multihandicapped workers whose earning or productivity is impaired by age or physical or mental injury at wages which are less than the minimum wage applicable under section 6 of this Act but not less than 80 percent of such wage and commensurate with those paid to workers in industry in the same type, quality of work.

(3) (A) The Secretary may, in his discretion, authorize the issuance of special certificates for the employment of handicapped workers in industry in the same type, quality of work.

(B) For purposes of this section, "handicapped workers" shall mean individuals whose earning or productivity is impaired by age or physical or mental injury at wages which are less than the minimum wage applicable under section 6 of this Act but not less than 80 percent of such wage and commensurate with those paid to workers in industry in the same type, quality of work.

(b) Authority to promulgate regulations and issue the certificates provided for in section 14(c) of the Act shall be vested in the Secretary of Labor. (Secretary's Orders 71 (36 FR 8755 and 8756))

(c) Patient workers whose earning or productivity is impaired to the extent that they are unable to earn the minimum wage, the regulations in Part 529 govern certification of such workers in hospitals and institutions at subminimum wages.



Official Business

Alaska State Legislature

House of Representatives

Committee on

Health, Education & Social Services

Pouch V
State Capitol
Juneau, Alaska 99811

March 21, 1983

MEMO TO: Ramona Barnes

FROM: Dave Palmer House HESS Committee x3777

SUBJECT: HB 182

The attached opinion from Nugen's attorney states that due to recent decisions of the courts, it is clear that HB 182 will not withstand a legal challenge. Do you want to direct legal services to redraft HB 182 as a sponsor substitute or should we schedule hearings on the bill as it is presently written?

gent persons in *Haas* and *Schutten*, has absolutely no interest in the subject matter of the suit, i.e., the lease. Hence judgment against GNCC for cancellation of the lease and an accounting would have no effect, practical or otherwise, on Lowell Kramer. As a result, we conclude that his interest in this suit would not be prejudiced by his absence as a party.

The final consideration is whether, given Lowell Kramer's interest in the litigation, GNCC might be subject to multiple or inconsistent liability. As we noted above, only Challenge and GNCC have any interest in the lease; thus GNCC's liability can extend only to Challenge and in any case will be finally resolved in this suit. *Cf. Haas, supra* (judgment in favor of Haas without Glueck as a party could leave bank open to double liability should Glueck later win a separate suit against the bank). The only other possible prejudice to GNCC would arise if the corporation claimed indemnity from Lowell Kramer for all or part of its liability. Because, as explained above, Kramer would not be legally bound by a judgment in this case, GNCC could theoretically lose a later suit for indemnity against Kramer. GNCC, however, may protect itself against this possibility by impleading Lowell Kramer under Rule 14.⁵ Consequently, GNCC also suffers no prejudice by the absence of Lowell Kramer. *See Smith v. State Farm Fire & Casualty Co.*, 633 F.2d 401, 405 (5th Cir. 1980).

Because Lowell Kramer does not fit any of the Rule 19(a) tests for persons who should be joined if feasible, he *a fortiori* is not an indispensable party under Rule 19. Accordingly, we reverse the district court's dismissal order.

REVERSED.



5. Such joinder would come under the ancillary jurisdiction of the court, so that the case could go forward despite lack of complete diversity. E.g., *Revere Copper & Brass, Inc. v. Aetna Casualty & Surety Co.*, 426 F.2d 709, 715 (5th Cir. 1970). The plaintiff, however, may not

David R. WILLIAMS, Plaintiff-Appellant,

v.

EASTSIDE MENTAL HEALTH
CENTER, INC., a corporation,
Defendant-Appellee.

No. 81-7284.

United States Court of Appeals,
Eleventh Circuit.

March 5, 1982.

Former employee of mental health institution brought action against employer to recover an award of back pay allegedly owed under the minimum wage provisions of the Fair Labor Standards Act. The United States District Court for the Northern District of Alabama, J. Foy Guin, Jr., J., 509 F.Supp. 579 entered judgment in favor of former employer and former employee appealed. The Court of Appeals, Tuttle, Circuit Judge, held that: (1) not-for-profit mental health institution created by a statutory mental health authority was not a state or political subdivision and thus not exempt from the Fair Labor Standards Act on that basis, and (2) even if state had chosen to operate the institution as a state agency, the institution was not performing an integral function of the state and it thus would not be exempt from the Act.

Reversed.

James C. Hill, Circuit Judge, filed a special concurring opinion.

1. States ⇌ 4.16

In determining whether a state sovereignty has been unduly and unconstitutionally impaired by federal regulations, court

assert any claims against the third-party defendant which do not have an independent jurisdictional basis. *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 98 S.Ct. 2396, 57 L.Ed.2d 274 (1978).

should look to the nature of the entity being regulated, the extent of control which the state maintains over the activities and administration of the entity in question, the function of the entity being regulated, and the nature of the federal regulation involved.

2. Labor Relations ⇌ 1248

In determining whether the Fair Labor Standards Act may constitutionally be applied to the activities of governmental entity, principles established in NLRB cases involving the issue of whether a particular entity is a political subdivision and thus exempt from the provisions of the National Labor Relations Act are applicable. National Labor Relations Act, § 2(2) as amended 29 U.S.C.A. § 152(2); Fair Labor Standards Act of 1938, § 5, 29 U.S.C.A. § 206.

3. Labor Relations ⇌ 1249

Not-for-profit mental health institution created by a statutory health authority was not a state or political subdivision and thus not exempt from the Fair Labor Standards Act because, although it was subject to substantial state regulation, it was analogous to a normal nonprofit institution in its basic corporate structure. Fair Labor Standards Act of 1938, § 6, 29 U.S.C.A. § 206.

4. Labor Relations ⇌ 1249

Even if state had chosen to operate not-for-profit mental health institution as a state agency, that institution was not performing an integral function of the state and thus would not be exempt from the Fair Labor Standards Act. Fair Labor Standards Act of 1938, § 6, 29 U.S.C.A. § 206.

5. Labor Relations ⇌ 1248

The type of integral state functions which are exempt from Fair Labor Standards Act are those which a state performs for or in relation to the society at large or the state as a whole. Fair Labor Standards Act of 1938, § 6, 29 U.S.C.A. § 206.

Reeves & Still, Edward Still, Birmingham, Ala., for plaintiff-appellant.

Beate Bloch, Associate Sol., Gregory O'Duden, Atty., U. S. Dept. of Labor, Div. of Fair Labor Standards, Washington, D. C., for Secretary of Labor amicus curiae.

Frank O. Hanson, Jr., Birmingham, Ala., for defendant-appellee.

J. Fairley McDorald, III, Asst. Atty. Gen., Ala. Dept. of Mental Health, Montgomery, Ala., for Ala. Dept. of Mental Health amicus curiae.

Before TUTTLE, HILL and JOHNSON, Circuit Judges.

TUTTLE, Circuit Judge:

This appeal involves a suit brought by the plaintiff-appellant against his employer for an award of back pay allegedly owed pursuant to the minimum wage provisions of the Fair Labor Standards Act [FLSA], 29 U.S.C.A. § 206 (1978). The district court, 509 F.Supp. 579, held that under the principles set out in *National League of Cities v. Usery*, 426 U.S. 833, 96 S.Ct. 2465, 49 L.Ed.2d 245 (1976), the defendant-appellee was exempt from the FLSA's minimum wage provisions. For the reasons that follow, we reverse.

I.

The plaintiff David R. Williams was an employee at the Eastside Mental Health Center [Eastside] from February, 1977 until May, 1979. Williams worked in Eastside's 'Transitional' Home Program. This program operates as a type of halfway house, providing psychological rehabilitation services for individuals recently released from state mental hospitals or persons who might otherwise be heading for commitment to a state mental hospital. Eastside hired Williams as a live-in home manager. He was required to work in 96-hour shifts, residing at the home for four days, followed by four days off. Eastside paid Williams a fixed salary, and considered him to be on duty 24 hours per day for the four working days. In fact he was required to be at the home during the four working days only from 5 p. m. until 8 a. m. the following morning.

During the day he was allowed to leave the home if he was not needed. As a home manager Williams' primary function was to oversee and assist the training of residents in basic socialization skills and some routine daily activities.

Sections 206 and 207 of the FLSA require all employers subject to the Act to pay employees a certain minimum wage for the first 40 hours worked in a given week, and one and one-half times the regular wage for any time worked over the 40-hour base. See 29 U.S.C.A. §§ 206, 207 (1978). There is some dispute in the record from the court below regarding the number of hours Williams worked during his employment at Eastside. Assuming the facts as alleged by the plaintiff, the losing party in the district court's summary judgment order, the salary Williams received during his entire employment at Eastside was about \$27,000 short of the minimum required under the FLSA.

II.

We must begin by describing the development and character of the defendant-appellee in this case, the Eastside Mental Health Center.¹ The state of Alabama first began treating mental patients in its state hospitals in 1861. Up through the 1960's Alabama provided comprehensive mental health services in state institutions such as Bryce Hospital, Searcy Hospital, and Partlow State School. In addition the state helped fund some smaller community mental health centers.

In 1965 the State Department of Public Health completed a two-year, federally financed study to plan for statewide provision of mental health services. This study recommended the establishment of a network of smaller, but comprehensive mental health centers throughout the state. Subsequently the state passed legislation creating the Department of Mental Health [the Department], see Ala.Code § 22-50-1 (1977), and enacted specific legislation to govern the creation and operation of re-

gional authorities to administer a network of community mental health centers. See Ala.Code § 22-51-1 (1977). All boards and corporations established pursuant to the provisions of this Act are statutorily designated as public corporations. Ala.Code § 22-51-2 (1977). The Department then divided the state into mental health regions, and established mental health authorities under section 22-51-2 to organize and administer the provision of services for each region.

In 1969 the Jefferson-Blount-St. Clair Mental Health Authority [hereinafter "the Authority" or "the Jefferson Authority"] was incorporated as a public corporation under section 22-51-2 as the Authority for coordinating mental health services in the three named counties. The Authority divided its region into four catchment areas each with a population of roughly 185,000 persons, and determined that adequate services could be provided if there were established one comprehensive mental health center in each catchment area. Three such centers were in fact created, one of which was Eastside Mental Health Center, the defendant-appellee in this case. The other two were the Western Mental Health Center and the University Mental Health Center. These latter centers were established as public corporations under section 22-51-2.

Eastside opened its doors as a community mental health center on July 15, 1974. It operated out of a building purchased with state, county and city funds. Unlike its counterpart centers operating within the three-county region, Eastside was initially opened as an unincorporated service unit for the Jefferson Authority wholly owned and operated by the Authority. The Western and University Centers subsequently lodged a complaint that there was a conflict of interest in the Authority operating a center that was competing for funds with

1. For reasons that are made clear below, see pp. 676-678 *infra*, the issue of state sovereignty upon which the case turns requires a

consideration of the nature of the entity claiming sovereignty, as well as the nature of its chief functions.

the other two centers.² In response to this complaint, the Authority then incorporated Eastside as a separate, non-profit entity under the Alabama non-profit statute. See Ala.Code § 10-3-1 (1977).³

As a non-profit corporation, Eastside is structured similarly to most private, non-profit institutions. Eastside has its own articles of incorporation and set of by-laws. These govern the general structure and management of the center, including appointment of its administrative board of directors. This board is responsible for seeing that adequate funds, staff and equipment are provided for the Center. The board also sets all major policies of the Center. Finally the board selects, hires, and fires the administrative staff of the Center.

Under the by-laws there are 14 separate agencies responsible for appointing the 18 members of Eastside's board of directors. Four directors are appointed by the Jefferson Authority; the other fourteen directors are appointed by a mix of state or public agencies and private, non-profit organizations.⁴ The parties in the present controversy stipulated in the district court that 10 of the appointing organizations should be considered as state or public entities and six as private, non-profit groups. The status of the remaining two was to be determined by the district court. The by-laws also provide that the Jefferson Authority must ratify the appointment of all board members, in-

cluding those appointed by private organizations. There is no indication in the by-laws that any of the appointing agencies or the Jefferson Authority has the power to remove a board member once appointed.

So far as disclosed by the record, all board members are to be motivated solely by what they believe is best for the Center and its clientele. They are not expected to represent or vote for policies favoring their appointing agency. Thus as long as state regulations are not violated, the administration of the institution is not subject to the legal dictates of any "official" state agency or officer.

Eastside's relationship to the Jefferson Authority and to the State of Alabama in general is controlled partially by provisions in the by-laws and articles of incorporation, partially by state licensing standards, and partially by the contracts it maintains with various state agencies for the provision of mental health services to its catchment area. In addition, federal regulations prescribe certain of the Center's activities, as Eastside receives about 38 percent of its funds from the federal government.

All mental health centers in Alabama, including Eastside, are subject to considerable state monitoring. Eastside must comply with the state's Standards for Community Mental Health Centers or be subject to revocation of its certification. Changes in the Center's articles of incorporation or by-laws must be approved by the Jefferson

2. Although the record is not clear on this point, it appears that the Jefferson Authority had some control over the dispersal of state funds to the three mental health centers in its region.

3. The court below determined that Eastside could not be established as a public corporation under section 22-51-2 because the community mental health centers statute allows only one public facility per county, and another center had already filed for incorporation "in the three-county area of Jefferson, Blount and St. Clair." See Mem. Op. filed March 24, 1981. Admittedly it is not clear how the statutory maximum had been reached if only one center had applied in a three-county area. Apparently each of the three entities, the Authority, and Western and University Mental Health Centers, had filled the statutory quota for each of the three counties.

4. The Health Departments of Jefferson, Blount, and St. Clair counties appoint one member of the board in rotation; similarly, the three counties' Departments of Pensions and Security, and the three counties' Associations for Retarded Citizens, each appoints one member in rotation. In addition the three County Commissions each appoints a member, the three appointees serving concurrently. Finally, the following agencies and organizations each appoints one board member: the Birmingham City Council, the Council for Exceptional Children, the Baptist Medical Center, the Hill Crest Foundation, Inc., the East End Memorial Hospital Association, the Mental Health Association of Jefferson County, the Occupational Rehabilitation Center, and the Birmingham Regional Health Systems Agency.

Authority. The Authority must also approve the Center's budget. Eastside is subject to auditing by both state and federal officials, and state examiners conduct frequent site visits to inspect its operations. Eastside also participates in Alabama's State Retirement System, and is exempt from state sales taxes. Finally, upon dissolution of the corporation, the articles of incorporation provide that all of Eastside's assets are to vest in the Jefferson Authority.

Eastside's general purpose is to provide comprehensive mental health and mental retardation services to a prescribed geographic area. The Center provides both inpatient and outpatient care, emergency care, consultation and educational services, as well as specialized services for children, elderly persons, and persons with alcohol or drug-related problems. In addition the Center runs the Transitional Home Program for people going to or about to return from a state hospital. The Center assists the local probate court in screening persons for state institutions. Finally, the Center provides some services for adult mentally retarded individuals. Some of these programs involve psychotherapeutic counseling, as well as prescribed medicine treatments. Eastside provides each of the services through contracts with schools, hospitals, nursing homes, or some other state facility or agency.

At present there are 25 community mental health centers in the State of Alabama. Twenty of these Centers are public corporations under Ala.Code § 22-51-2; two are operated directly by local governmental bodies. The remaining three are section 10-3-1 nonprofit corporations such as Eastside Mental Health Center.

III.

The defendant-appellee Eastside Mental Health Center claims exemption from the minimum wage provisions of the FLSA under the principles set out in the case of *National League of Cities v. Usery*, 426 U.S. 833, 96 S.Ct. 2465, 49 L.Ed.2d 245 (1976). Appellee asserts that the *Usery* case re-

quires FLSA exemption for all state or public agencies performing traditional government functions. The appellee argues that because Eastside is so thoroughly allied with the State of Alabama, and furthermore because it is engaged in an ordinary governmental function, namely, the provision of mental health services to the public, the *Usery* test has been satisfied and exemption is appropriate. We disagree with appellee's understanding of *Usery* and its corollary principles, and for the reasons that follow we hold that Eastside should not be exempt from the FLSA.

The overriding constitutional concern faced by the court in *Usery*, and thus by this Court in the present case, is the problem of affixing a clear and workable boundary between the two sovereignties in our federal system. The problem is amplified as always by the necessity that the result adhere to the facts before us while at the same time serve as a clear guide for future applications. And most importantly we are faced with the task of reaching a determination that is consonant with constitutional precedents.

The existing precedents make clear that the notion of state sovereignty is as important to a truly federal system of government as it is hard to define, let alone pigeonhole into any one constitutional provision. At least since the case of *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 410, 4 L.Ed. 579 (1819), the Court has recognized that state and federal powers must be preserved in a delicate equipoise in a federal system such as we have. The need for this balancing of state and federal power "rests on the conviction that each government, in order that it may administer its affairs within its own sphere, must be left free from undue interference by the other." *Metcalf & Eddy v. Mitchell*, 269 U.S. 514, 523, 46 S.Ct. 172, 174, 70 L.Ed. 384 (1926) (citing *McCulloch v. Maryland*, 17 U.S. (4 Wheat) 316, 4 L.Ed. 579 (1819)). There exist certain constitutional provisions that emphatically, though perhaps ambiguously, address the necessity of protecting the sovereignty and power of the individual state

governments. See *Hans v. Louisiana*, 134 U.S. 1, 21, 10 S.Ct. 504, 509, 33 L.Ed. 842 (1890) (Eleventh Amendment protects states against unconsented suits even if they arise under the Federal Constitution or laws of the United States); *Hodel v. Virginia Surface Min. & Rec. Ass'n*, 452 U.S. 264, 101 S.Ct. 2352, 69 L.Ed.2d 1 (1981) (Tenth Amendment contains limits on federal power to regulate states as states).³

Resort to specific constitutional provisions, or even individual case precedents, is nevertheless inadequate to a determination of the proper balance to be struck between the state and federal sovereignties. "Experience has shown that there is no formula by which the line may be plotted with precision in advance." *Metcalf & Eddy v. Mitchell*, 269 U.S. at 523, 46 S.Ct. at 174 (1926). Indeed such an approach is apparently inappropriate. In the most recent judicial attempt to determine the appropriate state-federal relationship, the Court in the *Usery* case relied upon a wealth of case precedents involving issues ranging from intergovernmental tax immunity, to federal regulation of commerce, to state control over the location of its state capitol. See *Metcalf & Eddy v. Mitchell*, 269 U.S. 514, 46 S.Ct. 172, 70 L.Ed. 384 (1926); *United States v. California*, 297 U.S. 175, 56 S.Ct. 421, 80 L.Ed. 567 (1936); *United States v. Darby*, 312 U.S. 100, 61 S.Ct. 451, 85 L.Ed. 609 (1941); *Coyle v. Oklahoma*, 221 U.S. 559, 31 S.Ct. 688, 55 L.Ed. 853 (1911). In line with the

5. The ambiguity of Tenth Amendment case law is merely coextensive with the ambiguity of its language. Compare *United States v. Darby*, 312 U.S. 100, 61 S.Ct. 451, 85 L.Ed. 609 (1941) (Tenth Amendment states but a truism), with *Fry v. United States*, 421 U.S. 542, 547 n.7, 95 S.Ct. 1792, 1795 n.7, 44 L.Ed.2d 363 (1975) (Tenth Amendment declares policy that Congress may not exercise power so as to impair the states' integrity or their ability to function effectively in a federal system), *National League of Cities v. Usery*, 426 U.S. 833, 842, 96 S.Ct. 2465, 2470, 49 L.Ed.2d 245 (1976) (relying on Tenth Amendment case precedents to strike down FLSA as applied to state and municipal governments), and *Hodel v. Virginia Surface Min. & Rec. Ass'n*, 452 U.S. 264, 289, 101 S.Ct. 2352, 2366, 69 L.Ed.2d 1 (1981) (citing Tenth Amendment as embodying certain limits on federal Commerce Clause regulations).

