

ALASKA LEGISLATURE COMMITTEE FILES 1903-1904 86 / 2

2276 HHESS HB 566 - HB 596

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5 6 7

MEMORANDUM

3/28/84

TO: Mae
FROM: Bill *Bu*
RE: HB 567 (NEA Request)

As you requested, I told Bob Manners that HB 567 would not be calendared on Friday of next week. I implied it was because of scheduling problems. I did not say whether the bill would be considered for calendaring at a later date, but he didn't ask anyway.

Since I had said I would let Anne in Lacher's office know what your decision was, I also told her that scheduling problems would make it impossible to hear the bill on Friday.

You recall she had sent a formal request for you to hear the bill. I think Barb Lacher will probably call today in regard to the bill.

/wtl

MEMORANDUM

3/28/84

TO: Mae
FROM: Bill *Boon*
RE: NEA Request

I did let Bob Manners know that HB 567 may be considered for calendaring should the other bills tied in with this one show any promise of moving in other committees.

I remind you that tomorrow is the day we must submit our committee schedule for next week. I have checked with other committees to see if HCR 46 or HB 566 "show any promise of moving." To date, no committee hearing has been scheduled for either bill. Neither bill ~~has~~ ~~bill~~ has yet been calendared for the House floor. Please bear in mind that the day Bob would like the bills heard is Friday, April 6 -- next week. I must let the clerk know if we want to hear this bill.

/wtl

MEMORANDUM

TO: Mae
FROM: Bill *[Signature]*
DATE: March 23, 1984
RE: NEA Request

Bill
Tell manners that
HB 567 may be
considered for calendaring
should the other
bills tied in with this
one show any promise
of moving into the
committee.

Bob Manners, Secretary of the NEA-Alaska, called and asked that you consider calendaring one of the two following bills on Friday, April 6:

HB 522 (Duncan) - Mandatory Kindergarten

HB 567 (Lacher) - Appropriation to DOE to develop a training program on sexual abuse

The NEA fly-in begins on Friday and Bob said that many of the teachers would like to hear one or both of these bills.

I said that you had announced that the HESS Committee would not be hearing any new House Bills after April 2, but that I would ask you if you wanted to allow this one exception.

If you don't want to hear one of the bills, I would like to call Bob and let him know of your decision.

Please bear in mind that Barbara Lacher has requested in writing that you hear HB 567. It might be a good idea to do so -- being careful to announce that the exception was being made only because of the unique circumstances (that is, the fly-in, Lacher's earlier request, previous passage of bills related to this appropriation). This appropriation could even be identified as a "clean-up measure," since earlier legislation will have little affect without this funding.

/wtl

HCR 46 - Rules

HB 566 - Rules

H

B

570

COMMITTEE REPORT

HOUSE

(7)

FURTHER: FINANCE

2/2/84

Date: MARCH 6, 1984

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had HB 570

"An Act making a special appropriation for payment as a grant to the Kodiak Island Borough for construction of the Kodiak auditorium and remodeling of Kodiak main elementary school; and providing for an effective date."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
- and recommends _____ new title
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING DO PASS

And Uebler

Ann Testerman

[Signature]

[Signature]

MEMBERS HAVING OTHER RECOMMENDATIONS:

no Rec

[Signature]

CHAIRMAN

Alaska State Legislature

REPRESENTATIVE
FRED F. ZHAROFF
P.O. Box 405
KODIAK, ALASKA 99615
(907) 486-5254

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA
99811
(907) 465-4986
465-4968



House of Representatives

DISTRICT 27:
AKHIOK
BELLS FLATS
CHIGNIK
CHIGNIK LAGOON
CHIGNIK LAKE
CHINIAC
IVANOF BAY
KARLUK
KODIAK
LARSEN BAY
OLD HARBOR
OUZINKIE
PERRYVILLE
PORT LIONS

MEMORANDUM

TO: Rep. Fischer, Chair
House Health, Education, and Social Services Committee

FROM: Rep. *Zharoff*

DATE: February 9, 1984

RE: HB 570, An act making a special appropriation for payment as a grant to the Kodiak island Borough for construction of the Kodiak auditorium and remodeling of Kodiak main elementary school; and providing for an effective date.

I wish to take this opportunity to request that the HESS Committee hold a hearing on HB 570 at the earliest possible convenience. If possible, I would request the hearing be teleconferenced to include the city of Kodiak, and other sites that may have an interest in HB 570. There are many people in my community that wish to participate in the hearing and I have been told that there may be others around the state that may wish to participate as well. (I have requested a list from the promoters of the auditorium of known supporters in other parts of the state.)

You may contact my office staff for needed back-up or to answer any questions that may arise. Thank you for your attention to this matter.



PERSEVERANCE
T·H·E·A·T·R·E

March 6, 1984

TO: Members of the House HESS Committee
SUBJ: Support for HB 570

Perseverance Theatre wishes to express our support for Rep. Zharoff's measure to build an auditorium facility in Kodiak in conjunction with the Kodiak High School.

The auditorium would benefit not only the students of Kodiak High School, but those organizations and individuals who participate in the performing arts. It would also increase the entertainment possibilities for the community. We urge its passage.

Sincerely,

Deborah Baley
Producing Director

INTRODUCTION

The Kodiak Island Borough School District has completed several planning studies and has determined:

1. The School and Community needs are best served by the construction of a new Auditorium seating 750 people and remodeling Old Main Elementary School into support facilities for the Auditorium and other uses all on the Mill Bay School Complex Site.
2. That the Auditorium should be located to provide interior access from the Junior High School and High School without either student body crossing the others "territory" and also provide direct public access.
3. That music and some other facilities would be shared by the Junior High School and High School.
4. This new construction and remodeling would occur in the year following the remodeling of the Junior High School.
5. This project should provide a low maintenance, energy efficient educational facility that would be in architectural and functional harmony with the existing school buildings on this site.
6. The School District wishes to develop buildings that are a good "buy" in the opinion of the tax payers and attractive, functional buildings that are of low maintenance and energy efficient are the way to achieve this.

The intent of this education specification is to provide a sound program that defines the capabilities required of the facilities but does not dictate the design. This is particularly important in the case of the Auditorium so that the Architect can be creative in the design and perhaps provide even greater capabilities than those now required or envisioned.

This education specification is of a "streamlined" nature and relies on the master plan for the Mill Bay School Complex Site and previous educational specifications to provide a basis for this project and for such information as demographics and other community and school descriptions.

SCHOOL USES

School uses or potential school uses of Auditorium and Support Facilities are:

	Audience size or Participants:	Facility:
1. Elementary School Music Program Concerts....	500-1,000	A
2. High School Music Program Concerts.....	500-1,000	A
3. High School Music Program Festival.....	500-1,000	A
4. High School Music Program Small Group Performances.....	250-500	A
5. High School Drama Club Workshops (Artist in Residence).....	30-50 Participants	A or DR.C.R.
6. High School Drama Club Productions.....	250-500	A
7. High School Drama Club Literary Contest.....	100-250	A
8. Junior High School Drama Club Workshop (Artist in Residence).....	50-100 Participants	A or DR.C.R.
9. Junior High School Drama Club Productions...	250-500	A
10. Junior High School Drama Club Contest.....	100-250	A
11. Certain Types of Assemblies for Junior High, High School and Elementary School.....	500 Max.	A
12. Faculty Meetings.....	_____	A
13. Parent-Teacher Association Meetings.....	_____	A
14. School Christmas Programs.....	_____	A
15. High School Baccalaureate Service.....	750 Max.	A
16. Junior High School Band Instruction.....	_____	B.C.R.
17. Junior High School Orchestra Instruction....	_____	B.C.R.
18. Junior High School Choral Instruction.....	_____	C.C.R.

19.	High School Band Instruction.....	_____	B.C.R.
20.	High School Orchestra Instruction.....	_____	B.C.R.
21.	High School Choral Instruction.....	_____	C.C.R.
22.	Music Instruction in Music Classroom (Such as Music Appreciation).....	_____	M.C.R.
23.	Dance Instruction.....	_____	DN.C.R.
24.	Cheerleading Practice.....	_____	DN.C.R.
25.	Adaptive Physical Education (For students with physical problems).....	_____	DN.C.R.
26.	Dance Rehearsal.....	_____	DN.C.R.
27.	Gymnastics.....	_____	DN.C.R.

ABBREVIATIONS

A	=	Auditorium
B.C.R.	=	Band Classroom
C.C.R.	=	Choral Classroom
DN.C.R.	=	Dance Classroom
DR.C.R.	=	Drama Classroom
G/L	=	Gallery / Lobby
M.C.R.	=	Music Classroom

COMMUNITY USES

Community uses or potential School uses of Auditorium and Support Facilities are:

	Audience Size or Participants:	Facility:
1. Kodiak Island Artists Association Exhibits.....	100-250	Gallery - Lobby
2. State Library Association Workshops.....	50-100 Participants	DR.C.R.
3. Kodiak Community College Workshops.....	250-500	A
4. Kodiak Island Artists Association Workshop	_____	C.C.R.
5. U.S. Coast Guard - Center Stage Drama Workshop.....	_____	DR.C.R.
6. Kodiak Baranof Productions, Inc. Workshops Given by Visiting Artists and Groups including School Workshops.....	500-1,000	A
7. Kodiak Baranof Productions, Inc. Concert Series.....	500-1,000	A
8. Kodiak Baranof Productions, Inc. Local Kodiak Artists Show.....	500-1,000	A
9. Kodiak Russian Dancers Folk Dance Class.....	30-50 Participants	DN.C.R.
10. Kodiak Russian Dancers School Performances..	500-1,000	A
11. Kodiak Russian Dancers Special Workshops by Visiting Artists.....	30-50 Participants	DR.C.R.
12. Kodiak Russian Dancers Community Performance	500-1,000	A
13. Mid-Eastern Dance Troop Classes.....	30-50 Participants	DN.C.R.
14. Mid-Eastern Dance Troop Workshops.....	30-50 Participants	DR.C.R.
15. Mid-Eastern Dance Troop Performance.....	500-1,000	A
16. Kodiak Allemanders Square Dance Club Classes and Workshops.....	30-50	DR.C.R.
17. Community Theater Workshops.....	30-50	DR.C.R.
18. Community Theater School Performance.....	500-1,000	A
19. Community Theater Community Performance.....	_____	A

20.	Children's Theater School Performances.....	500-1,000	A
21.	Kodiak Multi-Cultural Council Meeting & Talent Show.....	50-100	DR.C.R.
22.	Folk Arts Program Displays, Classes & Visual Presentation.....	100-500	DR.C.R., A & G/L
23.	State Museum Traveling Collections Displays.	500-1,000	G/L
24.	Kodiak Community College Displays, Workshops, Lectures.....	30-500	A, DR.C.R.
25.	Kodiak Community College Show To Go Program.	250-500	A
26.	Kodiak Community College Drama Production...	500-1,000	A
27.	Filipino Community Classes Philippine Folk Dance.....	10-30	DN.C.R.
28.	Filipino Community Floor Show Folk Dances...	250-500	A
29.	Filipino Community Fashion Show.....	250-500	A
30.	Filipino Community Workshops - Cultural.....	10-30	DN.C.R.
31.	Filipino Community Workshops - Awareness, Sensitivity & Leadership Training.....	_____	DR.C.R.
32.	U.S. Coast Guard Center Stage Talent Show...	250-500	A
33.	Millikens Show.....	500-1,000	A
34.	Cry of the Wild Ram Rehearsals.....	50-100	A
35.	Cry of the Wild Ram Fund Raising.....	250-500	A
36.	Film Lovers in Kodiak (Flik).....	100-250	A or C.C.R.
37.	Various Art Exhibits as Appropriate.....	10-1,000	G/L

See page 8 for Abbreviations.

KODIAK AUDITORIUM AND MAIN
SCHOOL REMODEL

HB570 provides for a special appropriation to fund the Kodiak Auditorium and remodeling of the Main school. The bill is a revision to Representative Zharoff's sponsored HB269 and reduces the funding request by \$386 thousand.

The Kodiak Community has identified the need for a multi-use facility for at least ten years. The facility would provide adequate stage area and seating for school and community art functions. The project has been identified in both the Kodiak City and Borough Capital Improvement Projects Plan. Additionally, The facility was also been targeted by the State Cultural Facility Council as a number one priority.

At present, the architectural and preliminary designs for the facility have been completed. A maintenance and operation budget report was prepared to indicate a cost of one quarter million dollars per year for the facility. The Borough has indicated that the current mill rates and existing levels of federal and state school funding subsidies are sufficient to cover the M & O of the facility.

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579

COMMITTEE REPORT

HOUSE

(7)

FURTHER:

2/16/84

Date: MARCH 14, 1984

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had HB 579

"An Act relating to Junior Reserve Officer Training Corps instructors."

under consideration and recommends:

do pass do not pass

do pass with attached amendments(s)

replace with CS for HB 579 (HESS) same title new title

and recommends THAT THE HESS CS DO PASS

AND attaches a "Letter of Intent" New Fiscal Note

reports it back without recommendation Zero Fiscal Note Attached

referred to the _____ Committee

MEMBERS SIGNING DO PASS

[Signature]
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MEMBERS HAVING OTHER RECOMMENDATIONS:

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CHAIRMAN

STATE OF ALASKA

CHAIRMAN,
HOUSE LABOR AND
COMMERCE

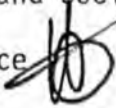


POUCH V
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(907) 465-3892

P.O. BOX 1542
ANCHORAGE, ALASKA 99510
(907) 333-2616

REPRESENTATIVE WALT FURNACE

March 14, 1984

TO: House Health, Education, and Social Services Committee
FROM: Representative Walt Furnace 
SUBJECT: House Bill 579

The purpose of this legislation is to correct an inequity existing in the Anchorage School District. Presently, all JROTC instructors regardless of educational attainment and the certification that reflects that attainment are paid at a lower level than their teacher colleagues. They are paid at 90 percent of the salary level of their teacher counterparts.

The bill in its present form grants teacher status to only certificated instructors that are charged with the direct supervision and teaching of students.

This legislation gives qualified JROTC instructors professional recognition as teachers and allows them to participate in the teachers retirement system.

Alaska State Legislature

REP. MAE TISCHER
CHAIRMAN



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

House of Representatives
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

MEMORANDUM

TO: Representative Mae Tischer
FROM: Bill Lovell, House HESS Committee Staff
DATE: March 14, 1984

RE: Sectional Analysis of HB 579

Pursuant to your request, I have prepared the following sectional analysis of House Bill 579, "An Act relating to Junior Reserve Officer Training Corps instructors."

Section 1 includes certain Junior Reserve Officer Training Corps instructors within the definition of "teacher" contained in AS 14.20.207 (1), which applies to all of AS 14.20, "Teachers and School Officials." Junior ROTC instructors thus included would be limited to those Junior ROTC instructors who

- 1.) are responsible for student supervision;
- 2.) have direct student contact for five or more hours a day; and
- 3.) are certificated instructors.

Section 2 includes certain Junior Reserve Officer Training Corps instructors within the definition of "teacher or member" contained in AS 14.25.220 (38), which applies to all of AS 14.25, "Teachers' Retirement." Junior ROTC instructors thus included would be limited to those Junior ROTC instructors who

- 1.) are responsible for student supervision;
- 2.) have direct student contact for five or more hours a day; and
- 3.) are certificated instructors.

/wtl

HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE
Wednesday, 14 March 1984

Agenda

Call to Order

Comments by Representative Tischer, Chairman

Consideration of HB 549, "An Act relating to vital statistics records."

Consideration of HB 579, "An Act relating to Junior Officer Training Corps Instructors."

Comments by members

Announcements

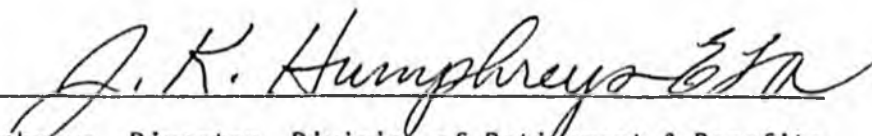
Adjournment

Position Paper

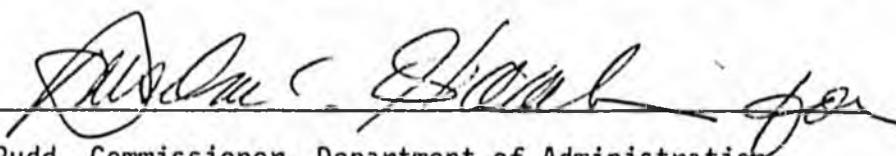
HB 579

Passage of this bill would allow Junior Reserve Officer Training Corps Instructors to participate in the Teachers' Retirement System (TRS) if they are responsible for student supervision for five hours or more each day and if they are certificated.

The Department opposes this bill. To open participation in the Teachers' Retirement System to certain individuals who happen to be certificated but for whom certification is not a condition of employment does not appear to serve any public purpose. There are undoubtedly other employees in the Public Employees' Retirement System who happen to possess a certificate and would have reason to pursue coverage under the TRS.



J.K. Humphreys, Director, Division of Retirement & Benefits 3/13/84
Date



Lisa Rudd, Commissioner, Department of Administration 3/15/84
Date

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____ (Page 1 of 2)

REQUEST Bill/Resolution No.: HB 579 FISCAL DETAIL Agency Affected: Administration
 Title: "An Act relating to TRS" Program Category Affected: TRS Match
 Sponsor: Furnace BRU, Program or Subprogram(s) Affected: _____
 Requestor: _____
 Date of Request: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

Operating	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
100 Personal Svcs						
100 Rtmnt & Bnfts						
200 Travel						
300 Contractual						
400 Supplies						
500 Equipment						
600 Land & Struct						
700 Grants, Claims						
700 TRS Match		17.5	18.9	20.4	22.0	23.8
TOTAL OPERATING		17.5	18.9	20.4	22.0	23.8
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

General Fund		17.5	18.9	20.4	22.0	23.8
Federal Funds						
Other						
Total						

POSITIONS:

Full-Time						
Part-Time						
Temporary						

SOURCE OF FUNDS TO OFFSET IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: J.K. Humphreys, Director Phone: 465-4460
 Division: Retirement & Benefits Date: 3-13-84

Approved by Commissioner: Lisa Rudd Date: 3-15-84
 Agency: Department of Administration

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

House Bill 579
Fiscal Note Analysis
Prepared by the Division of Retirement & Benefits
Department of Administration

March 13, 1984

IV Analysis: Passage of this bill will allow Junior Reserve Officer Training Corps instructors to participate in the Teachers' Retirement System (TRS) if they are individually certificated and supervise students for five or more hours a day.

