

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8546 HOUSE HEALTH EDUCATION & SOCIAL SERVICES

1 attendance area and a bargaining organization representing teachers on or after the
2 effective date of this section may not be inconsistent with the provisions of this
3 section.

4 (e) A teacher on layoff status is not entitled to be reemployed under
5 AS 14.20.145 and does not accrue leave. Time spent on layoff status does not count
6 toward the acquisition of tenure rights. However, layoff status does not constitute a
7 break in service for

8 (1) determining eligibility for tenure;

9 (2) retaining acquired tenure rights; or

10 (3) retaining accrued sick leave.

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

12 Sec. 14.20.205. JUDICIAL REVIEW. If a school board reaches a decision
13 unfavorable to a teacher, the teacher is entitled to mandatory, advisory arbitration
14 conducted by a neutral third party and, if the decision of the school board
15 remains unfavorable to the teacher, to judicial review based on the record [A DE
16 NOVO TRIAL] in the superior court. However, a teacher who has not attained tenure
17 rights is not entitled to arbitration or judicial review under [ACCORDING TO] this
18 section.

19 * Sec. 8. The amendments made by this Act apply to teachers first hired by a school
20 district on or after the effective date of this Act.

Alaska State House of Representatives
House District 39



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Representative Ivan M. Ivan

SECTIONAL ANALYSIS - HOUSE BILL 217

The following is a sectional analysis of House Bill 217:

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

Section 2: Amends AS 14.20.150, Acquisition of tenure rights. Changes tenure from two to five years.

Section 3: Amends AS 14.20.160, Loss of tenure rights. Clarifies that a teacher on layoff status does not lose tenure rights during the layoff period except as provided by regulations adopted under the new layoff sections defined under Section 5 of House Bill 217.

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

Section 5: Amends AS 14.25, Teachers' Retirement by adding a new section. This new section provides for layoff of a tenured teacher when there is a decrease in school attendance or school revenues or to better meet the academic program needs of the district. Instructs the department to adopt regulations to establish procedures under which a district may layoff tenured teachers, the length of time that a teacher retains hire rights after a layoff, the circumstances under which a teacher may lose rehire rights after a layoff and other provisions.

Section 6: Amends AS 14.20.205, Judicial review. Eliminates a de novo trial whenever a school district reaches an unfavorable decision to a teacher. This section adds language which allows judicial review of the decision based on the previously established record.

Section 7: States that the changes made by this bill apply to teachers first hired on or after the effective date of the bill.

ASSOCIATION OF ALASKA SCHOOL BOARDS

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POSITION PAPER

TENURE ACQUISITION

For public school educators

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

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

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

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

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TENURE ACQUISITION MAJOR ISSUES & KEY POINTS

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

INSUFFICIENT TIME FOR EVALUATION

1. FAIRNESS TO TEACHERS

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

2. FAIRNESS TO KIDS

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

3. ADMINISTRATIVE WORKLOAD

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

FIVE-YEAR TENURE WILL

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

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



1995 CORE RESOLUTION

95-22

ACQUISITION OF TEACHER TENURE

WHEREAS, the quality of teaching is important in the development of strong educational programs in the State; and,

WHEREAS, two years is often insufficient time for a teacher new to a school district to develop professionally and successfully; and

WHEREAS, two years is often not long enough to adequately evaluate the capability of a teacher prior to granting tenure; and

WHEREAS, the two year tenure restricts school boards' abilities to manage for quality education;

NOW THEREFORE BE IT RESOLVED that the Association of Alaska School Boards recommends to the Legislature that AS 14.20.150 (a) and (b) be amended to require five years of probation to obtain tenure in the school systems of the State of Alaska—applicable to teachers hired after the effective date of the act.

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POSITION PAPER

NONRETENTION REVISION

LAYOFF PROVISIONS DUE TO FISCAL CIRCUMSTANCES

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

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

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

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

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

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

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

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

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

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

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

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



1995 CORE RESOLUTION

95-23

TENURED STAFF REDUCTION WHEN REVENUES DECLINE

WHEREAS, school districts are faced with budget reductions not associated with declining enrollments; and,

WHEREAS, certificated staff may be non-retained due to incompetency, immorality, non-compliance with school law, and declining enrollments, but not due to declining revenues; and,

WHEREAS, this often places teachers in grade levels or subject areas for which they have insufficient preparation; and,

WHEREAS, districts, in order to deal with declining revenues, need the authority to reduce staff due to a lack of funds; and

WHEREAS, nonretention provisions in current statute address performance criteria, with the exception of declining enrollment;

NOW THEREFORE BE IT RESOLVED that the Association of Alaska School Boards supports amending AS 14.20.175(b) to separate declining enrollments and fiscal or budgetary circumstances from performance criteria when faced with staff reductions;

BE IT FURTHER RESOLVED that the Association of Alaska School Boards will draft legislation for layoff that addresses fiscal circumstances with rehire provisions to accommodate district program needs.

Passed by the General Membership at the
41st Annual AASB Conference, Nov. 15, 1994



1995 CORE RESOLUTION

95-24

STAFF REDUCTION DUE TO CHANGING PROGRAM NEEDS

WHEREAS, School Boards are specifically charged with the responsibility for determining the program needs of their particular districts; and,

WHEREAS, existing tenure laws do not allow for staff reduction because of changing program needs; and,

WHEREAS, changing program needs often force districts to place teachers in grade levels or subject areas for which they have insufficient preparation; and,

WHEREAS, school boards need to be able to make the decision to change staffing levels based on the district's program needs;

NOW THEREFORE BE IT RESOLVED that the Association of Alaska School Boards promotes necessary legislation to allow districts to change staffing levels based on the district's program needs.

Passed by the General Membership at the
41st Annual AASB Conference, Nov. 15, 1994



1995 CORE RESOLUTION

95-25

**SUBJECT AREA ENDORSEMENT IN THE
CERTIFICATION PROCESS**

WHEREAS, subject area endorsements gained through the teacher certification process are indicators of a teacher's potential competency; and,

WHEREAS, the Association of Alaska School Boards desires an optimal educational environment for its students by hiring the best qualified teachers that are available to us; and,

WHEREAS, the Association of Alaska School Boards recognizes that endorsements can demonstrate basic knowledge and skills;

WHEREAS, the public wants assurances that the people in the classroom are qualified and competent;

NOW THEREFORE, BE IT RESOLVED that the Association of Alaska School Boards desires the Alaska Department of Education to require subject area endorsements or multiple endorsements of initial applicants for teacher certification.

BE IT FURTHER RESOLVED that such endorsements be required of all applicants for certificate renewal, unless such requirement was met at the time of initial certification.