Usery precedent, we thus feel it appropriate, indeed constitutionally incumbent upon us, to look to a range of case sources interpreting a variety of constitutional provisions and penumbras in determining how to strike the proper balance in the present case.

[2] In determining whether a state's sovereignty has been unduly and unconstitutionally impaired by federal regulation, the courts have in the past considered several factors. First, they have looked to the nature of the entity being regulated. In *Usery* the Court acknowledged that attributes of state sovereignty emanating from the federal structure of our government put the states on a different footing from purely private entities with respect to federal regulation of their activities. Citing *Coyle v. Oklahoma*, 221 U.S. 559, 31 S.Ct. 688, 55 L.Ed. 853 (1911), the Court in *Usery* declared that even some affirmative grants of constitutional power to the federal government must be limited when national regulations directly affect a state or its political subdivisions in carrying out normal governmental activities. *National League of Cities v. Usery*, 426 U.S. at 845, 855-56 n.20, 96 S.Ct. at 2471, 2475-76 n.20 (1976).

Of course the determination that a regulation affects a state or its political subdivision is not always a simple one to make. There exist many public or quasi-public agencies the status of which, for purposes of determining a state sovereignty question,

Even Eleventh Amendment jurisprudence suffers from substantial confusion and complexity. For example, the principle of state immunity from unconsented suits has been qualified or at least restricted by a countervailing principle distinguishing suits against a state from suits against an individual officer of the state. The latter type of suits, at least in some circumstances, is not barred by the Eleventh Amendment. Compare *Ex Parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908) (establishing equitable cause of action against state officers in their individual capacities notwithstanding Eleventh Amendment) with *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 50 L.Ed.2d 662 (1974) (qualifying *Ex Parte Young* in situations where remedy requires payment of state funds as compensation for past damages).

is not easy to characterize. Frequently the courts have faced similar classification problems when deciding cases in the areas of state action doctrine, *see, e.g., Evans v. Abney*, 396 U.S. 435, 90 S.Ct. 628, 24 L.Ed.2d 634 (1970), § 1983 litigation, *see, e.g., Adickes v. Kress & Co.*, 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970), and Eleventh Amendment sovereign immunity questions, *see, e.g., Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 59 L.Ed.2d 662 (1974).⁶

At issue in *Usery* was the constitutionality of the Fair Labor Standards Act when applied to wages paid by state and subordinate political subdivisions to their employees. The Court held that this would seriously impair the right of the state to carry out its normal functions. It was only the payment of wages by state or subordinate political bodies that was involved there.⁷ The Court in *Hodel v. Virginia Surface Min. & Rec. Assn.*, *supra*, interpreted *Usery* as requiring that, *inter alia*, the federal regulation in question must address the "States as States" in order for there to be an infringement of state sovereignty. *Hodel v. Virginia Surface Min. & Rec. Assn.*, 101 S.Ct. at 2366 (1981).

[2] Beyond that we think the relevant inquiry is the extent of control the states maintain over the activities and administration of the entity in question. Indeed it seems to us appropriate to borrow from principles established by the court in NLRB cases involving the issue of whether a particular entity is a political subdivision and is

6. The Court in neither the *Usery* nor the *Hodel* case had to face this issue, as the nature of the regulated entities was not disputed in either case. In *Usery* many states were party to the suit, and the issue was whether the FLSA as applied directly to the states was within Congress' powers. *National League of Cities v. Usery*, 426 U.S. at 854, 96 S.Ct. at 2475 (1976). Similarly in *Hodel* the states were parties, and the Court did not question their status as states, but rather doubted that the states were being directly regulated by the federal government. *Hodel v. Virginia Surface Min. & Rec. Assn.*, 101 S.Ct. at 236 (1981).

7. That subordinate bodies are included in the *Usery* exemption is a principle which derives from explicit language in the opinion, as well as

therefore exempt from the provisions of the National Labor Relations Act, 29 U.S.C.A. § 152(2) (1973). *See NLRB v. Natural Gas Utility Dist.*, 402 U.S. 600, 91 S.Ct. 1746, 29 L.Ed.2d 206 (1971).⁸ In *NLRB v. Natural Gas*, the Court in a close case considered relevant whether the entity seeking exemption was administered by individuals responsible to public officials or to the general electorate. *Id.* at 605, 91 S.Ct. at 1749-50. Although these cases turn on the construction of the Labor Relations Act and not on constitutional considerations of state sovereignty, we find them helpful in our inquiry, and until the Court holds otherwise we will adopt this approach.

Second, in deciding cases involving possible federal infringement of state sovereignty, the courts have assessed the function of the entity being regulated. In *Usery* the Court repeatedly emphasized that the FLSA directly affected a function that was traditionally a governmental activity, namely, the structuring of wage and hour policies. *National League of Cities v. Usery*, 426 U.S. at 845-46, 851-52, 96 S.Ct. at 2471-72, 2474 (1976). The Court alternately characterized this function as traditional, essential, fundamental, and integral. *Id.* at 845, 851, 96 S.Ct. at 2471, 2474. The Court listed several other functions that could be so characterized, including fire prevention, police protection, sanitation, public health, and parks and recreation. *Id.* at 851, 96 S.Ct. at 2474. Moreover, in overruling *Maryland v. Wirtz*, 392 U.S. 183, 88 S.Ct. 2017, 20 L.Ed.2d 1020 (1968), the Court

by implication, at least insofar as the term relates to "such areas as fire protection, police protection, sanitation, public health, and parks and recreation." *National League of Cities, supra*, 426 U.S. at 851, 96 S.Ct. at 2474. The opinion specifically included "political subdivisions" as entities for which classification of sovereignties is appropriate. *Id.* at 855, n.20, 96 S.Ct. at 2476, n.20. Additionally, the Court mentioned state schools, hospitals, and other "subordinate arms of state government" as properly labelled sovereigns. *Id.*

8. We base our analogy to the labor cases on the simple fact that the precise term "political subdivision" is used in both the *Usery* case and the NLRB cases.

implicitly included the operation of public schools and hospitals as traditional functions of the states. 426 U.S. at 855, 96 S.Ct. at 2476. In *Hodel*, the Court listed the traditional nature of the function involved as the second condition precedent to a finding that a state's sovereignty has been constitutionally infringed by federal regulation. *Hodel v. Virginia Surface Min. & Rec. Ass'n*, 101 S.Ct. at 2366 (1981).

The third and final indicium of state sovereignty frequently considered by the courts is the nature of the federal regulation involved. The Court in *Usery* discussed at length the effects on state government operations that would result from application of the FLSA. The Court focused on the significant costs, both in terms of money and in terms of necessary restructuring of employment operations, that states would have to bear if forced to comply with the FLSA. *National League of Cities v. Usery*, 426 U.S. at 846-51, 96 S.Ct. at 2471-74 (1976). Similarly in *Fry v. United States*, the Court cited the unintrusive nature of the Economic Stabilization Act as a primary reason for upholding its application to state employees. *Fry v. United States*, 421 U.S. at 548, 95 S.Ct. at 1796 (1975). Finally, in the intergovernment tax immunity cases, the Court has been guided by an assessment of the interference with state government functioning. See *Helvering v. Gerhardt*, 304 U.S. 405 at 419-20, 58 S.Ct. 969 at 974-75, 82 L.Ed. 1427 (1933).

IV.

Before applying the foregoing principles to the facts of the case before us, we may well benefit from a quick study of Immanuel Kant's *On the Old Saw: That May be Right in Theory but it Won't Work in Practice* (E. B. Ashton trans. 1974). Precise legal guidelines easily applicable to particular fact situations do not exist in cases such as this involving broad constitutional concepts such as that of sovereignty. As will become clear shortly, our job is compounded in this case by the borderline nature of the facts before us. Nevertheless we are con-

vinced that upon a consideration of all the factors, on balance it seems clear that Eastside is not and should not be treated as a sovereign entity in our federal system.

[3] The determinative fact in this case is simply that the entity with which we are dealing is not a state or a political subdivision of a state as defined by the Court in *Usery* and in other cases involving similar issues. Eastside Mental Health Center is not the State of Alabama, nor is it an agency or department of the State of Alabama. Indeed no party contends otherwise.

Moreover as it currently exists under Alabama state law, Eastside is not a public agency or corporation. As was noted earlier, the Center is incorporated as a non-profit institution under section 10-3-1, rather than as a public corporation under section 22-51-2 of the Alabama Code. The Center is in fact distinct from many of the other community mental health centers operating in the State of Alabama in precisely this regard. For whatever reason, Alabama did not elect to operate Eastside as a state institution with state employees; instead it set up a not for profit corporation with a separate, independent board of directors to administer it. Whatever may have been the state's reason for doing it this way, it must live with the consequences. It cannot claim an immunity based on a condition which it itself sought to avoid.

Here, then, lies the greatest difference between *Usery* and the facts of this case. Here we are concerned with application of the FLSA wages paid by a not for profit corporation which operates by contract with a public corporation of the State of Alabama and by contract with other entities. There is thus no impact on the state in its relation with its own employees. Thus, the FLSA does not affect the "States as States."

For such reasons as were satisfactory to it, the State of Alabama elected not to employ any persons to operate institutions performing such services as are performed by Eastside. By making this election it removed the agency from the protection of the Tenth Amendment as delineated in

Usery and *Hodel*. Instead, certain individuals organized a corporation under the general legislative authorization used by other citizens to organize all educational, religious and other eleemosynary institutions, which thereafter contracted with Jefferson, itself an independent corporation, to carry out these functions.

For purposes of the sovereignty issue before us, Eastside is thus best characterized as a private, non-profit corporation, licensed in the State of Alabama to perform the services of a community mental health center, and carrying out such services by means of ordinary contracts with various state and local agencies and institutions. It is thus analogous to a normal nonprofit institution in its basic corporate structure, while at the same time analogous to a private business doing contracting work for the state in its basic business operations.

Although the Center is subject to substantial state regulation, this fact does not change our characterization. With respect to the state licensing regulations, we find it difficult to distinguish Eastside from a variety of private corporations and professional individuals that are subject to similar state control pursuant to licensing statutes. Such controls are normal means by which states effectuate public policies through the regulation of private entities. These licensing controls do not, however, somehow magically transform the fundamental nature of the licensed entity into a public agency or official.

The additional control exerted by the Jefferson Authority over Eastside's budget, board of directors, and residual assets upon dissolution, are not so significant as to justify characterizing the Center as an arm of the state. With respect to the board of directors, not only does the State of Alabama not have control over the appointment of nearly one-half of the board membership, in addition it has no power whatso-

ever to dismiss any of the board appointments. Members of the board do not serve as representatives of the state or any of its agencies. For this latter reason it is clear that no member of the administrative board is directly responsible to a public official or to the general electorate. Under the test set out in *NLRB v. Natural Gas Utility Dist.*, 402 U.S. 600, 91 S.Ct. 1746, 28 L.Ed.2d 206 (1971), this factor indicates that Eastside is not a political subdivision of the State of Alabama. The other controls, while perhaps uncommon in the context of normal private corporations contracting with the states, must be viewed simply as stringent licensing standards necessary to the effective implementation of the state's police power in the mental health arena.

If the State of Alabama chooses to foster the provision of mental health services by allowing Eastside and similar mental health centers certain fringe benefits, including sales tax exemption and participation in the State Retirement System, this does not mean that Eastside should be viewed as an arm of the state. Alabama either provides or legally may provide similar benefits to entities that are declaredly not public agencies.⁹

[4] Our conclusion that the Eastside Mental Health Center is not a state agency or a political subdivision of the state is sufficient under the *Hodel* test for us to hold that it may not be exempt from the FLSA. Just as in *Hodel*, we need not reach the other factors in the sovereignty test if we initially find, as we do here, that the entity with which we are dealing is not a state. See *Hodel v. Virginia Surface Min. & Rec. Ass'n*, 101 S.Ct. at 2369 (1981). For this reason it is not necessary for us to consider the extent of the FLSA's effect on Eastside's function of granting mental health services, nor need we decide whether such function is traditional or essential. In

9. The State of Alabama does in fact grant sales tax exemption to many other private businesses. See Ala.Code § 40-23-4 (1975). In addition, membership in the State Retirement System is not limited to state agencies, as it is also available to employees of a "public or quasi-

public organization." See Ala.Code § 36-27-6 (1975). Assuming Eastside is considered a quasi-public organization, it may participate in the retirement system and yet still not be a state or public agency within the meaning of the term as used in the *Usery* case.

view of the significance of the term "integral" used in the *Usery* opinion, however, we think it important to briefly discuss the application of this concept to the facts of this case. In short we believe that even if the State of Alabama had chosen to operate Eastside as a state agency, the Center is not performing an "integral" function and thus the *Usery* exemption would not apply.

In *Usery* the Court used the term "integral" to define the nature of a state operation that is protected by considerations of sovereignty. "We hold that insofar as the challenged amendments [of the FLSA] operate to directly displace the States' freedom to structure integral operations in areas of traditional governmental functions, they are not within the authority granted Congress by Art. 1, § 8, cl. 3." 426 U.S. at 852, 96 S.Ct. at 2474 (1976) (footnotes omitted).¹⁰

[5] Dictionary definitions indicate that the adjective "integral" signifies something that is a part of or is in itself a whole. See *Webster's New International Dictionary* 1290 (1936). We think an integral function is in this context one that a state performs for or in relation to the society at large, the state as a whole. One such function is the state's taxing power; another is the state's function of enacting laws for the public

good through its legislative body. For purposes of determining whether a particular function is "integral" in the context of sovereignty decisions such as the one before us, we think it therefore helpful to look at whether the federal regulation in question affects a state function in a way that reverberates throughout the society as a whole.¹¹ For example, any interference with a state's provision of police protection to its citizenry, or its ability in general to pass laws in its legislature, clearly affects all people in the state. Such integral functions may be contrasted with those that, while perhaps traditional, are nevertheless not functions which relate to the entire state populace. An example of a non-integral function is a state's enactment of particular regulations addressing specific problems such as water usage, farming, railroads, utilities, etc. Even though such functions may have been traditionally carried out by the state, federal regulation thereof is not prohibited because the functions do not produce significant consequences affecting all persons in the state and thus are not, in our definition of the term, "integral" functions.¹²

With these principles in view, we find that Eastside's function of providing mental health services to the citizens of Alabama is

10. We believe that the term "integral" relates to the nature of the state function to be given sovereign protection. Admittedly the Court in *Usery* appears in the quoted passage to differentiate an "operation" from a "function." It may be said that the phrase "integral operation" refers to the manner in which the state chooses to carry out its traditional function, including the state's structuring of its wage policies for those employees carrying out such functions. Here the term "integral" would refer both to the fact that the setting-of wage policies is crucial to the state's ability to carry out effectively a particular function, and to the fact that such policies affect the whole of the state's operations, in this case, all employees of the state. Under this view, it is of course true that any case such as the one before us involving the application of the FLSA to what is arguably a state entity involves an interference with the state's ability to structure its integral operations. In our opinion, however, the term "integral" also applies to the type of governmental function that is to be protected under a concept of state sovereignty.

At least one commentator agrees that the term "integral" is used in *Usery* to modify the type of state function involved. See Note, Taking Federalism Seriously: Limiting State Acceptance of National Grants, 90 Yale L.J. 1694, 1708 (1981). See also, *National League of Cities v. Usery*, 426 U.S. at 851, 855, 96 S.Ct. at 2476, (using phrase "integral governmental functions").

11. It bears noting that in this respect a determination of whether a function is integral requires an assessment of the effect of the federal regulation, which is in fact the third factor which the courts have considered in making sovereignty determinations. See pp. 678-679 *supra*.

12. Under our test regarding integral functions, the Court in *Hodel* could have easily found that the function of regulating the mining industry, while perhaps traditional, as the state parties argued, was nevertheless nonintegral because the federal interference did not affect the entire state citizenry.

comparitively inexpensive cost for establishing the long term alcoholism rehabilitation program so desperately needed in this state.

Secondly, the program may confront increased operational costs because of an obligation to pay clients at the facility a minimum wage while engaged in what is called "work therapy." The therapeutic design for Nugen's Ranch involved a scheme whereby clients, as part of their daily routine, would be involved in gardening, raising livestock, greenhouse activities; minor renovations on the facility, and the like. The program feels strongly that chronic alcoholics get no benefit from simply being "warehoused" at an institution for a period between six months and two years. Clients must be actively engaged in activities which will increase their health, occupy some of their time, and train them in minimal employment skills that can be helpful with their eventual reintegration into their community. This work therapy, when combined with traditional forms of counseling, should result in a high rate of success in treating chronic alcoholism.

But my analysis of state and federal law indicates that the program may be under an obligation to pay clients at least a minimum wage while engaged in the work therapy. For reasons that are not clear, state regulations pursuant to the Alaska Wage and Hour Act specifically exclude alcoholism and drug treatment programs from provisions which would otherwise enable the program to pay less than a minimum wage to clients. None of the specific exclusions of the Alaska Wage and Hour Act provide exceptions for long-term treatment facilities to pay clients less than a minimum wage. Because Alaska has not specifically identified this area of labor law as an issue of particular state concern, it is likely that federal law, in addition to state law, will require the payment of minimum wages. I have already provided SOADA with a detailed legal analysis of this problem, and am willing to provide you with a copy if you wish.

The impact on the program and the state is significant. Even with clients working only a few hours per day, the yearly cost of the program to pay a minimum wage to clients engaged in work therapy is estimated to be in excess of \$230,000 per year. This adds a substantial cost to the operation of the program on a yearly basis.

The solution to this problem may be in a legislative amendment to the Alaska Wage and Hour Act exempting patient workers in residential drug and alcoholism treatment programs from the coverage of the statute, and an amendment to the Uniform Alcoholism Intoxication and Treatment Act

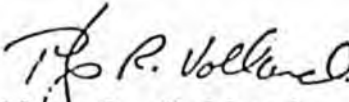
which would permit the payment of a sub-minimum wage to clients who are engaged in work therapy projects. I do not know whether legislation of this nature could be accomplished this session, and we look for your direction on this issue.

All of this is to say that the program needs your continued support on alcoholism monies this session, and assistance in possible legislative solutions to some of the problems already identified. The Ranch has been receiving strong and continued support from residents and organizations in the Mat-Su Valley, and we urge your continued support also.

You are more than welcome to call or write me if you have any questions.

Sincerely,

REESE, RICE & VOLLAND, P.C.