Currently there are nine positions covered by the Public Employees' Retirement System (PERS) that we estimate would qualify under this bill. Those positions are currently with the Anchorage School District, which would experience an increase in cost equal to the state match.

<u>FY 85</u>	<u>FY 86</u>	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u>
17.5	18.9	20.4	22.0	23.8

The present value of this benefit is \$80,000. This bill would have no perceptible effect on the funding ratio.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE



Revision Date: _____

REQUEST

Bill/Resolution No.: HB-579
 Title: ... Junior Reserve Officer
 Training Instructors
 Sponsor: Furnace
 Requestor: Furnace
 Date of Request: 3-14-84

FISCAL DETAIL

Agency Affected: Education
 Program Category Affected: _____
 BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL		0	0	0	0	0
REVENUE		0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS: 0 0 0 0 0

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The bill has no fiscal impact on this department.

ANALYSIS: Attach a separate page for analysis

Prepared By: Steve Hole Phone: 2800
 Division: Commissioner's Office Date: 3-14-84

Approved by Commissioner: Harold Reynolds, Jr. Date: 3-14-84
 Agency: Education

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

§ 14.25.205

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§ 14.25.210

EDUCATION

§ 14.25.220

an active member, no benefits or refunds may be paid under this chapter and the member's records may be destroyed. (§ 14 ch 84 SLA 1969; am § 23 ch 13 SLA 1980)

Effect of amendments. — The 1980 amendment rewrote the section.

Sec. 14.25.210. Penalty for false statements. A person who willfully or knowingly makes a false statement, or falsifies or permits to be falsified any record of the retirement system, is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than \$500 or by imprisonment for not more than six months, or by both, and forfeits all rights under this chapter. (§ 20 ch 145 SLA 1955)

Sec. 14.25.220. Definitions. In this chapter, unless the context requires otherwise,

(1) "active member" means a member who is employed by an employer, is receiving compensation on a full-time or part-time basis and is making contributions to the system, or a member making contributions under AS 14.20.330 or 14.20.345;

(2) "actuarial adjustment" means equality in value of the aggregate expected payments under two different forms of pension payments, considering expected mortality and interest earnings on the basis of tables adopted from time to time by the board;

(3) "administrator" means the person appointed by the commissioner of administration under AS 14.25.015;

(4) "annuitant" means a retired member or a disabled member who is receiving a benefit under this system;

(5) "average base salary" means the result obtained by dividing the sum of the member's three highest years' base salary by three, or if a member does not have three years base salary, then by dividing the sum of all base salaries by the number of years of base salary; the base salary for a year in which credit is granted for disability totaling more than one-third of a year may not be used in the computation of the average base salary; the base salary in a school year for which the member receives compensation for less than two-thirds of a year may not be used in the computation of the average base salary; if compensation is received for more than two-thirds of a year, the full base salary for that school year shall be used in the computation of the average base salary;

(6) "base salary"

(A) means the total remuneration payable under contract for a full year of membership service, including addenda to the contract;

(B) has the same meaning as "compensation" under AS 39.35.680(8) when applied to a state legislator who elects membership under AS 14.25.040(b);

(7) "beneficiary" means a person designated by a member to receive benefits that may be due from the system upon the member's death;

(8) "BIA service" means service, including partial years, as a teacher in a school operated by the Bureau of Indian Affairs in Alaska;

(9) "compensation" means the total remuneration paid under contract to a member for services rendered during a school year, including cost-of-living differentials, payments for leave that is actually used by the member, the amount by which the member's wages are reduced under AS 39.30.150(c), and the amount deferred under an employer-sponsored deferred compensation plan or the tax shelter annuity plan approved by the Department of Education, but does not include retirement benefits, welfare benefits, per diem, expense allowances, workers' compensation payments, or payments for leave not used by the member, whether those leave payments are scheduled payments, lump-sum payments, donations, or cash-ins; for purposes of AS 14.25.050, compensation paid includes any payment made after June 30 of a school year for services rendered before the end of the school year;

(10) "credited service" means all membership service as provided in (20) of this section, territorial employment as defined in (41) of this section, plus outside, military, and Alaska BIA service, with outside and military service limited to 10 years except under the conditions set out in AS 14.25.100;

(11) "deferred vested member" means an inactive member who meets the service requirements of a vested member;

(12) "dependent child" means an unmarried child of a member, including an adopted child, who is dependent upon the member for support and who is either (A) less than 19 years old, or (B) less than 23 years old and registered at and attending on a full-time basis an accredited educational or technical institution recognized by the Department of Education; the age limits set out in this paragraph do not apply to a child who is totally and permanently disabled;

(13) "disabled member" means a member who is terminated, who has not received a refund from the system, and who is receiving a disability benefit from the system;

(14) "early retirement" means retirement under AS 14.25.110(b);

(15) "employer" means a public school district, the Board of Regents of the University of Alaska, the Department of Education, the National Education Association of Alaska, the Regional Resource Centers or the state legislature with respect to a state legislator who elects membership under AS 14.25.040(b);

(16) "former member" means a member who is terminated and who received a total refund of the balance of the mandatory contribution account, or who has requested in writing a refund of the balance of the mandatory contribution account;

(17) "full-time teacher" means a teacher occupying a position requiring teaching on a regular basis for the normal work period per day or week at a teaching assignment, excluding teaching as an assistant or graduate assistant or teaching on a substitute, temporary, or per diem basis;

(18) "inactive teacher or member" means a member who is terminated and who has not received a refund from the system or a member who is on leave of absence and who is not making contributions under AS 14.20.345;

(19) "member contribution account" means the total maintained by the system of the member's mandatory contributions, indebtedness principal and interest contributions, interest credited to each of those accounts, and adjustments to the account in accordance with AS 14.25.170;

(20) "membership service" means

(A) full or part-time service as a teacher in a public school in the Territory or State of Alaska, or both, under the supervision and control of the Territorial Board of Education or the Department of Education or the school board of a city, regional educational attendance area, or borough school district;

(B) full-time or part-time teaching at the University of Alaska or a full-time administrative position at the University of Alaska which requires academic standing and which has been approved for inclusion in the system by the administrator;

(C) any period during which the teacher receives a disability benefit under this system or is on an approved sabbatical leave granted in accordance with AS 14.20.310; or

(D) continuous service as a state legislator when performed by a state legislator who elects membership under AS 14.25.040(b), subject to the requirements of AS 14.25.040(c);

(21) "military service" means active duty in the armed forces of the United States;

(22) "nonpublic school" means a school established by an agency other than a state which is primarily supported by other than public funds, and operation of whose program rests with other than publicly elected or appointed officials, and is state approved or accredited;

(23) "non-vested member" means an active or inactive member who does not meet the requirements of a vested member or deferred vested member;

(24) "normal retirement" means retirement under AS 14.25.110(a);

(25) "outside service" means service

(A) as a certificated full-time elementary or secondary teacher or a certificated person in a full-time position requiring a teaching certificate as a condition of employment in an out-of-state public school within the United States, or in a school outside the United States supported by funds of the United States;

(B) as a certificated full-time elementary or secondary teacher or a certificated person in a full-time position requiring a teaching certificate as a condition of employment in an approved or accredited nonpublic school within the United States, or in a school outside the United States supported by funds of the United States;

(C) in a full-time position requiring academic standing in an out-of-state institution of higher learning accredited by a nationally recognized accrediting agency as listed in the Education Directory — Colleges and Universities by the National Center for Education Statistics;

(D) as a full-time teacher in an approved or accredited nonpublic institution of higher learning in Alaska;

(26) "part-time teacher" means a teacher occupying a position requiring teaching on a regular basis for at least 50 percent of the normal workweek at a teaching assignment, excluding teaching as an assistant or graduate assistant, or teaching on a substitute, temporary, or per diem basis;

(27) "permanent disability" means a physical or mental condition which, in the judgment of the administrator, based upon medical reports and other evidence satisfactory to the administrator, presumably prevents a member from satisfactorily performing the member's usual duties for the member's employer or the duties of another position or job which an employer makes available for which the member is qualified by training or education;

(28) "prescribed rate of interest" means the rate of interest used for computing employer contributions, for preparing actuarial tables used by the system, for crediting interest to members' contributions, and for charging interest on members' indebtedness accounts;

(29) "public school" means a school operated by publicly elected or appointed school officials in which the program and activities are under the control of those officials and which is supported by public funds;

(30) "retired teacher or member" means a member who is terminated, who has not received a refund from the system, and who is receiving a benefit, other than disability, from the system;

(31) "retirement" means that period of time from the first day of the month following

(A) the date of termination; and

(B) application for retirement in which a person is appointed to receive a retirement benefit, other than a disability benefit;

(32) "retirement benefit" means the annuity received by a retired member from the system;

(33) "retirement fund" means the fund consisting of all matching contributions by local school districts, money made available by appropriations by the state legislature and from all contributions from whatever source, and income and interest derived from the investment of money;

(34) "Retirement System of 1945" and "Retirement Fund of 1945" or like terms mean the system and fund established in sections 37-5-21 — 37-5-35, ACIA 1949;

(35) "school year" means the 12-month period beginning July 1 of each year and ending June 30 of the following year;

(36) "supplemental contribution account" means the account maintained by the system to record the supplemental contributions of each member, including interest and adjustments to the account in accordance with AS 14.25.170;

(37) "system" means the Teachers' Retirement System of Alaska;

(38) "teacher or member" means a person eligible to participate in the system and who is covered by the system, including:

(A) a certificated full-time or part-time elementary or secondary teacher, a certificated school nurse, or a certificated person in a position requiring a teaching certificate as a condition of employment in a public school of the state;

(B) the commissioner of education and all supervisory positions in the Department of Education;

(C) a full-time or part-time teacher of the University of Alaska or a person occupying a full-time administrative position at the University of Alaska which requires academic standing; the approval of the administrator must be obtained before an administrative position qualifies for membership in the system;

(D) a state legislator who elects membership under AS 14.25.040(b);

(39) "vested member" or "vested teacher" means an active member who has completed either

(A) 15 years of service, the last five of which have been membership service, for a member first hired before July 1, 1975; or

(B) eight years of membership service; or

(C) five years of membership and three years of BIA service;

(40) "year of service" means membership service during the dates set for a school year; partial-year service credit is given for membership service before July 1, 1969, during any school year as follows:

(A) less than 20 days, no credit;

(B) 20 days or more but less than 35 days, 0.2 years;

(C) 35 days or more but less than 49 days, 0.3 years;

(D) 49 days or more but less than 63 days, 0.4 years;

(E) 63 days or more but less than 77 days, 0.5 years;

(F) 77 days or more but less than 91 days, 0.6 years;

(G) 91 days or more but less than 105 days, 0.7 years;

(H) 105 days or more but less than 119 days, 0.8 years;

(I) 119 days or more but less than 133 days, 0.9 years;

(J) 133 days or more, 1.0 years; partial-year service credit is given for membership service after July 1, 1969, during any school year as follows:

- (A) less than nine days, no credit;
- (B) nine days or more but less than 27 days, 0.1 years;
- (C) 27 days or more but less than 45 days, 0.2 years;
- (D) 45 days or more but less than 63 days, 0.3 years;
- (E) 63 days or more but less than 81 days, 0.4 years;
- (F) 81 days or more but less than 100 days, 0.5 years;
- (G) 100 days or more but less than 118 days, 0.6 years;
- (H) 118 days or more but less than 136 days, 0.7 years;
- (I) 136 days or more but less than 154 days, 0.8 years;
- (J) 154 days or more but less than 172 days, 0.9 years;
- (K) 172 days or more, 1.0 years; if service is performed on a part-time basis, one-half credit shall be given for each day of service.

(41) "territorial employment" means non-teaching employment with the Territory of Alaska as provided under AS 14.25.105; territorial employment is not membership service;

(42) "board" means the Alaska Teachers' Retirement Board established under AS 14.25.035. (§ 2 ch 145 SLA 1955; am § 1 ch 142 SLA 1957; am § 2 ch 89 SLA 1960; am § 7 ch 179 SLA 1960; am §§ 1, 2 ch 78 SLA 1962; am §§ 8 -- 12 ch 86 SLA 1963; am § 1 ch 111 SLA 1965; am §§ 20 -- 22 ch 151 SLA 1966; am § 1 ch 76 SLA 1968; am §§ 15 -- 19 ch 84 SLA 1969; am § 21 ch 46 SLA 1970; am §§ 13 -- 18 ch 138 SLA 1970; am §§ 3 -- 5 ch 229 SLA 1970; am §§ 16 -- 18 ch 32 SLA 1971; am §§ 6 -- 8 ch 86 SLA 1971; am §§ 30 -- 33 ch 66 SLA 1973; am § 3 ch 57 SLA 1974; am § 21 ch 127 SLA 1974; am §§ 12, 13 ch 173 SLA 1975; am §§ 1, 6 ch 155 SLA 1976; am § 5 ch 169 SLA 1976; am §§ 12, 13 ch 128 SLA 1977; am §§ 4, 5 ch 174 SLA 1978; am §§ 4 -- 7 ch 82 SLA 1979; am § 24 ch 13 SLA 1980; am §§ 25 -- 28 ch 137 SLA 1982)

Effect of amendments. — The 1980 amendment rewrote the section.

The 1982 amendment inserted the language beginning "including cost-of-living differentials" and ending "whether those leave payments are scheduled payments, lump-sum payments, donations, or cash-ins" in paragraph (9), inserted "territorial employment as defined in (41) of this section" and substituted "Alaska BIA service" for "service not exceeding 15 years" in paragraph (10), substituted "member contribution account" for "mandatory contribution account," "total" for "account," and "of the member's mandatory contributions, indebtedness principal and interest contributions, interest credited to each of the accounts" for "to record the mandatory contributions of each member, including interest" in paragraph (19), and added paragraphs (41) and (42).

Editor's notes. — Sections 37-5-21 — 37-5-35 ACIA 1949 referred to in (34) were repealed by § 24, ch. 145, SLA 1955.

Paragraph (1) of section 51, ch. 13, SLA 1980 provides: "This Act takes effect July 1, 1980 except that (1) the definitions of 'military service' and 'outside service' contained in AS 14.25.220(21) and (25), and the definitions of 'membership service' and 'teacher or member' contained in AS 14.25.220(20) and (38) to the extent that they apply to part-time teachers at the University of Alaska, as repealed and re-enacted in sec. 24 of this Act, take effect March 22, 1980, and are retroactive to July 1, 1955."

Legislative history reports. — For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138. For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

§ 14.18.090

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§ 14.18.110

(14.18.07), and that the measures taken under (a) of this section have been ineffective, the board shall withhold state funds in accordance with AS 14.07.070. (§ 1 ch 17 SLA 1981)

Revisor's notes. -- The words "(a) of this section" were substituted for "AS 14.18.090(a)" this in subsection (b) by the revisor of statutes pursuant to AS 01.05.031.

Sec. 14.18.100. Remedies. (a) A person aggrieved by a violation of this chapter or of a regulation or procedure adopted under this chapter as to primary or secondary education may file a complaint with the board and has an independent right of action in superior court for civil damages and for such equitable relief as the court may determine.

(b) A person aggrieved by a violation of this chapter or of a regulation or procedure adopted under this chapter as to postsecondary education has an independent right of action in superior court for civil damages and for such equitable relief as the court may determine. (§ 1 ch 17 SLA 1981)

Sec. 14.18.110. Effect of chapter. This chapter is supplementary to and does not supersede existing laws relating to unlawful discrimination based on sex. (§ 1 ch 17 SLA 1981)

Chapter 20. Teachers and School Officials.

Article

1. Teacher Certification (§§ 14.20.010 — 14.20.090)
2. Employment and Tenure (§§ 14.20.095 — 14.20.210)
3. Salaries (§§ 14.20.220 — 14.20.275)
4. Sabbatical Leave (§§ 14.20.290 — 14.20.350)
5. Professional Teaching Practices Act (§§ 14.20.370 — 14.20.510)
6. Negotiation and Mediation (§§ 14.20.550 — 14.20.610)
7. Interstate Agreement on Qualification of Educational Personnel (§§ 14.20.620 — 14.20.650)

Article 1. Teacher Certification.

Section

10. Teacher certificate required
20. Requirements for issuance of certificate
30. Causes for revocation and suspension

Section

40. Applicability of the Administrative Procedure Act
90. [Repealed]

Collateral references. — 68 Am. Jur. 2d Schools, §§ 128-143.

78 C.J.S. Schools and School Districts, §§ 154-182.

Matters proper for consideration in appointment of teachers. 94 ALR 1484

Tests of moral character of fitness as requisite to issuance of teacher's license or certificate. 96 ALR2d 536.

Bias of members of license revocation board. 97 ALR2d 1210.

Actionability of statements imputing inefficiency or lack of qualification to public school teacher. 40 ALR3d 490.

Sec. 14.20.010. Teacher certificate required. A person may not be employed as a teacher in the public schools of the state unless that person possesses a valid teacher certificate except that a person who has made application to the department for a teacher certificate or renewal of a teacher certificate which has not been acted upon by the department may be employed as a teacher in the public schools of the state until the department has taken action on the application, but in no case may employment without a certificate last longer than three months. (§ 37-5-3 ACLA 1949; am § 9 ch 98 SLA 1966; am § 1 ch 165 SLA 1976)

Editor's notes. — The words "that person" were substituted for "he" by the revisor of statutes under AS 01.05.031 and § 4, ch. 58, SLA 1982.