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POSITION PAPER

DE NOVO TRIALS

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

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

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

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

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

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

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DE NOVO TRIALS SAMPLE COSTS

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

NORTH SLOPE BOROUGH SCHOOL DISTRICT

Tom Everitt, Director of Personnel

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

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

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

FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT

Barbara M. Martin, Assistant Superintendent

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

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

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

ANCHORAGE SCHOOL DISTRICT

Larry Wiget, Director of Government

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

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

KENAI PENINSULA BOROUGH SCHOOL DISTRICT

Richard Swarner, Executive Director of Business Management

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

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

SITKA SCHOOL DISTRICT

John Holst, Superintendent

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

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



**1995 CORE RESOLUTION
95-2
ELIMINATE TRIAL DE NOVO**

WHEREAS, the current system of tenured teacher non-renewal and dismissal in Alaska is inefficient and costly for all parties when compared with similar processes in other states; and

WHEREAS, the current system of tenured teacher non-renewal and dismissal in Alaska requires a school district to complete a trial de novo following a similar hearing process by a hearing officer;

WHEREAS, the school trial de novo doubles the cost to the school district for teacher non-renewal or dismissal; and

WHEREAS, school districts have generally used independent hearing officers who utilize an approved process similar to a courtroom situation; and

WHEREAS, in overturning a Superior Court ruling against trial de novo the Supreme Court of Alaska stated the resolution to the process must be remedied by the Legislature;

NOW THEREFORE BE IT RESOLVED that the Association of Alaska School Boards will promote legislation to adjust the current system of tenured teacher non-renewal and dismissal in order to eliminate the trial de novo when the hearing officer has met standards acceptable to the court.

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To	Tom Wright	From	AASB
		Co.	

GOVERNANCE

(95-2) **ELIMINATE TRIAL DE NOVO** The current system of tenured teacher non-renewal and dismissal in Alaska is inefficient and costly for all parties. AASB would like to see elimination of the duplicative and costly "Trial De Novo" for school employees who, if not satisfied with a district led investigation, go to the state court system to begin an entirely new trial. The district's investigation, most often, must be re-created. School boards simply want to eliminate the trial de novo when the district investigation has met standards acceptable to the court.

(95-4) **STRIKE NOTIFICATION** Concerned that school employees may walk off their jobs without adequate notice, school boards are asking for a 24-hour notification period before employees strike schools so that the safety of school children would not be compromised.

(95-5) **MANDATED SCHOOL CONSOLIDATION** AASB continues to engage in cooperative and shared service opportunities to run schools efficiently, but is opposed to MANDATED school consolidation, as it may not serve the best educational interests of children and will significantly reduce local control for a majority of school districts in Alaska.

(95-6) **MANDATED BOROUGH FORMATION** Some communities and school districts have considered it viable to consolidate, and have done so through their own volition as a local decision. The concept of cooperation and shared services as an alternative to mandated consolidation ensures local autonomy and decision making are preserved. A MANDATORY borough act reverses a decades long trend toward increased local responsibility and control, and thus AASB continues to oppose mandatory formation of boroughs.

PERSONNEL

Reforming tenure laws was the top priority in the area of personnel.

(95-22) **ACQUISITION OF TEACHER TENURE** Two years is often insufficient time for a teacher new to a school district to develop professionally and successfully. AASB recommends teacher tenure acquisition to be extended to five years of probation before obtaining tenure. Boards agree to make this change applicable to teachers hired after the effective date of the new law.

(95-23) **TENURED STAFF REDUCTION WHEN REVENUES DECLINE** School districts are faced with budget reductions not always associated with declining enrollments. Certified staff may be non retained due to incompetency, immorality, non compliance, and declining enrollments, but not due to declining revenues. This often results in the placement of teachers in grade levels or teaching subjects for which they have insufficient preparation. Schools need the authority to reduce staff due to declining revenues.

(95-24) **STAFF REDUCTION DUE TO CHANGING PROGRAM NEEDS** A similar situation to the above is that school boards are specifically charged with the responsibility for determining the program needs of their particular districts, but existing tenure laws do now allow for staff reduction because of changing program needs. Again, this often forces districts to place teachers in grade levels or subject areas for which they have insufficient preparation. School boards need to be able to put children first, and make the decision to change staffing levels based on the district's educational needs.

EDUCATION PROGRAMS/OTHER

(95-28) **DISTANCE DELIVERED EDUCATION** AASB has long championed the use of distance delivered education, and urges the Alaska Department of Education to expand its distance delivery programs with the input of local districts and use of existing facilities whenever possible.

(95-30) **YEAR-ROUND EDUCATION** AASB would like to work with the State of Alaska in a statewide effort to encourage the Department of Education to develop a formula that provides for the additional funding necessary to operate year-round schools in the very near future. Year-round education is a viable alternative to the 180 school year calendar. Ultimately, it is cost effective and would save the cost of building new schools. The education advantages for children are well documented.

(95-52) **SCHOOL CHOICE / CHARTER SCHOOLS** While AASB adamantly opposes public funding for private schools, it strongly supports exploration of different means of organizing and managing schools that lead to improvement in the education of all Alaska youth, including non-mandated charter schools under contract with local school boards.

(95-54) **STANDARDS, ASSESSMENT AND TEACHER PREPARATION** AASB welcomes reform efforts in Alaska, and supports changes in setting standards and assessments for children and significant changes in teacher preparation to assure that high standards of professionalism will be promoted, recognized and rewarded.

(95-57) **BOARDING HOME PROGRAM** Many students in small village high schools now desire the educational and extra-curricular opportunities found at larger, centralized high school sites. AASB supports the State Boarding Home Program expanding to provide funds for students to enable them to attend high school at centralized sites within a school district without regard to availability of programs in their village community.

Sec. 14.20.147

TRANSFER OR ABSORPTION OF ATTENDANCE AREA OR FEDERAL AGENCY SCHOOL

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

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

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

History -

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

Decisions -

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

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

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

Sec. 14.20.150

ACQUISITION OF TENURE RIGHTS.

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

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

History -

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

Decisions -

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 14.20.160

LOSS OF TENURE RIGHTS.

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

History -

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

Sec. 14.20.175

NONRETENTION.

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

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

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

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

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

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

History -

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

Decisions -

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

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

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

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

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

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

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

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

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

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

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

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

Collateral Refs -

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

Sec. 14.20.205

JUDICIAL REVIEW.

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

History -

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

Decisions -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ralph Tronrud

Legislative Liason -SkagwaySchool Board District
P O Box 523
Skagway, Alaska 99840

Rep. Cynthia Toohey

Co-chair HESS Committee
Juneau, Alaska 99801

March 16, 1995

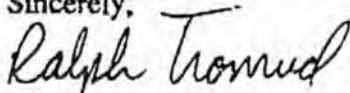
Dear Rep. Toohey;

I am writing this letter in support of House Bill 217. Next to funding levels, the provisions contained in this bill are the most important items (tools) that school boards need in order to continue to manage districts.

During my tenure on the local school board here in Skagway, we have been adversely impacted by each of the aspects of this bill. Should you require specific information I would be more than willing to oblige.

On behalf of the children of Skagway, and the State of Alaska I urge your timely passage of HB 217.