Philip R. Volland

PRV/kkr

cc: Leonard & Henrietta Nugen

April 2, 1982

The ¹second problem with the current scheme is that it has no provisions for addressing the problem of the Department withholding a decision with respect to a pending grant application. In The Studio Club's situation, the grant for FY '82 had not yet been awarded. Therefore, the program had not entered into a contractual relationship with the agency, and there was no grant to suspend, nor was the pending grant ever denied. All that happened was that SOADA decided to "put on hold" any transactions related to the FY '82 grant application.

Undoubtedly, the program could have pursued remedies in court to secure certain protections during the process of review. But that is an illusory remedy for a non-profit organization that depends entirely on state funding. The program simply had no funds to finance the litigation that would have been necessary to prevent the kind of administrative abuse that the program never expected to happen in the first place.

It would appear to me that regulations could be adopted pursuant to 7 AAC 78.010 et seq. to provide the kind of procedural protections that I have listed above. This would certainly happen if the legislature amended AS 47.37 to mandate the appropriate regulations.

B. The Payment of Wages to Patient Workers

An entirely separate and unique issue to the program is the question of its legal obligation to pay clients a minimum wage for activities performed during "work therapy." As you recall, the scheme of Nugen's Ranch involves client activities in gardening, greenhouse work, housecleaning, and renovation work on the facility.

Although the question seems straightforward, the answer is not. I have enclosed with this letter my legal memorandum to SOADA outlining the results of my research. I encourage you to read it so that you can get a complete understanding of the various issues involved.

Current state and federal law clearly suggests that patient workers be paid a minimum wage. This is understandable in light of the fact that the case law developed from wholesale institutional abuses of clients in mental institutions who were required to perform work of questionable therapeutic value. But viewed from the program's perspective, this obligation makes little sense. First of all, the economic impact on the program is tremendous. Our estimates are that the increased operational costs for Nugen's Ranch for paying minimum wages to 48 clients

for only a few hours of work per day amounts to \$230,000 annually. This is without an analysis of fringe, overhead costs, and the possible necessity to add additional clerical help to handle the administrative burden related to the payroll.

But the more important concern is the therapeutic value of the work to clients at the Ranch. It is in this area where the work therapy program planned for the Ranch differs from the activities normally required of patient workers in other institutions.

The program's treatment philosophy starts from the premise that it makes no sense to have clients sit around for two years while going through a long period of sobriety. The health of a chronic alcoholic has often deteriorated, and physical activity is necessary to restore this health. Equally true is the fact that a typical long-term inebriate has become a public pariah who lacks self-esteem, motivation, self-worth, and the most minimal of job skills. Work therapy can enable that individual to regain self-confidence and acquire some skills. And anyone in the treatment field will tell you that an alcoholic who has just recently stopped drinking needs something to occupy the time and energy that was once spent drinking. If nothing else, the work therapy helps keep the alcoholic from drinking by keeping him busy.

Unfortunately, the law does not address the different therapeutic values that work therapy holds for recovering alcoholics and drug addicts compared to patient workers in other kinds of institutions. The law simply applies an "economic reality test" as the rubric for when clients are to be paid the minimum wage. By definition, however, almost any form of work therapy will arguably meet the economic reality test and therefore require the payment of wages.

The options open to the program are not especially attractive. If the work therapy concept is scrapped because of the economic cost to the program, the Ranch will find itself stripped of a treatment technique which is critical to the success of the program. If the Ranch is compelled to divert substantial operational funds each year for the payment of client wages, other equally important aspects of the program - renovation, staff salaries, administration, etc. - will suffer.

Honorable Donald E. Clocksin

April 2, 1982

The legal authority for the program to recoup wages paid to clients by charging them a higher fee for their cost of care amounts to a scam that has no practical or therapeutic value. The program would simply be "paying" clients with one hand, and taking it back with the other. This kind of charade to meet the requirements of the law would only serve to generate client resentment toward the program.

The program is not suggesting that the clients be paid no wages at all. Rather, it hopes to pay the clients some form of compensation so that each client can have his or her own money to use for the purchase of incidentals and gifts during treatment, and also be able to build up a reserve fund to be used at the time of release from treatment. All the program is asking for is relief from the obligation to pay each client \$3.85 per hour.

I believe that this can be accomplished by an amendment to the Alaska Wage and Hour Act which would exempt drug and alcoholism centers from the obligation to pay a minimum wage to patient workers. I also believe it would be appropriate to amend the Uniform Alcoholism and Intoxication Treatment Act by adding a new section which would authorize the Department to fund programs for work therapy projects, including monies to pay a certain minimal compensation to clients (less than \$1.00 per hour I would think). HL 194 currently contemplates an analogous institutional employment scheme for state prisoners and it might be possible to pay residents in long-term treatment centers at the same rate.

If these amendments are considered, it would be essential to include language stating that the legislation serves an important and exclusive state function (the treatment of alcoholism through funding to private, non-profit programs). This language, I believe, would protect the program from the application of the Fair Labor Standards Act by virtue of the holding in National League v. Usury.

Unfortunately, this entire problem regarding the payment of wages to clients just recently surfaced. I realize the practical problems of seeking these amendments this late in the legislative session. Please let me know if you see any way of obtaining the relief before the session ends.

LAW OFFICES OF
REESE, RICE AND VOLLAND

A PROFESSIONAL CORPORATION

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ANCHORAGE, ALASKA 99501
(907) 276-5231

MEMORANDUM

TO: Governor's Review Board on Alcoholism

FROM: Philip R. Volland, Attorney for
Alaska Alcoholism Rehabilitation Services, Inc.

DATE: May 25, 1982

RE: Payment of Wages to Clients
Engaged in Work Therapy at Nugen's Ranch

In the program's FY '83 grant application, and SOADA's review of the funding request, reference has been made to the allocation of funds for clients engaged in work therapy at Nugen's Ranch. This memorandum has been prepared in order to assist you in evaluating the projected costs of work therapy at the facility.

As you are aware, an essential component of the treatment philosophy at Nugen's Ranch is to have clients there engage in a form of "work therapy." The work therapy is designed to provide clients with basic learning, life, and employment skills; to enhance the clients' sense of belonging at the facility; and to prevent the "warehousing" of clients over a long period of time. Work therapy projects for each client will be tailored to the client's individual treatment plan. Originally, the work therapy project was designed to involve clients in the final renovation of the facility (painting, laying carpet, etc.), as well as to involve them in gardening activities, the raising of livestock, etc.

The work therapy plan that was proposed for the Ranch raised a legal question of whether or not clients should be paid for their work. After a review of this question by my office, and the office of the Attorney General, it was concluded that the Alaska Wage and Hour Act (AS 23.10.050-150) and the the Fair Labor Standards Act, (29 USC 201 et seq.), required that clients be paid the statutory minimum wage (\$3.85 per hour) for certain work (e.g., renovations), but not for other work (such as general housekeeping). Although I disagreed with the Assistant Attorney General's conclusion about paying clients for "farming" activities, it was clear that the program would have to budget monies for the payment of clients engaged in work therapy, particularly if the work resulted in any consequential economic benefit to the

program. Without discussing the legal aspects of this particular problem in detail, I will simply note that the issue presents some far-reaching implications for residential drug and alcoholism treatment programs which involve clients in work therapy. I have at my disposal and will provide to any interested Review Board members copies of the legal opinions prepared on the issue by myself and by Linda Scocchia, Assistant Attorney General.

The uncertainty surrounding this issue presented a unique planning problem for the program this year. Because of the original plan to engage clients in a variety of work therapy, including renovation of the facility, and because the legal questions about payment were yet unresolved, the program submitted a grant request sufficient to cover the payment of wages for all anticipated work therapy. At the same time, the program pursued the alternative of complete renovation of the facility by a general contractor and the elimination of renovation work from the client work therapy plan. Both alternatives had to be pursued while awaiting a response from the Attorney General's office. As a consequence, the FY '83 grant request includes approximately \$235,000 for client wages even though the renovation contract for the facility calls for the completion of all finish work in the main building. Nonetheless, a sufficient amount of grant funds need to be allocated to the program to cover those work therapy activities which do require the payment of wages.

The program hopes to redesign its work therapy program so as to involve clients in activities which can provide the benefits of personal labor, but which will not require the payment of the statutory minimum wage. For instance, it is anticipated that clients could raise crops and bedding plants in a greenhouse for sale to the community, not be paid an hourly wage for this work, but yet retain the proceeds from sale in a special fund reserved exclusively for the benefit of clients. The program also intends to pursue legislative amendments to the Alaska Wage and Hour Act next year in order to provide a clarification of the current state of the law and enable drug and alcohol programs to fully fund work therapy projects.

None of this is to suggest that the program is opposed to paying clients a wage for the work they perform during work therapy. Rather, the payment of wages to clients has its own inherent therapeutic value -- it assists in the enhancement of personal pride and dignity and permits clients to manage their own finances. But the payment of a statutory minimum wage for all work therapy presents a significant economic cost to the program that threatens the development of successful work therapy projects unless adequate funds are provided. Hopefully, the problem can be resolved during the coming year.

Page -3-

Governor's Review Board on Alcoholism

May 25, 1982

Your evaluation of the program's request for grant funds to cover client wages should be made in recognition of the fact that this issue is yet unresolved, and that the work therapy program employed at Nugen's Ranch may not incur the expenses originally estimated by the grant request.

STATE OF ALASKA
FISCAL NOTE

Revision Date Original, 1983

I. REQUEST CS for House
Bill/Resolution No.: Bill 182 (HESS)
Title: "...residential drug abuse..."
Sponsor: Representative Barnes
Requestor: Health, Education, and Social Services

II. FISCAL DETAIL
Agency Affected: Labor
Program Category Affected: Worker Protection
ERU, Program of Subprogram(s) Affected: Labor Standards and Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		65.0	68.9	73.0	77.4	82.0
200 TRAVEL		12.4	13.1	13.9	14.7	15.6
300 CONTRACTUAL		23.2	24.6	26.1	27.7	29.4
400 COMMODITIES		2.5	2.7	2.9	3.1	3.3
500 EQUIPMENT		4.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		107.1	109.3	115.9	122.9	130.3
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		107.1	109.3	115.9	122.9	130.3
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: Not available.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: ^{RB} Robert J. Bacolas, Sr. *Robert J. Bacolas*
Division: Labor Standards and Safety

Phone: 465-4870
Date: April 26, 1983

Approved by Commissioner: ^{RB} Jim Robison *Jim Robison*
Department: Labor

Date: April 26, 1983

LEG:A:12

Distribution:

Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

Detail Bill Analysis House Bill 182

Under this bill a large segment of the work force currently entitled to full coverage for minimum wage would no longer be covered, and as a result the Department of Labors' work load to ensure workers are not abused and unfair trade practices do not occur would be increased.

The Department will require one Wage and Hour Investigator located in Anchorage to handle the additional workload. In addition, a Clerk Typist II will be necessary to lend the investigator support and free the position to make field calls.

Assumptions:

Effective date of July 1, 1983

6% per annum inflation rate

Equipment cost in FY 1984 is a one-time item

Potential for 22 separate programs that will require monitoring (13 currently operating with an average monthly capacity of 350 clients).

LEG:A:12

1.	POSITION TITLE Wage and Hour Investigator I			RANGE/STEP 16A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER HB 182	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.	
3.	CONTINUATION LEVEL	ADDITION	XX	JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT					
	1	2	3						
	PERSONAL SERVICES*								
5.	Salary	30,886							
6.	Benefits	4,902							
7.	Supplemental Benefits	1,893							
8.	Fixed Benefits	2,880							
9.	TOTAL PERSONAL SERVICES	01	40,561						
10.	Travel	02	12,400						
11.	Contractual	03	12,460						
12.	Commodities	04	1,000						
13.	Equipment	05	1,500						
14.	Other								
15.	TOTAL COST		67,921						
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts 1002							
17.		G.F. Match 1003							
18.	100	General Funds 1004		67,921					
19.		I-A Receipts 1005							
20.		Program Receipts 1028							
21.		Other							
FOR B&M USE ONLY									
4A KEY NUMBER _____									

This position will determine compliance with work therapy wage requirements; perform onsite inspection of facilities; interview patients and staff; re-review case records for determinations and personnel actions for wage rates.

The incumbent will be required to travel extensively throughout the State, therefore, \$12,400 has been requested for in-state travel.

Contractual services includes \$4,068 for indirect support services, \$3,400 in rent, and \$5,000 for basic operating expenses.

The equipment line items includes \$1,500 to purchase basic office equipment for this position.

13 REQUEST FOR
NEW POSITION

AGENCY Labor

PROGRAM Worker Protection

BRU Labor Standards & Safety

COMPONENT Wage and Hour

FY 84

Page 1 of 2

Revised Date

1.	POSITION TITLE Clerk Typist II				RANGE/STEP 7A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV. DISAP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER HB 182	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.	
3.	CONTINUATION LEVEL	ADDITION	XX	JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT					
	1	2	3						
	PERSONAL SERVICES								
5.	Salary		17,657						
6.	Benefits		2,802						
7.	Supplemental Benefits		1,082						
8.	Fixed Benefits		2,880						
9.	TOTAL PERSONAL SERVICES	01	24,421						
10.	Travel	02							
11.	Contractual	03	10,725						
12.	Commodities	04	1,500						
13.	Equipment	05	2,500						
14.	Other								
15.	TOTAL COST		39,146						
RECEIPT CODE FUNDING SOURCE									
16.			Federal Receipts	1002					
17.			G.F. Match	1003					
18.	100		General Funds	1004	39,146				
19.			I-A Receipts	1005					
20.			Program Receipts	1028					
21.			Other						
FOR B&M USE ONLY									
4A KEY NUMBER _____									

This position will lend clerical support to the Wage and Hour Investigator. Type correspondence for signature of composer; including preparation of technical or legal documents, complex material (i.e. regulations, form layouts and masters), transcribe from dictation, tape recording or draft. Compile Wage and Hour activity data, type statistical and/or investigative documentary reports.

Contractual services include \$2,325 for indirect support services, \$3,400 in rent, and \$5,000 for other normal operating costs.

The equipment line items include \$2,500 to purchase basic office equipment for this position.

13 REQUEST FOR NEW POSITION

AGENCY Labor
PROGRAM Worker Protection
BRU Labor Standards & Safety
COMPONENT Wage and Hour

FY 84

Page 2 of 2
Revised Date _____

***** BROWSE FILE IN BILL ORDER *****

BILL NUMBER	STATUTE	ACTION
HB 180	18.56.098	REFERENCE
HB 180	18.56.101	ADDED
HB 190	18.56.101	AMENDED
HB 181	01.10.070	REFERENCE
HB 181	08.03.010	AMENDED
HB 181	08.86.010	REFERENCE
HB 181	08.86.070	REPL&REIN
HB 181	08.86.150	AMENDED
HB 181	08.86.180	AMENDED
HB 182	23.10.050	REFERENCE
HB 182	23.10.055	REFERENCE
HB 182	23.10.060	REFERENCE
HB 182	23.10.065	REFERENCE
HB 182	23.10.070	ADDED
HB 182	23.10.070	REFERENCE
HB 182	23.10.075	REFERENCE
HB 182	23.10.080	REFERENCE
HB 182	23.10.085	REFERENCE
HB 182	23.10.090	REFERENCE

SELECT A BILL NUMBER AND HIT ENTER BILL NUMBER HB 182 STATUTE 2310090
 RETURN TO MAIN MENU ?

***** BROWSE FILE IN BILL ORDER *****

BILL NUMBER	STATUTE	ACTION
HB 182	23.10.090	REFERENCE
HB 182	23.10.095	REFERENCE
HB 182	23.10.100	REFERENCE
HB 182	23.10.105	REFERENCE
HB 182	23.10.110	REFERENCE
HB 182	23.10.115	REFERENCE
HB 182	23.10.120	REFERENCE
HB 182	23.10.125	REFERENCE
HB 182	23.10.130	REFERENCE
HB 182	23.10.135	REFERENCE
HB 182	23.10.140	REFERENCE
HB 182	23.10.145	REFERENCE
HB 182	23.10.150	REFERENCE
HB 182	33.32.050	REFERENCE
HB 182	47.37.245	ADDED
HB 182	47.37.270	ADDED
HB 182	47.37.270	REFERENCE
HSCR 1	24.30.130	REFERENCE
SB 1	01.10.060	ADDED

SELECT A BILL NUMBER AND HIT ENTER BILL NUMBER SB 1 STATUTE 0110060
 RETURN TO MAIN MENU ?

Section 1: (a) Authorization is given for exemption to the State minimum wage (AS 23.10.050 - 50 cents per hour greater than prevailing Federal minimum wage or \$2.60/hour whichever is greater) for participants in work therapy programs.

(b) The Commissioner is required to adopt regulations regarding payment for work therapy while considering specific criteria included in the bill.

Section 2: (a) Wages paid for work therapy are considered allowable operational costs and are eligible for reimbursement by grants.

(b) No part of wages earned may be deducted for room, board or services.

(c) Wages may be held in trust and disbursed, with consent for specific purposes.

Section 3: Work therapy is defined.

No effective date.

The impetus for HB 182 is the Nugen Ranch, a treatment facility for chronic and debilitating alcoholics. A component of the treatment program is work on the ranch in exchange for minimal compensation. With the intent on establishing lost work habits, developing self esteem, and rekindling positive work attitudes, work as therapy is used at the ranch. However, Federal and State minimum wage laws apply. HB 182 provides an exemption from the State minimum wage, which exceeds the Federal minimum wage.

Exemptions to the State minimum wage currently exist (AS 23.10.070) for:

1. Individuals whose earning capacities are reduced by physical or mental deficiencies, age or injuries.
2. Apprentices (approved by the Commissioner)
3. A learner, subject to conditions set by the Commissioner.

DISS Position: The position paper relates to HB 182, not proposed CSHB 182. It is relevant. The DISS asks that the exemption apply to programs designed to last over 120 days. Short-term programs would be required to pay prevailing minimum wage.

Fiscal Note: The fiscal note for HB 182 is zero. However, the CSHB 182 requires the development of regulations and implies that review of programs would be necessary to assure compliance with those regulations. If not done before the hearing, the fiscal note requires revision.

POSITION PAPER

HOUSE BILL 182

"An Act exempting participants in residential drug abuse and alcoholism treatment programs from Alaska's minimum wage provisions, and providing a wage scale."

The Department of Health and Social Services is supportive of this legislation.

The issues and remedies surrounding this proposed legislation arose with the advent of a long term care program for the chronic and significantly debilitated alcoholic. The individuals to be served by these programs have long histories of unemployment, skill depreciation, loss of positive employment experiences and loss of positive life experiences. Long term care is defined as treatment lasting from a minimum 120 days to a maximum of 2 years with an average length of 1 year.

One of the intents of long term care treatment program is to have clients engage in a form of work therapy as part of their overall treatment regime. Such work therapy will be designed to help the client re-establish or re-learn basic learning, life and employment skills. It is the intent of the long term care treatment program to be more than a warehouse for the most severely afflicted casualties of the disease alcoholism.

The Department is also concerned that clients' rights be protected. The Department is also concerned that short term treatment programs provide intensive therapy to appropriate clients. To this end the Department of Health and Social Services would recommend the following.