Sec. 14.20.020. Requirements for issuance of certificate. (a) The department shall issue a teacher certificate to every person who meets the requirements in (b) and (c) of this section.

(b) A person is not eligible for a teacher certificate unless that person has received at least a baccalaureate degree from an institution of higher education accredited by a recognized regional accrediting association or approved by the commissioner. However, this subsection is not applicable to

(1) persons employed in the state public school system on September 1, 1962;

(2) persons issued an emergency certificate during a situation which, in the judgment of the commissioner, requires the temporary issuance of a certificate to a person not otherwise qualified.

(c) The board may establish by regulation additional requirements for the issuance of certificates.

(d) The board may by regulation establish various classes of certificates. (§ 37-5-4 ACLA 1949; am § 1 ch 76 SLA 1962; am § 10 ch 98 SLA 1966; am §§ 13, 14 ch 32 SLA 1976)

Editor's notes. — In subsection (b), the words "that person" were substituted for "he" by the revisor of statutes pursuant to AS 01.05.031 and § 4, ch. 58, SLA 1982.

Legislative history reports. — For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

Sec. 14.20.030. Causes for revocation and suspension. The commissioner or the Professional Teaching Practices Commission may revoke or suspend a certificate only for the following reasons:

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

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

(3) substantial noncompliance with the school laws of the state or the regulations of the department; or

(4) upon a determination by the Professional Teaching Practices Commission that there has been a violation of ethical or professional standards or contractual obligations. (§ 11 ch 98 SLA 1966; am § 1 ch 9 SLA 1975; am § 1 ch 103 SLA 1976)

NOTES TO DECISIONS

Quoted in *Watts v. Seward School Bd.*, Sup. Ct. Op. No. 380 (File No. 427), 421 P.2d 586 (1966).

Collateral references. — Rejection of public school teacher because of disloyalty. 27 ALR2d 487.

Temporary inability of teacher without fault of school authorities to perform duty as justifying termination of contract or removal. 72 ALR 283.

Candidacy for or incumbency of public office or other political activity by teacher or other school employee as ground for dismissal or compulsory leave of absence. 136 A.L.R. 1154.

Validity of governmental requirement of oath of allegiance or loyalty as applied to college curators. 18 ALR2d 303.

Assertion of immunity as ground for discharge of teacher. 44 ALR2d 799.

Wearing of religious garb by public-school teachers. 60 ALR2d 300.

Tests of moral character of fitness as requisite to issuance of teacher's license or certificate. 96 ALR2d 536.

Revocation of teacher's certificate for moral unfitness. 97 ALR2d 827.

Use of illegal drugs as ground for dismissal of teacher, or denial or cancellation of teacher's certificate. 47 ALR3d 754.

Dismissal of, or disciplinary action against, public school teachers for violation of regulation as to dress or personal appearance of teachers. 58 ALR3d 1227.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate. 78 ALR3d 19.

What constitutes "incompetency" or "inefficiency" as a ground for dismissal or demotion of public school teacher. 4 ALR3d 1090.

Sec. 14.20.040. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to all proceedings under AS 14.20.030, and revocations and suspensions are final and reviewable in accordance with AS 44.62.560 — 44.62.570. (§ 12 ch 98 SLA 1966; am § 2 ch 9 SLA 1975)

Sec. 14.20.090. Revocation of certificates.
Repealed by § 59 ch 98 SLA 1966.

Editor's notes. — The repealed section derived from § 37-5-10 ACLA 1949; § 1, ch. 41, SLA 1965. See now AS 14.20.030.

Article 2. Employment and Tenure.

Section

- 95. Right to comment and criticize not to be restricted
- 97. Duty-free time
- 100. Unlawful to require statement of religious or political affiliation
- 110. Penalty for violation of AS 14.20.100
- 120. Statement of qualifications
- 130. Employment of teachers and administrators
- 140. Notification of nonretention
- 145. Automatic re-employment
- 147. Transfer of attendance area or federal agency school; absorption
- 148. Intradistrict teacher reassignments

Section

- 150. Acquisition of tenure rights
- 155. Effect of tenure rights
- 158. Continued contract provisions
- 160. Loss of tenure rights
- 165. Restoration of tenure rights
- 170. Dismissal
- 175. Nonretention
- 180. Procedure and hearing upon notice of dismissal or nonretention
- 185-200. [Repealed]
- 205. Judicial review
- 207. Definitions
- 210. Authority of school board or department to adopt bylaws

Collateral references. — 68 Am. Jur. 2d Schools, §§ 138-143, 149-214.
 78 C.J.S. Schools and School Districts, §§ 154-217.
 Extent of power of school district to provide for the comfort and convenience of teachers and pupils. 7 ALR 791; 52 ALR 249.
 Teacher as an officer whose right may be tested by quo warranto. 30 ALR 1423.
 Status of teacher as an officer or employee. 75 ALR 1552.
 Teachers' tenure statutes. 110 ALR 791; 113 ALR 1495; 127 ALR 1298; 145 ALR 1078.
 Schoolteacher as an employee within workmen's compensation acts. 140 ALR 1383.

Constitutionality and construction of repeal or modification by legislative action of teachers' tenure statute, as regards retrospective operation. 147 ALR 293.
 Personal liability of public school officers or other employees for negligence. 32 ALR2d 1163.
 Teacher's civil liability for administering corporal punishment. 43 ALR2d 469.
 Right of school teacher to serve as member of school board in same school district where employed. 70 ALR3d 1188.
 Who is "teacher" for purposes of tenure statute. 94 ALR3d 141.

Sec. 14.20.095. Right to comment and criticize not to be restricted. No bylaw or regulation of the commissioner, a school board, or local school administrator may restrict or modify the right of a teacher to engage in comment and criticism outside school hours, regarding school personnel, members of the governing body of any school or school district, any other public official, or any school employee, to the same extent that any private individual may exercise the right. (§ 1 ch 14 SLA 1965; am § 13 ch 98 SLA 1966)

Revisor's notes. — The words "of education" were deleted following "commissioner" by the revisor of statutes under AS 01.05.031 and 14.60.010.

NOTES TO DECISIONS

This section was not enacted to be retrospective. *Watts v. Seward School Bd.*, Sup. Ct. Op. No. 554 (File No. 427), 454 P.2d 732 (1969), cert. denied, 397 U.S. 921, 90 S. Ct. 899, 25 L. Ed. 2d 101, rehearing denied, 397 U.S. 1071, 90 S. Ct. 1495, 25 L. Ed. 2d 695 (1970).
 It applies to activities conducted outside school hours. *Watts v. Seward School Bd.*, Sup. Ct. Op. No. 554 (File No. 427), 454 P.2d 732 (1969), cert. denied, 397 U.S. 921, 90 S. Ct. 899, 25 L. Ed. 2d 101, rehearing denied, 397 U.S. 1071, 90 S. Ct. 1495, 25 L. Ed. 2d 695 (1970).

And is directed at rules or regulations which would restrict criticism of school officials. — This section is directed at the rules or regulations of a commissioner, a local school board, or a local administrator. *Watts v. Seward School Bd.*, Sup. Ct. Op. No. 554 (File No. 427), 454 P.2d 732 (1969), cert. denied, 397 U.S. 921, 90 S. Ct. 899, 25 L. Ed. 2d 101, rehearing denied, 397 U.S. 1071, 90 S. Ct. 1495, 25 L. Ed. 2d 695 (1970).

Sec. 14.20.097. Duty-free time. Each governing body shall allow its teachers in school facilities with four or more teachers a daily duty-free mealtime of at least 30 minutes between 11:00 a.m. and 1:00 p.m. (§ 1 ch 11 SLA 1969)

Sec. 14.20.100. Unlawful to require statement of religious or political affiliation. No school board, or member of a school board may require or compel a person applying for the position of teacher in the public schools of the state to state a religious or political affiliation. (§ 37-5-1 ACLA 1949)

Editor's notes. — The revisor of statutes substituted "a" for "his" preceding "religious or political affiliation" pursuant to AS 01.05.031 and § 4, ch. 58, SLA 1982.
Collateral references. — Discrimination because of race, color, or creed in respect of appointment, duties, compensation, etc., of schoolteachers or other public officers or employees. 130 ALR 1512.

Validity of governmental requirement of oath of allegiance or loyalty as applied to college curators. 18 ALR2d 303.
 Dismissal or rejection of public schoolteacher because of disloyalty. 27 ALR2d 487.

Sec. 14.20.110. Penalty for violation of AS 14.20.100. A person violating AS 14.20.100 is punishable by a fine of not more than \$100. (§ 37-5-2 ACLA 1949)

Sec. 14.20.120. Statement of qualifications. A statement of the qualifications of each teacher and superintendent employed by the state or a school district shall be filed with the commissioner. The statement shall contain the credits earned in college, normal school, or university, and the number of years of teaching experience both in the state and elsewhere in the form and manner prescribed by the commissioner. (§ 37-6-5 ACLA 1949; am § 5 ch 179 SLA 1957; am § 12 ch 46 SLA 1970)

Sec. 14.20.130. Employment of teachers and administrators. An employer may, after January 1, issue contracts for the following

school year to employees regularly qualified in accordance with the regulations of the department. The contract for a superintendent may be for more than one school year but may not exceed three consecutive school years. (§ 1 ch 92 SLA 1960; am § 14 ch 98 SLA 1966)

NOTES TO DECISIONS

Authority of school district to employ teachers. — A school district has no authority to employ teachers except as prescribed by statute and regulation. *Spicer v. Anchorage Independent School Dist.*, Sup. Ct. Op. No. 325 (File No. 576), 410 P.2d 995 (1966).

schools held not to be an offer of a contract. — See *Spicer v. Anchorage Independent School Dist.*, Sup. Ct. Op. No. 325 (File No. 576), 410 P.2d 995 (1966).

Cited in *Skagway City School Bd. v. Davis*, Sup. Ct. Op. No. 1216 (File No. 2265), 543 P.2d 218 (1975).

Letter from superintendent of

Collateral references. — Duty of teacher to perform services other than those which pertain to instruction. 38 ALR 1414.

coaching of athletic sports as within duties assumed by, or that may be assigned to, teacher, or among the subjects in respect of which teacher applicants must qualify. 119 ALR 819.

Sec. 14.20.140. Notification of nonretention. (a) If a teacher who has acquired tenure rights is not to be retained for the following school year, the employer shall notify the teacher of the nonretention by writing, delivered before March 16, or by registered mail postmarked before March 16.

(b) If a teacher who has not acquired tenure rights is not to be retained for the following school year the employer shall notify the teacher of the nonretention by writing delivered on or before the last day of the school term or by registered mail postmarked on or before the last day of the school term. (§ 1 ch 92 SLA 1960; am § 15 ch 98 SLA 1966)

NOTES TO DECISIONS

Notice of nonretention sufficient. — See *Griffin v. Galena City School Dist.*, Sup. Ct. Op. No. 2469 (File No. 5388), 640 P.2d 829 (1982).

Quoted in *State v. Redman*, Sup. Ct. Op. No. 755 (File No. 1431), 491 P.2d 157 (1971).

Collateral references. — Notice of intention to discharge teacher, or not to

renew contract, sufficiency under statutes requiring such notice 92 ALR2d 751.

Sec. 14.20.145. Automatic re-employment. If notification of nonretention is not given according to AS 14.20.140 a teacher is entitled to be re-employed in the same district for the following school year on the contract terms the teacher and the employer may agree upon, or if no terms are agreed upon, the provisions of the previous contract are continued for the following school year, subject to AS 14.20.158. The right to be reemployed according to this section expires if the teacher does not accept reemployment within 30 days after the date on which the teacher receives a contract of reemployment. (§ 16 ch 98 SLA 1966)

Editor's notes. — The revisor of statutes, pursuant to AS 01.05.031 and § 4, ch.

58, SLA 1982, substituted "a" for "his" in the second sentence.

NOTES TO DECISIONS

The purpose of tenure laws is to give job security to experienced teachers and to ensure that they will not be discharged for inadequate reasons. *Redman v. Department of Educ.*, Sup. Ct. Op. No. 1009 (File Nos. 1802, 1822), 519 P.2d 760 (1974).

This section seeks to achieve this result by treating an improperly nonretained teacher as if the teacher had been retained, with no prejudice to result from the fact of nonretention. *Redman v. Department of Educ.*, Sup. Ct. Op. No. 1009 (File Nos. 1802, 1822), 519 P.2d 760 (1974).

The effect of this section is to give an improperly nonretained teacher the enforceable right to a written contract of employment for the next school year containing provisions like those in the teacher's contract for the preceding year. *Redman v. Department of Educ.*, Sup. Ct. Op. No. 1009 (File Nos. 1802, 1822), 519 P.2d 760 (1974).

This section does not automatically continue a teacher's prior contract in the event proper notice of nonretention is not given. *Redman v. Department of Educ.*, Sup. Ct. Op. No. 1009 (File Nos. 1802, 1822), 519 P.2d 760 (1974).

The language requiring that the provisions of the previous contract are to be continued for the following school year is intended to protect the teacher's legitimate expectation of continued employment on terms no less favorable than those previously enjoyed. It is not meant to require each term of the previous contract to be continued unchanged where the result would be to unreasonably penalize either the teacher or the employer. *Redman v. Department of Educ.*, Sup. Ct. Op. No. 1009 (File Nos. 1802, 1822), 519 P.2d 760 (1974).

No action for damages may be based on prior, expired contract. — Where the employer has refused to tender the teacher a new contract, the teacher may enforce the teacher's statutory right to be given a new contract and may then sue for breach of that contract, but an action for damages cannot be based upon a prior contract that has expired. *Redman v. Department of Educ.*, Sup. Ct. Op. No. 1009 (File Nos. 1802, 1822), 519 P.2d 760 (1974).

Quoted in *State v. Redman*, Sup. Ct. Op. No. 755 (File No. 1431), 491 P.2d 157 (1971).

Sec. 14.20.147. Transfer of attendance area or federal agency school; absorption. — (a) When an attendance area is transferred from a currently operating district to, or absorbed into, a new or existing school district, the teachers for the attendance area also shall be transferred unless otherwise mutually agreed by the teacher or teachers and the chief school administrator of the new district. Accumulated or earned benefits, including but not limited to, seniority, salary level, tenure, leave, and retirement, accompany the teacher who is transferred.

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

(c) On the first day of service in the absorbing school district, a teacher transferred from a federal agency school shall be allowed the actual number of days of accumulated sick leave that the teacher has earned while teaching in Alaska. Consistent with the established district policy the absorbing district may allow credit for any other type of leave. Credit for retirement shall be allowed in accordance with AS 14.25.060. (§ 1 ch 53 SLA 1972; am § 1 ch 150 SLA 1975)

Legislative history reports. — For report on ch. 150, SLA 1975 (CSSB 128 am), see 1975 Senate Journal, p. 712.

NOTES TO DECISIONS

Back pay is not a benefit for the purpose of subsection (a) of this section. Aleutian Region R.E.A.A. v. Wolansky, Sup. Ct. Op. No. 2380 (File No. 5098), 630 P.2d 529 (1981).

Quoted in Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 591 P.2d 1292 (1979).

Sec. 14.20.148. Intradistrict teacher reassignments. When a teacher is involuntarily transferred or reassigned to a position for which the teacher is qualified, within the district, the teacher's moving expenses shall be paid, unless the one-way driving distance is 20 miles or less from the teacher's present place of residence, or unless otherwise mutually agreed by the teacher and chief school administrator of the district. (§ 1 ch 136 SI A 1972)

Editor's notes. — The revisor of statutes, pursuant to AS 01.05.031 and § 4, ch 58, SLA 1982, substituted "the teacher" for "he" and "the teacher's" for "his."

Collateral references. — Power of school authorities to transfer teacher from one school or district to another, 103 ALR 1382.

Sec. 14.20.150. Acquisition of tenure rights. (a) A teacher acquires tenure rights in a district when the teacher

(1) possesses a standard teaching certificate;

(2) has been employed as a teacher in the same district continuously for two full school years and is reemployed for the school year immediately following the two full school years.

(b) The tenure rights acquired under (a) of this section become effective on the first day the teacher performs teaching services in the district during the school year immediately following the two full school years. (§ 1 ch 92 SLA 1960; am § 17 ch 98 SLA 1966)

Editor's notes. — The revisor of statutes, pursuant to AS 01.05.031 and § 4, ch. 58, SLA 1982, substituted "the teacher"

for "his" in the introductory language of subsection (a).

NOTES TO DECISIONS

Purpose of tenure laws. — Tenure laws are intended to give job security to experienced teachers and to ensure that they will not be discharged for inadequate reasons. State v. Redman, Sup. Ct. Op. No. 755 (File No. 1431), 491 P.2d 157 (1971).

A system of tenure has as its objective the retention of able personnel after they have undergone an adequate period of probation with the concomitant result that more talented personnel will be attracted to enter the teaching profession. State v. Redman, Sup. Ct. Op. No. 755 (File No. 1431), 491 P.2d 157 (1971).

The law does not require that teachers shall teach every day, or every hour of every day. State v. Redman, Sup. Ct. Op. No. 755 (File No. 1431), 491 P.2d 157 (1971).

The supreme court fails to find any provision of Alaska statutes concerning education which requires, or to perceive of any persuasive policy reasons why, a

teacher must work full days throughout the school year in order to attain tenure rights. No legislative intent to exclude a teacher who works less than full days is manifest from a study of the applicable statutes. State v. Redman, Sup. Ct. Op. No. 755 (File No. 1431), 491 P.2d 157 (1971).

Duties regular and substantial enough to afford intelligent evaluation are sufficient. — When a teacher's duties are regular and substantial enough to afford intelligent evaluation, there is little in the way of persuasive policy considerations for excluding such service from the ambit of Alaska tenure laws. State v. Redman, Sup. Ct. Op. No. 755 (File No. 1431), 491 P.2d 157 (1971).