Sincerely,



Ralph Tronrud



P.O.Box 157 Hoonah, Alaska 99829 (907) 945-3611 Fax (907) 945-3614

March 15, 1995

Representative Cynthia Toohey
House of Representatives
State Capital Room 104
Juneau, AK 99801-1182

RE: HB 217 Teacher Tenure and Layoff

Dear Representative Toohey:

We would like to voice our support of HB 217, a key cost containment bill. We believe that extension of tenure acquisition rights from two to five years will only enable school districts across the State to provide better education for all students. We also concur with AASB and the Legislative Majority that providing the layoff due to fiscal circumstances or due to program needs is an important piece of this legislation.

The fact that this bill would ultimately result in subject area endorsements could only serve to heighten the quality of teaching. This is a bill that has been a long time coming and has gone through many changes. However, as it stands now, it could only benefit us and we pledge our full support.

Sincerely,

Virgie L. Fryrear

Dr. Virgie L. Fryrear
Superintendent

Leona Lindoff

Ms. Leona Lindoff
Board Secretary/Treasurer

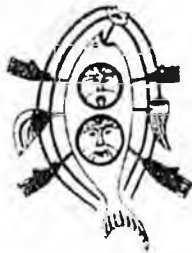
Mary A. Peterson
Mrs. Mary A. Peterson
Board of Education President

Terrence P. Barry
Mr. Terrence P. Barry
Board Member

Jacqueline Y. Dick
Mrs. Jacqueline Y. Dick
Board Vice President

Grace Hillman
Ms. Grace Hillman
Board Member

VLF/db



KASHUNAMIUT SCHOOL DISTRICT

985 KSD Way
Chevak, Alaska 99563
(907) 858-7713 FAX (907) 858-7328

March 13, 1995

Honorable Cynthia Toohey
Alaska House of Representatives
State Capitol Mail Stop 3101
Juneau, AK 99801-1182

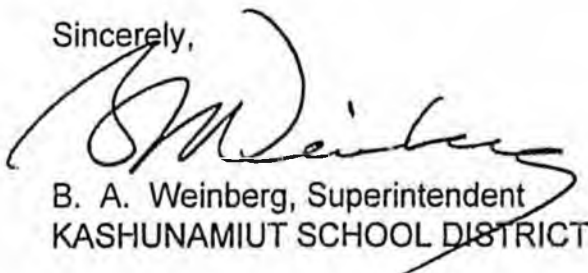
Re: HB 217

Dear Representative Toohey:

I urge your support of HB 217, "An Act relating to employment of teachers." Although tenure is recognized as an appropriate state policy, balance is required so that school districts can carry out their mission of providing cost-effective education for Alaska's children and youth. The ability to comply with our public mandate is being jeopardized in an era when state aid to school districts is constantly eroded by inflation and the demands on districts are constantly increased. School boards and administrators must have reasonable cost containment tools if they are to be expected to accomplish the demands that the public places upon them.

Enactment of HB 217 would be a step in the right direction. It would give school districts some much-needed management flexibility, while teachers would retain ample protection against arbitrary treatment. In short, this bill provides an appropriate balancing of certain interests, the benefits of which accrue to the direct consumers of public education as well as to the public at large.

Sincerely,



B. A. Weinberg, Superintendent
KASHUNAMIUT SCHOOL DISTRICT



Alaska State Legislature

Please enter into the record my testimony to the HOUSE HESS
committee name

committee on HB 226 date 04/06/95
bill/subject

Thank you for allowing me the opportunity to vocalize my opinion. I would like to start by saying that I am very much against this bill being passed into law.

The government is acting unresponsibly by trying to pass this law. If this law passes, all it is going to do is promote people to stop having AIDS tests. A person will be less likely of having a test if they fear that they can be sued. Also, if the public at large does not ask the person they are sleeping with whether or not they are positive or negative or chooses to have unsafe sex, then, they are obviously too immature to be having sex.

There is also a double standard in the government, how can the legislators ask people to do what they are not asking big business to do,

Signed: MR. Utter
Testifier

(next page)

Representing (Optional)

1285 Ballaine Rd

Address

• - FBKS AK

99709

which is to be publically disclose information. I could go and buy a six pack of Coors and not know that the profits are going to help the Contras, who were killing many people, and I would not know that I was helping support this cause. However, you would expect a person with AIDS to disclose to the state and other people they are positive.

Finally, if this law does pass, are we the concerned citizens of this state, and other states who have had friends and family die from AIDS, going to be able to sue groups like the American Red Cross, the United States Government and individuals like Ronald Reagan and George Bush, who actively let this plague take hold in the United States because the groups of people that were affected by the plague, deserved to die and were not a part of society that was wholesome and good. I am of course talking about, gays, Haitian hemophiliacs, and drug users. Now that the plague threatens heterosexuals you the legislators are trying to close the barn door after the horses have escaped.

THANK YOU

BRIEFLY - CHANGES BETWEEN THE ORIGINAL AND THE CS

Section 1 and Section 2. Changes tenure from two to four years.

Section 3. Adds nontenured teacher evaluation annually by a superintendent. Also adds a peer evaluation for 3 out of the 4 years.

Section 4. This is the original bill's Section 3.

Section 5. This is the original bill's Section 4.

Section 6. Changes Section 5 of the original bill on layoffs. It sets out the conditions under which layoffs may happen. (It no longer requires the State Board to set those out in regulation.)

Section 7. Adds mandatory, advisory arbitration and judicial review, (removes de novo trial - same as in the original bill).

Section 8. Remains the same.

A M E N D M E N T #1

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROBINSON

TO: CSHB 217() "K" Version, dated 4/6/95

1 Page 1, line 12:

2 Delete "four"

3 Insert "three"

4 Page 2, line 6:

5 Delete "four"

6 Insert "three"

7 Page 2, line 7:

8 Delete "four"

9 Insert "three"

10 Page 2, line 12:

11 Delete "four"

12 Insert "three"

13 Page 2, line 16:

14 Delete "three of the four"

15 Insert "two of the three"

16 Page 2, line 22, after "superintendent":

17 Insert "and to the nontenured teacher"

#4

AMENDMENT #2

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROBINSON

TO: CSHB 217(), "K" Version, dated 4/6/95

1 Page 3, line 12, through page 4, line 3:

2 Delete all material and insert:

3 ** Sec. 6. AS 14.20 is amended by adding a new section to read:

4 Sec. 14.20.177. LAYOFFS AND REHIRE. (a) A tenured or nontenured
5 teacher is subject to layoff for the next fiscal year if the school district has

6 (1) an unanticipated financial exigency that interferes with the normal
7 operations of the school district and that cannot be resolved through other reasonable
8 and usual budgetary processes, including normal staff attrition, reduction of
9 unnecessary expenditures, and administrative layoffs; or

10 (2) a decrease in school attendance that makes a reduction in staff
11 necessary.

12 (b) A neutral third party selected by mutual agreement between the school
13 district and the bargaining organization representing teachers must verify the
14 unanticipated financial exigency or the need to reduce staff because of a decrease in
15 school attendance before the school district may lay off teachers.