House Bill No. 182, lines 12 through 14 be amended to read:

(b) Participants in residential drug and alcoholism treatment programs [designed to exceed 120 days in length,] may be paid less than the minimum wage prescribed in AS 23.10.050-23.10.150 for work therapy, as defined in AS 47.37.270.

House Bill No. 182, lines 16 through 19 be amended to read:

Sec. 47.37.245. Wages of Patients. Participants in residential drug abuse and alcoholism treatment programs, [designed to exceed 120 days in length,] shall be paid for work therapy, as defined in AS 47.37.270, at the rates established under AS 33.32.050. [AS 33.32.050(a)].

These recommended changes would have the effect of limiting the applicability of the exemption from the minimum wage law. It is the Department's position that only long term care treatment programs (designed to exceed 120 days) be exempted.

POSITION PAPER / Department of Health & Social Service

Walter J. Jants

Recommended by:

George E. Mundell
George E. Mundell
Acting Coordinator
Office of Alcoholism/
Drug Abuse

Date:

3/1/83

Approved by:

Robert London Smith
Robert London Smith, Ph.D.
Commissioner
Dept. of Health &
Social Services

Date:

3/2/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Bill No. 182 Date on Bill: 2/9/83
 Title: "An Act exempting participants in residential drug abuse and alcoholism treatment
 Sponsor: Barnes, Clocksin, Bussell, Liska, Larson
 Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating				
Total	-0-	-0-	-0-	-0-

b. Revenues:

Revenue	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It do
not represent the policy of the Sheffield Administration or the final estimate of fis
 impact.

Prepared By George E. Mundell, Acting Coordinator *GAIA* Phone: 586-6201
 Division: Office of Alcoholism/Drug Abuse Date: 3/1/83

Approved by Commissioner: Robert Anderson, M.D. Date: 3/1/83
 Department: 7/1/83 Health & Social Services

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor

H B

1911

5/24/83 - HESS mtg. notes

Entertain Motion - none

Jan Krause - Teacher @ Warren
High School. Testified against a bill.
Don't work on bill any longer.

Tischer - In favor of concept / problem w/
bill

Krause - Reward's - Sabbatical leave program
w/certain standards

~~_____~~ - Currently, my school board may
introduce this language.

Tischer - Moves CS for SS+B 191 HESS
Object -

Alaska State Legislature

REP. MAE TISCHER
CO-CHAIRMAN

REP. MILO FRITZ
CO-CHAIRMAN

MEMBERS:
REP. MIKE MILLER
VICE CHAIRMAN
REP. BETTE CATO
REP. MIKE DAVIS
REP. PETER GOLL
REP. NIILLO KOPONEN

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3777

House of Representatives HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

To: House HESS Committee Date: 5/16/83
From: Linda Otey, Committee Aide
HESS Committee
Re: Summary/ HB 291 "An Act providing for tuberculosis exams
and quarantines"

This bill adds new sections to the Health & Safety Statutes, Article 3, Tuberculosis. Sec. 18.15 is amended which applies to Disease Control.

Sec 1.

18.15.135- Tuberculosis Exams

- a) An individual must submit to an exam, whenever in the opinion of a medical officer of the Div. of Public Health, there is a public threat.
- b) Exam shall be by written order with the individual's name and the time and place of the exam. The individual shall be served with a copy of the order.
- c) Examination by licensed physician of the individuals choice as long as the exam complies with specific conditions approved by the medical officer

18.15.136- Quarantines (new section)

- a) Maximum of 6 month quarantine allowed by medical officer of the Division of Public Health.
- b) Written notice of quarantine as in provisions for order for examination. Expires on dates specified in the order or at the opinion of the medical officer of the Division.

18.15.137- Reporting Violations (new section)

Medical Officers must report violation to nearest law enforcement agency.

18.15.138- Penalty (new section)

Violation of terms of order constitutes a Class A misdemeanor subject to a maximum imprisonment of one year and a maximum fine of \$5,000 or both.



City of Galena

Antoski Hall • P.O. Box 149 • Galena, Alaska 99741 • Telephone (907) 656-1281

December 20, 1982

Rep. Vernon Hurlbert
Pouch V
Mailing Stop 3100
Juneau, AK 99811

*Re/ HB 291,
Quarantine*

Dear Rep. Hurlbert,

The City Council of Galena is very concerned about the lack of legislation to control communicable disease in Alaska. Here in Galena we have currently and have had in the recent past outbreaks of tuberculosis. The problem becomes particularly serious when an individual refuses treatment. This individual can then infect others, and the community has no protection as there is currently no law to force the individual to seek treatment (according to our attorney, Mary Nordale, and as we understand it from the opinions of the State Attorney General's office).

Tuberculosis is a disease that can be eliminated if infected individuals follow-through on treatment. We urge the State to provide legislation to give the necessary basis to force individuals with communicable diseases, particularly tuberculosis, to seek treatment.

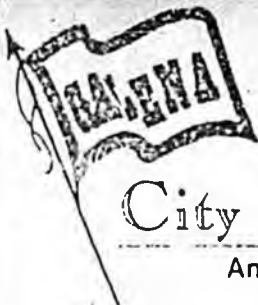
Enclosed is a resolution from the Galena City Council supporting this issue.

We appreciate your attention to this problem and interest.

Sincerely,

Pat Myers

Pat Myers
City Manager



City of Galena

Antoski Hall • P.O. Box 149 • Galena, Alaska 99741 • Telephone (907) 656-1281

Resolution 82-22

A RESOLUTION ENCOURAGING LEGISLATION SUPPORTING ENFORCEMENT OF TREATMENT OF COMMUNICABLE DISEASES, PARTICULARLY TUBERCULOSIS, IN ALASKA.

WHEREAS, the City Council of Galena is the duly authorized governing body of the City of Galena, and;

WHEREAS, the City of Galena has experienced an ongoing problem with tuberculosis and a recent outbreak of the disease, and;

WHEREAS, the City is experiencing an incident where one individual who has active tuberculosis is refusing treatment, and;

WHEREAS, the nature of the tuberculosis disease is that it can be highly contagious and endanger a whole community, and;

WHEREAS, the disease can be prevented with adequate treatment, and;


WHEREAS, there is no legislation to enforce treatment, and;

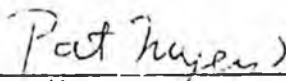
WHEREAS, the City of Galena has a strong committment to protect the citizens, and;

NOW, THEREFORE, Be It Resolved That the City Council of Galena requests the legislators to enact legislation to require individuals to obtain treatment for tuberculosis and other communicable disease.

PASSED AND APPROVE this 16th day of December ,1982

ATTEST:


Vernon White
Mayor


Pat Myers
City Manager

Article 2. Physical Examination of Nonresident Employees.

Section

60—110. [Repealed]

Secs. 18.15.060—18.15.110. Physical examinations of employees transported into state; certificate of health; return to place of residence; penalty for violations; exceptions.

Repealed by § 1 ch 130 SLA 1976.

Editor's notes. — The repealed article derived from §§ 1 — 5, ch. 103, SLA 1949.

Article 3. Tuberculosis.

Section

120. Tuberculosis control program authorized

130. Department to cooperate with other agencies

Section

140. Title to and inventory of equipment allotted to private institutions

Collateral references. — 39 Am. Jur. 2d, Health, §§ 22, 23, 27-30.

39A C.J.S., Health and Environment, §§ 7-13, 18-22, 26, 27.

Right of one detained pursuant to quarantine to habeas corpus. 2 ALR 1542.

Pesthouse or contagious disease hospital as nuisance. 4 ALR 995; 18 ALR 122; 48 ALR 518.

General delegation of power to guard against spread of contagious disease. 8 ALR 836.

Liability for committing, or aiding commitment, to contagious disease hospital of one not suffering from contagious disease. 54 ALR 656.

Power of municipal or school authorities to prescribe vaccination or other health measure as a condition of school attendance. 93 ALR 1413.

Malpractice in diagnosis or treatment of tuberculosis. 75 ALR2d 814.

Sec. 18.15.120. Tuberculosis control program authorized. The department may establish a comprehensive program for the control of tuberculosis in the state, and may

(1) arrange means by which persons in the state may be X-rayed to determine the presence of tuberculosis;

(2) establish necessary out-patient clinics for the care of tuberculosis;

(3) encourage and promote the establishment of adequate sanatorium facilities within the state to care for persons suffering from tuberculosis and allied conditions;

(4) obtain, by purchase or donation from surplus federal property or otherwise, medical supplies and equipment useful in carrying out this program and to allot or resell these supplies and equipment to private institutions engaged by the department to carry out this program;

(5) contract with hospitals, associations, or sanatoria qualified and equipped to give adequate care inside or outside the state;

(6) employ necessary and trained personnel to carry out the purposes of AS 18.15.120 — 18.15.140;

(7) pay the costs of care and incidental expenses for residents of the state, in whole or in part, depending on the ability of each patient to pay, and the temporary costs of care and transportation for nonresidents on the same basis until they can be transferred to their residence;

(8) enlist the cooperation of state and federal agencies operating in the state for the furtherance of this program;

(9) establish standards in accordance with department procedure for the care of tuberculars receiving treatment under AS 18.15.120 — 18.15.140. (§ 40-2-11 ACLA 1949)

Sec. 18.15.130. Department to cooperate with other agencies. The department, in conducting a study and case finding survey of the tuberculosis problem, shall cooperate with state and federal agencies operating in the state, and obtain as much information and data as possible from them. (§ 40-2-12 ACLA 1949)

Insert
HB 291
→

Sec. 18.15.135 - 138
Sec. 18.15.140. Title to and inventory of equipment allotted to private institutions. Equipment purchased for the purposes of carrying out AS 18.15.120 — 18.15.140 which is allotted to private institutions remains the property of the state. Before February 2 in each year, each allottee shall file a complete inventory of the equipment with the department. (§ 40-2-13 ACLA 1949)

Article 4. Prenatal Blood Tests.

Section	Section
150. Taking of blood sample	170. Report of birth
160. Test for syphilis	180. Penalty

Collateral references. — 39 Am. Jur. 39A C.J.S., Health and Environment, 2d, Health, §§ 22, 26, 27. §§ 7-15, 47.

Sec. 18.15.150. Taking of blood sample. Each licensed physician and in absence of a licensed physician each licensed graduate nurse who attends a pregnant woman for conditions relating to her pregnancy during the period of gestation or at delivery shall take, or have taken, a sample of the blood of the woman at the time of her first professional visit or within 10 days after the visit, unless the serological test is contrary to the tenets or practice of the religious creed of which she is an adherent. The blood specimen shall be sub-

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POSITION PAPER / Department of Health and Social Services

POSITION PAPER
HOUSE BILL NO. 291

For an Act entitled: "An Act providing for tuberculosis examinations and quarantines."

This Bill provides the Department of Health and Social Services with authority to require an individual suspected of having an active case of pulmonary tuberculosis to submit to an examination and to order the quarantine of a person with active pulmonary tuberculosis for a period of six months when such action is necessary to preserve and protect public health.

While tuberculosis is not the enormous health problem it was in the 1950s, a large number of persons infected in earlier years are at risk of re-activation of their disease and of being capable of spreading the disease to others. Over the past ten years, new active cases have numbered between 75 and 100 cases per year, placing Alaska among the five states with highest incidence.

Most persons with active tuberculosis are highly motivated to comply with treatment recommendations intended to render them non-infectious and to inactive their infections. A very few people, however, refuse to submit to examination or to accept treatment recommendations. Such individuals are a hazard to themselves, their families, communities and the general public.

The existing authority of the Department to require examination, isolation or treatment of individuals with communicable disease who may threaten the health of the public is not clear.

It is expected that the authority contained in this Bill would be exercised infrequently. Based on past experience, the estimate is that orders for examination may be required three times per year. Quarantine orders would be used even less frequently, perhaps not even one per year as the public becomes aware of a statutory provision which could compel quarantine.

The Department anticipates that on the rare occasions when quarantine may be required, it would be accomplished by restricting the individual's movements within his or her own home.

The Department supports passage of this Bill. Over the past few years, many cases of tuberculosis could have been avoided, including one near-fatal infection, had the source of infection been prevented from spreading the disease to others.

Recommended by: E. S. Rabeau
E. S. Rabeau, M.D., Director

Date: March 31, 1953

Approved by: Robert London Smith
Robert London Smith, Ph.D.
Commissioner
Department of Health & Social Services

Date: 4/4/53

I. REQUEST
 Bill/Resolution No.: House Bill No. 291
 Title: "Tuberculosis examinations & quarantines"
 Sponsor: Hurlbert
 Requestor: House HESS

II. FISCAL DETAIL
 Agency Affected: Health & Social Services
 Program Category Affected: Health
 BRU, Program of Subprogram(s) Affected: Communicable Disease Control

E. PENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING	0	0	0	0	0	0
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LANDS & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
	0	0	0	0	0	0

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dean F. Tirador, M.D. *4/11* Phone: 465-2113
 Division: Public Health Date: 3/30/83
 Approved by Commissioner: *Robert Gordon Smith* Date: 4/14/83
 Department: Health and Social Services

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/8/83

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FEB 23 1983

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB - 191
Title An act relating to school board negotiations with certificated...
Requested by House BESS Date 2/18/83

II. FISCAL DETAIL

Agency Affected Department of Education
Program Category Affected Elementary and Secondary Education
BRU, Program, Or Subprogram(s) Affected _____
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-		

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
OPERATING						
CAPITAL						

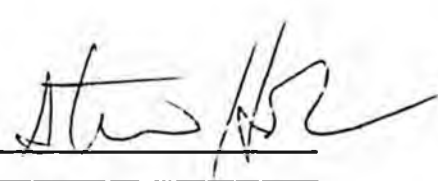
POSITIONS N/A

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

THIS FISCAL NOTE IS PRESENTLY BEING REVIEWED BY THE OFFICE OF MANAGEMENT AND BUDGET.

This bill has no fiscal impact on this department.

IV. DATE 2/18/83 PREPARED BY Steve Hole 

Original: Legislative Finance AGENCY Education
cc: Budget and Management PHONE 465-2865

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82)

Summary: HB 191 by Rep. Hurlbert

"An act relating to school board negotiations with certificated employees."

Section 1. AS 14.20.550 - Negotiation with Certificated Employees

1. Adds a new subsection under "Article 6, Negotiation and Mediation.
2. Mandates that negotiations on or after July 1, 1984 must include criteria based on performance and merit in determining pay increases.

Suggested Amendment - by Bob Greene, School Board Association

line 14 pg. 1 = delete "above" and insert "when determining".

folder content:

left

fiscal note Ø
summary

right

back-up provided by Rep. Hurlbert
bill

Original sponsors: Hurlbert, Lindauer,
Fuller, et al

1 IN THE HOUSE BY THE HEALTH, EDUCATION AND
2 SOCIAL SERVICES COMMITTEE

3 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 191 (HESS)

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 THIRTEENTH LEGISLATURE - FIRST SESSION

6 A BILL

7 For an Act entitled: "An Act relating to school board negotiations with
8 certificated employees."

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

10 * Section 1. AS 14.20.550 is amended by adding a new subsection to
11 read:

12 (b) Salary schedules or other pay provisions negotiated under
13 this section that take effect on or after July 1, 1984, shall include
14 performance and merit criteria, among others, that shall determine pay
15 increases for individual certificated employees.

16
17 *ASSBA - in support of this CS*

18 *1) Shall - change shall to may. pg 1 & 13*

19 *2) Days - could suggest some variation award for an exceptional
20 teacher*

Proposed HESS committee substitute for HB 191

Change Section 1 new subsection s

Add the following paragraphs

(c) The parties may agree to waive the requirement that pay scales for certificated employees include criteria based upon performance and merit.

(d) In the event a negotiations dispute between the parties is not resolved through mediation either party may submit the issues in dispute to last best offer arbitration, item by item, according to the interest arbitration procedures of the American Arbitration Association. The decision of the arbitrator will be final and binding on the parties.

(e) ~~The objective criteria used to evaluate performance and award merit pay increases and class size and pupil/teacher ratios shall be established by the parties through the collective bargaining process.~~

Binding Arbitration

NEA Proposal

not

Bob Cook

Del-Phi - Technique - Copies to Committee

SS. 85191 -

Huller - no way to implement it - School Districts will implement this. Reagan - encourages merit & confidence rather than tenure.

David Weaver - 30 yr Fed Personnel Officer - last stint - BIT Perf evaluation - A history in Federal govt. Good intentions but doesn't work. Worked hard @ trying to make this work - come down to us. Got our opinion & they were no better for heavy standards.

Negotiations - must be perf evaluation standards before this can come to the table. Save this effort - try to legislate something with foresight of knowledge to implement. Syracuse N.Y. - involve relationship of Superintendents &

Davis - Fed's still use merit pay.

Weaver - 1971 Retiree doesn't know answer.

Doll - Opinion - Test for competency prior to certification - Any rep see as a personnel

Weaver - Rather than having someone in authority, doing merit - importance must come from ind. himself - create a climate where employees want to do better.

SS HB191

M. Miller - Conflict of Interest - wife is school teacher.

Davis - objected

Dall - Bonus System? How do you feel about replacing this w/ boards granting bonus w/o eliminating standardized salary structure.

Hurlbut - agrees w/ intent to get teachers to excel.

Kitty - Which one is better

Hurlbut - Sponsor Sub.

~~John~~

Elizabeth Morris - from Kkks (Parent) agrees w/ SS HB 191

Sends children to private school. Flks. 50% drop out rate w/ Native children. 1500 Native kids vs 11,900 Caucasian children in Flks. Drop out rate is effected by teachers. Johnson O'Malley program. Good Program. 70% drop-out rate in Anchorage.

~~John~~

Bob Greene - In favor of Sponsor Substitute

Total Merit System in one shot - not feasible.

- Dissenari to teachers & education. Move from indiv approach to salary schedule which is complex.

- 1) Experience 5% p yr
- 2) additional educ component = 5%
- 3) annual negotiation = 7%

Your teacher could have 17% pay raise.

B. Green continued.

- ① Put Merit component in there. Must improve.
- ② Can't pay for it = salary in Pac N.W. - 12,000 - 26,000
engineers in Pac N.W. @ 26,000. - Brain drain
from Educ to other occupations.

Evaluation System is a force. Reg's require evaluation annually. So then the expense for no reason.

Goll - Why did so many teachers quit in ~~San~~
Hydaburg last year? - Salary - no - not one
person has left b of \$ - b of bad
management.

* Merit pay could be used to punish teachers -
What ~~can~~ kind of safeguards to insure against this?
Don't dispute intent of 191 b this is too loose!

* Greene - Futuristic legislation. 1st year that we have
attention w/ problem of funding education. A lot of work
to put this together administratively. local groups will
set up criteria - this is ~~not~~ a guarantee. So long
as item is mentioned in

* - binding arbitration that ~~is~~ is in statutes for
grievance procedures

Can negotiate anything you want now w/o this bill. -
Merit or otherwise.

Prity - Short of teachers? - Greene Bush yes - Urban - no

Steve Hole - opposes bill - concerns deal w/ criteria established & who makes determination & due process rights under this type of salary schedule -
* l 12 "shall include criteria" - worrisome language.

~~Muller~~ - SS & HB 191 - l 14 differences "above" vs "when determining" - dept opposed to both?

Hole - Original bill was in form of bonus - not as much problem as in the Spon. sub "when determining."