Cited in Skagway City School Bd. v. Davis, Sup. Ct. Op. No. 1216 (File No. 2265), 543 P.2d 218 (1975); Crisp v. Kenai Peninsula Borough School Dist., Sup. Ct. Op. No. 1771 (File No. 3318), 587 P.2d 1168 (1978).

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

What amounts to contract or statute governing employment of faculty member by college or university, 66 ALR3d 1018.

Construction and effect of tenure provi-

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

Sec. 14.20.155. Effect of tenure rights. (a) A teacher who has acquired tenure rights has the right to employment within the district during continuous service.

(b) A teacher who has acquired tenure rights may agree to a new contract at any time. However, if the teacher fails to agree to a new contract, the provisions of the previous contract are continued subject to AS 14.20.158. (§ 18 ch 98 SLA 1966)

Collateral references. — Compensation of tenure teacher. 145 ALR 408; 154 ALR 148.

Sec. 14.20.158. Continued contract provisions. Continuation of the provisions of a teacher's contract according to AS 14.20.145 or 14.20.155 does not

(1) affect the alteration of the teacher's salary in accordance with the salary schedule prescribed by state law, or in accordance with a local salary schedule applicable to all teachers in the district and adopted by bylaws;

(2) limit the right of the employer to assign the teacher to any teaching, administrative, or counseling position for which the teacher is qualified; or

(3) limit the right of the employer to assign the teacher, as is reasonably necessary, to any school in the district. (§ 19 ch 98 SLA 1966)

NOTES TO DECISIONS

This section puts the reemployed teacher in the same salary position he would have been in had his employment not been interrupted, regardless of his salary under his last contract. *Redman v. Department of Educ., Sup. Ct. Op. No. 1009 (File Nos. 1802, 1822), 519 P.2d 760 (1974).*

It further allows flexibility in the manner of reemployment where adherence to the strict terms of the prior contract would put an unreasonable burden on the employer. *Redman v. Department of Educ., Sup. Ct. Op. No. 1009 (File Nos. 1802, 1822), 519 P.2d 760 (1974).*

Limited interpretation of section would defeat legislative intent. — A limited interpretation of this section as representing an exclusive list of the ways in which an improperly nonretaining teachers' prior contract may be varied

would defeat the general intent of the legislature that an improperly nonretained teacher be returned to substantially the same position as before nonretention. *Redman v. Department of Educ., Sup. Ct. Op. No. 1009 (File Nos. 1802, 1822), 519 P.2d 760 (1974).*

Ways prior contract may be varied. — In assessing damages due to improper nonretention, the strict terms of a teacher's prior contract may be varied in ways not specifically enumerated in this section where such modifications are necessary to protect the reasonable expectations of the parties. *Redman v. Department of Educ., Sup. Ct. Op. No. 1009 (File Nos. 1802, 1822), 519 P.2d 760 (1974).*

AS 14.20.145 is expressly made subject to this section. *Redman v. Department of Educ., Sup. Ct. Op. No. 1009 (File Nos. 1802, 1822), 519 P.2d 760 (1974).*

Sec. 14.20.160. Loss of tenure rights. Tenure rights are lost when the teacher's employment in the district is interrupted or terminated, or when the teacher reaches the age of 65. (§ 1 ch 92 SLA 1960; am § 1 ch 104 SLA 1965; am § 20 ch 98 SLA 1966)

Sec. 14.20.165. Restoration of tenure rights. A teacher who held tenure rights and who was retired due to disability under AS 14.25.130, but whose disability (1) has been removed, and the removal of that disability is certified by a competent physician following a physical or mental examination, or (2) has been compensated for by

rehabilitation or other appropriate restorative education or training, and that rehabilitation or restoration to health has been certified by the division of vocational rehabilitation of the Department of Education, shall be restored to full tenure rights in the district from which the teacher was retired, at such time as an opening for which the teacher is qualified becomes available. (§ 1 ch 71 SLA 1975)

Editor's notes. — The revisor of statutes, pursuant to AS 01.05.031 and § 4, ch. 58, SLA 1982, substituted "the teacher" for "he" twice near the end of the section.

Sec. 14.20.170. Dismissal. (a) A teacher, including a teacher who has acquired tenure rights, may be dismissed at any time only for the following causes:

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

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

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

(b) A teacher may be suspended temporarily with regular compensation during a period of investigation to determine whether or not cause exists for the issuance of a notification of dismissal according to AS 14.20.180. (§ 2 ch 92 SLA 1960; am § 21 ch 98 SLA 1966; am §§ 1, 2 ch 104 SLA 1966)

Revisor's notes. — AS 14.20.170(1) and (2) are amended by ch. 98, SLA 1966, which is a revision of the education law. Chapter 104, SLA 1966, also amends paragraphs (1) and (2) to make manifest the legislative intent to specifically amend these paragraphs in relation to the Watts

v. Seward School Board case. This is more fully discussed in the Legislative Committee Report, p. 988 of the 1966 House Journal.

Legislative history reports. — For report on ch. 104, SLA 1966, see 1966 House Journal, p. 988.

NOTES TO DECISIONS

In general. — See annotations under AS 14.20.095, Notes to Decisions.

Subsection (b) of this section is in a permissive form and allows temporary suspension during the investigation. *Nichols v. Eckert, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).*

A right of nontenured teachers to a hearing prior to dismissal for cause is not to be found in this section. *Nichols v. Eckert, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).*

The express language of subsection (b) of

this section clearly lacks any indication that the legislature intended to provide a hearing prior to dismissal for cause of a nontenured teacher. *Nichols v. Eckert, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).*

Despite the reference to AS 14.20.180. — The reference to AS 14.20.180 in this section cannot reasonably be interpreted to extend the hearing rights given to tenured teachers under that section to nontenured teachers. *Nichols v. Eckert, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).*

The distinction in treatment between tenured and nontenured teachers is quite clear from the express terms of AS 14.20.180. *Nichols v. Eckert*, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

Validity of dismissal proceedings. — When a discharged teacher had not demonstrated any way in which his dismissal was tainted by his temporary suspension with pay under subsection (b), nor any other way in which he was prejudiced by the suspensor, his contention that the dismissal proceedings were void as a matter of law was found to be without merit. *Renfroe v. Green*, Sup. Ct. Op. No. 2233 (File Nos. 4394, 4481), 626 P.2d 1068 (1980).

Instructions. — There was no error in the court's inclusion of an instruction on provisions of the Professional Teaching Practices Commission Code of Ethics although there had been no determination that a dismissed teacher had violated the code by the commission when fair minded jurors, in the exercise of reasonable judg-

ment, could differ on whether certain actions by the dismissed teacher were unethical or otherwise constituted substantial non-compliance under subsection (a) of this section. *Renfroe v. Green*, Sup. Ct. Op. No. 2233 (File Nos. 4394, 4481), 626 P.2d 1068 (1980).

Directed verdict. — When there was evidence that a dismissed teacher had verbally and physically abused another member of the teaching profession in front of students; and fair minded jurors, in the exercise of reasonable judgment, could differ on whether those actions violated provisions of the code of ethics of the Professional Teaching Practices Commission or otherwise constituted incompetency or substantial noncompliance under subsection (a) of this section, the superior court did not err in failing to direct a verdict in the dismissed teacher's favor. *Renfroe v. Green*, Sup. Ct. Op. No. 2233 (File Nos. 4394, 4481), 626 P.2d 1068 (1980).

Cited in *Skagway City School Bd. v. Davis*, Sup. Ct. Op. No. 1216 (File No. 2265), 543 P.2d 218 (1975).

Collateral references. — Temporary inability of teacher without fault of school authorities to perform duty as justifying termination of contract or removal. 72 ALR 283.

Marriage of teacher as ground for removal or discharge. 81 ALR 1033; 118 ALR 1092.

Candidacy for or incumbency of public office or other political activity by teacher or other school employee as ground for dismissal or compulsory leave of absence. 136 ALR 1154.

Assertion of immunity as ground for discharge of teacher. 44 ALR2d 799.

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

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

What constitutes "incompetency" or

Sec. 14.20.175. Nonretention. (a) A teacher who has not acquired tenure rights is subject to nonretention for the school year following the expiration of the teacher's contract for any cause which the employer determines to be adequate. However, at the teacher's request, the teacher is entitled to a written statement of the cause for

"inefficiency" as a ground for dismissal or demotion of public school teacher. 4 ALR3d 1090.

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

Use of illegal drugs as ground for dismissal of teacher, or denial or cancellation of teacher's certificate. 47 ALR3d 754.

Dismissal of, or disciplinary action against, public school teachers for violation of regulation as to dress or personal appearances of teachers. 58 ALR3d 1227.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate. 78 ALR3d 19.

What constitutes "insubordination" as ground for dismissal of public school teacher. 78 ALR3d 83.

Dismissal of public school teacher because of unauthorized absence or tardiness. 78 ALR3d 117.

nonretention. The boards of city and borough school districts and regional educational attendance areas shall provide by regulation or bylaw a procedure under which a nonretained teacher may request and receive an informal hearing by the board.

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

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

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

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

(4) a necessary reduction of staff occasioned by a decrease in school attendance. (§ 22 ch 98 SLA 1966; am § 1 ch 11 SLA 1968; am § 13 ch 46 SLA 1970; am § 15 ch 124 SLA 1975)

Editor's notes. — The revisor of statutes, under the authority of AS 01.05.031 and in accordance with the directive in SLA 1982, ch. 58, § 4, substituted "the teacher's" for "his" in the first and second sentences of subsection (a), deleted "his"

preceding "nonretention" in the second sentence of subsection (a), and rewrote the third sentence of that subsection.

Legislative history reports. — For report on ch. 11, SLA 1968 (HB 91 am), see 1967 House Journal, p. 160.

NOTES TO DECISIONS

Section exceeds federal constitutional requirements. — This section in requiring a statement of cause and an opportunity to be heard, exceeds federal constitutional requirements. *Shatting v. Dillingham City School Dist.*, Sup. Ct. Op. No. 2177 (File No. 4240), 617 P.2d 9 (1980).

Discretion of school boards. — 4 AAC 19.010, which provides that formal evaluations shall serve as a method for gathering data relevant to subsequent employment status decisions pertaining to the person evaluated, cannot operate to limit the broad discretion that was intentionally given to local school boards by the legislature, and a school board's decision not to renew the contract of a nontenured teacher may be "for any cause which the employer determines to be adequate." *Shatting v. Dillingham City School Dist.*, Sup. Ct. Op. No. 2177 (File No. 4240), 617 P.2d 9 (1980).

Despite the broad language of subsection (a), the board's discretion is subject to certain limitations; for example, a school

board may not deny continued employment to a teacher because of the teacher's exercise of first amendment rights, nor may a school board deny continued employment to a teacher if to do so would deprive the teacher of other rights that are guaranteed by constitution or statute. *Shatting v. Dillingham City School Dist.*, Sup. Ct. Op. No. 2177 (File No. 4240), 617 P.2d 9 (1980).

Rights of nonretained, nontenured teachers are limited. — The rights of a nontenured teacher who is simply not retained at the end of his period of employment are relatively limited. A nonretained, nontenured teacher has no constitutionally protected interest in public employment. *Gorder v. Matanuska-Susitna Borough School Dist.*, Sup. Ct. Op. No. 929 (File No. 1754), 513 P.2d 1094 (1973); *Shatting v. Dillingham City School Dist.*, Sup. Ct. Op. No. 2177 (File No. 4240), 617 P.2d 9 (1980).

Probationary employees who are otherwise lawfully discharged cannot obtain permanent status through

grievance procedures which do not purport to modify the statutory provisions concerning tenure and termination of employees. *Gorder v. Matanuska-Susitna Borough School Dist.*, Sup. Ct. Op. No. 929 (File No. 1754), 513 P.2d 1094 (1973).

The grievance procedure may be of value to a nontenured teacher in attempting to persuade the hiring authority that he should be retained. The process might on occasion bring forth evidence and argument by which the termination of the nontenured teacher might be reconsidered. *Gorder v. Matanuska-Susitna Borough School Dist.*, Sup. Ct. Op. No. 929 (File No. 1754), 513 P.2d 1094 (1973).

But any such results and action would be a matter within the discretion of the hiring authority, and thereby a matter of grace rather than legal right. *Gorder v. Matanuska-Susitna Borough School Dist.*, Sup. Ct. Op. No. 929 (File No. 1754), 513 P.2d 1094 (1973).

Quoted in *Matanuska-Susitna Borough v. Lum*, Sup. Ct. Op. No. 1179 (File Nos. 2241, 2250), 538 P.2d 994 (1975); *Jerrel v. Kenai Peninsula Borough School Dist.*, Sup. Ct. Op. No. 1458 (File No. 2901), 567 P.2d 760 (1977).

Cited in *Huber v. Fairbanks N. Star Borough School Dist.*, Superior Court, 4th Jud. Dist., C.A. No. 72-511 (1973).

Collateral references. — Right to dismiss public school teacher on ground that

services are no longer needed. 100 ALR2d 1141.

Sec. 14.20.180. Procedure and hearing upon notice of dismissal or nonretention. (a) An employer shall include in a notification of dismissal of a teacher who has not acquired tenure rights, or of nonretention or dismissal of a tenure teacher, a statement of cause and a complete bill of particulars.

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

(c) Upon receipt of the notification requesting a hearing, the employer shall immediately arrange for a hearing, and shall notify the tenure teacher or administrator in writing of the date, time, and place of the hearing. A written transcript, tape, or similar recording of the proceedings shall be kept. Transcribed copies shall be furnished to the tenure teacher for cost upon request of the tenure teacher. A final decision of the school board requires a majority vote of the membership. The vote shall be by roll call. The final decision shall be written and contain specific findings of fact and conclusions of law. A written notification of the decision shall be furnished to the tenure teacher within 10 days of the date of the decision. (§ 3a ch 92 SLA 1960; am § 23 ch 98 SLA 1966; am §§ 2, 3 ch 11 SLA 1968; am § 14 ch 46 SLA 1970; am §§ 16, 17 ch 124 SLA 1975)

Editor's notes. — The revisor of statutes, under the authority of AS 01.05.031 and in accordance with the directive in SLA 1982, ch. 58, § 4, rewrote subsection (b) and in the third sentence of subsection

(c), substituted "request of the tenure teacher" for "his request."

Legislative history reports. — For report on ch. 11, SLA 1968 (HB 91 am), see 1967 House Journal, p. 160.

NOTES TO DECISIONS

Section describes procedure. — This section describes the administrative procedure, which includes a hearing, when a tenured teacher has been given a notice of dismissal or nonretention. *Corso v. Commissioner of Educ.*, Sup. Ct. Op. No. 1412 (File No. 2870), 563 P.2d 246 (1977).

Reference to section in AS 14.20.170 does not extend hearing rights to nontenured teachers. — The reference to this section in AS 14.20.170 cannot reasonably be interpreted to extend the hearing rights given to tenured teachers under this section to nontenured teachers. *Nichols v. Eckert*, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

But constitutional due process requirements overcome any statutory rule. — Even though a hearing is not accorded to nontenured teachers by statute, the constitutional requirements of due process overcome any statutory rule. *Nichols v. Eckert*, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

And nontenured teachers are entitled to hearing upon dismissal. — Where a mid-year dismissal is at issue, clearly the teachers have been deprived of an interest in property, namely, their present teaching post. This is an interest protected by the 14th amendment to the United States Constitution and by the first article of the Alaska Constitution, and thus they are entitled to a hearing. *Nichols v. Eckert*, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

A hearing is the procedure most likely to lead to a fair determination regarding the dismissal of a nontenured

teacher. The stigma which attaches to a discharge for incompetence is sufficiently injurious to call for this type of safeguard. *Nichols v. Eckert*, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

A full judicial hearing is not necessary, but a hearing that allows the administrative authority to examine both sides of the controversy will protect the interests and rights of all who are involved. *Nichols v. Eckert*, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

But nontenured teachers must be given opportunity to present defense by testimony. *Nichols v. Eckert*, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

When time for appeal begins to run. — In light of the provision in subsection (c) of this section that the final decision of the school board must be "written and contain specific findings of fact and conclusions of law," the time for appeal from the board's determination did not begin to run until the written decision was mailed or delivered to the teacher. *Jerrel v. Kenai Peninsula Borough School Dist.*, Sup. Ct. Op. No. 1458 (File No. 2901), 567 P.2d 760 (1977).

Attorney's fees not allowed against teacher whose dismissal was affirmed. — See *Crisp v. Kenai Peninsula Borough School Dist.*, Sup. Ct. Op. No. 1771 (File No. 3318), 587 P.2d 1168 (1978).

Applied in *Renfroe v. Green*, Sup. Ct. Op. No. 2233 (File Nos. 4394, 4484), 626 P.2d 1068 (1980).

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

Sufficiency of notice of intention to discharge teacher or not to renew contract

under statutes requiring such notice. 92 ALR2d 751.

Elements and measure of damages in action by schoolteacher for wrongful discharge. 22 ALR2d 1047.

Secs. 14.20.185 — 14.20.200. Procedure and hearing; appeals.
Repealed by § 59 ch 98 SLA 1966.

Editor's notes. — The repealed sections derived from §§ 3b, 3c, ch. 92, SLA 1960; § 2, ch. 41, SLA 1965.

Sec. 14.20.205. Judicial review. If a school board reaches a decision unfavorable to a teacher, the teacher is entitled to a de novo trial in the superior court. However, a teacher who has not attained tenure rights is not entitled to judicial review according to this section. (§ 24 ch 98 SLA 1966; am § 1 ch 148 SLA 1966; am § 4 ch 11 SLA 1968; am § 18 ch 124 SLA 1975)

Legislative history reports. — For report on ch. 11, SLA 1968 (HB 91 nm), see 1967 House Journal, p. 160.

NOTES TO DECISIONS

This section, granting a trial de novo to teachers, does not violate the separation of powers. *Matanuska-Susitna Borough v. Lum*, Sup. Ct. Op. No. 1179 (File Nos. 2241, 2250), 538 P.2d 994 (1975).