16 (c) A school district shall notify tenured teachers of a layoff no later than
17 March 15th of the fiscal year preceding the year of layoff. Layoffs shall occur in
18 reverse order of seniority of employment within the district.

19 (d) A school district and the bargaining organization representing teachers
20 shall negotiate a provision concerning the rehire or recall rights of teachers who have
21 been laid off under this section before the district lays off teachers under this section.

22 (e) A teacher who is laid off under this section has recall rights based on
23 seniority for five years after the date of layoff. A school district may not employ a
24 new teacher so long as there are laid off teachers on the recall list."

1 Reletter the following subsection accordingly.

AMENDMENT #3

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROBINSON

TO: CSHB 217(), "K" Version, dated 4/6/95

1 Page 1, lines 1 - 2:

2 Delete "to review of decisions of school boards concerning teachers"

3 Insert "teacher arbitration rights"

4 Page 4, lines 11 - 18:

5 Delete all material.

6 Insert new bill sections to read:

7 **** Sec. 7.** AS 14.20.180(b) is amended to read:

8 (b) The tenured teacher may, within 15 days immediately following receipt
 9 of the notification, notify the employer in writing that arbitration under
 10 AS 09.43.010 - 09.43.180 [A HEARING BEFORE THE SCHOOL BOARD] is
 11 requested. The tenured teacher may require in the notification that the arbitration
 12 hearing be either public or private [AND THAT THE HEARING BE UNDER OATH
 13 OR AFFIRMATION. THE NOTIFICATION MAY ALSO REQUIRE THAT THE
 14 RIGHT OF CROSS-EXAMINATION BE PROVIDED AND THAT THE TENURED
 15 TEACHER BE REPRESENTED BY COUNSEL AND HAVE THE RIGHT TO
 16 SUBPOENA A PERSON WHO HAS MADE ALLEGATIONS THAT ARE USED
 17 AS A BASIS FOR THE DECISION OF THE EMPLOYER].

18 *** Sec. 8.** AS 14.20.180(c) is amended to read:

19 (c) Upon receipt of the notification requesting an arbitration [A] hearing, the
 20 employer and the employee shall immediately arrange for a hearing [, AND SHALL
 21 NOTIFY THE TENURED TEACHER OR ADMINISTRATOR IN WRITING OF
 22 THE DATE, TIME, AND PLACE OF THE HEARING. A WRITTEN
 23 TRANSCRIPT, TAPE, OR SIMILAR RECORDING OF THE PROCEEDINGS
 24 SHALL BE KEPT. TRANSCRIBED COPIES SHALL BE FURNISHED TO THE

1 TENURED TEACHER FOR COST UPON REQUEST OF THE TENURED
2 TEACHER. A FINAL DECISION OF THE SCHOOL BOARD REQUIRES A
3 MAJORITY VOTE OF THE MEMBERSHIP. THE VOTE SHALL BE BY ROLL
4 CALL. THE FINAL DECISION SHALL BE WRITTEN AND CONTAIN SPECIFIC
5 FINDINGS OF FACT AND CONCLUSIONS OF LAW.] A written notification of
6 the arbitration decision shall be furnished to the tenured teacher and the employer
7 within 10 days after [OF] the date of the decision. Either party may apply to the
8 court to confirm, vacate, modify, or correct the arbitration decision in
9 accordance with AS 09.43.110 - 09.43.130.

10 * Sec. 9. AS 14.20.205 is repealed and reenacted to read:

11 Sec. 14.20.205. JUDICIAL REVIEW. Judicial review of a decision or award
12 in arbitration under AS 14.20.180 shall be as provided in AS 09.43.010 - 09.43.180."

13 Renumber the following bill section accordingly.



NEA-ALASKA

Affiliated with the National Education Association

NEA-Alaska Survey of the States

State	Required for Tenure - Years
Alabama	3 Years + R*
Alaska	2 Years - R*
Arizona	3 Years + R*
Arkansas	3 Years + R*
California	2 Years + R*
Connecticut	3 Years
Delaware	3 Years
Florida	Professional Services Contract (PSC) Teacher - 3 Years
	Continuing Contract (CC) Teacher - 3 Years
Georgia	3 Years - R*
Hawaii	2 Years + R*
Idaho	3 Years - R*
Illinois	2 Years
Indiana	5 Years + R*
Iowa	2 Years
Kansas	3 Years + R*
Kentucky	4 Years - R*
Louisiana	3 Years
Maine	2 Years
Maryland	2 Years or Less
Massachusetts	3 Years
Michigan	4 Yrs. after 6/11/93 2 Yrs. before 6/11/93
Minnesota	3 Years
Mississippi	Not Specified
Missouri	5 Years + R*
Montana	3 Years + R*
Nebraska	3 Years
Nevada	1st year probation 2nd year of probation is optional
New Hampshire	3 Years
New Jersey	3 Years + R*
New Mexico	3 Years

*(R = Must return to begin the next school year.)

New York	3 Years
North Carolina	3 Years + R*
North Dakota	Not Specified
Ohio	3 Years + R*
Oklahoma	3 Years
Oregon	3 Years + R*
Pennsylvania	2 Years
Rhode Island	3 Years
South Carolina	3 Years
South Dakota	2 Years + R*
Tennessee	3 Years + R*
Texas	3 Years
Utah	Not Specified
Vermont	Continuing Contract
Virginia	3 Years + R*
Washington	Continuing Contract
	2 years in 1st job;
	1 year in school
	district if 2 years
	previously served
	in another school
	in state
West Virginia	3 Years
Wisconsin	3 Years + R*
Wyoming	3 Years + R*

*(R = Must return to begin the next school year.)



Alaska State Legislature
 House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

DATE: APR 13 1995

PLACE: Capitol Room 106

SUBJECT OF MEETING:
 HB 217: Employment Rights
 of Teachers

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Carl Rose	AASIS	316 W 11th ST Juneau	99801		6-1088	<input checked="" type="checkbox"/> Y	N HB 217
Vernon Marshall	NEA-AK	114 2nd St Juneau			586 3090	<input type="checkbox"/> Y	N
						Y	N
						Y	N
						Y	N
						Y	N
						Y	N
						Y	N
						Y	N
						Y	N



Alaska State Legislature
 House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

SUBJECT OF MEETING:
 HB 217
 work session

DATE: 3/29/95

PLACE: Capitol Room 106

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
DR Roger D. Jarvis	INFORMATION FOR PURPOSES	3MSS/DPE, 21570 Lemon Av. ELEMENOR AFB, AK 99506			552-2120	Y N	
Stewart Johnson	"	State Board of Ed.				Y N	
Shirley C. Haway	"	DPE				Y N	
CARL ROSE	AASB	316 W 11th ST Juneau	99801	6-1083		Y N	HB 217
Steve McPhetres	AK Council of Educators	326 4th 401 SW 99801		6-9702		Y N	
Heather Flynn	SELF	918 R St Anch 99501		272-5342	279-9581	Y N	
Sheila Peterson	observe	801 W 10 Street, Suite 200 Juneau, AK 99801		463-3863	465-4203	Y N	
Robert G. Heston		630 W 4th Ave #303 Anchorage 99501		274-4001	257-5601	Y N	
CLAUDIA DOUGLAS	NEA-ALASKA	114 SECOND, JUNEAU		586-3090		Y N	
Janet Marshall	NEA AK	" " "		"		Y N	TECHNICAL
Nike Williams	DUPD PURPOSES	Box 126, AKIAK, AK 99852		765-7444		Y N	217