Tischler - Are you suggesting we set down criteria

Hole - Not suggesting anything - All negotiated agreements must include . . . Based on performance and merit

Fritz Any objective criteria by which you can judge a teacher

Hole - Yes possibly - difficult to isolate on classroom characteristics. Did not mean to lead you to believe that the confrontations will occur everywhere.

Doll - agree to benefits to higher achievement & still a worry about the exceptions. School Boards can back off w/ binding arbitration. Does not specify what we are doing.

Tischler Maybe we have to define merit & performance

Hole - Pertains to a process that is on going. - a § will also accompany HB 191.

Jean Krause. Pres of NEA - Teacher salaries. -
also Principals (Administrative groups)

- ① Force out incompetent educators?
- ② Evaluation procedures.
- ③ Support written evaluation procedures @ the
beginning of the school years.
- ④ Certification, Teacher - not a merit proposal
- ⑤ Is the intent to lower salaries - 55% rule -
Teacher salaries are included under 55% not
administrators.
- ⑥ Boards can hire & fire.
- * ⑦ None has statewide merit pay plan thru out states.
- ⑧ Merit pay abandoned in Arch for Principals
& favoritism, harassment, beholden to supervisors
decrease idea of sharing - promotes competitiveness.
- ⑨ Supports Very Strong evaluation procedure
- ⑩ " Teacher preparation plans @ Universities
- ⑪ Talent Bank - should be used in teacher preparation

^{curriculum}
Take Care of Evaluation System

↔ Held until a later date -

↔ Davis - ^{to Krause} ~~Don~~ Available Articles ref Merit Pay.

New task force pushes rewarding good teachers

RESEARCH TRIANGLE PARK, N.C. (AP) — A task force on education says states must begin giving rewards to teachers for doing a good job.

"No public school system in America pays one teacher one penny more for doing a good job," Tennessee Gov. Lamar Alexander lamented. "They can make a little more for going back to school. They can make a little more for going into administration."

Alexander and seven other governors and 31 business and education leaders met here Wednesday as the National Task Force on Education for Economic Growth. They recommended that each state find ways to give "extraordinary rewards for extraordinary teachers."

The task force was convened because of what it called an emergency in American education. Its report will be issued early in the summer.

IBM Corp. Chairman Frank Cary, the co-chairman of the task force, said the draft agrees with a 29-page report released last week by the federal government's Commission on Excellence in Education, which put responsibility for improving education with school boards and state officials.

Alaska State Legislature



House of Representatives

REPRESENTATIVE
RAMONA L. BARNES

HOUSE MAJORITY LEADER

MEMBER

RULES COMMITTEE

JUDICIARY COMMITTEE

LEGISLATIVE COUNCIL

POLICY COMMITTEE

ALASKA REPRESENTATIVE

STATES RIGHTS COORDINATING COUNCIL

WESTERN LANDS TASK FORCE

CITIZENS ADVISORY COMMISSION
ON ALASKA LANDS

ANCHORAGE

2230 PAXSON
ANCHORAGE, ALASKA 99504
(907) 337-7904

POUCH V

JUNEAU, ALASKA 99811
(907) 485-3718

April 13, 1983

To: Representatives Tischer, Fritz, Co-Chairs
Health and Social Services Committee

From: Representative Barnes
Majority Leader

A handwritten signature in cursive script that reads "Ramona L. Barnes".

Subj: Priority Bill
SSHB 191

The above referenced bill is a personal priority of Representative Vern Hurlburt. I would appreciate your moving it out of committee.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 23, 1983

SUBJECT: Education of exceptional children
(CSHB 194 (HESS))

TO: Representative Milo Fritz
Chairman, House Health, Education, and
Social Services Committee

FROM: Keith B. Levy *KL*
Legislative Counsel

You have asked whether CSHB 194 (HESS) requires a school district to provide special education and related services to an exceptional child whose parent refuses to consent to the transfer of the child to another school district that already offers an appropriate special education program. In my opinion, the bill does not necessarily require this and an amendment is necessary to make it clear.

Sections 5 and 6 of the committee substitute amend AS 14.-30.186 to provide that school districts and regional educational attendance areas shall provide special education and related services in a school in the district for exceptional children residing in the district. Sec. 13 of the committee substitute amends AS 14.30.285(b) to provide that an exceptional child may be sent to a school outside the child's school district under certain circumstances. AS 14.30.-285(f) provides that a child may not be transferred out of the district without the consent of the child's parent.

Thus, the school district has an obligation to provide special education and related services unless the child is transferred, but the child cannot be transferred unless the parent consents. The argument could be made that if the school district offers to transfer the child and the parent refuses to consent, the district has fulfilled its obligation to provide special education. To foreclose this possibility, I would recommend the following addition to the bill:

Representative Milo Fritz
Page 2
May 24, 1983

* Sec. . AS 14.30.285(f) is amended to read:

(f) No child may be transferred to a school outside the district in which the child resides without the consent of the parent or guardian. The withholding of consent to transfer an exceptional child by a parent does not relieve a school district or regional educational attendance area of the obligation to provide special education and related services to an exceptional child under AS 14.30.186.

This amendment would make it clear that the school district must provide special education and related services even if the parent refuses to allow the child to be transferred to a school outside of the district.

KBL:ljb
21/021

Proposed HESS committee substitute for RB 191

Change Section 1 new subsection s

Add the following paragraphs

- (c) The parties may agree to waive the requirement that pay scales for certificated employees include criteria based upon performance and merit.
- (d) In the event a negotiations dispute between the parties is not resolved through mediation either party may submit the issues in dispute to last best offer arbitration, item by item, according to the interest arbitration procedures of the American Arbitration Association. The decision of the arbitrator will be final and binding on the parties.
- (e) ~~The objective criteria used to evaluate performance and award merit pay increases~~ and class size and pupil/teacher ratios shall be established by the parties through the collective bargaining process.

binding arbitration question

d & e Add to the NEA's statute in the negotiation process. (d) sets up last best offer arbitration to all negotiation items unless somehow restricted to just merit pay - it applies to every issue which is

(e) ~~allows~~ requires the district to negotiate class size and teacher ratio. Items that management tries to keep as a management right. These amendments do more than affect merit pay! (d) & (e) NOT GERMAN to the MERIT PAY BILL.

Introduced: 2/25/83
Referred: Health, Education &
Social Services and Finance

BY HURLBERT, LINDAUER, FULLER,
ABOOD, BARNES, BETTISWORTH,
BUSSELL, COWDERY, FLOOD,
HAYES, LISKA, MARTIN,
M.W. MILLER, PESTINGER,
TISCHER AND WARD

1 IN THE HOUSE

2

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 191

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to school board negotiations with
certificated employees."

7

8

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

9

* Section 1. AS 14.20.550 is amended by adding a new subsection to
read:

10

11

12

13

14

15

mandatory - in negotiations
(b) An agreement negotiated under this section that takes effect
on or after July 1, 1984, shall include criteria based on performance
and merit which govern pay increases for individual certificated
employees when ^{above the} determining the general pay scale established for all
employees.

apply to negotiations prior to contract.

*Pretty Ambiguous - SAYS you must use individual
Performance & merit criteria when establishing
GENERAL SCALE for ALL employees. How does
he RECONCILE using merit when determining a
Scale for ALL?*

Introduced: 2/25/83
Referred: Health, Education &
Social Services and Finance

BY HURLBERT, LINDAUER, FULLER,
ABOOD, BARNES, BETTISWORTH,
BUSSELL, COWDERY, FLOOD,
HAYES, LISKA, MARTIN,
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1 IN THE HOUSE

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 191

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to school board negotiations with
7 certificated employees."

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10 read:

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13 and merit which govern pay increases for individual certificated
14 employees (when ~~determining~~ ^{determine} ^{above}) the general pay scale established for all
15 employees.

Legislative history reports. — For report on ch. 18, SLA 1970 (HB 391 am S), see 1970 Senate Journal, p. 296.

Opinions of attorney general. — While these provisions waive the state's sovereign immunity and that of its political subdivisions from having to bargain collectively with teachers in the public schools, they do not address, expressly or

even impliedly, any right to strike on the part of teachers of school districts. May 19, 1977, Op. Att'y Gen.

Teachers of school districts do not presently have the right to strike because the state has not waived its or its political subdivisions' immunity from strikes by teachers. May 19, 1977, Op. Att'y Gen.

Collateral references. — 48A Am. Jur. 2d Labor and Labor Relations, §§ 1727 — 1775.

51A C.J.S. Labor Relations, § 402.
Right of school authorities to make membership or nonmembership in teachers' association or other organization

a condition of employment as a teacher. 72 ALR 1225.

Bargainable or negotiable issues in state public employment labor relations. 84 ALR3d 242.

Union security arrangements in state public employment. 95 ALR3d 1102.

Sec. 14.20.550. Negotiation with certificated employees. Each city, borough and regional school board, shall negotiate with its certificated employees in good faith on matters pertaining to their employment and the fulfillment of their professional duties. (§ 1 ch 18 SLA 1970; am § 3 ch 71 SLA 1972; am § 21 ch 124 SLA 1975)

NOTES TO DECISIONS

Constitutionality. — This section and AS 14.20.610 state two goals which apparently conflict, but since the supreme court construes this section fairly and narrowly, it finds no constitutional infirmity in this section and AS 14.20.610. Kenai Peninsula Borough School Dist. v. Kenai Peninsula Educ. Ass'n, Sup. Ct. Op. No. 1537 (File Nos. 2470, 2492, 2563), 572 P.2d 416 (1977).

Requirements of section. — This section merely requires a school board to negotiate with a union. It does not require a board to accept any particular proposal a union might offer. It does not require probably does not permit, a board to negotiate to a union the sole power to make a decision. Kenai Peninsula Borough School Dist. v. Kenai Peninsula Educ. Ass'n, Sup. Ct. Op. No. 1537 (File Nos. 2470, 2492, 2563), 572 P.2d 416 (1977).

As to matters which affect educational policy and are, therefore, not negotiable, there is nevertheless

implicit in the Alaska Statutes the intention that the school boards meet and confer with the unions. Kenai Peninsula Borough School Dist. v. Kenai Peninsula Educ. Ass'n, Sup. Ct. Op. No. 1537 (File Nos. 2470, 2492, 2563), 572 P.2d 416 (1977).

Negotiable items. — Salaries, fringe benefits, the number of hours worked, and the amount of leave time are negotiable. Kenai Peninsula Borough School Dist. v. Kenai Peninsula Educ. Ass'n, Sup. Ct. Op. No. 1537 (File Nos. 2470, 2492, 2563), 572 P.2d 416 (1977).

The salary of teachers is a proper subject of collective bargaining under Alaska's statutes. Rouse v. Anchorage School Dist., Sup. Ct. Op. No. 2106 (File No. 4715), 613 P.2d 263 (1980).

Nonnegotiable items. — Such items as (1) relief from nonprofessional chores, (2) elementary planning time, (3) paraprofessional tutors, (4) teacher specialists, (5) teacher's aides, (6) class size, (7) pupil-teacher ratio, (8) a teacher



ANCHORAGE
SCHOOL DISTRICT

4600 DeBarr Avenue
Pouch 6-614
Anchorage, Alaska 99502
[907] 333-9561

SCHOOL BOARD

PRESIDENT
Lee Gorsuch

VICE-PRESIDENT
John Buchanan

CLERK
Alyce Hanley

DEPUTY CLERK
Frank Wadsworth

TREASURER
Tom Schellenberg

DEPUTY TREASURER
Past President
Jim Robinson

LEGISLATIVE COUNSEL
Bettye Davis

DEPUTY LEGISLATIVE COUNSEL
(Gene) Davis, Ed. D.

April 15, 1983

Ms. Jean Krause
President, NEA-AK
174 South Franklin, #201
Juneau, AK 99801

Dear Jean:

I am aware that you testified before the Legislature last week on merit pay for administrators. What you are probably not aware of is the fact that I was involved in merit pay for principals for two years when I previously served as supervisor for elementary principals in the Anchorage School District. For your information, this provision was included in the negotiated agreement between the principals and the District.

It is interesting to note that while the concept seems to be worthwhile and would probably provide equity in compensation for our administrators, you should also note that the administration of a merit pay plan is cumbersome, inequitable and subjective. I would not recommend merit pay for teachers or administrators now or in the near future.

Should you need further information on the provisions of our merit pay plan, please call me.

Sincerely,

Rita R. Strachan

Rita R. Strachan
Director of Personnel Services

ms



Anchorage Principals' Association

ANCHORAGE, ALASKA 99501

April 15, 1983

APR 19 1983

Ms. Jean Krause, President
NEA-Alaska
147 S. Franklin #201
Juneau, Alaska 99801

Dear Ms. Krause:

The Anchorage Principals' Association strongly opposes merit pay. We experienced three years of merit pay during the tenure of our previous negotiated agreement with the Anchorage School District. As a result of this experience, the principals had as their number one priority, during negotiations for our present agreement, the elimination of all merit pay items.

Merit pay drove a wedge between supervisors and staff at all levels. It interfered with effective employee evaluation, making it extremely difficult to maintain a trusting, working relationship between supervisor and subordinates.

In theory, merit pay sounds like a great way to provide incentive and reward for top performance. In practice, it is a means to favor those who follow, without question, and it divides the ranks, causing an atmosphere of mistrust and non-sharing of good, innovative, successful educational and managerial practices.

Respectfully yours,

William Frick
President

. jm

(b) Salary schedules or other pay provisions negotiated into an agreement under the provisions of this section that take effect on or after July 1, 1984, shall include performance and merit as one criteria, among others, which shall determine pay increases for individual certificated employees.

Summary: HB 191 by Rep. Hurlbert

"An act relating to school board negotiations with certificated employees."

Section 1. AS 14.20.550 - Negotiation with Certificated Employees

1. Adds a new subsection under Article 6, Negotiation and Mediation.
2. Mandates that negotiations on or after July 1, 1984 must include criteria based on performance and merit in determining pay increases.

Suggested Amendment - by Bob Greene, School Board Association

line 14 pg. 1 = delete "above" and insert "when determining".

folder content:

left

fiscal note Ø
summary

right

back-up provided by Rep. Hurlbert
bill

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FEB 23 1983

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB - 191
Title An act relating to school board negotiations with certificated...
Requested by House HESS Date 2/18/83

II. FISCAL DETAIL

Agency Affected Department of Education
Program Category Affected Elementary and Secondary Education
BRU, Program, Or Subprogram(s) Affected _____
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-		

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
OPERATING						
CAPITAL						

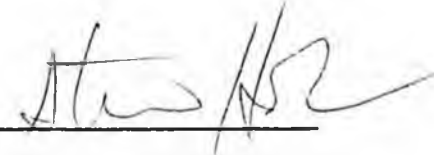
POSITIONS N/A

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

THIS FISCAL NOTE IS PRESENTLY BEING REVIEWED BY THE OFFICE OF MANAGEMENT AND BUDGET.

This bill has no fiscal impact on this department.

IV. DATE 2/18/83 PREPARED BY Steve Hole 
AGENCY Education
Original: Legislative Finance PHONE 465-2865
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/82)

Introduced: 2/11/83
Referred: Health, Education &
Social Services and Finance

BY HURLBERT, LINDAUER, FULLER,
ABOOD, BARNES, BETTISWORTH,
BUSSELL, COWDERY, FLOOD,
HAYES, LISKA, MARTIN,
M.W. MILLER, PESTINGER,
TISCHER AND WARD

1 IN THE HOUSE

2

HOUSE BILL NO. 191

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to school board negotiations with
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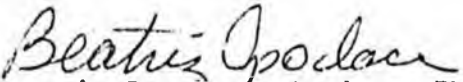
when determining

February 16, 1983

Vernon L. Hurlbert
House of Representatives
State Capitol
Pouch V
Juneau, AK 99811

I am pleased to hear of your interests on Merit Pay for Teachers. For accountability purposes and to ensure full involvement on the part of students, I certainly support this effort. We at Yukon Flats are very concerned on the low achievement of students and lack of student motivation. The District has taken steps by developing a Teacher Incentive Plan (see attached), High School Requirements (see attached) and curriculum development district wide. We are also establishing eligibility criteria of "C" for any travel on school related activities as well as an incentive plan for students on academic achievement and attendance.

We have been negotiating a teachers contract for the past nine months. We are at impasse. I did recommend a Merit Pay System for teachers. Our professional negotiator did not recommend it due to difficulty we have had in negotiating a reasonable contract that we can live with. Also, because this would be introducing a new concept in Alaska which may not be acceptable. I am enclosing my idea for your review. I encourage you to pursue this effort. I look forward to seeing you next week.


Beatriz Garcia de Apodaca, Ph.D.
Superintendent

Enclosures

BA:lk

MERIT PAY FOR TEACHERS

Teacher Initiative The District will award two of a possible eight merit points for teacher initiative, i.e. projects of activities that the teachers themselves choose to carry out. Teachers may earn their points in the basic curriculum; others may prefer to create new elective courses in area of interest. For example a teacher with a Master's Degree in Music may elect to teach music to junior high school students during her preparation period.

Teacher Cooperation The District will award four of a possible eight merit points for group efforts, in which teachers join forces to focus on a common goal. High school teachers, for example, unite to develop and implement a consistent disciplinary program, and they will receive merit points according to the degree of their success. Others may work to establish writing, health and physical education programs across the curriculum. Others may earn points for their cooperative efforts to organize contests and extra curricular activities.

The Principal's Role Only three points of the possible eight merit points may a teacher earn dependent on the principal's evaluation.

The Role of the School Board The Board draws up annual guidelines for teachers' proposals and then negotiates through a committee--discussing possible objectives, activities and methods of evaluation.

<u>Merit Points</u>	<u>Dollars</u>
1	\$320
2	320
3	320
4	320
5	320
6	320
7	320
8	320

February 1, 1983



MEMORANDUM

TO: Teaching Staff

FROM: Beatriz Apodaca, Superintendent *Beatriz*

SUBJECT: 1983-84 YFSD Teacher Incentive Plan

To encourage excellence in teaching and to improve student learning the following Incentives will be offered by YFSD.

Plan A. Participating in the Alaska State Writing Consortium
Mary Morris and Debbie Drong-Bjork participated in the Writing Consortium last summer in Fairbanks. Attached see Mary's enthusiastic remarks about this program. YFSD will again be able to send two teachers to the Consortium.

The consortium is made up of 13 Alaskan Districts which have joined together to help children learn how to write. The consortium offers a four-week course for teachers of all subject areas and all grades who want to see students write better. This also will provide you with the opportunity to earn five graduate credits.

Attached is selection criteria and how to apply, as well as other literature in the Alaska State Writing Consortium that may influence your decision.

Plan B. The District will award \$400 to any two teachers in the District to purchase classroom materials, visit other programs in the state or observe other teachers in our District. Awards will be based on teacher initiative, student motivation and excellence in teaching.

1. Teachers may choose to carry out a project or activities within the basic curriculum Language Arts, Health, Science, Math or Computer Literacy.
2. Teachers may prefer to create new elective courses grounded in personal interests. For example, an elementary teacher with a masters in English may elect to teach a course in publications.
3. Teachers may join forces to focus on a common goal. For example, developing and successfully implementing a consistent disciplinary program, organizing contests and extra-curricular activities.