On its face, this section bears no relation to the general provisions governing judicial appeals, which is covered by Title 22. *Matanuska-Susitna Borough v. Lum*, Sup. Ct. Op. No. 1179 (File Nos. 2241, 2250), 538 P.2d 994 (1975).

AS 22.10.020 does not supersede this section. — AS 22.10.020, which provided in § 17(1), ch. 50, SLA 1959, that "All hearings on appeal from any final order or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, shall grant a trial de novo, in whole or in part," does not supersede this section, which expressly mandates de novo reviews for tenured teachers. *Matanuska-Susitna Borough v. Lum*, Sup. Ct. Op. No. 1179 (File Nos. 2241, 2250), 538 P.2d 994 (1975).

In reenacting AS 22.10.020 in 1970 the legislature has not unequivocally expressed any intent to deny tenured teachers de novo review. Nor was the reenactment part of a comprehensive revision. *Matanuska-Susitna Borough v. Lum*, Sup. Ct. Op. No. 1179 (File Nos. 2241, 2250), 538 P.2d 994 (1975).

Since this section and AS 22.10.020 are not irreconcilably conflicting, but can be intelligently read as contemporaneous

expressions of a general rule and an exception to it, nothing in the edicts of statutory construction requires us to find that this section has been rendered inoperative by the reenactment of AS 22.10.020. *Matanuska-Susitna Borough v. Lum*, Sup. Ct. Op. No. 1179 (File Nos. 2241, 2250), 538 P.2d 994 (1975).

A policy factor militating in favor of a full application of this section is that a tenured teacher against whose favor a decision has been reached is faced with the loss of a very important right — his source of income. In this connection, it is not necessary to indulge in such classificatory labels as "vested right" or "property right," for it is enough that the right be recognized as important for it to act as a guide to decision in the interpretation of this section. *Matanuska-Susitna Borough v. Lum*, Sup. Ct. Op. No. 1179 (File Nos. 2241, 2250), 538 P.2d 994 (1975).

Rights of nonretained, nontenured teachers are limited. — The rights of a nontenured teacher who is simply not retained at the end of his period of employment are relatively limited because such a teacher has no constitutionally protected interest in public employment. *Gorder v. Matanuska-Susitna Borough School Dist.*, Sup. Ct. Op. No. 929 (File No. 1754), 513 P.2d 1094 (1973).

Probationary employees who are otherwise lawfully discharged cannot obtain permanent status through grievance procedures which do not purport to modify the statutory provisions concerning tenure and termination of

employees. *Gorder v. Matanuska-Susitna Borough School Dist.*, Sup. Ct. Op. No. 929 (File No. 1754), 513 P.2d 1094 (1973).

The grievance procedure may be of value to a nontenured teacher in attempting to persuade the hiring authority that he should be retained. The process might on occasion bring forth evidence and argument by which the termination of the nontenured teacher might be reconsidered. *Gorder v. Matanuska-Susitna Borough School Dist.*, Sup. Ct. Op. No. 929 (File No. 1754), 513 P.2d 1094 (1973).

But any such results and action would be a matter within the discretion of the hiring authority, and thereby a matter of grace rather than legal right. *Gorder v. Matanuska-Susitna Borough School Dist.*, Sup. Ct. Op. No. 929 (File No. 1754), 513 P.2d 1094 (1973).

Right of nontenured teacher to judicial review. — While this section does not extend the tenured teacher's right to a trial de novo to a nontenured teacher, neither does it preclude a more limited form of judicial review of the school board decision; therefore a nontenured teacher has a right to judicial review, on the record, of a school board's nonretention, and although a review on the record is all that is required, in its discretion the superior court may grant a trial de novo. *Shatting v. Dillingham City School Dist.*, Sup. Ct. Op. No. 2177 (File No. 4240), 617 P.2d 9 (1980).

Courts granted fact-finding role. — While courts normally feel constrained to

defer to the fact-finding role which the legislature has given to a particular agency, no such constraint logically should exist where the legislature itself has granted the courts a fact-finding role in their review of administrative action. This section seemingly does just that, for it expressly grants a tenured teacher a "trial de novo" following an unfavorable school board decision. *Matanuska-Susitna Borough v. Lum*, Sup. Ct. Op. No. 1179 (File Nos. 2241, 2250), 538 P.2d 994 (1975).

When time for appeal begins to run. — In light of the provision in AS 14.20.180(c) that the final decision of the school board must be "written and contain specific findings of fact and conclusions of law," the time for appeal from the board's determination did not begin to run until the written decision was mailed or delivered to the teacher. *Jerrel v. Kenai Peninsula Borough School Dist.*, Sup. Ct. Op. No. 1458 (File No. 2901), 567 P.2d 760 (1977).

Attorney's fees not allowed against teacher whose dismissal was affirmed. — See *Crisp v. Kenai Peninsula Borough School Dist.*, Sup. Ct. Op. No. 1771 (File No. 3318), 587 P.2d 1168 (1978).

Applied in *Renfree v. Green*, Sup. Ct. Op. No. 2233 (File Nos. 4394, 4481), 626 P.2d 1068 (1980).

Quoted in *Sjong v. State, Dep't of Revenue*, Sup. Ct. Op. No. 2269 (File No. 4255), 622 P.2d 967 (1981); *Fedpac Int'l, Inc. v. State*, Sup. Ct. Op. No. 2520 (File No. 6034), 646 P.2d 240 (1982).

Sec. 14.20.207. Definitions. In AS 14.20.010 — 14.20.210

(1) "teacher" means a person serving in a teaching, counseling, or administrative capacity and required to be certificated in order to hold the position;

(2) "employer" means the school board or superintendent which appoints the teacher;

(3) "school year" includes "school term" if the teacher is employed only for the period of the school term;

(4) "continuous employment" means employment which is without interruption except for temporary absences approved by the employer or its designee, or except for the interval between consecutive school terms if the teacher is employed only for the months of the school term;

(5) "nonretention" means the election by an employer not to re-employ a teacher for the school year or school term immediately following the expiration of the teacher's current contract; and

(6) "dismissal" means termination by the employer of the contract services of the teacher during the time a teacher's contract is in force,

and termination of the right to the balance of the compensation due the teacher under the contract. (§ 25 ch 98 SLA 1966; am § 15 ch 46 SLA 1970; am § 19, ch 124 SLA 1975)

Editor's notes. — In paragraph (6), "the" was substituted for "his" by the revisor of statutes pursuant to AS 01.05.031 and § 4, ch. 58, SLA 1982.

NOTES TO DECISIONS

Applied in Griffin v. Galena City School Dist., Sup. Ct. Op. No. 2469 (File No. 5388), 640 P.2d 629 (1982).

Quoted in Begich v. Jefferson, Sup. Ct. Op. No. 481 (File No. 894), 441 P.2d 27 (1968); State v. Redman, Sup. Ct. Op. No. 755 (File No. 1431), 491 P.2d 157 (1971); Shatting v. Dillingham City School Dist., Sup. Ct. Op. No. 2177 (File No. 4240), 617 P.2d 9 (1980).

Cited in Alaska State-Operated School Sys. v. Mueller, Sup. Ct. Op. No. 1157 (File No. 2138), 536 P.2d 99 (1975); Skagway City School Bd. v. Davis, Sup. Ct. Op. No. 1216 (File No. 2265), 543 P.2d 218 (1975); Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 591 P.2d 1292 (1979).

Collateral references. — Who is "teacher" for purposes of tenure statutes. 94 ALR3d 141.

Sec. 14.20.210. Authority of school board or department to adopt bylaws. A school board or the department may adopt teacher tenure bylaws not in conflict with the regulations of the department or state law. (§ 4 ch 92 SLA 1960; am § 26 ch 98 SLA 1966)

Article 3. Salaries.

<p>Section 220. Minimum teachers' salary scale by area 230. Administrators' salaries</p>	<p>Section 240-270. [Repealed] 275. Definitions</p>
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Collateral references. — 68 Am. Jur. 2d Schools, §§ 144-148.

78 C.J.S. Schools and School Districts, §§ 218-230.

Right of teacher to compensation while school is closed. 6 ALR 742; 17 ALR 1224; 21 ALR 711.

Discrimination because of race, color, or creed in respect of appointment, duties, compensation, etc., of schoolteachers or other public officers or employees. 130 ALR 1512.

Validity of classification or grading of

teachers for purposes of compensation. 133 ALR 1437.

Compensation of tenure teacher. 145 ALR 408; 154 ALR 148.

Construction and application of provision of social security or unemployment compensation acts relating to exemption of corporations or institutions of a religious, charitable, or educational character. 155 ALR 369.

Services included in computing period of service for purpose of. 2 ALR2d 1033.

Sec. 14.20.220. Minimum teachers' salary scale by area. (a) The school board of each school district shall pay a regularly qualified teacher employed by it a salary not less than that set out in this subsection plus the regional adjustments set out in (b) and (c) of this section.

(1) The base salary of a teacher with three years' training is \$8,000 for a teacher with no school experience in or outside the state. The salary is augmented by \$200 for each year of school experience in or outside the state up to and including four years. This paragraph applies only to teachers employed in the state before July 1, 1970.

(2) The base salary for a teacher holding a bachelor's degree and having the requisite number of hours in education is \$9,500. This salary is augmented by the sum of .04 times the base for each year of school experience in the state up to and including seven years. Teachers transferring experience from outside the state are subject to (e) of this section.

(3) The base salary for a teacher having a master's degree and the required number of hours of education is \$10,900. This salary is augmented by the sum of .04 times the base for each year of school experience in the state up to and including 11 years. Teachers transferring experience from outside the state are subject to (e) of this section.

(b) The school board of each school district in the Central area and in election districts 6 and 11 shall pay the amount set out in (a) of this section plus five per cent of the base salary.

(c) The school board of each school district in the Northwest area, in that part of the Central area lying north of the Arctic Circle, and in those parts of the Southcentral and Central areas lying west of 152 degrees West Longitude, excluding election districts 6 and 11, shall pay the amount set out in (a) of this section plus 10 per cent of the base salary.

(d) Repealed by § 35 ch 46 SLA 1970.

(e) For teachers holding bachelors' degrees, not more than six years of school experience outside the state may be substituted for a like period of school experience in the state when a teacher's position on the salary scale is established, and, for teachers holding masters' degrees, not more than eight years of school experience outside the state may be substituted for a like period of school experience in the state when a teacher's position on the salary scale is established.

(f) The salary for a certificated substitute teacher teaching in a public school in the state may not be less than 75 per cent of 1/180th of the base salary for the applicable area.

(g) In this section "school experience" means a full-time elementary or secondary teacher in a public or non-public school as defined in AS 14.25.220 (19) and (20). (§ 37-6-1 ACIA 1949; am § 1 ch 69 SLA 1949; am § 1 ch 104 SLA 1951; am § 1 ch 104 SLA 1953; am § 1 ch 176 SLA

1955; am § 1 ch 179 SLA 1957; am § 1 ch 51 SLA 1961; am § 1 ch 54 SLA 1963; am § 1 ch 160 SLA 1966; am §§ 1 — 3 ch 208 SLA 1968; am §§ 1, 2 ch 209 SLA 1968; am §§ 16, 35 ch 46 SLA 1970; am § 1 ch 229 SLA 1970)

Revisor's notes. — As of the date of the 1982 reprint of AS 14, this section is out-of-date and obsolete. Teachers' salaries in Alaska are established by nego-

tiation between districts and the teachers (AS 14.20.550). The minimum salary scale in this section is no longer used but has not been repealed.

NOTES TO DECISIONS

Cited in Griffin v. Galena City School Dist., Sup. Ct. Op. No. 2469 (File No. 5388), 640 P.2d 829 (1982).

Sec. 14.20.230. Administrators' salaries. School boards of city and borough school districts and regional educational attendance areas shall pay a qualified school administrator a salary not less than the allowable amount for the school administrator's position on the teachers' scale provided in AS 14.20.220(a) — (c), plus

(1) 25 per cent for the chief school administrator of a district with an average daily membership of 500 or more;

(2) 20 per cent for the chief school administrator of a district with an ADM of less than 500;

(3) 15 per cent for a principal or other administrator;

(4) 10 per cent for an assistant principal. (§ 37-6-2 ACLA 1949; am § 2 ch 69 SLA 1949; am § 2 ch 104 SLA 1951; am § 2 ch 104 SLA 1953; am § 2 ch 176 SLA 1955; am § 2 ch 179 SLA 1957; am § 2 ch 51 SLA 1961; am § 2 ch 54 SLA 1963; am § 2 ch 160 SLA 1966; am § 17 ch 46 SLA 1970; am § 2 ch 229 SLA 1970; am § 20 ch 124 SLA 1975)

Revisor's notes. — AS 14.20.230 was amended by both § 17, ch. 46, SLA 1970 and § 2, ch. 229, SLA 1970. Although neither amendment took cognizance of the other, they appear to be compatible and are both given effect here.

This section is obsolete. See revisor's

note under AS 14.20.220.

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, ch. 58, SLA 1982.

Secs. 14.20.240 — 14.20.270. Salaries; reimbursement by state to school districts; limitation on higher salaries not prohibited; determination of number of teachers, superintendents, principals and vice principals for which district entitled to reimbursement.

Repealed by § 6 ch 229 SLA 1970.

Editor's notes. — The repealed sections derived from §§ 37-6-3, 37-6-4, 37-7-4, ACLA 1949; §§ 3, 4, 6, ch. 179, SLA 1957;

§ 3, ch. 51, SLA 1961; § 3, ch. 54, SLA 1963; § 1, ch. 42, SLA 1965; §§ 3, 4, ch. 160, SLA 1960; § 19, ch. 46, SLA 1970.

Sec. 14.20.275. Definitions. In AS 14.20.220

(1) "Central area" means that area included within the boundaries of election districts 13, 14, 15, and 16;

(2) "Northwest area" means that area included within the boundaries of election districts 17, 18, and 19;

(3) "Southcentral area" means that area included within the boundaries of election districts 6, 7, 8, 9, 10, 11, and 12;

(4) "Southeastern area" means that area included within the boundaries of election districts 1, 2, 3, 4, and 5. (§ 5 ch 160 SLA 1966)

Revisor's notes. — The election district descriptions in this section are obsolete as a result of successive reapportionments of

election districts since 1966. See also the note under AS 14.20.220.

Article 4. Sabbatical Leave.

Section

- 280. Basis of leave
- 290. Application
- 300. Selection of teachers
- 310. Amount of sabbatical leave and compensation
- 320. Responsibility of teacher

Section

- 330. Position, tenure, and retirement
- 340. Military service and previous leaves of absence
- 345. Leave of absence without pay
- 350. Definition

Collateral references. — 68 Am. Jur. 2d Schools § 147.

78 C.J.S. Schools and School Districts, § 227.

Sec. 14.20.280. Basis of leave. A teacher who has rendered active service for seven or more years in a district is eligible for sabbatical leave. Sabbatical leave may be taken for educational purposes only, and for not more than one school year. (§ 1 ch 134 SLA 1962; am § 1 ch 62 SLA 1964; am § 2 ch 104 SLA 1965; am § 27 ch 98 SLA 1966; am § 1 ch 168 SLA 1968)

Collateral references. — Candidacy for or incumbency of public office or other political activity by teacher or other school

employee as ground for dismissal or compulsory leave of absence. 136 ALR 1154.

Sec. 14.20.290. Application. A teacher who wishes to take sabbatical leave must apply to the governing body of the school district. The teacher must submit information showing qualifications for sabbatical leave and a plan for education during the leave. (§ 2 ch 134 SLA 1962; am § 28 ch 98 SLA 1966)

Editor's notes. — The word "his" was deleted preceding "qualification" and preceding "education" in the second sen-

tence by the revisor of statutes under AS 01.05.031 and § 4, ch. 58, SLA 1982.

Sec. 14.20.300. Selection of teachers. (a) The governing body of the school district has the responsibility for selection of the teachers to be granted sabbatical leave.

(b) In selecting teachers for sabbatical leave, the governing body shall consider the benefit which the school district will derive from the proposed plan of the teacher for educational purposes, the field of study of the teacher, the contributions of the teacher to education in Alaska, and the seniority of the teacher. (§ 3 ch 134 SLA 1962; am § 29 ch 98 SLA 1966)

Sec. 14.20.310. Amount of sabbatical leave and compensation.

(a) The number of teachers eligible for sabbatical leave which may be allowed under AS 14.20.280 — 14.20.350 is as follows:

(1) not more than one-half of one per cent of the total number of teachers from all borough and city school districts and the state-operated school district may be on state-supported sabbatical leave in any year;

(2) any number of teachers may be on sabbatical leave at school district or personal expense.

(b) A teacher on state-supported sabbatical leave is entitled to one-half of base salary to be paid by the department.

(c) A teacher on sabbatical leave at district expense is entitled to an amount of salary to be determined by the school board. (§ 4 ch 134 SLA 1962; am § 3 ch 104 SLA 1965; am § 30 ch 98 SLA 1966; am § 2 ch 168 SLA 1968)

Revisor's notes. — The reference to "state-operated school district" in (a) (1) of this section is obsolete. The state-operated school system was superseded by regional educational attendance areas in 1975. See AS 14.08.

Editor's notes. — In subsection (b), the word "of" was substituted for "his" by the revisor of statutes pursuant to AS 01.05.031 and § 4, ch. 58, SLA 1982.

Sec. 14.20.320. Responsibility of teacher. Upon the return of a teacher to the teaching position, the teacher shall make a report to the governing body concerning educational accomplishments. A teacher who does not serve for at least a full year after returning shall refund to the district, if the sabbatical leave was at district expense, or to the board of state-operated schools, if the sabbatical leave was state-supported, money paid to the teacher under AS 14.20.310 unless the failure to serve a full year after return is attributable to sickness, injury or death. (§ 5 ch 134 SLA 1962; am § 4 ch 104 SLA 1965; am § 31 ch 98 SLA 1966; am § 20 ch 46 SLA 1970)

Revisor's notes. — The reference to the board of state-operated schools is obsolete. The state-operated school system was superseded by regional educational attendance areas in 1975. See AS 14.08.