Alaska State Legislature

House of Representatives

COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

DATE: 3/29/95

PLACE: Capitol Room 106

SUBJECT OF MEETING:

HB 217
work session

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
ED GILLEY	ADAK	PSC-486 Box-1234 FPO AP 96506	96506	592-3188 -3239	592-3188	<input checked="" type="radio"/>	<input type="radio"/>	HB-217A
Cory Caldwell	ADAK	3541 Hartwood PL ANCHORAGE, AK 99504	99504	337-2491	337-2491	<input type="radio"/>	<input checked="" type="radio"/>	
MARY Ann Eiminger	St Brd	2120 Cushman Seward AK 99701		485-2877	452-7733	<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
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						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	

HB

222

FISCAL NOTE

STATE OF ALASKA

BILL NO. HB222

1995 LEGISLATIVE SESSION

Revision Date: March 31, 1995

Department Affected: Education

Title: "An Act allowing a local bidder preference in certain contracts for school construction."

BRU: School Finance

Sponsor: Representative Vezey

Component: Educational Facilities Support

Requester: Representative Vezey

COMPONENT SERIAL NO. 1957

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
-----------------------------	--	--	--	--	--	--

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	-0-	-0-	-0-	-0-	-0-	-0-
1005 GF/Program Receipts						
1006 GF/MHTA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY95) impact: \$ -0-

ANALYSIS: (Attach a separate page if necessary.) HB222 amends AS 14.11.017 adding a new subsection that allows a municipality that is school district or a regional educational attendance area to include an Alaska bidder preference provision in the grant agreement when determining the award of a contract. HB222 does not have a fiscal impact on Educational Facilities Support. This legislation may have the effect of increasing the cost of school construction projects by the percentage of bidder preference provided. The actual fiscal impact cannot be determined.

Prepared by: Duane Guiley

Phone: 465-8679

Division: School Finance

Date: March 31, 1995

Approved by Commissioner: 

Shirley J. Holloway, Ph.D.

Agency: Education

Date: March 31, 1995

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Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3718

House Majority Leader

SPONSOR STATEMENT

I introduced House Bill 222 because the Alaska Statutes do not mandate a local bidder preference in school district procurements, including school construction. The money used for school construction comes from the state capital budget and a local contribution.

Alaska statutes do not prohibit a local bidder preference. However, the bureaucrats have taken it upon themselves write regulations barring local bidder preference.

This statute would bar the bureaucrats from ever doing this particular abuse of power again.

SPONSOR STATEMENT

Legislative Research Agency

Alaska State Legislature




130 Seward Street, Suite 218
Juneau, Alaska 99801-2196

Phone: (907) 465-3991
Fax: (907) 463-3351

March 17, 1995

MEMORANDUM

TO: Representative Al Vezey

FROM: Gordon S. Harrison, Director 

RE: Preferences Granted to Alaska Businesses and Products in State Procurement Code
Research Request 95.163

You asked us to identify the preferences granted to Alaska resident businesses and Alaska products in the state procurement code. The preferences described briefly below were found by searching the statutes for references to "procurement preference" and "bidder preference."

Alaska Businesses

There are two types of resident business bidders' preferences: a 5 percent preference for Alaska bidders, and an unspecified preference for Alaska shipyards. Both apply to state agencies.

General 5 Percent Alaska Bidder Preference

State agencies covered by the state procurement code (AS 36.30), when obtaining goods or services through competitive bidding, must grant a 5 percent preference to an "Alaska bidder." An "Alaska bidder" is a person who holds an Alaska business license and has had a place of business in the state for at least six months (AS 36.30.170(b)). A number of specific types of procurements are explicitly exempt from this bidder preference and other provisions of the procurement code (AS 36.30.385).

Representative Vezey

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State Shipyards

State agencies that operate marine vessels must have their ship maintenance and repair work done in a shipyard within the state, without competitive bidding, unless the agency determines that the proposed cost of the work is unreasonable (AS 36.90.050).

Alaska Products

There is a general preference given for Alaska products (including recycled Alaska products) in procurements by state agencies. In addition, there are specific preferences granted to timber, agriculture, and fisheries products that apply to procurements by municipalities and school districts as well as state agencies. Municipalities and school districts (excluding REAAs) must also grant a preference for recycled Alaska products.

Alaska Products Generally

"Alaska products [defined as at least 25 percent manufactured or produced in Alaska] shall be used whenever practicable in procurements for an agency" (AS 36.30.324).

Alaska products receive a preference of 3, 5, or 7 percent, depending upon the percentage of their manufacture or production that occurs in the state, as follows:

- Class I product--from 25 percent to 50 percent--3 percent preference
- Class II product--from 50 percent to 75 percent--5 percent preference
- Class III product--from 75 to 100 percent--7 percent preference

These preferences apply only to the procurement of state agencies, subject to the exceptions enumerated in AS 30.36.850.

Forest Products

State agencies must grant a preference of 7 percent to Alaska timber products (AS 36.30.322).

Alaska timber products must be used in all projects financed by state money "whenever practicable" (AS 30.15.010). The term "financed by state money" includes "state reimbursement to school districts for school or related construction, foundation funding for education, municipal assistance,

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revenue sharing, and state funds for capital projects" (AS 36.15.050(g)(3)). A bid preference amount is not specified.

Agriculture and Fisheries Products

State agencies, school districts (including REAAs), and municipalities must grant a 7 percent preference for local agriculture and fisheries products (AS 36.15.050 and AS 29.71.040).

Recycled Alaska Products

All recycled products receive a 5 percent preference from state agencies, whether they are recycled in Alaska or not (AS 36.30.339). In addition, products recycled in Alaska receive a preference under the same provisions that grant a sliding scale of preference to Alaska products generally in AS 36.30.328 and 332. Municipalities and school districts (excluding REAAs) must extend a similar preference to recycled Alaska products (AS 29.71.050 and AS 14.03.085). The law is ambiguous about the value of the preference to be given recycled Alaska products. Regulations have not been adopted by the commissioner of the Department of Commerce and Economic Development to clarify the value of the preference due Alaska recycled products (see AS 36.30.228).

The procurement code and other statutes provide for other miscellaneous preferences, such as a preference for the use of disabled workers, but these are not based on Alaska residency and are omitted from this memorandum. Also, this memorandum does not deal with the matter of resident employment preferences.