Teaching Staff - 1983-84 Incentive Plan

4. Administrative & Program staff will identify exemplary programs by March of 1984. If you are initiating any programs and would like YFSD staff to observe let us know in advance.

cc: Estelle TaFoya, Assistant Superintendent
Charlotte Conner, Curriculum Specialist

enclosure:

BA:dgc

YUKON FLATS SCHOOL DISTRICT
HIGH SCHOOL REQUIREMENTS

To earn a high school diploma from the Yukon Flats School District, a student must satisfactorily complete 21 required credits as shown below:

<u>SUBJECT</u>	<u>CREDITS REQUIRED</u>
<u>*English I, II, III and IV, required:</u> To include speech, reading, comprehension, vocabulary building, grammar, written communications, content analysis, literature, leadership, critical thinking and applied skills.	4 credits
<u>Mathematics, required, select from:</u> General Math, Pre-Algebra, Algebra I, Algebra II, Geometry, Trigonometry, and/or Calculus or computer literacy.	3 credits
<u>Social Studies, select from or add to:</u> Alaska History with focus on Native cultures $\frac{1}{2}$, 1 unit US History, US Government $\frac{1}{2}$, World History $\frac{1}{2}$, Geography $\frac{1}{2}$, Economics $\frac{1}{2}$.	2 $\frac{1}{2}$ credits
<u>Science, select from or add to:</u> General Science, Biology, Physics and/or Chemistry.	2 $\frac{1}{2}$ credits
<u>Physical Education, possible courses are:</u> Gymnastics $\frac{1}{4}$, Skiing $\frac{1}{4}$, Roller Skating $\frac{1}{4}$, Ice Skating $\frac{1}{4}$, Basketball $\frac{1}{4}$, Track $\frac{1}{4}$, Wrestling $\frac{1}{4}$.	1 Credit
<u>Health & Family Living, required:</u> To include alcohol and drug abuse in an integrated approach.	$\frac{1}{2}$ credit
<u>Fine Arts, select from or add to:</u> Music, Drama, Art, Photography.	1 credit
<u>College Careers, required:</u> Vocational and Academic	$\frac{1}{2}$ credit
<u>Business and Finance, required:</u> Native Land Claims and Corporate Structure.	$\frac{1}{2}$ credit
<u>Electives, select from:</u> Vocational Education courses (Business, Trades and Industry, i.e. Business Math, Consumer Math, Economics, Aviation Science, Foreign Languages, Native Language or others.)	5 $\frac{1}{2}$ credits
	21 TOTAL CREDITS

*English must be taken in each year of the 9-12 program.

Credits: One credit is defined as 130 clock hours of instruction.

Note: As the curriculum is developed, specific courses in a specific sequence will be adopted in math, social studies, science & fine arts.

ADOPTED: AUGUST 1982

Applicable to incoming Freshmen.

YUKON FLATS SCHOOL DISTRICT
HIGH SCHOOL COURSE OF STUDY PLAN

STUDENT'S NAME _____ GRADE _____ DATE _____

Instructions: Circle or write in courses from attached requirements as needed.

Requirements	Units	Credits Earned	Credits Needed	Date Approved	Supervisor's Signature
<u>Freshmen</u>					
- English I	1				
- General Math or Pre-algebra/ Algebra I	1				
- Social Studies	½				
- Native Land Claims	½				
- Science	½				
- P.E.	½				
- Electives (Gwitch'n)	1				
TOTALS	5				
<u>Sophomore</u>					
- English II	1				
- Algebra I or II	1				
- Social Studies	½				
- Science	1				
- P.E.	½				
- Health & Family Living	½				
- Electives (Gwitch'n)	½				
TOTALS	5				
<u>Junior</u>					
- English III	1				
- Algebra I, II or Geometry	1				
- Social Studies	½				
- Science or Computer Literacy	½				
- Fine Arts	½				
- Electives	2				
TOTALS	5½				
<u>Senior</u>					
- English IV	1				
- Social Studies	1				
- Science	½				
- Fine Arts	½				
- Careers	½				
- Electives	2				
TOTALS	5½				

GRAND TOTAL _____



THE LAKE AND PENINSULA SCHOOL BOARD

SARA HORNBERGER, President 1976-1981
~~Port Alsworth, Alaska 99653~~
P.O. Box 69, Iliamna, AK. 99606

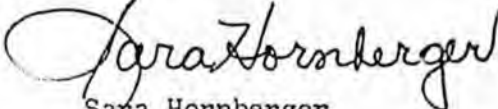


Dear Representative Hurlburt:

Thank you for your letter of information about the bill to allow districts to give merit pay to exceptional teachers. I do support the bill with one reservation. It is not always easy to administer such a program. It is often difficult to draw the line as to where merit pay is warranted and where it is not. At this time, many school districts are paying bonuses to teachers of science and math often without regard to the ability of the teacher in the discipline and/or ability as a teacher. The teachers' unions also make it difficult to give merit pay. They protect the teachers no matter what their abilities just because they are teachers and pay their union dues (and I say this as a life member of the National Education Association and an honorary member of NEA-Alaska). However, a bill such as yours is good because it forces us to take time to face the issue and come up with guidelines, etc.

As a teacher of 17 years and a rural board member of seven years, I oppose binding arbitration in any form and I also oppose giving teachers the right to strike. Several times when I was teaching, our union tried to pull a strike and I always refused to strike (and my refusal sparked other refusals so the strike always failed). It is my opinion that public employees do not have the right to strike and if a person doesn't like that, go get another job. Back to binding arbitration. The taxpayers are the ultimate authority in the schools and if we give away binding arbitration, we might just as well disband publically elected school boards of directors and let the teachers elect a committee to run the schools.

Best wishes,


Sara Hornberger

What's Wrong With Our Teachers

Low prestige and few rewards are discouraging top students from entering the profession. Result: Too many instructors who don't measure up to the challenge.

A Texas elementary-school teacher gave a reading lesson under her hand-printed sign: "Patient is a virtue."

A Salt Lake City English teacher renowned for his excellence quit the classroom to earn twice as much in another job—driving a truck.

These cases illustrate two sides of a growing crisis in America's public schools: On the one hand, too many classrooms are burdened with teachers improperly prepared for their work. On the other, thousands of competent instructors are being lured from their jobs by more rewarding work elsewhere.

Educators insist that teachers don't deserve all the blame for the decay in American education as evidenced, for example, by the decline of Scholastic Aptitude Test (SAT) scores to a national average of 893 in 1982, from 958 in 1967. Factors such as budget cuts, curricula changes, classroom violence and competition for students' interest from TV and other outside forces also are cited for causing poor performances.

Increasingly, however, leading scholars insist that reform of the nation's schools—crucial to maintaining America's technological leadership—must start with teachers.

In a major study of the American teacher to be released in mid-March by a panel of top educators, project director Emily Feistritzer concludes: "The real crisis in teaching today is in who is entering the profession. And if we don't do something about that now, it will hurt America's competitive standing in the future."

Many remedies are being undertaken to reverse the situation. Colleges of education are raising their admissions standards, and beginning teachers are being tested to weed out incompetence. Higher pay is being considered in some areas.

To relieve a teacher shortage in math and science, the House of Representatives on March 2 approved a 425-million-dollar program designed to put more qualified instructors in the classroom. The bill, which awaits approval by the Senate, includes 250 million dollars in grants to the states and to local school districts to update the math and science skills of current teachers and to retrain teachers of other subjects to qualify them to teach math and science.

An intense immediate concern is the fact that most of the nation's brightest college students are rejecting careers as

teachers at a time when enrollment increases are expected to create serious teacher shortages by 1990. Shortages already are appearing in some areas.

Fewer than 5 percent of the freshmen entering college last fall said they planned to become teachers—down from nearly 22 percent in 1966. Their

low numbers were matched only by their low academic performances. The 1982 SAT scores for students entering education were 80 points below the national average in math and verbal skills—a combined score of 813 out of a possible 1,600. Future teachers ranked 26th in 29 academic fields surveyed.

Alarming Decline in Quality

Educators say many of the problems are traceable to a surge in public-school enrollment in the early '60s that put pressure on colleges of education to train thousands of teachers quickly. The boom also caused many states to certify new instructors who were not adequately prepared.

"They were just trying to get warm bodies into the classroom," recalls Samuel Sava, executive director of the National Association of Elementary School Principals.

Since then, educators note, the women's-liberation move-

ment also has encouraged females to aspire to their highest goals of employment. As a result, many young women have decided that the teaching profession, for decades one of the best jobs available to them, did not have enough prestige and chose other careers.

The result has been an alarming decline in the quality of teachers entering many classrooms. While school officials claim that 95 percent of their teachers perform adequately, they also concede that cases of incompetence have become all too common:

- An elementary-school teacher in South Carolina was downgraded to a substitute after parents complained about the bad grammar and misspelled words she used in correcting students' papers.

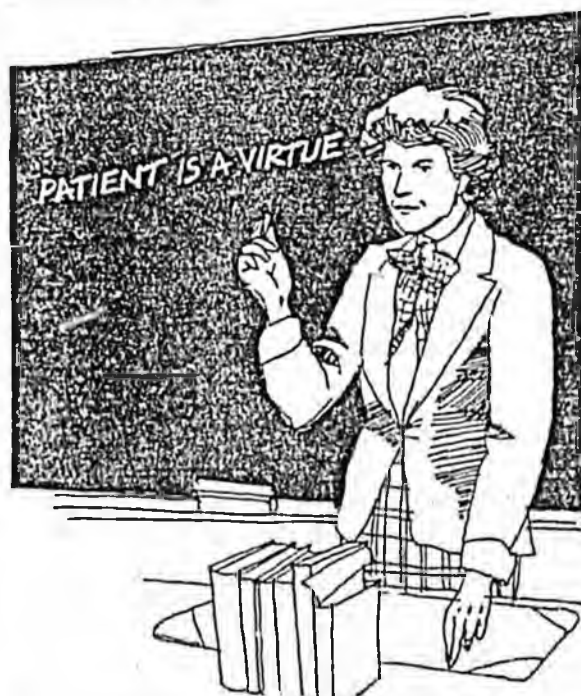
- A California teacher stood with her back to the class while youngsters pelted her with spitballs, the noise becoming so intense

that another teacher came to investigate. After other incidents of behavior that were judged to detract from her teaching, she was put on notice to improve or risk dismissal.

- A mathematics teacher in a Creve Coeur, Mo., high school was discovered by administrators to be "completely incompetent." Her problem: "Inability to read the chemistry of the kids. She wasn't capable of responding to the class. She'd miss the puzzled look on kids' faces."

Sufficient knowledge of the subject matter is only one of the criteria for successful teaching. Being able to communicate that information to large classes with both talented students and slow learners presents problems for some otherwise competent teachers. A Pasadena, Calif., teacher with a firm grasp on her subject matter "had no control of

ILLUSTRATION BY HAROLD BAILEY



Classroom teachers who cannot spell words correctly are a source of concern about incompetence.

her class. She was literally afraid of her gifted and accelerated students," says the superintendent. The district paid a settlement of \$78,000 to terminate her services.

A study conducted for the National Institute of Education, which looked at college graduates who entered teaching in the late '70s, found that those with the highest academic ability were much more likely to leave their jobs than those who were lower achievers. Among high-achieving students, only 26 percent intended to teach at age 30, as compared with approximately 60 percent of those with the lowest academic ability.

Many Americans worry about the damage that such experiences cause to impressionable young people. Mike Barnicle, columnist for the *Boston Globe*, received a letter from a high-school English teacher that included such comments as: "I get sick and tired of the vandalism and all the drinking, too much of it. I have been a teacher for eight years and I try and tell the kids. They have been a big increase in public drinking." Barnicle noted in his column: "For all practical



Teachers find that part-time jobs in places such as a gas station make them vulnerable to students' taunts and jeers.

minimum-competency test failed to meet the most basic skill requirements.

Notes Dan Alexander, president of the Mobile County, Ala., school board: "If the current test-failure rate is, say, 20 percent, then you have to figure that 20 percent of the people who would have failed in the past are still teaching in the system."

Teachers "Are Beaten Down"

One of the worst effects of the crisis is the lowering of teachers' morale. A 1981 survey of the nation's 2.2 million public-school teachers by the National Education Association found that 24 percent of the teachers polled "probably would not" choose teaching as a career again. In 1961, fewer than 8 percent said they would reconsider.

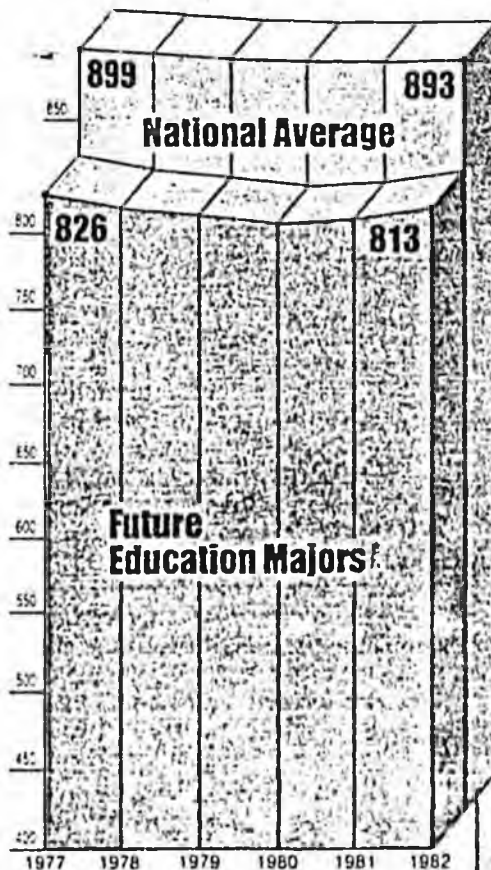
What has happened over the past two decades to make teaching so unpopular? Responds Ernest C. Smith, a Los Angeles industrial-arts teacher with 15 years of experience: "Teachers economically and morally are beaten down."

Low pay is the top complaint. The National Center for Education Statistics estimates that the average current salary for classroom teachers is \$17,644—up from \$9,269 in 1971. However, in constant 1980-81 dollars, teachers have lost money, dropping from the 1971 equivalent of \$20,168.

The outlook for the future is equally bleak. The center

When It Comes to Tests, Future Teachers Rank Low

Combined Math and Verbal Scores of College-Bound Seniors (1,600 is perfect)



Scores from this same Scholastic Aptitude Test for 1982 were ranked according to the students' intended areas of study, with the outcome—

Test Score	Test Score
1. Physical sciences: 7054	15. Health and medical: 885
2. Mathematics: 1024	16. National average: 883
3. English/literature: 895	17. Communications: 882
4. Engineering: 886	18. Music: 880
5. Biological sciences: 976	19. Psychology: 882
6. History and cultures: 860	20. Theater/arts: 878
7. Foreign languages: 955	21. Forestry, conservation: 876
8. Philosophy and religion: 945	22. Geography: 868
9. Social sciences: 936	23. Business and commerce: 847
10. Library science: 932	24. Agriculture: 838
11. Undecided: 925	25. All other fields: 832
12. Military science: 908	26. Art: 822
13. Computer science: 906	27. Education: 813
14. Architecture: 906	28. Home economics: 792
15. Environmental design: 898	29. Ethnic studies: 744
	30. Trade and vocational: 739

expects salaries in 1991 to have risen to \$20,113—still \$55 below the 1971 mark.

"Looking down the way 20 years, I wouldn't want to support my family on a teacher's salary," says Patricia Nipper, a Latin teacher in Little Rock. With seven years' experience and a master's degree in English, Nipper earned \$16,000 last year.

Many teachers are forced to take part-time jobs to supplement their salaries. Twenty-nine percent of the teachers surveyed in Texas last year had outside jobs, up from 22 percent in 1980. The experience can be humiliating. A Salt Lake City teacher finds his job at a gas station makes him the target of student ridicule: "Students that I had bring in their cars and ask for a dollar's worth of gas. They enjoy taunting me as their teacher who now has to wait on them."



Some instructors who know their subject matter are unable to provide adequate discipline for students unwilling to learn.

Teachers don't have to go far to find better-paying jobs, and many are doing so. The average starting salary for teachers is \$12,800, compared with \$16,200 for accountants and \$20,264 for computer scientists. A master's degree may raise a starting teacher to \$14,079, but engineers holding master's degrees receive \$11,000 more as starting pay.

As a result, many college students, most often math and science majors, are seeking more lucrative careers. In Iowa, the

number of graduates in mathematics education fell to 38 in 1981, down from 234 in 1970. The state needed 102.

Experienced teachers are joining the exodus from the classroom. Richard Ong, 25, recently left a computer teaching job in Los Angeles to program videogames for Mattel.

The transfer instantly raised his salary 50 percent, from \$16,000 to \$24,000. If teachers such as Ong continue to leave at their current rate, more than a third of the nation's qualified secondary-school math and science instructors will be gone by 1992.

Many areas faced with these shortages have had to use teachers certified in other subject areas to teach math and science. In Pacific Coast states, 84 percent of the new math and science teachers were trained in other fields.

Educators as Baby-Sitters

Other reasons for leaving include problems of discipline in overcrowded classrooms that are filled with handicapped youngsters, children who speak little English, and the products of broken homes.

Says one suburban Washington, D.C., elementary-school teacher: "I have children who have been with a babysitter since they were 3 months old. They are demanding from me the individual attention, concern and caring they haven't gotten from their parents. I just can't give enough with 25 students in the room."

Thirty-four-year-old Gay Maise left her teaching position in a St. Louis suburb because of discipline problems: "I spent the entire first three months of school on discipline and classroom order. Forget about teaching subjects."

Teachers in many urban school districts live with the fear of violence. In February, an Atlanta teacher was cut in the neck during a robbery attempt while walking during school hours from the main school building to an annex. In

Teachers' Test—Can You Answer?

Six states use the National Teacher Examinations produced by the Educational Testing Service for teacher certification. Prospective teachers take a battery of tests on communications skills, general and professional knowledge and their specific field of study. Here are sample questions from those tests—

1. If the sum of two numbers is 18, which cannot be true of the numbers?

- A Their sum is 0.
- B Their product is 0.
- C One number is twice the other number.
- D One number is 8 times the other number.
- E One number is greater than 18.

2. During a recession in the United States, unemployment is likely to be highest among which of the following groups?

- A Public-school teachers.
- B Army officers.
- C Office managers.
- D Automobile-assembly workers.
- E Dairy farmers.

Answers: 1. A, 2. D, 3. B, 4. D.

3. The maximum size of particles that can be moved by a river is related most directly to the:

- A Length of the river.
- B Speed of water in the river.
- C Cross-sectional area of the river.
- D Amount of salt dissolved in the river water.
- E Number of waterfalls along the river's course.

4. Tom had a party for some friends and relatives, and 40 people came. If twice as many relatives had come, the number of people at the party would have been:

- A Exactly 60.
- B Exactly 80.
- C Exactly 81.
- D Between 40 and 80, but not necessarily 60.
- E More than 40, but no maximum can be set.

Questions are reprinted by permission of Educational Testing Service.



Incentives such as higher pay and tougher academic courses are being tried to encourage better-quality students to enroll in teacher-training programs.