Editor's notes. — The revisor of statutes, pursuant to AS 01.05.031 and § 4, ch. 58, SLA 1982, substituted "the" for "his" once in the first and second sentences, deleted "his" preceding "educational

accomplishments" in the first sentence, the second sentence, and substituted "the substituted "returning" for "his return" in teacher" for "him" in the second sentence.

Sec. 14.20.330. Position, tenure, and retirement. (a) Unless it is otherwise agreed, a teacher returning from sabbatical leave shall return to the position occupied by that teacher when the sabbatical leave began.

(b) A sabbatical leave is not an interruption of the continuous service necessary to attain or retain tenure under AS 14.20.150, 14.20.155, or 14.20.160. However, the time spent on sabbatical leave may not be counted in determining when a teacher has sufficient service to enable the teacher to acquire tenure rights.

(c) A sabbatical leave is not a break in service for retirement purposes. Payment into the retirement fund shall be made on the basis of full salary. (§ 6 ch 134 SLA 1962; am § 32 ch 98 SLA 1966)

Editor's notes. — Subsection (a) was rewritten by the revisor of statutes under the authority of AS 01.05.031 and in accordance with the directive in § 4, ch. 58, SLA 1982. The revisor also, in subsection (b), substituted "the teacher" for "him" under the authority of AS 01.05.031 and ch. 58.

Sec. 14.20.340. Military service and previous leaves of absence. To determine eligibility for sabbatical leave, tours of military service and leaves of absence granted before July 1, 1963, are not considered years of active service. (§ 7 ch 134 SLA 1962; am § 2 ch 62 SLA 1964)

Sec. 14.20.345. Leave of absence without pay. (a) A teacher may be granted a leave of absence without pay for the purposes which may be approved by the governing body of the district if

(1) the teacher's application is approved by the governing body of the district; and

(2) the teacher agrees to return to employment in a public school not later than the beginning of the school year following termination of the period for which the leave of absence was granted.

(b) A leave of absence is not an interruption of the continuous service necessary to attain or retain retirement or tenure rights according to AS 14.20.150, 14.20.155, or 14.20.160. However, the time spent on leave of absence may not be counted in determining when a teacher has sufficient service to enable the teacher to acquire retirement or tenure rights.

(c) The leave of absence is not a break in service for retirement purposes.

(d) The governing body of the district may agree to continue the teacher's retirement contributions if the teacher agrees to pay the required seven per cent of the salary the teacher would have received during the leave of absence and reimburse the district for the district's required retirement contribution. Each year of leave of absence then would count as a year of retirement service.

(e) The governing body of the district may advance the teacher on the district salary schedule when the teacher returns to employment if the governing body determines that the teacher's leave of absence was educationally or professionally beneficial to the teacher or the district.

(f) A teacher may make contributions to the retirement fund for each year or portion of a year of leave of absence taken. The contribution shall include the required per cent of the salary the teacher would have received had the leave of absence not been taken, plus the required employer and state contributions that would have been made. Compound interest at the rate prescribed by regulation shall be added as computed from the beginning date of the leave of absence to the date the teacher pays the contribution. (§ 5 ch 104 SLA 1965; am §§ 33, 34 ch 98 SLA 1966; am § 1 ch 44 SLA 1971; am § 1 ch 184 SLA 1972; am § 2 ch 99 SLA 1974)

Editor's notes. — The revisor of statutes, pursuant to AS 01.05.031 and § 4, ch. 58, SLA 1982, substituted "the teacher's" for "his" in subsection (a)(1); substituted "the teacher" for "he" in subsections (a)(2), (d), (e), and (f); substituted "the teacher"

for "him" in subsection (b); substituted "the" for "his" in subsection (d); and, in subsection (f), substituted "the leave of absence not been taken" for "he not taken the leave of absence."

Sec. 14.20.350. Definition. In AS 14.20.280 — 14.20.350 "teacher" means a certificated member of the teaching, supervisory, or administrative corps in the public schools of the state. (§ 8 ch 134 SLA 1962)

Revisor's notes. — This section was rewritten to eliminate former paragraph (2) which defined "department" by the

revisor of statutes under AS 01.05.031 because of the redundancy in light of AS 14.60.010(4).

Article 5. Professional Teaching Practices Act.

Section

- 370. Teaching profession
- 380. Creation of a commission
- 390. Appointment and qualifications
- 400. Composition of the commission
- 410. Selection of members
- 420. Term of office
- 430. Dismissal
- 440. Reimbursement

Section

- 450. Responsibilities of commission
- 460. Duties of commission
- 470. Powers of commission
- 475. Applicability of the Administrative Procedure Act
- 480. Effect of standards
- 500. Support
- 510. Short title

Sec. 14.20.370. Teaching profession. Teachers required by Alaska law to be certificated, instructors in institutions of higher learning, school administrators, school program administrators, and school counselors are within the teaching profession. (§ 35 ch 98 SLA 1966)

Opinions of attorney general. — Unless the duties of an employee of the department of education can be characterized as falling within one of the five categories of this section, that employee cannot be said to fall within the teaching profession for purposes of the Professional Teaching Practices Act. July 15, 1977. Op. Att'y Gen.

The only employees of the department of education who might fit into one of the categories of this section are those who are employed by the department at the Alaska Skill Center or in its centralized correspondence study program. July 15, 1977. Op. Att'y Gen.

Sec. 14.20.380. Creation of a commission. There is a commission of professional educators known as the Professional Teaching Practices Commission. (§ 35 ch 98 SLA 1966)

Sec. 14.20.390. Appointment and qualifications. The commission consists of nine members appointed by the governor and confirmed by a majority of the members of the legislature in joint session. Each member, in addition to having been actively engaged in the teaching profession for at least five years immediately preceding appointment, shall be a citizen of the United States and a resident of the state. (§ 35 ch 98 SLA 1966)

Editor's notes. — The revisor of statutes, pursuant to § 4, ch. 58, SLA 1982 and AS 01.05.031, deleted "his" preceding "appointment" in the second sentence.

Collateral references. — Bias of members of license revocation board. 97 ALR2d 1210.

Sec. 14.20.400. Composition of the commission. The commission consists of the following members:

- (1) five classroom teachers;
- (2) one principal;
- (3) one superintendent;
- (4) one representative of the office of the commissioner;
- (5) one representative of an Alaska institution of higher learning. (§ 35 ch 98 SLA 1966)

Revisor's notes. — The words "of commissioner" by the revisor of statutes education" were deleted following "the under AS 01.05.031. See AS 14.60.010.

Sec. 14.20.410. Selection of members. (a) Members of the commission shall be selected as follows:

(1) the five classroom teachers from lists of names submitted by recognized Alaska teachers' organizations, each list not to exceed 12 names; however, in lieu of one of the five, one classroom teacher may be selected from a list of not more than four names signed and submitted by not less than 25 teachers who have no affiliation with any organization qualified to submit nomination lists, with the limitation that no teacher may sign more than one list in any year;

(2) the principal from a list of three names submitted by the Alaska Principals Association;

(3) the superintendent from a list of three names submitted by the Superintendents Advisory Commission;

(4) the representative of the office of the commissioner from a list of three names submitted by the commissioner;

(5) the representative of an Alaska institution of higher learning from lists of names submitted by Alaska institutions of higher learning, each list not to exceed three names.

(b) The lists shall be submitted to the commissioner who shall submit them as a group to the governor's office.

(c) At least 30 days before a position on the commission is due to become vacant, the chairman shall cause notice of the impending vacancy to be published and to be conveyed to each organized group eligible to submit a list of nominees. (§ 35 ch 98 SLA 1966)

Editor's notes. — In subsection (a)(4), revisor of statutes pursuant to AS the words "of education" were deleted 01.05.031. See AS 14.60.010. following "the commissioner" by the

Sec. 14.20.420. Term of office. (a) The term of office for each member of the commission is three years and until a successor is appointed, except that members of the first commission shall be appointed as follows: three members for one year, three members for two years, and three members for three years. Members of the first commission shall draw by lot for the initial term of appointment.

(b) Vacancies shall be filled by appointment by the governor for the unexpired term.

(c) No individual may serve more than a total of two 3-year terms.

(d) The commission shall select a chairman from among its members. (§ 35 ch 98 SLA 1966)

Sec. 14.20.430. Dismissal. Any member may be removed by the governor for misconduct, malfeasance or nonfeasance in office, or incapacity. (§ 35 ch 98 SLA 1966)

Sec. 14.20.440. Reimbursement. Members of the commission shall receive per diem according to law and are to be granted administrative leave with full pay by their employer for time spent in the performance of official duties under AS 14.20.370 — 14.20.510. If a member is required to spend more than 15 days in a fiscal year in the performance of official duties under AS 14.20.370 — 14.20.510, the state shall reimburse the employer for costs incurred after the 15th day. (§ 35 ch 98 SLA 1966; am § 1 ch 4 SLA 1975)

Editor's notes. — The word "his" was deleted preceding "official duties" in the second sentence by the revisor of statutes pursuant to AS 01.05.031 and § 4, ch. 58, SLA 1982.

Sec. 14.20.450. Responsibilities of commission. (a) The commission shall have the initial responsibility of developing, through the teaching profession, criteria of professional practices in areas including, but not limited to:

- (1) ethical and professional performance;
- (2) preparation for and continuance in professional services; and
- (3) contractual obligations. (§ 35 ch 98 SLA 1966)

Sec. 14.20.460. Duties of commission. The commission shall

- (1) establish procedures, and adopt rules to implement the purposes of AS 14.20.370 — 14.20.510;

- (2) conduct investigations and hearings on alleged violations of ethical or professional teaching performance, contractual obligations, and professional teaching misconduct;

- (3) review the regulations of the department as they relate to teacher certification and recommend necessary changes;

- (4) review the decisions of the department regarding the issuance or denial of certificates and in its discretion recommend reversal of decisions. (§ 35 ch 98 SLA 1966)

Sec. 14.20.470. Powers of commission. (a) The commission may

- (1) study proposals developed by regular committees of any existing professional organization whose members are within the teaching profession;

- (2) subpoena witnesses, place them under oath, and maintain written records;

- (3) warn or reprimand members of the teaching profession, if in the judgment of the commission such action is warranted;

- (4) suspend or revoke the certificate of a member of the teaching profession for one of the reasons set out in AS 14.20.030 except that in the case of an administrator, the commissioner must concur;

- (5) make any recommendation to the board or to school boards which will promote an improvement in the teaching profession;

- (6) request assistance through any of the investigative processes of any existing professional teaching organizations when analyzing charges of breach of ethical or professional teaching practices;

- (7) appoint an executive secretary, delegate those ministerial functions to executive secretary as the commission may decide and set executive secretary's compensation with a starting salary not exceeding range 26, step B of the pay plan for state employees in AS 39.27.011(a).

(b) A decision issued by the commission with the approval of the commissioner under (a)(4) of this section is final. (§ 35 ch 98 SLA 1966; am § 1 ch 77 SLA 1972; am §§ 3, 4 ch 9 SLA 1975; am § 2 ch 103 SLA 1976; am § 13 ch 94 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "the pay plan for state employees in AS 39.27.011(a)" for "AS 39.27.010" at the end of paragraph (7) of subsection (a).

Editor's notes. — The revisor of statutes, under the authority of AS 01.05.031 and § 4, ch. 58, SLA 1982, deleted "of

education" following "commissioner" in subsection (a)(4) and subsection (b), and, in subsection (a)(7), substituted "executive secretary" for "him" and "executive secretary's" for "his."

Legislative history reports. — For report on ch. 77, SLA 1972 (SB 126), see 1972 House Journal, p. 1208.

Sec. 14.20.475. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings under AS 14.20.370 — 14.20.510. (§ 5 ch 9 SLA 1975)

Sec. 14.20.480. Effect of standards. Members of the teaching profession are obligated to abide by the professional teaching standards adopted by the commission. (§ 35 ch 98 SLA 1966)

NOTES TO DECISIONS

Applied in Renfroe v. Green, Sup. Ct. Op. No. 2233 (File Nos. 4394, 4481), 626 P.2d 1068 (1980).

Sec. 14.20.500. Support. In addition to available state funds, the commission shall also be financed by members of the profession in accordance with regulations adopted by the department including, if necessary, an increase in the fees for certificates. (§ 35 ch 98 SLA 1966; am § 1 ch 73 SLA 1973)

Revisor's notes. — The word "adopted" was substituted for "promulgated" by the revisor of statutes under AS 01.05.031.

Sec. 14.20.510. Short title. AS 14.20.370 — 14.20.510 shall be known as the Professional Teaching Practices Act. (§ 35 ch 98 SLA 1966)

Article 6. Negotiation and Mediation.

Section	Section
550. Negotiation with certificated employees	570. Mediation
555. Optional coordinated employee negotiations	580. The mediation report
560. Teachers' bargaining groups and meetings with the groups	590. Grievance procedures
	600. Individual cases
	610. Legal responsibilities of boards

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 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, and probably does not permit, a board to delegate to a union the sole power to make any 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

ombudsman, (9) teacher evaluation of administrators, (10) school calendar, (11) selection of instructional materials, (12) the use of secondary department heads, (13) secondary teacher preparation and planning time, and (14) teacher representation on school board advisory committees are, under the existing statutory language, nonnegotiable. 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).

Dismissal of complaint held proper. — Change in teachers' salaries brought about by contract renegotiation did not abuse any "vested" rights entitled to judicial protection, and dismissal of the complaint for failure to state a claim for which relief could be granted was proper. Rouse v. Anchorage School Dist., Sup. Ct. Op. No. 2106 (File No. 4715), 613 P.2d 263 (1980).

Sec. 14.20.555. Optional coordinated employee negotiations.

(a) Negotiations between the certificated employees of the regional educational attendance areas and the respective regional school boards shall be conducted by one team representing all the certificated employees, one team representing all the certificated administrative personnel if they have joined together to negotiate independently as provided in AS 14.20.560(f), and one team representing all the participating regional school boards.

(b) Each team may consist of as many members as there are regional school boards. Each board is entitled to one member on the team. However, each negotiating team shall consist of not less than five members.

(c) A regional educational attendance area board may by resolution choose to conduct its own negotiations in accordance with AS 14.20.550. (§ 22 ch 124 SLA 1975)

Sec. 14.20.560. Teachers' bargaining groups and meetings with the groups.

(a) When a majority of the certificated employees in a school district have designated an educational organization of their own choosing to bargain for them, the organization shall be recognized by the school board as the bargaining agent for all the certificated staff, except superintendents of schools. The membership of any such recognized educational organization shall be composed principally of those employed in the teaching profession in Alaska.

(b) The organization representing a majority of the certificated employees of a school district shall, upon the request of the school board, submit an affidavit verifying that it does represent a majority of the certificated employees. Recognition of the employee bargaining agency by a school board is valid for one year or a term agreed upon by the two parties to an agreement, unless a majority of certified staff votes to request the termination of recognition of the employee bargaining agency. The school board is entitled to an affidavit of membership from the employee bargaining agency once each year.

(c) Upon the request of 25 per cent of the certificated employees in a district, the school board shall hold, within 20 days, an election by secret ballot of all the certificated employees in order to determine their choice of a bargaining agency. The results of this election are binding for one year.

(d) A school board shall, upon the written request of the employee bargaining organization, meet with the representative of the organization within 20 days of the request at a time and place to be mutually agreed upon. In the same manner, representatives of an employee bargaining organization are required to meet with a school board or its representatives within 20 days after receiving a written request. The school board and the employee organization may not select more than five representatives each to negotiate for them.

(e) The negotiating meeting may be held in executive session upon mutual agreement of both parties, but all final agreements shall be made at a public meeting of the school board.

(f) Nothing in this section shall be construed to prevent certificated administrative personnel groups, including principals and assistant principals, from having the right to negotiate independently of the other certificated personnel if they choose to do so as the result of a secret ballot. (§ 1 ch 13 SLA 1970; am § 1 ch 43 SLA 1971)

NOTES TO DECISIONS

Negotiable items. — 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).

Dismissal of complaint held proper. — Change in teachers' salaries brought

about by contract renegotiation did not abuse any "vested" rights entitled to judicial protection, and dismissal of the complaint for failure to state a claim for which relief could be granted was proper. Rouse v. Anchorage School Dist., Sup. Ct. Op. No. 2106 (File No. 4715), 613 P.2d 263 (1980).

Sec. 14.20.570. Mediation. (a) Upon the written request for mediation by an employee bargaining agency or a school board, and upon certification by the requesting party that the parties cannot agree on an independent private mediator and that good faith negotiations have terminated in an impasse, the following occurs:

(1) Within seven days of the certification the requesting party shall ask the United States Federal Mediation and Conciliation Service to serve as the agency to resolve the dispute.

(2) The mediator shall chair all mediation meetings between the disputing parties and attempt to resolve the differences between the disputing parties and reach common acceptance of terms and conditions or other items in dispute wherever possible.

(3) Within 30 days of the initial meeting of the parties to the dispute the mediator shall have reduced all the agreed terms, conditions and other items to a written contract. If mutually agreed the period for reporting the contract to both parties may be extended.

(4) Each party to the dispute may select a team of not more than five persons to present the evidence, thinking and position of the group they represent, to the mediator.

(b) If the mediation meetings are held during the school day, teachers representing an employee bargaining agency shall be released from classroom or other assigned duties without penalty or loss of pay. (§ 1 ch 18 SLA 1970; am § 1 ch 201 SLA 1975)

Sec. 14.20.580. The mediation report. (a) Within 10 days each party to the dispute shall accept or reject in total the mediation report.

(b) If rejected by either party, the mediator shall have an additional five days to review the objections and prepare a final report.