I hope this is the information you were looking for. If you have questions, or would like additional detail on these procurement preferences, please call.

4 AAC 31.080. CONSTRUCTION AND ACQUISITION OF PUBLIC SCHOOL FACILITIES. (a) The construction of a public

educational facility by a school district with money provided through a grant under AS 14.11.011 — 14.11.020, or the construction of a public educational facility which is eligible for reimbursement under AS 14.11.100, must be performed under a written contract awarded on the basis of competitive sealed bids. However, if the estimated cost of the project is less than \$100,000 or if it is in the best interests of the state, the school district may, with the prior approval of the commissioner, construct the educational facility itself using its own employees.

(b) The school district shall provide notice of its solicitation of bids by advertisement at least three times in the 21 days before the bid opening in a newspaper of general circulation, mailing its solicitation of bids to contractors on any bidder list it maintains, and any other means reasonably calculated to provide notice to prospective bidders.

(c) The school district shall provide for the administrative review of a complaint filed by an aggrieved bidder which allows the bidder to file a bid protest, within 10 days after notice is provided of intent to award the contract, requesting a hearing for a determination and award of the contract in accordance with the law. The school district shall provide notice to all interested parties of the filing of the bid protest.

(d) The award of a contract for the construction of an educational facility under this section must be to the lowest responsible bidder without regard to municipal ordinances or school board resolutions granting a preference to local bidders.

(e) The department will, in its discretion, deny or limit its participation in the costs of school construction for a project eligible for reimbursement under AS 14.11.100 if the school district does not comply with the requirements of this section. A school district that enters into a construction contract for a project authorized for construction under AS 14.11.020 which is awarded without competitive bidding under this section, will not receive money under its grant agreement for the construction phase of the project.

(f) Nothing in this section precludes a school district from using design/build contracting methodology, if the department concurs in advance of contracting, the proposed contract is in the state's best interest, and the school district concurs in any directives the department makes concerning the award of the contract.

(g) A school district may, with prior approval by the department, purchase an existing facility for use as an education-related facility if

- (1) a cost saving over new construction is achieved;
- (2) the purchase price is arrived at through arm's-length negotiation and is supported by a real estate appraisal that meets accepted standards; and
- (3) the purchase is in the best interests of the state and the school district. (Eff. 12/2/83, Register 88; am 8/31/90, Register 115)

Sec. 14.11.017. Grant conditions. (a) The department shall require in the grant agreement that a municipality that is a school district or a regional educational attendance area

(1) agree to construction of a facility of appropriate size and use that meets criteria adopted by the department if the grant is for school construction:

(2) provide reasonable assurance by a means acceptable to the department, that the cost of the project will be uniform with the costs of the most current construction or major maintenance projects, as appropriate, in the area:

(3) agree to limit equipment purchases to that required for the approved project plan submitted under (5) of this subsection and account for all equipment purchased for the project under a fixed asset inventory system approved by the department:

(4) submit project budgets for department approval and agree that the grant amount may, at the discretion of the department, be reduced or increased by amounts equal to the amounts by which contracts vary from the budget amounts approved by the department: and

(5) submit to the department for approval, before award of the contract, a plan for the project that includes educational specifications, final drawings, and contract documents.

(b) The cost of any school construction or major maintenance activity encompassed by the definition of "costs of school construction" under AS 14.11.135 is payable under a grant awarded from the appropriate fund under AS 14.11.015 without regard to whether the costs were incurred before the

(1) award of the grant;

(2) approval of the grant application by the board: or

(3) effective date of an appropriation to the appropriate grant fund for the year in which the grant is funded.

(c) The department, by regulation, may establish the time period in which activities described in (b) of this section must have occurred in order to be paid under a grant. (§ 6 ch 5 SLA 1990; am §§ 11, 12 ch 78 SLA 1993)

Effect of amendments. — The 1993 amendment, effective June 26, 1993, added "if the grant is for school construction" in paragraph (a)(1); inserted "or major maintenance" and references to "appropriate" in paragraph (a)(2) and subsection (b); substituted "project" or "appropriate" for "school construction" throughout; inserted "submitted under (5) of this subsection" in paragraph (a)(3); deleted "construction" preceding the first "contract" and "drawings" in paragraph

(a)(5); added subsection (c); and made stylistic changes.

Editor's notes. — Section 23(a), ch. 78, SLA 1993 provides that the amendment of (a) and (b) by § 11, ch. 78, SLA 1993 does not apply to grants awarded under AS 14.11.005 — 14.11.019 after June 30, 1993.

Section 23(b), ch. 78, SLA 1993 provides that the addition of (c) by § 12, ch. 78, SLA 1993 does not apply to capital improvement grants included in appropriations for fiscal year 1994.

Sec. 36.30.170. Contract award after bids. (a) Except as provided in (b) — (h) of this section, the procurement officer shall award a contract based on the solicited bids with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the invitation to bid.

(b) The procurement officer shall award a contract based on solicited bids to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent, an Alaska products preference as described in AS 36.30.322 — 36.30.338, and a recycled products preference under AS 36.30.339 have been applied. In this subsection, "Alaska bidder" means a person who

(1) holds a current Alaska business license;

(2) submits a bid for goods, services, or construction under the name as appearing on the person's current Alaska business license;

(3) has maintained a place of business within the state staffed by the bidder or an employee of the bidder for a period of six months immediately preceding the date of the bid;

(4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship and the proprietor is a resident of the state, or is a partnership and all partners are residents of the state; and

(5) if a joint venture, is composed entirely of ventures that qualify under (1) — (4) of this subsection.

(c) Except as otherwise provided under (e) or (f) of this section, if a bidder qualifies under (b) of this section as an Alaska bidder, is offering services through an employment program, and is the lowest responsible and responsive bidder with a bid that is not more than 15 percent higher than the lowest bid, the procurement officer shall award the contract to that bidder. This subsection does not give a bidder who would otherwise qualify for a preference under this subsection a preference over another bidder who would otherwise qualify for a preference under this subsection.

(d) The procurement officer shall award an insurance-related contract based on solicited bids to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent. In this subsection, "Alaska bidder" means a person who meets the criteria set out in (b)(1) — (5) of this section and who is an Alaska domestic insurer.

(e) If a bidder qualifies under (b) of this section as an Alaska bidder, is a sole proprietorship owned by an individual who is a person with a disability, and is the lowest responsible and responsive bidder with a bid that is not more than 10 percent higher than the lowest bid, the procurement officer shall award the contract to that bidder. This subsection does not give a bidder who would otherwise qualify for a preference under this subsection a preference over another bidder who

would otherwise qualify for a preference under this subsection or (f) of this section.

(f) If a bidder qualifies under (b) of this section as an Alaska bidder, if 50 percent or more of the bidder's employees at the time the bid is submitted are persons with a disability, and if the bidder is the lowest responsible and responsive bidder with a bid that is not more than 10 percent higher than the lowest bid, the procurement officer shall award the contract to that bidder. The contract must contain a promise by the bidder that the percentage of the bidder's employees who are persons with a disability will remain at 50 percent or more during the contract term. This subsection does not give a bidder who would otherwise qualify for a preference under this subsection a preference over another bidder who would otherwise qualify for a preference under this subsection or (e) of this section.