Dade County, Fla., public schools reported 84 student assaults on school personnel during the first half of the past school year.

Tight budgets in many school districts have meant coping with inadequate supplies. In Prince George's County, Md., no new textbooks were purchased this year. As a result, many English teachers can't use favorites such as *The Great Gatsby* or *The Scarlet Letter* because there aren't enough books to go around. A poll of Louisiana teachers found nearly a third spend more than \$100 of their own money annually to buy classroom materials.

"We're being asked to do more and more with less and less," notes Marty Berger, a Prince George's County psychology teacher who makes do with a 1974 text. "That forces you to be more creative, but it also makes it harder to maintain your enthusiasm."

Why, then, do so many teachers remain in the classroom? Because, they say, there are priceless rewards such as the moment when a child suddenly understands a math problem or discovers the joy of Shakespeare's plays.

Explains California industrial-arts teacher Ernest Smith: "It's a great feeling to meet a former student who says: 'You gave me a tough time, but now my life is better.'"

For some individuals, these rewards were sufficiently attractive to lure them from higher-paying jobs in private industry. Wynetta McNeil, 31, left previous positions in finance and consulting to teach math and social sciences in Atlanta. She says: "I found that my skills were strong as a motivator. A lot of kids I work with have the talents that just have to be tapped. When I see the little light bulbs click on over their heads, I feel satisfied."

Melissa Lane, 16, a junior at North Hollywood High School, says good teachers are easy to identify: "They are excited about the subjects they teach. They're available at lunchtime if you need them. They always have plans and projects."

Screening Out Incompetents

Efforts are under way in many places to upgrade the quality of teachers while attracting more intelligent newcomers. By 1985, half of the 50 states will require new teachers to take a basic-skills test before they can operate in a classroom.

The tests screen out incompetent teachers and help pinpoint weak teacher-preparation programs. Since Louisiana began testing its future teachers in 1978, the passage rate has risen from an initial 53 percent to 75 percent last year.

In Florida, 84 percent of all who took the exam last Oct passed. However, only 37 percent of the black students in education passed, which has raised concerns about worsening of an already serious decline in the number of black teachers. The American Association of College Teacher Education and other groups are discussing ways to recruit top-quality black students and offer better preparation programs.

Some areas also have tightened procedures for determining how well a teacher controls a class or imparts her knowledge to students. Some states have begun delaying certification for new teachers until they have completed a one-to-three-year internship on the job. During that time, teachers are evaluated by administrators and other instructors.

Improvements also are under way in many of the 1,000 colleges offering teacher-education programs—only 5 percent of which are approved by the National Council for Accreditation of Teacher Education. Concern has generally focused on the teaching-methods courses that critics say are being abandoned and are driving away many bright, ambitious students.

Now many colleges of education are raising their admissions standards and stressing more liberal-arts courses. Some are combining classes in teaching methods with fieldwork in local schools. The University of Kansas is among a handful of schools that have expanded their four-year programs to five years to cover all the new issues today's teachers must know.

More programs also are being designed to assist experienced teachers already in the classroom. About 600 community work sites, known as teachers centers, have sprung up around the country to enable teachers to help one another solve academic and emotional problems.

"Master teacher"—a solution? The most critical problem still to be solved is how much teachers should be paid. A 1981 study for the National Institute of Education concluded that the U.S. "gets approximately what it pays." The bottom one-third of the college-going population is seeking positions paying salaries in the bottom one-third of the economy.

Several states, including Florida and Texas, have proposed raising all teacher salaries significantly. Secretary of Education Terrel Bell favors creating a position of "master teacher," which would command a salary several thousand dollars higher than a regular teacher's pay. Tennessee Governor Lamar Alexander has proposed such a program that would pay master teachers an average salary of \$26,873, which is 60 percent more than the salary of a regular teacher.

While such a program would reward excellence, many administrators say any type of merit-pay system would be hard to administer and might prove divisive. Says elementary-school Principal Elizabeth Decker of Loudoun County, Va.: "If every teacher is out for herself, the sharing of materials, ideas and talents tends to stop."

The question of how much teachers are worth ultimately boils down to how much students are learning. Notes Los Angeles parent Annie Richardson: "Teachers will have to rededicate themselves to produce better products or they will never get the support of the public."

By LUCIA SOLORIZANO with the magazine's domestic bureau

Want Better Teachers? Raise Pay, Stop Classroom Violence

A well-known educator says that a vital part of the effort to improve the quality of instruction in our schools depends on the public—including a willingness to spend more.

Q Mr. Shanker, why are teachers under so much fire now?

A Not so long ago, many people in the general public were uneducated. Teachers were among the educated elite. But very quickly we've educated so many of our people that the gap between the general public and the teacher is no longer there. That makes teachers easier to criticize.

Also, we no longer have an elite student body, and we're not educating the masses as well as we used to educate the few. What teachers can do with children who are relatively advantaged is very different from what can be done with the kids who used to be pushed out of school. To some extent, teachers are blamed for that.

In addition, it is getting more difficult to find teachers of acceptable or high quality.

Q What makes that so difficult?

A A big part of it is the money—or lack of it. If somebody is asked to go into teaching at \$12,000 a year but can become a trainee for some business at \$20,000, you're not going to get very many candidates.

Also, 30 years ago about the highest profession that most women could aspire to was teaching. Now all sorts of other professions have opened up to them.

Q How can better students be attracted to a teaching career?

A The economic incentives have to be improved. You also have to solve the problem of violence and disruption. A person who is primarily interested in mathematics or Shakespeare loves that subject and feels that it is important enough to spend a lifetime imparting this knowledge to others. That person does not want to spend his or her time telling Johnny to put away his knife or to stop shrieking.

In many schools a teacher cannot get satisfaction from the job because of a small percentage of students who are sick, who are violent, who are not learning. Instead they are preventing other children from learning and are driving out competent and capable teachers.

A good teacher does not want to be a policeman, a psychiatrist or a jailer. The schools must come to grips with this.

Q What about improving the teaching environment?

A A lot of corporations are talking about "quality circles"—increasing productivity by increasing the participation and happiness of all who are involved. Schools have to develop in that direction, too.

In schools today, teachers are very often treated pretty much the way the children are. If they're absent for a day, they're asked to bring a doctor's note. Most people with intellectual self-respect and some accomplishment are not going to thrive in an atmosphere like that. Schools have to make teachers an equal partner in the educational endeavor.

Q How do you define a competent teacher?

A A teacher should have a relatively high level of literacy and should be competent in his or her own subject matter. Everyone who enters teaching ought to be tested on those skills. There also must be performance characteristics related to the interaction between teacher and students, but

those have to be observed by people over a period of time.

There ought to be an internship period similar to what a doctor goes through. This should be done in a regular school setting over a two or three-year period of time in which the new person gets a good deal of help and is able to try out different things. It also ought to be a time after which, if the person isn't really good, you can say, "Goodbye—this is not for you."

Q What are the characteristics of an excellent teacher?

A The excellent teacher is a great artist. Greatness implies a certain creativity. Probably most adults have had at least one or two teachers who would have inspired them to come back to classes even on Saturday or Sunday. But you can't have all of your teachers at that level any more than you can expect every singer to be a Pavarotti. There's nothing wrong with being competent. Most teachers *are* competent, and what we need to do now is constantly to raise that level a bit. If we can do that, our schools will be in pretty good shape.



Q Would it help to pay higher salaries to the best teachers?

A If we could find a scheme that rewarded merit on some measurable and commonly accepted basis, there'd be nothing wrong with it. But wherever this has been tried, the majority of colleagues became demoralized because they felt it was not the meritorious person who was being rewarded. The money was being used to accomplish other purposes.

Q Would it raise educational standards to pay more to teachers in fields where there is a shortage, such as math or science?

A How much more are you going to pay them? Are you going to pay \$1,000 or \$2,000 more to a college graduate normally starting at \$11,000 or \$12,000? Industry will pay a science major \$24,000. Do I hear anybody bidding \$24,000? No.

Suppose that next year we have a shortage of English or kindergarten teachers. Will the public say: "Well, math and science are superior subjects. So when they're in short supply, we'll pay extra money. But anybody can teach English or kindergarten." Then you begin to teach children that it's not as important to learn English, that it's not as important to be able to understand or work with children who are younger.

Q What can be done to improve or fire incompetent teachers presently in the classroom?

A With people who are not making it, you first give them all the help you can. Then you do what any other employer does: You build a case against them. Tenure doesn't mean you keep your job. It just means that the boss has to go before somebody and give a reason for removing you. If you've got a good reason, there's no judge in the world who's going to uphold that teacher's right to stay there.

It is also important to stimulate teachers constantly. Teachers are locked up with children for almost their entire lives. They spend very little time with their colleagues. We need to develop ways for teachers to have a chance to read great literature, to discuss ideas, to be in an adult environment where they are respected by others. Getting excited about something and learning something new will generate the kind of enthusiasm we need to make teaching a really desirable profession again. □

Kerttula questions UA salary proposal

Associated Press

Juneau — Plans to increase staff salaries at the University of Alaska by 7.5 percent drew concern today during a Senate Finance Committee hearing on UA's proposed \$174.28 million operating budget for fiscal 1984.

The package represents a 17 percent increase over UA spending this fiscal year.

Senate President Jay Kerttula, D-Palmer, who sat in during the fourth day of hearings on UA's proposed spending package, said he wondered why salaries were climbing in the midst of a recession.

"Salaries Outside are going down," Kerttula told UA-Anchorage Chancellor David Outcault.

Pay raises based on merit "are justified," Kerttula hastened to add, but he questioned the practice of issuing automatic pay raises in the face of hard times that bring "competition for jobs."

Contained in the UA request is a 3 percent "step" increase in pay, and a 4.5 percent cost-of-living increase for UA staff.

UA-Anchorage is requesting a total operating budget of \$35.56 million.

In a separate matter, George P. Melican, chancellor of UA's Division of Community Colleges and Rural Education and Extension, decried the fact that tuition at Alaska's 10 community colleges is the highest in the nation among such institutions.

He said he is recommending that community college tuition not be increased at the same rate as university tuition, which, according to Sen. Jan Faiks, R-Anchorage, is 300 percent lower than the national average for state universities.

Melican had no figures immediately available showing how community college tuition compares with the national average.

White House Favors Civil-Service Pay Tied to Performance

By a WALL STREET JOURNAL Staff Reporter
WASHINGTON—The Reagan administration wants to place greater emphasis on job performance in determining the salaries of federal white-collar employees and the order of layoffs when furloughs are necessary.

Under a proposal being considered by the administration, a performance-based pay system would replace the current procedure under which these workers get increases based mostly on seniority. The proposal would retain the across-the-board yearly increases federal workers usually receive to keep their pay comparable to private-sector workers'. Further, the plan would make performance more important than seniority in determining which workers lose their jobs during layoffs.

The plan, which doesn't require Congressional approval, has been agreed to at the cabinet level. President Reagan is expected to give final approval.

The plan would bring about 1.4 million federal workers under a merit-pay system that currently includes about 125,000 senior federal executives.

Donald Devine, director of the Office of Personnel Management, said the proposed changes would "reform the system so it makes more sense from a management perspective." He added, at a briefing yesterday for a small group of reporters, that government decisions on the pay and laying off of personnel "are made with very little consideration given to how well they perform."

In the past, rumors of such proposals have been greeted with howls of protest from federal employee groups. Yesterday the American Federation of Government Employees, which represents about 700,000 workers, called the plan "a return to the spoils system." A spokeswoman said the government's performance-appraisal system, which has been used for senior executives since 1981, is "too new and too subjective to be an adequate criterion" for determining pay raises.

The latest proposal is another dose of harsh medicine for federal workers. Mr. Reagan's 1984 budget proposes that federal workers' pay be frozen next year and that workers' contributions to the pension system be raised. On Oct. 1, federal workers received a 4% increase. Further, the administration has proposed that the age at which civilian workers can retire with full benefits be increased, over a 10-year phase-in period, to 65 from 55.

Dunkin' Donuts, Franchisees To Raise Advertising Outlays

RANDOLPH, Mass.—Dunkin' Donuts Inc. disclosed in its annual report that the company and its franchisees plan to increase spending for advertising to \$100 million in the five years ending 1987, from \$43 million

Philips Unit Settles Suit Against Mattel Over TV-Game Patent

By a WALL STREET JOURNAL Staff Reporter
NEW YORK—North American Philips Corp. said it agreed to settle a television-game patent lawsuit it had filed against Mattel Inc.

Under the settlement, Magnavox Consumer Electronics Co., a unit of North American Philips, releases Mattel from all claims of patent infringement and grants Mattel a license for its television-game patents. An official of North American Philips declined to specify the amount of the licensing fees to be paid by Mattel, but he said: "We think it was a very satisfactory settlement for Magnavox."

In Hawthorne, Calif., Mattel also declined to disclose the amount of the royalties. The toy maker, publishing and entertainment concern said it had made adequate provision for payment, but wouldn't comment further.

The settlement involves a 1980 suit that contended that Mattel infringed Magnavox's patent on "Odyssey 2," a programmable television-video game, by introduction of Mattel's "Intellivision." At issue was the electronic circuitry that converts electrical impulses to images on the screen.

Last July, a federal judge in Chicago ruled that Mattel had infringed Magnavox's patent for certain television-video games, and Mattel later appealed the decision.

North American Philips has interests in consumer products, electrical and electronic parts, and professional equipment. It is a unit of Philips N.V. of the Netherlands.

Nissan Motor in USA Is Sued by Wisconsin Over Pickup Truck Ads

By a WALL STREET JOURNAL Staff Reporter
MILWAUKEE—The Wisconsin Attorney General sued Nissan Motor Corp. in USA, charging the unit of the Japanese auto maker with deceptive television commercials.

The suit, filed in Milwaukee County Civil Court, cites two 30-second television advertisements that ran last fall, featuring Datsun King Cab pickup trucks. The commercials said Datsun pickup truck prices "start at \$5,858." King Cab models usually cost at least \$7,000, according to the suit.

The ads included a disclaimer that the \$5,858 price applied only to another model. The attorney general's suit charges that the disclaimer appeared too briefly to be read by viewers.

"We viewed it over and over and it really is impossible to read that disclaimer," said Jonathan P. Siner, an assistant attorney general.

The suit asks for penalties of as much as \$500 for each time the ad is aired, it also seeks restitution for customers who shopped for King Cabs at \$5,858 but paid more. Mr.

Shultz Says To Need Are Cut

By a WALL STREET JOURNAL Staff Reporter
WASHINGTON—George Shultz said fearful of an intern cutting back too far derdeveloped countries. "I think myself have been drawing fact, in international desirable." Mr. Shultz said something that if fast will be damaged.

He said that new developing world's rate from the first half of 1982. But in year, he said, estimated "precipitous drop" give any figures.

Mr. Shultz warned to scale back undercuts chances less-developed countries work out from loads.

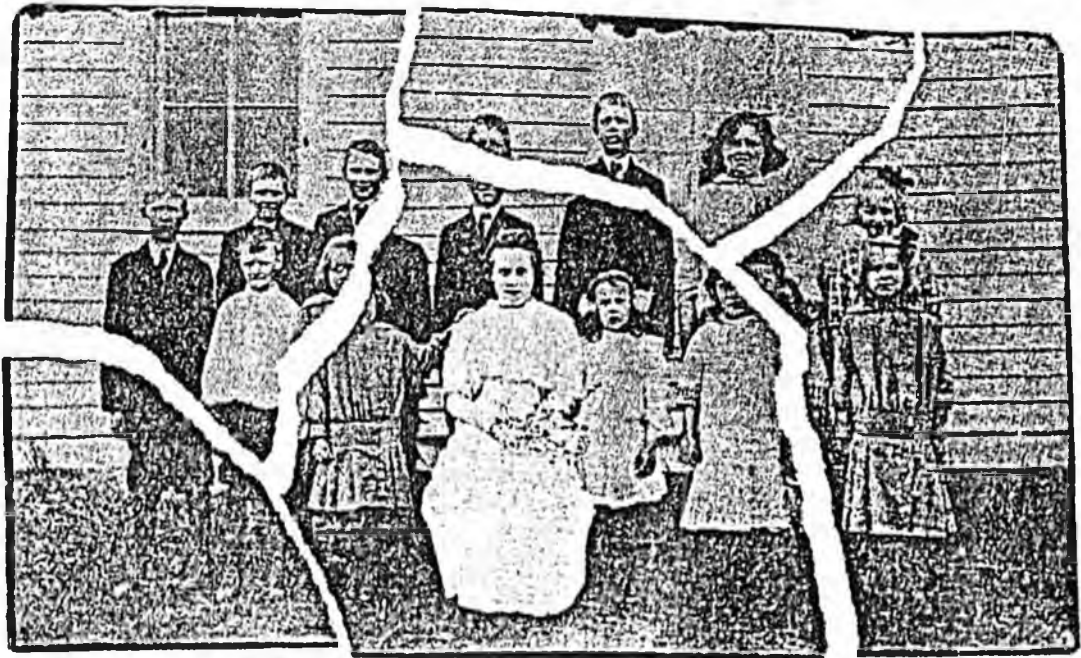
Reagan administration warned before might overreact international debt and cut. But Mr. Shultz warned that bankers act back too much.

Mr. Shultz said:

Basic verbal and mathematical skills don't make a good teacher, but the lack of them will surely make a bad one—and bad teachers mean inadequate education. Confronted with the fact that too many teachers do lack basic skills, the states are responding with a variety of remedies.

Teachers: A Question of Competence

"Why should we be able to read and write if our students can't?" a grade-school teacher commented sarcastically when asked about teacher competency. Needless to say, teachers don't appreciate being scapegoats for the failures of public education. Nevertheless, revelations about a generation of high school students who could neither read nor write has inevitably led to the questioning of teacher quality in America.



The mid-1970s was filled with press accounts of plummeting test scores and functionally illiterate high school graduates. The minimum competency movement was born and, when the dust settled, 40 states had enacted laws requiring basic skills tests in the public schools.

The teacher competency movement followed not far behind. "We started out testing the students," says House Speaker Frank Kelley of Arizona. "That's like measuring your body temperature to find out you're sick. So we found out that we were a

Teachers

little bit sick. Now we're looking at the education of teachers and the testing of those teachers before they can be certified to teach in Arizona."

The public, fueled again by press reports of teachers failing basic skills tests, garbled notes to parents, and incomprehensible homework assignments, began now demanding teacher accountability. In a 1979 Gallup Poll, a whopping 85 percent of respondents agreed that teachers should have to pass state exams in their subject areas.

Over the last several decades, the teaching profession has suffered some severe blows to its prestige. Whereas in the past, teachers were well-respected and generally had more education than the general public, today the public is often as well-educated, if not more educated, than teachers. "Teachers are surrounded by parents who feel that they could do as good a job teaching their children if they weren't too busy making more money," once commented Albert Shanker, president of the American Federation of Teachers (AFT).

Low salaries haven't helped attract qualified applicants to teaching. The 1981-82 average teaching salary was \$18,976, according to the National Education Association (NEA), the country's largest teacher union. The low status and pay of the profession—not to mention the problems of violence, discipline and apathy in the classroom—is turning away many who in the past would have taught.