(c) If the final report is rejected by either side, the governor may appoint an advisory arbitrator to review the issues and make recommendations for solution. (§ 1 ch 18 SLA 1970; am § 2 ch 201 SLA 1975)

Sec. 14.20.590. Grievance procedures. Negotiations agreements executed after July 1, 1975 shall define "grievances" and provide for grievance procedures for the certificated staff. The grievance procedures shall provide that the final step in the procedure shall be binding arbitration. The negotiations agreement shall provide a method for the selection of an arbitrator. (§ 1 ch 18 SLA 1970; am § 3 ch 201 SLA 1975)

Sec. 14.20.600. Individual cases. Nothing in AS 14.20.550 — 14.20.590 prohibits an employee from addressing a school board, as an individual, through the regular procedures of the school board for hearing individual cases. (§ 1 ch 18 SLA 1970)

Sec. 14.20.610. Legal responsibilities of boards. Nothing in AS 14.20.550 — 14.20.600 may be construed as an abrogation or delegation of the legal responsibilities, powers, and duties of the school board including its right to make final decisions on policies. (§ 1 ch 18 SLA 1970)

NOTES TO DECISIONS

Constitutionality. — AS 14.20.550 and this section state two goals which apparently conflict, but since the supreme court construes AS 14.20.550 fairly narrowly, it finds no constitutional infirmity in AS 14.20.550 and this section. *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).*

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 ombudsman, (9) teacher evaluation of administrators, (10) school calendar, (11) selection of instructional materials, (12) the use of secondary department heads, (13) secondary teacher preparation and planning time, and (14) teacher rep-

resentation on school board advisory committees are, under the existing statutory language, nonnegotiable. *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).

Article 7. Interstate Agreement on Qualification of Educational Personnel.

Section

620. Entry into agreement

630. Terms and provisions of agreement

640. Designated state official to make contracts

Section

650. Filing and publishing of contracts

Sec. 14.20.620. Entry into agreement. The interstate Agreement on Qualification of Educational Personnel is enacted into law and entered into in behalf of the State of Alaska with all other states and jurisdictions legally joining in it in a form substantially as contained in AS 14.20.630. (§ 1 ch 83 SLA 1970)

Sec. 14.20.630. Terms and provisions of agreement. The terms and provisions of the agreement referred to in AS 14.20.620 are as follows:

INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL.

ARTICLE I. PURPOSE, FINDINGS, AND POLICY.

(1) The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

(2) The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence,

a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states of origin, can increase the available educational resources. Participation in this compact can increase the availability of educational manpower.

ARTICLE II. DEFINITIONS.

As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

(1) "Educational personnel" means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.

(2) "Designated state official" means the education official of a state selected by that state to negotiate and enter into, on behalf of his state, contracts pursuant to this agreement.

(3) "Accept," or any variant thereof, means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.

(4) "State" means a state, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico.

(5) "Originating state" means a state (and the subdivisions thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

(6) "Receiving state" means a state (and the subdivisions thereof) which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

ARTICLE III. INTERSTATE EDUCATIONAL PERSONNEL CONTRACTS.

(1) The designated state official of a party state may make one or more contracts on behalf of that state with one or more other party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it, and the subdivisions of those states, with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this article only with states in which the state official finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable, even though not identical to that prevailing in his own state.

(2) Any such contract shall provide for:

(a) Its duration.

(b) The criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state.

(c) Such waivers, substitutions, and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice of basic educational standards.

(d) Any other necessary matters.

(3) No contract made pursuant to this agreement shall be for a term longer than five years but any such contract may be renewed for like or lesser periods.

(4) Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January 1, 1954.

(5) The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

(6) A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting states.

ARTICLE IV. APPROVED AND ACCEPTED PROGRAMS.

(1) Nothing in this agreement shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

(2) To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

ARTICLE V. INTERSTATE COOPERATION.

The party states agree that:

(1) They will, so far as practicable, prefer the making of multilateral contracts pursuant to Article III of this agreement.

(2) They will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

ARTICLE VI. AGREEMENT EVALUATION.

The designated state officials of any party states may meet from time to time as a group to evaluate progress under the agreement, and to formulate recommendations for changes.

ARTICLE VII. OTHER ARRANGEMENTS.

Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel.

ARTICLE VIII. EFFECT AND WITHDRAWAL.

(1) This agreement shall become effective when enacted into law by two states. Thereafter it shall become effective as to any state upon its enactment of this agreement.

(2) Any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

(3) No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

ARTICLE IX. CONSTRUCTION AND SEVERABILITY.

This agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person, or circumstances is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency,

person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters. (§ 1 ch 83 SLA 1970)

Editor's notes. — In article III (1) of the compact, the word "that" was substituted for "he" in the third sentence by the revisor of statutes pursuant to AS 01.05.031 and § 4, ch. 58, SLA 1982. for "his" in the first sentence and the words "the state official" were substituted

Sec. 14.20.640. Designated state official to make contracts. The designated state official to make contracts on behalf of the state according to Article III of the agreement shall be the commissioner. (§ 1 ch 83 SLA 1970)

Revisor's notes. — The words "of education" were deleted following "commissioner" by the revisor of statutes under AS 01.05.031. See AS 14.60.010.

Sec. 14.20.650. Filing and publishing of contracts. True copies of all contracts made on behalf of this state according to the agreement shall be kept on file in the office of the commissioner and in the office of the lieutenant governor. The Department of Education shall publish all contracts in convenient form. (§ 1 ch 83 SLA 1970)

Revisor's notes. — In the first sentence of the section, the words "of education" were deleted following "the commissioner" and "lieutenant governor" was substituted for "secretary of state" by the revisor of statutes under AS 01.05.031.

Chapter 25. Teachers' Retirement.

Section	Section
10. Retirement system established	105. Credit for service as an employee of the Territory of Alaska
12. Purpose and effective date	107. Credit for Alaska BIA service
15. Administrator	110. Retirement benefits
20. Powers of the administrator	115. Unused sick leave credit
22. Regulations	120. [Repealed]
30. Duties of the administrator	125. Conditional service retirement benefits
35. Teachers' Retirement Board	130. Disability benefits
40. Membership	135—140. [Repealed]
43. Reemployment of retired members	142. Cost of living allowance
45. Participation by National Education Association employees	143. Post retirement pension adjustment
50. Contributions by teachers	145. Interest on individual accounts
55. Supplemental contributions by teachers	150. Refund upon termination
60. Arrearage indebtedness	155. Nonoccupational death benefits
61. Recractive indebtedness	157. Occupational death benefits
62. Reinstatement indebtedness	160. Death benefits
63. Payment of indebtedness	162. Survivor's allowance
65. Transmittal of contributions	164. Spouse's pension
70. Contributions by employer	166. Designation of beneficiary
80. Contributions by the state	167. Joint and survivor option
90. [Repealed]	168. Medical benefits
	169. Duplicate benefits

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DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 583

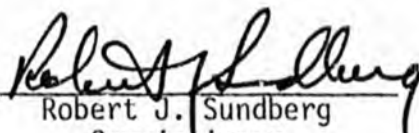
Support

The reporting of gunshot and stab wounds to law enforcement agencies by treating physicians and health care institutions is a basic tool within the criminal justice systems of most states that is not presently available to law enforcement agencies in Alaska. The absence of such a requirement under current law means that some serious assaults may never be reported to law enforcement authorities, especially in the remote villages and rural areas of the State.

Until recently, physicians and health care institutions had reported wounds of the types described in HB 583 to law enforcement agencies without being required to do so out of a desire to serve the public good. Privacy statutes and fear of litigation have virtually ended this long-standing informal relationship.

This legislation will enable timely responses from law enforcement officers to protect victims of violent crimes and to investigate the apparent commission of serious crimes. It may aid in the apprehension of the offender before he can do harm to other members of the public.




Robert J. Sundberg
Commissioner

POSITION PAPER

HOUSE BILL NO. 583

For an Act entitled: "An Act relating to report of certain injuries."

This Act amends AS 18.20 by adding provisions requiring that health care facilities and providers report cases involving certain types of injuries to law enforcement agencies. The types of injuries include those inflicted by firearms and those which are caused by cutting or stabbing implements or which are likely to be fatal unless the cause of the injury is clearly accidental. Both immediate verbal and follow-up written reports are required. The Act also provides for civil and criminal immunity for persons making reports in good faith under this requirement.

The Department of Health and Social Services endorses passage of this Bill since it clearly delineates when reports are required and provides the necessary legal protections to institutions and providers reporting such injuries. It will bring the Alaska statutes into line with those in many other states.

Recommended by: *E.S. Rabeau*
E.S. Rabeau, M.D.
Director, Division of
Public Health

Date: 2-15-84

Approved by: *Robert London Smith*
Robert London Smith, Ph.D.
Commissioner

Date: 2/17/84

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date _____, 1984

REQUEST
Bill/Resolution No.: HB 583
Title: Report of Certain Injuries

II. FISCAL DETAIL
Agency Affected: Health & Social Servs.
Program Category Affected: Health

Sponsor: Rules Committee
Requestor: House HESS
Date of Request: 2/14/83

~~BRU, Program of Subprogram(s) Affected:~~
Public Health Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LANDS & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for Analysis

Prepared By: Dean Tirador Phone: 465-3090
Division: Public Health Date: 2/15/84

Approved by Commissioner: Robert Gordon Smith Date: 2/17/84
Agency: Dept. of Health & Social Services

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 583
 Title: "An Act relating to reporting of certain injuries..."
 Sponsor: House Rules
 Requestor: House HESS
 Date of Request: 2-7-84

FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: _____
Administration of Justice
 BRU, Program or Subprogram(s) Affected: _____
Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
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						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis N/A - No costs anticipated.

Prepared By: Francis C. Allan F.C.A. Phone: 269-5691
 Division: Alaska State Troopers Date: 1-3-84

Approved by Commissioner: R. J. Sundberg Date: 1/5/84
 Agency: Public Safety

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

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STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST:

Bill/Resolution No.: HB No. 585
 Title: "An Act relating to the Senate Education Advisory Council..."
 Sponsor: Rep. M.M. Miller
 Requestor: HESS Committee
 Date of Request: February 9, 1984

FISCAL DETAIL:

Agency Affected: ADULT CORRECTIONS AGENCY
 Program Category Affected: _____
 Administration of Justice
 BRU, Program or Subprogram(s) Affected: _____
 Administration and Support

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		60.1	63.7	67.5	71.6	75.9
200 TRAVEL		9.9	10.5	11.1	11.8	12.5
300 CONTRACTUAL		8.5	9.0	9.6	10.1	10.7
400 COMMODITIES		1.6	1.7	1.8	1.9	2.0
500 EQUIPMENT		4.0	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	84.1	84.9	90.0	95.4	101.1

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	84.1	84.9	90.0	95.4	101.1
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL	-0-	84.1	84.9	90.0	95.4	101.1

POSITIONS:

FULL-TIME	-0-	1	1	1	1	1
PART-TIME	-0-	1	1	1	1	1
TEMPORARY						
TOTAL	-0-	2	2	2	2	2

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The source of funds to offset the fiscal impact of this bill have not been identified by the bill sponsor.

ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Roger C. Lange
 Division: Administrative Services

Phone: 465-3376
 Date: February 14, 1984

Approved by Commissioner: William W. Ludwig
 Department: ADULT CORRECTIONS AGENCY

Date: March 5, 1984

Distribution:

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency (ies)

ANALYSIS

I. Assumptions:

House Bill No. 585 will create an Inmate Education Advisory Council made up of five members. The duties of the Council are to:

1. Research and make recommendations regarding inmate education in the State's prisons;
2. Coordinate a system of inmate education that is based on the individual inmate's education level;
3. Hire the staff necessary to carry out the provisions of the Act; and
4. Perform all acts necessary to carry out the purposes of the Act.

It is assumed that a staff of a full time Associate Coordinator and a half-time Clerk Typist III will be required by the Council to provide the research and support for the Council to receive adequate information to evaluate the existing education programs and then make recommendations regarding the future education programs in the State's prisons. It is also assumed that the Council will meet quarterly, with only four of the five members in attendance. As education is a statewide program, the cost estimates are based on the assumption that the Council will be appointed from the following areas of the State where prison facilities are located:

- 1 member - Ketchikan
- 1 member - Juneau
- 2 members - Anchorage/vicinity
- 1 member - Fairbanks

A 6% inflation factor was used for fiscal years subsequent to 1985.

II. Program Summary:

A. Positions:

	Associate Coordinator (12 months)	Clerk Typist III (6 months)
Annual Salary	\$35,580	\$ 9,588
Supplemental Benefits @ 6.13%	2,181	588
Retirement @ 13.8%	4,910	1,323
Variable Benefits @ 4.045%	1,439	388
Fixed Benefits @ \$227.35/mo.	<u>2,728</u>	<u>1,364</u>
Total Personal Services	\$46,835	\$13,251
Travel	3,000	-0-
Contractual (communications, copying, rent)	4,500	3,000
Commodities (office supplies)	600	600
Equipment	<u>1,500</u>	<u>2,500</u>
Total Position Cost	\$56,438	\$19,351

B. Other Expenditures:

The following identified expenditures are for Council members travel and per diem costs, long distance telephone charges and commodities and/or supplies specific to their quarterly meetings:

Travel	\$ 6,900
Contractual	1,000
Commodities	<u>400</u>
Total - Other Expenditures	\$ 8,300

III. Economic Impact:

Enactment of this bill will not have a significant impact on the State's economy.

IV. Impact on Local Government:

This bill has no apparent impact on local government units.

1.	POSITION TITLE Clerk-Typist III				RANGE/STEP 8B	BARC. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 6	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT	<p>To provide clerical support for the Inmate Education Advisory Council and the program administrator. The duties would include the full gamut of Clerical Functions such as typing, filing, answering the telephone, and providing receptionist services as well as arranging for travel of the advisory council, scheduling meeting rooms, arranging for recording equipment (as necessary), etc.</p>					
	1	2	3							
PERSONAL SERVICES										
5.	Salary	\$1,578/mo.	9.588							
6.	Benefits		1.711							
7.	Supplemental Benefits		588							
8.	Fixed Benefits		1.364							
9.	TOTAL PERSONAL SERVICES		01	13,251						
10.	Travel		02	-0-						
11.	Contractual		03	3,000						
12.	Commodities		04	600						
13.	Equipment		05	2,500						
14.	Other									
15.	TOTAL COST			19,351						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004			19,351					
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR B&M USE ONLY										
4A KEY NUMBER										

REQUEST FOR
13 NEW POSITION

AGENCY Adult Corrections
PROGRAM Offender Confinement, Reformation
and Supervision
BRU Administration and Support
COMPONENT Statewide Programs

FY 85

Page 2 of 2
Revised Date

ADULT CORRECTIONS AGENCY
Pouch T
Juneau, Alaska 99811

POSITION PAPER
House Bill No. 585

"An Act relating to the Inmate Education Advisory Council."

House Bill No. 585 would create an Inmate Education Advisory Council to coordinate inmate education services. The Council's duties would include, but not be limited to, conducting research and making recommendations regarding inmate education; coordination of an inmate education program based on individual inmate's education level; and hiring the staff necessary to carry out the provisions of the Act.

The Adult Corrections Agency fully recognizes the value and need for input from both the community and agency staff regarding the development and administration of the inmate education program. The Adult Corrections Agency has set a high priority on the coordination of the inmate education program since the Director of Statewide Programs position was authorized and filled.

In keeping with this commitment, the Director of Statewide Programs, in conjunction with the Department of Education, has established a Corrections Education Advisory Board. The Board consists of thirteen members, who initially met December 15, 1983. The Board represents the following agencies:

University of Alaska - Anchorage, School of Justice
Anchorage Community College, Eagle River Extension
Adult Learning Programs of Alaska
University of Alaska, Rural Education
Department of Education
Hiland Mountain Correctional Center
Peninsula Learning Resources
Southeast Regional Resource Center
Fairbanks Correctional Center
Cook Inlet Pre-Trial Facility
Anchorage Community College, Adult Learning Center
Kawerak, Inc.
Human Resources Adult Education

The Board has been given the responsibility to make policy and procedure recommendations, but does not have as broad a scope of powers that House Bill No. 585 would give to the Inmate Education Advisory Council. It is felt that the Corrections Advisory Board meets the intent of the proposed legislation, while leaving the administrative responsibilities of the inmate education program to Corrections professionals.

Education is just one part of the complex incarceration/rehabilitation regimen experienced by the inmates. The Adult Corrections Agency must retain control of programs administered in the State correctional facilities to ensure that the needs of both the institution and the inmates are met.

Therefore, the Adult Corrections Agency agrees in concept with this proposed legislation, but does not support its passage.

Prepared by:

Roger C. Lange

Roger C. Lange
Internal Management Administrator

Date:

March 5, 1984

Approved by:

William W. Ladwig

William W. Ladwig
Assistant Commissioner
for Administration
Adult Corrections Agency

Date:

March 5, 1984

H

B

5

8 8

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

While in Juneau
POUCH V
JUNEAU, ALASKA 99811



Senate

VICE CHAIRMAN
SENATE RESOURCES COMMITTEE
MEMBER
SENATE JUDICIARY COMMITTEE
WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE
WESTERN CONFERENCE COUNCIL
OF STATE GOVERNMENTS

May 9, 1984

Senator Bill Ray, Chairman
Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Re: CSHB 588.

Dear Bill:

I have attached Guy's research on the captioned bill. It very well explains the subject matter of the bill; I favor the legislation.

Too often people get involved in a bureaucratic maze and encounter excessive red tape and unnecessary delay. If a hearing officer, for example, knew that the state could be assessed attorneys fees and/or costs if he made a capricious or arbitrary decision, we might arrive at more efficient processing and handling of claims.

I have not talked to the prime sponsor to find out whether she has a particular target in mind, but I'd be more than happy so to do if requested by you.

Regards,

3-

Robert H. Ziegler, Sr.

RHZ:1k

Attachment

file w/ my Bill

TO: SENATOR ROBERT H. ZIEGLER, SR.
FROM: GUY VAN DOREN
ADMIN. ASST. *Guy*
SUBJECT: CSHB 588

CSHB 588 AN ACT PROVIDING FOR THE AWARD OF COSTS
AND ATTORNEY FEES TO PERSONS WHO PREVAIL IN CERTAIN STATE
ADMINISTRATIVE PROCEEDINGS AND PROVIDING FOR AN EFFECTIVE DATE

NEW SECTIONS ADDED TO 09.50

Sec. 1. ARTICLE 7 COST AND ATTORNEY FEES IN ADMINISTRATIVE PROCEEDINGS.