(g) The division of vocational rehabilitation in the Department of Education shall add to its current list of qualified employment programs a list of individuals who qualify as persons with a disability under (e) of this section and of persons who qualify under (f) of this section as employers with 50 percent or more of their employees being persons with disabilities. A person must be on this list at the time the bid is opened in order to qualify for a preference under (e) or (f) of this section.

(h) A preference under (c), (e), or (f) of this section is in addition to any other preference for which the bidder qualifies, including the preference under (b) of this section; however, a bidder may not receive a preference under both (e) and (f) of this subsection for the same contract.

(i) This section applies to all insurance contracts involving state money. In this subsection, "state money" includes state grants and reimbursement to municipalities, school districts, and other entities.

(j) In this section, "person with a disability" means an individual (1) who has a severe physical or mental disability that seriously limits one or more functional capacities in terms of employability; in this paragraph, "functional capacities" means mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills;

(2) whose physical or mental disability

(A) results from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders, paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, or end stage renal disease; in this subparagraph, "neurological disorders" include stroke and epilepsy; or

(B) is a disability or combination of disabilities that are not identified in (A) of this paragraph and that are determined on the basis of an evaluation of rehabilitation potential to cause substantial functional limitation comparable to a disability identified in (A) of this paragraph; and

(3) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time. (§ 2 ch 106 SLA 1986; am §§ 7 — 9 ch 65 SLA 1987; am §§ 6, 18 ch 102 SLA 1989; am § 3 ch 175 SLA 1990; am §§ 1 — 3 ch 114 SLA 1992)

Revisor's notes. — Subsection (i) was formerly AS 36.30.350(e). Renumbered in 1992. Subsection (j) enacted as (i). Relettered in 1992.

Effect of amendments. — The 1989 amendment, effective September 10, 1989, deleted "as defined under AS 36.30.100(c)" following "employment program" in subsection (c); and divided subsection (i) (formerly AS 36.30.350(e)) into two sentences, substituting "In this subsection, 'state money' includes" for "Including" at the beginning of the present second sentence.

The 1990 amendment, in subsection (b), inserted "and a recycled products preference under AS 36.30.339" in the first sentence in the introductory paragraph and

made a series of minor stylistic changes throughout the subsection.

The 1992 amendment, effective June 23, 1992, made a subsection reference substitution in subsection (a); rewrote subsection (c); and added subsections (e)-(i).

Editor's notes. — Section 5, ch. 114, SLA 1992 provides that the 1992 amendments to this section apply "to procurements that begin on or after June 23, 1992."

Opinions of attorney general. — An agent will be considered the bidder only if the agent is in fact a principal with the power to convey a leasehold interest in its own right. Otherwise, he is not entitled to the bidder preference. July 1, 1989 Op. Att'y Gen.

NOTES TO DECISIONS

Quoted in *State v. Johnson*, 779 P.2d 778 (Alaska 1989).

Collateral references. — Validity, construction, and effect of requirement under state statute or local ordinance giv-

ing local or locally qualified contractors a percentage preference in determining lowest bid. 39 ALR4th 587.

Sec. 36.30.180. Purpose. The legislature finds that there exists in the state continuing high unemployment, underutilization of resident construction and supply firms, and high costs unfavorable to the welfare of Alaskans and to the economic health of the state. The purpose of bidder preference for resident firms when the state acts as a market participant is to encourage local industry, strengthen and stabilize the economy, decrease unemployment, and strengthen the tax and revenue base of the state. (§ 1 ch 70 SLA 1985)



Alaska State Legislature
 House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

PLEASE!
 Fill IN ALL
 AREAS OF THIS
 FORM!

SUBJECT OF MEETING:
 HB 222: SCHOOL CONSTRUCTION
 ALASKA BIDDER
 PREFERENCE

DATE: APRIL 4, 1994

PLACE: Capitol Room 106

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Duane Guiley	DOE	501 W 10th JUNIOR	972			<input checked="" type="radio"/> Y	<input type="radio"/> N	HB222
						<input type="radio"/> Y	<input type="radio"/> N	
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HB

226

CS FOR HOUSE BILL NO. 226(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES KELLY, Rokeberg

A BILL

FOR AN ACT ENTITLED

1 "An Act permitting the provision of different retirement and health benefits to
2 employees based on marital status except to marital or domestic partners of
3 employees."

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

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

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

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

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

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

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

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

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

27 * Sec. 2. AS 18.80.220 is amended by adding new subsections to read:

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

30 (1) an employer may, without violating this chapter, refuse to provide
31 benefits to a person based on marital status unless the person

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- (A) is legally married to an employee; or
- (B) is the domestic partner of an employee as established under (d) of this section; and

(2) a labor organization may, without violating this chapter, negotiate to preclude or may directly preclude the provision of benefit to a person based on marital status unless the person

- (A) is legally married to an employee; or
- (B) is the domestic partner of an employee as established under (d) of this section.

(d) An employee may not establish a domestic partnership for purposes of this section unless both the employee and the individual with whom the domestic partnership is established are unmarried, at least 18 years of age, and mentally competent to consent to contract.

(e) In this section, "domestic partner" means an individual who

(1) is an employee's only domestic partner and who intends, and who is intended by the employee, to remain the employee's domestic partner indefinitely;

(2) is not related to the employee by blood to a degree that would prohibit legal marriage in the state;

(3) resides in the same residence as the employee and intends, and is intended by the employee, to do so indefinitely;

(4) is, as established by at least five of the criteria set out in this paragraph, jointly responsible with the employee for the employee's common welfare and financial obligations and for whom the employee is jointly responsible in similar fashion; the criteria are

(A) having entered into a legally binding domestic partnership agreement with the employee;

(B) holding a joint deed, mortgage agreement, or lease of real property with the employee;

(C) holding joint ownership of a motor vehicle with the employee;

(D) having a joint bank account with the employee;

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(E) having a joint credit account or other joint liabilities with the employee;

(F) having a co-parenting agreement with the employee, having adopted a child of the employee, or being the natural parent of a child of the employee;

(G) being designated by the employee as primary beneficiary on the employee's life insurance;

(H) being designated by the employee as primary beneficiary of the employee's retirement benefits in case of the employee's death;

(I) being designated as the primary beneficiary under the employee's will; and

(J) being named by the employee under a durable health care or property power of attorney.

FISCAL NOTE

BILL NO. HB 226

STATE OF ALASKA
1995 LEGISLATIVE SESSION

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE: (Thousands of Dollars)

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

The state's health insurance plan extends coverage by statute [AS 39.30.090(a)(2)] to employees, their spouses, and their eligible dependent children. Domestic partners are not considered to be eligible for health insurance benefits. This bill would reinforce the rights of employers, including the state, to exclude domestic partners from health insurance benefits despite a recent court decision, which ordered the University of Alaska to extend health insurance coverage insurance benefits to domestic partners. This decision has been appealed.