"We are no longer seeing the first cut of people who would have entered the profession 10 years ago," says Rich Hollihan of the Florida Education Standards Commission. "Those people are now in industry and other professions." Shortages of mathematics and science teachers are becoming especially acute because of the competition of higher-paying private-sector jobs. The exodus of women and minorities from teaching to new job opportunities offering more pay and status has also contributed to the decline in teacher quality.

Recent studies confirm that teaching does not attract the "best and brightest." In a study for the National Institute of Education, Phillip C. Schlechty and Victor S. Vance concluded from a review of Scholastic Aptitude Test (SAT) scores that teaching attracts and retains those with low measured academic ability while failing to attract or retain those with high measured academic ability. Thirty percent of all teachers are drawn from the lower 20 percent of academic achievement. And 34 percent of teachers committed to remain in teaching come from the lower 20 percent—61 percent from the lower 40 percent.

The nation's schools of education have also come under fire. Teacher preparatory schools have been criticized for minimal entrance requirements and low standards for graduation. The curricula has been scored for emphasis on

teaching theory rather than on subject matter and actual student teaching experience.

But in most states, graduation from a school of education is all that is necessary for teacher certification. "Certification in most states is verification," says Lester Solomon, director of Georgia's performance-based certification program. That is, the state basically accepts the recommendation of a college.

Solomon does not consider such a system as setting standards. "Only when [the state] sets standards for a test or on-the-job assessment is the state really taking its responsibility of establishing standards for certification as opposed to just accepting a recommendation from the college."

State response to the public pressure for teacher accountability has initially been quite similar to demands for student competency. Twenty states now require, or will require in the future, that applicants for teacher certification be tested (see chart on page 13). In at least half of these states, the tests have been mandated by the legislature—the rest have been authorized by the state board or department of education.

Testing does not mean the same thing in all states: Some have developed their own tests, others use the Educational Testing Service's National Teacher Exam (NTE), South Carolina uses a combination; some states test the basic skills of reading, writing and mathematics, others test subject matter or professional teaching skills, some test a combination of these; in some states prospective teachers are tested before entrance to teacher preparatory programs, others test after graduation.

Is testing the answer to teacher competency? Critics argue that it is a "band-aid" approach that has no power to treat the causes of poor teaching and that testing alone cannot predict who will be an effective teacher. Many different qualities go into good teaching—and high measured academic ability may not necessarily be one of them. According to Schlechty and Vance, much research has been devoted to studying what makes a good teacher—without conclusive results.

Those who support testing of basic verbal and mathematical skills agree that a test will not tell you who will be a good teacher. But, they argue, the lack of such minimal skills will surely make a bad one. "We feel very strongly," says Florida's Hollihan, "that if teachers cannot demonstrate that level of competency, we don't need them."

Testing has been opposed in some states by minorities and teacher unions. Minorities argue that testing perpetuates past discrimination and also that standardized test:

are often culturally biased. Blacks in Florida maintain that that state's requirements for certification will eliminate blacks from the teaching profession. According to Holihan, Florida law requiring that applicants to teacher colleges be in the 40th percentile on the SAT is making a significant impact on the number of blacks admitted to teacher programs. After reviewing results just in from California's new proficiency test for teachers, officials projected in January that two-thirds of minority candidates failed the test, compared to a one-third overall failure rate.

NEA, with 1.6 million members, has also gone on record against testing. Last year, Massachusetts witnessed a battle over a bill that would have required a basic skills test of all teachers, including those already certified. According to a legislative aide, the Senate tabled the bill—after it was amended in the House to apply only to new teacher applicants—because of the volatility of the issue. The Massachusetts Teachers Association (MTA), a division of

NEA and the state's largest teacher union, lobbied heavily against the bill. In the November elections, the union ranked candidates according to their position on the issue of competency testing.

Richard Durkin, lobbyist for the MTA, calls the type of testing Massachusetts was considering "punitive" rather than constructive. NEA does not consider testing a valid method of evaluating teachers and is opposed to its use as a sole condition for employment, especially after students have invested heavily in four years of education. Durkin and NEA support what they term more constructive approaches to teacher competency such as improved teacher education and provisional certification after graduation when a teacher can receive feedback and assistance. "I think evaluation is the key," says Durkin.

AFT, the smaller teacher union with a half million members, has come out in favor of testing, but both NEA and AFT vigorously oppose testing of teachers already or

States Requiring Testing for Certification

State	Authority	Year Enacted	Year Effective	Test Used	Areas to be Tested
Alabama	SBE ¹	1980	1981	State	Professional knowledge/subject matter areas ²
Arizona	SBE/Legislature	1980	1980	State	Basic skills/professional knowledge
Arkansas	Legislature	1979	1983	NTE ³	Commons and area examinations ⁴
California	Legislature	1981	1982	State	Basic skills
Colorado	Legislature	1981	1983	State	Basic skills ⁵
Connecticut	SBE	1982	1985	State	Professional knowledge/subject matter areas ⁶
Delaware	SBE	1982	1983	State ⁷	Basic skills
Florida	Legislature	1978	1980	State	Basic skills/professional knowledge
Georgia	SBE	1979	1979	State	Subject matter areas
Louisiana	Legislature	1977	1979	NTE	Commons and area examinations
Mississippi	SBE	1977	1977	NTE	Commons and area examinations
New Mexico	SBE	1981	1983	State	Basic skills/professional knowledge/subject matter areas ⁸
New York	Board of Regents	1980	1984	State	Basic skills/professional knowledge/subject matter areas
North Carolina	SBE	1979	1981	State	Basic skills/subject matter areas ⁹
Oklahoma	Legislature	1980	1982	State	Subject matter areas
South Carolina	Legislature	1979	1982	NTE/State	Areas examinations (NTE)/basic skills (state developed)
Tennessee	SBE	1980	1981	NTE	Commons examinations
Texas	SBE/Legislature	1980/1981	1985	State	Basic skills/subject matter areas
Virginia	Legislature	1980	1981	NTE	Commons and area examinations
West Virginia	SBE	1982	1985	State ¹⁰	Basic skills/subject matter areas

¹State board of education.

²English proficiency test required for admission to professional sequence.

³National Teacher Examination (developed by Educational Testing Service).

⁴NTE commons examination tests general knowledge from a liberal arts education; area examinations test subject matters areas.

⁵Required of applicants to professional sequence.

⁶Basic skills test required of applicants to professional sequence.

⁷Developed by the Educational Testing Service in cooperation with the s

⁸Basic skills test required of applicants to professional sequence.

⁹Basic skills test required of applicants to professional sequence.

¹⁰Developed by Educational Testing Service in cooperation with the state

Source: Education Commission of the States, Denver, Colorado.

the job for purposes of retention or salary decisions. Although several have tried, no states have succeeded in enacting such legislation.

A number of states have recognized that testing alone will not assure quality teaching in the classroom. "Testing doesn't tell you that much," says Speaker Kelly of Arizona. "It's the training and the follow-through, making sure that measurable standards of competency are set and followed." Several states have broadened their testing programs to include a period of provisional certification and on-the-job training.

In states that have recently instituted or are experimenting with such programs, there is a high level of optimism and support. "We are very excited about the program," says Holihan. "This is a program we are very anxious to have succeed." Dr. Everett Howerton, associate superintendent of public instruction in Virginia, says that he cannot "recall two legislative items for which there was more widespread support" than for Virginia's plan for testing and assessment.

One of the more extensive programs is in Georgia, which has a three-year period of provisional certification—the longest of any state. The first part of Georgia's program is a state-developed diagnostic test. Administrators in Georgia felt the NTE, like most standardized tests, did little to provide clear objectives to applicants and feedback to those who fail.

The main focus of effort and money in Georgia is on-the-job training and development. Solomon believes that legislators should look at the whole process as not simply

Twenty states now require, or will require, that applicants for teacher certification be tested. In at least half of the states, the tests have been mandated by the legislature.

setting standards and weeding people out but as providing for growth and development. "Four years of college do not a finished teacher make," Solomon frequently tells legislators.

Since the mid-1970s, the state board of education in Georgia has developed a sophisticated assessment program. For certification, a teacher must master 14 competencies, each measured by two to five indicators. An assessment team, made up of an administrator, a teacher and someone external to the school system, evaluates the teacher. Seventeen regional centers, funded by the legislature, provide 50-hour training programs for those who serve on an assessment team.

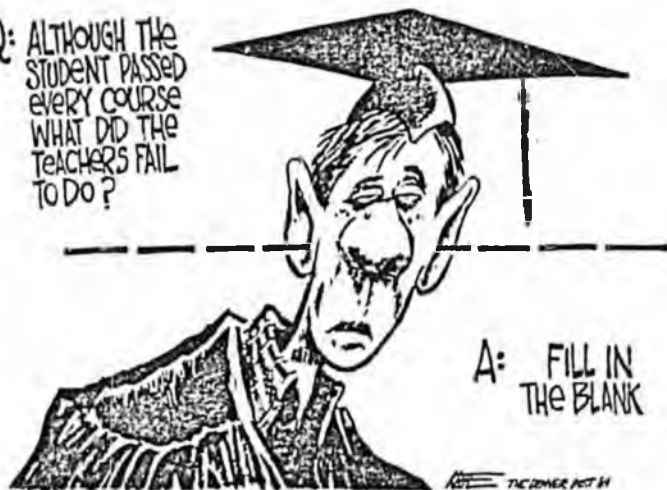
To Solomon, the training centers are one of the best investments a legislature can make. Although the training centers are a means to an end, i.e., the assessment of new teachers, both experienced teachers and administrators reporting profited greatly from the training. While it is costing the state \$3 million to run the training centers, Solomon considers this a small investment for such a high return on \$900 million the state invests in teacher salaries. However, the evaluation process can be done less expensively, says Solomon, by omitting the training centers and by using NTE rather than developing a new test.

Georgia has an 86 percent cumulative pass rate on the test. Solomon estimates that approximately 2,100 prospective teachers—out of the 15,000 applicants that have been tested since 1978—have been excluded from teaching in Georgia. The assessment program is in its third year and has seen a steadily improving pass rate: 60 percent the first year; 70 percent the second; and 80 percent expected this year. Solomon attributes the improving pass rate to college and universities using the feedback from the assessment and assessment process to better prepare students. In teacher preparatory programs have begun to use the Georgia assessment system in their student teaching programs.

Other states with comprehensive teacher programs in place include South Carolina, Florida, Virginia, Oklahoma, New York and Louisiana. South Carolina, Florida, Oklahoma and Louisiana screen applicants to teacher preparatory programs with either a basic skills examination or a certain high school grade point average or score on standardized tests like the ACT. South Carolina requires student teaching in the junior or senior year of the teacher program; Louisiana requires prospective teachers to maintain a 2.5 grade point average in a preparatory program. These states require testing at graduation and a one- to two-year period of provisional certification when a teacher is evaluated and assisted.

Arizona instituted a basic skills test in 1980 and is

Q: ALTHOUGH THE STUDENT PASSED EVERY COURSE WHAT DID THE TEACHERS FAIL TO DO?



experimenting with a pilot program in several school districts that provides for a one-year residency program before certification. Speaker Kelley believes "the key to the whole thing" is to require that competency in the classroom be demonstrated before certification is granted. He hopes the pilot project will demonstrate the program's value so that the legislature will provide funding. "I'm high on it," Kelley says. "I think this is the route to go."

In addition to setting certification standards, there are other steps states are taking to improve teachers. For example, state boards of education can work directly with schools of education to improve curricula, as Arizona is currently doing. A few states—California, New York and Oklahoma—have implemented programs for on-the-job teachers. Legislation in California in 1981 provided for professional teacher development centers to conduct basic skills training for teachers, and 1982 legislation provided funds for training programs for school administrators. Teacher preparatory programs themselves have begun to tighten standards and improve curricula. The impetus comes in part from the tightening of state standards and student failure to meet certification requirements.

Funding is an issue that most states are concerned with in this era of scarce fiscal resources. While testing is not an expensive program, especially if the NTE is used, the more extensive programs increase the costs. Many administrators and legislators are expressing concern about funding of current programs—and new ones. Utah is interested in a teacher competency program and is awaiting a report from the board of education. "We felt that Georgia had a good system but it set up a completely new bureaucracy within the state," says Senator William T. Barton, chairman of the Senate Public Education Committee, "so we're trying to come up with a way our ex-

isting state board can handle it with existing funds and personnel."

The availability of funds also has a bearing on teacher salaries. Legislators and administrators are very aware that setting standards and being selective must be balanced with attracting and retaining qualified teachers. Shortages of mathematics and science teachers will increase as well as in other fields if teaching is not competitive with other professions. Teachers' unions generally favor raising salaries before raising standards and requirements; legislators tend to favor raising standards, which would then justify higher salaries.

Some states are raising salaries as they implement new regulations. Florida, for example, aims to raise its salaries to the top 25 percent in the country within the next five years; Georgia is providing additional pay for its new teachers who go through the three-year assessment procedure.

Another means of raising the status and professionalism of teaching is to recognize different levels of teaching. Some states may move in this direction. Speaker Kelley in Arizona hopes to eventually "get into different levels of certification, including master teacher and so forth." Teachers should be rewarded for their competence so that a "'a teacher is a teacher is a teacher' just doesn't stand anymore."

Georgia is interested in providing the option to experienced teachers of going through the test and assessment procedure. Such teachers would then receive a performance-based teacher certificate and additional pay. States must move away from overall pay increases, Solomon thinks, and move toward performance-based increases—in part because there just isn't enough money to go around.

The "bottom line" of teacher competency, of course, is improved student learning. Because state programs to improve teacher quality are new, there is yet no data to assess the effects on learning. There is much room in the future for research that will correlate student achievement with what states are doing to improve teacher competency. And there is still room for further discovery and refinement of what makes for effective teaching.



Lisa Berland is assistant editor of State Legislatures.

HOUSE HEALTH, EDUCATION & SOCIAL SERVICES
STANDING COMMITTEE
April 13, 1983
1:06 p.m.

Members Present: Rep. Tischer, Co-Chair
Rep. Fritz, Co-Chair
Rep. M.W. Miller, Vice-Chair
Rep. Goll
Rep. Davis

Members Absent: Rep. Koponen
Rep. Cato

COMMITTEE CALENDAR

HB 257: "An Act relating to certain limitations and
exclusions in health insurance policies."
HJR 35: Relating to payment for health services
provided by the Alaska Area Native Health
Service.
SSHB 191: "An Act relating to school board
negotiations with certificated employees."

WITNESS REGISTER

Rep. Ward
State Capitol Building
Pouch V
Juneau, Alaska 99811
465-4939

Position Statement: Introduced a Committee Substitute for HB 257
which deleted Lines 16, 17 and 18 of the
original bill; said he did not agree with
the necessity of the deletion but would
agree to it in order to expedite the bill's
passage.

Martin Tirador
Blue Cross of Washington and Alaska
808 Doyon
Juneau, Alaska 99811
586-2142

Position Statement: Agreed to the changes made in the Committee
Substitute; questioned the legal obligation
of Native Health Service beneficiaries to
pay; suggested a word change in Section 2,
Line 18 of CSHB 257.

Rep. Hurlbert
State Capitol Building
Pouch V
Juneau, Alaska 99811
465-3799

Position Statement: Supported passage of SSHB 191; contended that good teachers are not paid enough because of the pay scale must also contend with incompetent teachers.

Elizabeth Morris
141 Denkel #3
Fairbanks, Alaska 99701
452-3053

Position Statement: Testified in support of SSHB 191; agreed with the intent to reward good teachers and get rid of incompetent teachers; commented on the high drop out rate for native students in public schools.

Bob Green
Association of Alaska School Boards
326 4th Street
Juneau, Alaska 99801
586-1083

Position Statement: Supported SSHB 191 if the merit scale was only one of the ingredients used to determine teacher pay; stated the need for an incentive to keep good teachers in education; contended that teachers are not paid fairly.

Steve Hole
Department of Education
Pouch F
Juneau, Alaska 99811
465-2890

Position Statement: Opposed SSHB 191; stated concern about the criteria to be used, who would determine criteria, to what extent performance would determine pay; pointed out the nebulous language in SSHB 191; contended that SSHB 191 could lead to conflicts of interest.

Jean Krause
National Education Association - Alaska
147 S. Franklin, #207
Juneau, Alaska 99801
586-3090

Position Statement: Pointed out that other groups besides teachers negotiate their salaries; opposed the bill's intent to lower teacher salaries and control the local bargaining process; cited states where merit pay plans were

tried and rescinded due to failure; contended that merit pay scale would engender many problems including harassment, favoritism, and competitiveness, and discourage cooperation among educators; supported strong evaluation procedures.

PREVIOUS ACTION

HB 257: 3/11/83 - First Reading.
Committee referrals - HESS, Labor & Commerce and Rules Committees.
See HESS minutes of March 25, 1983.

HJR 35: 3/11/83 - First Reading.
Committee referrals - HESS and Rules Committees.
See HESS minutes of March 15, 1983.

SSHB 191: 2/11/83 - First Reading.
Committee referrals - HESS and Finance Committees.
No previous action in HESS Committee.

ACTION NARRATIVE

TAPE#28
Recording
Number 0001

Co-Chair Tischer called the meeting to order at 1:06 p.m. Representatives Fritz, Goll and Miller were present. Representative Davis arrived at 1:18 p.m. Co-Chair Tischer announced the committee calendar and the Chair's intent to move HB 257 and HJR 35 out of committee.

Number 0045

Co-Chair Tischer informed the committee that the CS for HB 257 was now available for review, and called the sponsor to the witness stand.

Number 0064

Rep. Ward claimed that the CS was written to clear up some alleged problems with HB 257 and expedite the bill's passage out of committee.

Number 0083 Discussion regarding the difference between CSHB 257 and HB 257. Rep. Tischer pointed out that Lines 16, 17 and 18 of original bill were deleted in the committee substitute.

Number 0097 Rep. Ward stated he still was not certain the lines needed to be deleted but would agree to the change in order to ensure the bill's passage.

Number 0104 Martin Tirador, Blue Cross of Washington and Alaska, agreed with the Division of Insurance concerns presented at a previous hearing on HB 257. Mr. Tirador said the CS draft seemed to resolve most of the problems, but whether or not the beneficiary of Native Health Services had a legal obligation to pay was still questionable. Mr. Tirador was also concerned about where the money would go.

Number 0142 Mr. Tirador stated that Indian Health Services had no mechanism to bill 3rd party payers; consequently, the companion resolution HJR 35 would be necessary for HB 257 to have any impact.

Number 0165 Mr. Tirador recommended deleting the wording of Section 2, Line 18 and adding "is effective January 1, 1984 and applies to all policies issued on or upon renewal on or after that date," in order to prevent excess paperwork for insurance companies.

Number 0205 Rep. Goll vocalized his understanding of Mr. Tirador's intent and then clarified the wording of the suggested amendment.

Number 0245 Rep. Tischer said the intent of the bill was to create a mechanism to make hospitals more accountable for their services and encourage consumer responsibility.

Number 0270 Mr. Tirador informed the committee of Blue Cross' policy which requires direct billing from the hospital.

Number 0290 General discussion regarding billing procedures.

Number 0300 Discussion about federal involvement in the implementation of the bills.