09.50.140 AWARD OF COSTS AND ATTORNEY FEES TO RESPONDENTS IN
ADMINISTRATIVE PROCEEDINGS.

(a) Allows a respondent, who prevails in an administrative proceeding involving a civil penalty on that person or revocation, suspension, limitation or the conditioning of a persons license or privilege, to recover from the state, the costs of defense including attorney fees.

(b) Allows respondent to recover from the state the reasonable costs of the appeal and the administrative proceedings, including reasonable attorney fees, if the original determination imposes a civil penalty or revocation, suspension, limitation or conditioning of a right, authority, license or authority and that decision is reversed in a subsequent court proceeding.

(c) Provides that the award of attorney fees may not exceed \$75 and hour for services actually rendered and the total may not exceed \$10,000 unless the limitation results in the extreme hardship of the prevailing party.

(d) Provides that the award of attorney fees or costs made under this section may be appealed to Superior Court.

***** (who pays for the appeal???)

(e) Provides that this provision does not apply to claims for costs or attorney fees that are specifically authorized by statute or rules of court.

(f) Defines state agency and includes the Univ. of Alaska

Section 2. Provides that the act applies only to proceedings commenced after the effective date of this act.

Section 3. Immediate effective date.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 3/20/84

REQUEST

Bill/Resolution No.: CSHB 588 (JUD)
Title: Costs and Attorney fees,
administrative proceedings
Sponsor: Tischer
Requestor: House Finance
Date of Request:

FISCAL DETAIL

Agency Affected: ADEC
Program Category Affected: All programs
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		49.5	50.1	50.7	51.3	
200 TRAVEL		10.0	10.0	12.0	15.0	
300 CONTRACTUAL		8.0	3.0	8.0	8.0	
400 SUPPLIES		1.5	1.5	1.5	1.5	
500 EQUIPMENT		2.5	.5	.5	.5	
600 LAND & STRUCTURES						
700 CRANTS, CLAIMS		50.0	75.0	100.0	125.0	
800 MISCELLANEOUS						
TOTAL OPERATING		121.5	140.1	172.7	201.3	
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		121.5	140.1	172.7	201.3	
FEDERAL FUNDS						
OTHER						
TOTAL		121.5	140.1	172.7	201.3	

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not identified by the sponsor.

If the Bill were amended, the State agency could collect its cost and attorney fees when it prevails thus offsetting the costs when the respondent prevails.

ANALYSIS: Attach a separate page for analysis

Prepared By: Billie Trent Phone: 465-2600
Division: Commissioner's Office Date: 3/20/84
Approved by Commissioner: *Richard A. Neve* Date: 3/20/84
Agency: Environmental Conservation

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/84

FISCAL ANALYSIS

CSHB 588 (Jud)

This legislation, if it becomes law, will create the need for a staff attorney/hearing officer to handle the more sophisticated proceedings which would result from the involvement of attorneys. At the very least, a contract attorney would be required to advise the commissioner.

We further believe it would be necessary to contract the services of court reporters to record the hearings and prepare transcripts which meet the more stringent expectations of an attorney.

Since hearings are requested and granted statewide, travel would be substantial in order to hold the hearings in locations most convenient to the participants.

The claims figures are based on the fact that in 1983, ten hearings were granted, only one of which could result in the reversal of an agency decision, at an estimated cost of \$50,000 for costs and attorney fees.

In estimating future fiscal impact, we have assumed that passage of HB 588 would result in more hearings being requested and granted, with a similar percentage of reversals.

In truth, there is no way to accurately estimate fiscal impact. Each case is unique and could result in complications and costs even greater than anticipated herein.

1.	POSITION TITLE ATTORNEY II			RANGE/STEP 19	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPRDV.	DISAPP.
2.	TYPE OF POSITION Permanent	STAFF MONTHS 12	RP NUMBER ----	PCN NUMBER pending	BRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT 99	LEC.	
3.	CONTINUATION LEVEL			ADDITION	JUSTIFICATION				
4.	TYPE OF EXPENDITURE			AMOUNT	<p>Should HB 588 become law, this position would be necessary to handle the more sophisticated hearings which would result.</p> <p>It is also anticipated that there would be an increase in the number of hearings requested, thereby precluding the Commissioner from acting as hearing officer, even if he had the legal expertise to do so.</p> <p>Since hearings are held statewide, a substantial travel increment would be required. We further believe it would be necessary to contract the recording of the hearings to court reporters rather than simple cassette recordings by persons unfamiliar with formal proceedings.</p>				
	1	2	3						
	PERSONAL SERVICES								
5.	Salary	38,124							
6.	Benefits	6,282							
7.	Supplemental Benefits	2,337							
8.	Fixed Benefits	2,728							
9.	TOTAL PERSONAL SERVICES	01	49.5						
10.	Travel	02	10.0						
11.	Contractual	03	8.0						
12.	Commodities	04	1.5						
13.	Equipment	05	2.5						
14.	Other								
15.	TOTAL COST		71.5						
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts 1002							
17.		G.F. Match 1003							
18.		General Funds 1004							
19.		I-A Receipts 1005							
20.		Program Receipts 1028							
21.		Other							
FOR B&M USE ONLY									
4A KEY NUMBER -----									

13 REQUEST FOR
NEW POSITION

AGENCY Environmental Conservation

PROGRAM All

BRU _____

COMPONENT _____

FY 85

Page 1 of 1

Revised Date 3/20/84

POSITION PAPER

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

CSHB 588 (Judiciary)

Award of Costs and Attorney Fees, State Administrative Proceedings

While we have no problem with the concept of reimbursing reasonable costs to persons who challenge permit decisions and prove that the department erred, we believe encouraging the involvement of attorneys would complicate what is now a very simple process within our regulations and would result in an increase in hearings at great expense to the state with a disproportionate benefit to the public, given the fact that most of this department's challenged decisions have been upheld.

Our adjudicatory process was created for use by laypersons. It provides an informal forum whereby anyone may challenge a department decision and bring that challenge before the commissioner. In such cases, the Department of Law attorney assigned to defend the decision has kept a low profile with regard to strict legal procedure, keeping objections to a minimum and giving as much leeway to the layperson as possible.

Most of the adjudicatory hearings before this department have not involved attorneys. Those that have become a nightmare of motions to be decided, and extensions of time that delayed the decision many months beyond the limits set in our regulations. A formal atmosphere was created in what was intended to be a quasi-judicial setting.

Under AS 46.35.090 (e), this department "need not conform to the Administrative Procedure Act" when a permit decision is adjudicated. However, when a proceeding becomes complicated with factors not anticipated when our regulations were drafted, we are forced to look elsewhere for guidance, i.e., the Administrative Procedure Act and the Alaska Rules of Court. Such complication was clearly not envisioned when the adjudicatory process was developed. If this bill becomes law, we would require a staff attorney/hearing officer or, at the very least, a contract attorney to advise the commissioner. It would also be necessary to rewrite our regulations to include more sophisticated procedures.

A memo dated July 8, 1982 from Art Peterson at Department of Law addressing award of costs and fees, states "It is difficult to relate [the concept of 'prevailing party'] to either the single-party or multi-party permit-application adjudications handled by your department."

For example, when someone challenges a permit issued for a solid waste disposal site, that challenge usually reflects the undesirability of having such a site near their home. That argument is a zoning issue beyond our jurisdiction. For that person to "prevail," we would have to withhold the permit and prevent the site from being established. What actually happens, however, when a decision is found lacking in some respect, is that the matter is remanded back to the regional office for further study or refinement. Permit conditions are sometimes amended. While that could be interpreted as a "victory" for the requestor, in the very strictest sense, it is not.

We certainly appreciate the intent of this legislation. Not many private citizens will devote the time and effort spent by Mrs. McCallon in her "successful" adjudication of the Auke Bay Breakwater permit, or by Mr. and Mrs. Allen in their "unsuccessful" adjudication of the Soldotna Landfill permit. They had no apparent difficulty with the hearing process and met most deadlines with ease.

At the other extreme we find the Cube Cove adjudication where five attorneys participated, and the Atwood adjudication with four attorneys. The Cube Cove decision was delayed for several months by complicated procedures, and the Atwood matter is still undecided nearly three years later. Costs and fees in those matters will probably amount to five figures.

While Cube Cove and Atwood would have involved attorneys with or without HB 588, that legislation will encourage even cases such as Auke Bay and Soldotna to escalate to the same unwieldy proportions.

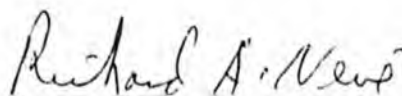
Compliance order and emergency order hearings, on the other hand, are more formal, and more appropriately lend themselves to the presence of attorneys. This is evident from the requirement for the appointment of a formal hearing officer. Of the two types of hearings, it is suggested that adjudicatory hearings be exempted from this legislation, while compliance order and emergency order hearings be covered.

The amendment that places a ceiling on the amount that might be awarded is an improvement over the original bill, but it will still be costly for the state to bear this expense. Assessing fiscal impact is close to impossible.

We do not believe the delays inherent with a more complicated approach would serve the best interests of the public. Neither is the public well served by the state addressing increased, convoluted hearings at increased cost to the taxpayer, with no provision for reimbursement to the state from unsuccessful requestors.

If the award of attorney fees were restricted to proceedings which fall strictly under the Administrative Procedure Act (exempting our adjudicatory hearings but not our compliance hearings), while reasonable costs (excluding attorney fees but including expert witness fees--probably of far greater benefit to the requestor) were allowed for all proceedings, we believe the intent of the legislation would be carried out without jeopardizing the simple hearing process we follow.

DATED: March 20, 1984.



Richard A. Neve
Commissioner

H

B

596

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 27, 1984

SUBJECT: CSHB 596 (HESS)

TO: Representative Mae Tischer
Chairman, HESS Committee

FROM: Richard C. Folta 
Legislative Counsel

You have asked if the committee can change the title of HB 596 originally sponsored by the Rules Committee at the request of the governor and if the amendments made in CSHB 596 are germane to the subject matter of the bill.

A. TITLE

Rule 24(c) of the Uniform Rules of the Alaska State Legislature does not allow a committee of a second house to change the title of a bill as enacted in the house of origin other than to make a clerical or technical change. There is no restriction on title changes in the house of origin other than the requirement that amendments must be germane to the original subject matter.

At the present time HB 596 is in the house of origin.

B. GERMANENESS

The original bill relates to public construction generally and schools specifically. CSHB 596 (HESS) relates to legislative space or facilities public works construction and location.

A committee substitute for a bill is an amendment to the bill. Rule 35 of the Uniform Rules provides in relevant part:

A motion or proposition on a subject may not be admitted under color of amendment if the subject matter is different from that under consideration.

This is supplemented by Mason's Manual of Legislative Procedure which provides in Sec. 402.

Sec. 402. Amendments Must Be Germane

1. Every amendment proposed must be germane to the subject of the proposition or to the section or paragraph to be amended, and an amendment is not in order which is not germane to the question to be amended. This is, basically, a phase of the rule that each proposition have but one subject and that members have the right to vote separately on each question.

2. To determine whether an amendment is germane, the question to be answered is whether the question is relevant, appropriate, and in a natural and logical sequence to the subject matter of the original proposal.

3. To be germane, the amendment is required only to relate to the same subject. It may entirely change the effect of the motion or measure and still be germane to the subject.

4. An entirely new proposal may be substituted by amendment so long as it is germane to the main purpose of the original proposal.

5. An amendment to an amendment must be germane to the subject of the amendment as well as to the main question.

6. No independent new question can be introduced under cover of an amendment. But an amendment may be in conflict with the spirit of the original motion, and still be germane and, therefore, in order.

7. The admissibility of an amendment should be judged from the provisions of the text, rather than from the purpose which circumstances may suggest.

8. Whether a proposed amendment is consistent with the measure, motion or question proposed to be amended, is a question to be decided by the body and not by the presiding officer.

Representative Mae Tischler
Page 3
March 27, 1984

The HESS Committee substitute is an entirely new proposal. Both versions relate to public construction; however the original bill concerns school construction primarily while the substitute relates to legislative public work construction, planning, location and other matters that could be seen as not germane to the original subject matter. Using the germaneness criteria above, it is my opinion that the committee substitute is proper.

RCF:ojb
J5/018



Alaska State Legislature

Rep. Uehling

REP. MAE TISCHER
CHAIRMAN



MAR 28 1984

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

House of Representatives
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

MEMORANDUM

TO: Representative Mae Tischer
FROM: Bill Lovell, Professional Assistant *lruu*
DATE: March 27, 1984
RE: Sectional Analysis of CSHB 596 (HESS)

Pursuant to your request, I have prepared the following sectional analysis of the House HESS Committee Substitute for House Bill 596.

Section 1 inserts language allowing the legislature to convene regular legislative sessions in places besides the state capitol building. In accordance with current drafting methods, the word "that" is substituted for the word "which" throughout the existing section (Sec. 24.05.090).

Section 2 inserts language authorizing the Legislative Affairs Agency to supervise space occupied in any building by the legislature or its agencies, thereby permitting the Agency to maintain legislative space in buildings which are not state property (e.g., a private or municipal convention center). The section contains a definition which authorizes the Agency to supervise planning, construction, maintenance, occupancy, and operation of any facility, or space within any facility, for the legislature or its agencies. The agency is given specific right of prior approval before the state may acquire land, contract public works, expend state funds, or enter into a lease, if those actions relate to the legislature or its agencies (Sec. 24.05.190 (a)).

Section 3 adds new language permitting the legislature to authorize the Legislative Affairs Agency to acquire, construct or lease legislative facilities in the state capital or in any other location in the state for a regular or special session of the legislature (Sec. 24.05.190 (c)). The Agency is required to coordinate with the Department of Transportation and Public Facilities to carry out the provisions of AS 24.05.190 (Sec. 24.05.190 (d)).

Section 4 adds new language that requires appropriation bills

Sectional Analysis of CSHB 596 (HESS)

March 27, 1984

Page 2

relating to legislative facilities or space within facilities to describe the location, purpose, and funding source for land acquisition, planning, and construction for the facility.

Section 5 inserts language requiring the Department of Transportation and Public Facilities to have the approval of the Legislative Affairs Agency before planning, or commencing construction of, legislative facilities.

Section 6 provides that the act takes effect immediately.

/wtl

Introduced: 2/9/84
Referred: Health, Education &
Social Services and State Affairs

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2

HOUSE BILL NO. 596

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to public construction and provid-
7 ing for an effective date."

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

9 * Section 1. AS 35.15.080(d) is amended to read:

10

(d) Provisions of this title governing planning, design, and
11 construction of public works by the department, and regulations adopt-
12 ed under those [THE] provisions, govern the administration of projects
13 assumed by a municipality or regional educational attendance area
14 under this section or under AS 14.11.020. For that purpose those
[THE] provisions supersede any conflicting provisions of ordinance or
15 charter of a municipality.

16

17 * Sec. 2. AS 35.15.080(f) is amended to read:

18

(f) To carry out the purpose of this section, the commissioner
19 of transportation and public facilities shall adopt regulations relat-
20 ing to the application for and the making and the conditions of agree-
21 ments and the local assumption of responsibilities for the planning,
22 design and construction of public works under this section. [HE SHALL
23 INCLUDE IN GRANT CONTRACTS TERMS AND CONDITIONS REQUIRING A REGIONAL
24 SCHOOL BOARD AND ITS CONTRACTORS TO ADHERE TO THE PROVISIONS OF
25 AS 36.05.010 WITH RESPECT TO THE PAYMENT OF WAGE RATES ON CONSTRUCTION
26 PROJECTS, AND AS 36.10.010 WITH RESPECT TO EMPLOYMENT PREFERENCE, AND
27 MAY REQUIRE DIFFERENT TERMS IN AGREEMENTS FOR DIFFERENT PROJECTS TO
28 MEET LOCAL CONDITIONS AND UNIQUE REQUIREMENTS AND TO ASSURE COMPLIANCE
29 WITH THE PUBLIC FACILITIES PROCUREMENT POLICIES DEVELOPED BY THE

Public works →

School facilities →

1 DEPARTMENT UNDER AS 35.10.160 -- 35.10.200.] If necessary, the com-
2 missioner may require as a condition of an agreement approval of the
3 agreement by the federal government. [REGULATIONS ADOPTED, AMENDED OR
4 REPEALED BY THE DEPARTMENT UNDER THIS SECTION WHICH RELATE TO EDUCA-
5 TION FACILITIES SHALL BE DEVELOPED IN CONJUNCTION WITH THE ALASKA
6 ASSOCIATION OF SCHOOL BOARDS AND THE ALASKA ASSOCIATION OF SCHOOL
7 ADMINISTRATORS AND REVIEWED BY THOSE ASSOCIATIONS BEFORE FINAL ACTION
8 ON THE REGULATIONS IS TAKEN BY THE DEPARTMENT.]

9 * Sec. 3. AS 35.25.020(2) is amended to read:

10 (2) "department" means the Department of Transportation and
11 Public Facilities, except that, in connection with schools, it means
12 the assembly, council, or school board that has assumed responsibil-
13 ities under AS 14.11.020;

14 * Sec. 4. AS 35.27.030(1) is amended to read:

15 (1) "department" means the Department of Transportation and
16 Public Facilities, except that, in connection with schools, it means
17 the assembly, council, or school board that has assumed responsibil-
18 ities under AS 14.11.020;

19 * Sec. 5. AS 35.30.040(1) is amended to read:

20 (1) "department" means the Department of Transportation and
21 Public Facilities, [AND] the University of Alaska, and, in connection
22 with schools, the assembly, council, or school board that has assumed
23 responsibilities under AS 14.11.020;

24 * Sec. 6. This Act takes effect immediately in accordance with AS 01.-
25 10.070(c).