Prepared by: Robert F. Stalnaker *Janet Parker for*
 Division: Retirement & Benefits

Phone: 465-4470
 Date: _____

Approved by Commissioner: Mark Boyer *Mark Boyer*
 Agency: Department of Administration

Date: 3/13/95

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Alaska State Legislature

Please enter into the record my testimony to the HOUSE HESS
committee name

committee on HR 226, dated 04/06/95
bill/subject:

Thank you for allowing me the opportunity to vocalize my opinion. I would like to start by saying that I am very much against this bill being passed into law.

The government is acting irresponsibly by trying to pass this law. If this law passes, all it is going to do is promote people to stop having AIDS tests. A person will be less likely of having a test if they fear that they can be sued. Also, if the public at large does not ask the person they are sleeping with whether or not they are positive or negative or chooses to have unsafe sex, then, they are obviously too immature to be having sex.

There is also a double standard in the government, how can the legislators ask people to do what they are not asking big business to do,

Signed: NR Utter
Testifier

(next page)

Representing (Optional)

1285 Ballaine Rd

Address

FBKS AK

99709

which is to be publically disclose information. I could go and buy a six pack of Coors and not know that the profits are going to help the Contras, who were killing many people, and I would not know that I was helping support this cause. However, you would expect a person with AIDS to disclose to the state and other people they are positive.

Finally, if this law does pass, are we the concerned citizens of this state, and other states who have had friends and family die from AIDS, going to be able to sue groups like the American Red Cross, the United States government and individuals like Ronald Reagan and George Bush, who actually let this plague take hold in the United States because the groups of people that were affected by the plague, deserved to die and were not a part of society that was wholesome and good. I am of course talking about, gays, hattons, hemophiliacs, and drug users. Now that the plague threatens heterosexuals you the legislators are trying to close the banddoor after the horses have escaped

THANK YOU



ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE Hess
 COMMITTEE ON HB 226/Robinson Amendment DATED 18 April 1995
 BILL/SUBJECT COMMITTEE NAME

Although it is dangerous to begin restricting the Human Rights Code in any fashion whatsoever, Robinson's Amendment, as a compromise, would make HB226 palatable. I urge the adoption of the Robinson Amendment, but the rejection of HB226, ~~and~~ with or without the amendment.

SIGNED *Richard Schull*
 TESTIFIER

REPRESENTING (OPTIONAL)
4756 Glasgow #3, Fairbanks, AK 99709 479-7348
 ADDRESS/PHONE NUMBER

April 18, 1995

To the members of the H.E.S.S. Committee,

Please do not pass HB 226.

I am unable to testify in person this morning because I am at my work site, working alongside my married co-workers who are receiving higher wages for the same job in the form of health insurance for their spouses and however many children they might have. My partner of 8 years (who is disabled and unable to work) and I have to scrimp to make ends meet. We can not afford to purchase a private health plan. It is truly inequitable. I am discriminated against every day.

Please do not pass HB 226.

If you feel you must pass this outrageous bill, then please attach Representative Robinson's equitable amendment which would include and define domestic partners. Remember that a large number of your constituents either can not or choose not to marry. It is unfair to set married couples up as a special class of persons. Besides, with the rising number of divorces, it seems interesting that one would hold marriage up to be the epitome of stability.

Please do not pass HB 226.

Leave Alaska's fair and just Human Rights Law alone. It is extremely dangerous to go in and change this tenet just because a group of people find unmarried persons (gay or straight) objectionable. Who will they dislike next time? Are you going to chip away at Human Rights in the name of "family values", (because to call this an economic issue is a red herring)? Do not make it legal to discriminate. We already live in a society torn apart by "isms". As a society we need to draw together, not drive more wedges between us.

Please do not pass HB 226.

Thank you very much for considering my input.

Jennine Williamson
Jennine Williamson
2454 Killarney Way
Fairbanks, AK 99709

P.O. Box 82708
Fairbanks, AK 99708
April 18, 1995

TESTIMONY OPPOSING H.B. 226

I wish I could be at this hearing to urge you to oppose H.B. 226 (but I have to be at my job). There are two major reasons why I don't support this bill. First, this bill would undercut the Alaska Human Rights Act, which was set up to ensure equal and fair treatment for all Alaskans. It may not sound like much to allow discrimination on the basis of marital status for benefits, but it is! Not only would we be denying equal benefits and treatment for people who cannot or choose not to marry, but we are setting a truly dangerous precedent by toying with this law. Second, the comments I read by Rep. Kelly in the Fairbanks newspaper seem to indicate that passage of this bill would cause insurance costs to skyrocket. Not true! Many universities, businesses, and municipalities in the lower 48 offer benefits to domestic partners of employees, and what happened? The cost of premiums went up little or nothing, and enrollment only increased .5% to 2%. This economic argument used to deny equal benefits is at best a red herring and at worst a deliberate falsehood meant to mislead the public.

In closing, I wonder what people 25 to 50 years from now will think when they look back on this bill. Will it be seen as a misguided attempt to control insurance costs, or will it be seen as a deliberate attempt to deny equal rights to some citizens in our state?

Oppose H.B. 226!

Thank-you.

Jeff Walters

April 5, 1995

Rep. Cynthia Toohey
State Capitol Building
Juneau, Ak. 99801

Dear Representative Toohey:

I want you to know that I appreciate the way in which you handle meetings. You are a good listener and a good moderator and as a woman I am proud you are in that slot. I'm here today because I'm concerned about HB226. I hope it can either be dropped completely or passed with Robinson's amendment.

I agree with you about the bottom line these days being how much something will cost. It is my understanding that ~~this bill~~ will not cost the state anything, as people receiving benefits actually pay into the system themselves. In fact, the cost may be less, as domestic partners with no health insurance when they get sick may not have the means of paying for their care and so would fall back on public assistance.

→ letting the U.S. ruling stand

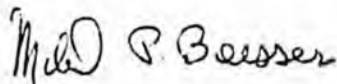
I have lived in Alaska for 36 years, am 70 years old, the mother of 4 children and grandmother of 4. I am a Christian and have been married for 47 years to a Christian pastor.

All the rhetoric around HB226 and HB227 is a smokescreen which unsuccessfully hides the fact that they are both aimed directly at homosexuals. My husband and I are parents of 3 heterosexual daughters and 1 lesbian daughter and we are equally proud of each of them. We have come to firmly believe that each was born the way she is. They are all honest, faith-full, caring contributing adults in this state and it is unthinkable to me that anyone would want to penalize and ostracize and legally discriminate against any one of them. Having lived through the days of Hitler, I am keenly watchful over any attempt to treat one group of people as outside the protection of the state.

As a Christian, I believe that the Church's stand against homosexuality is based on a false interpretation of those few Biblical passages which mention it and that, legislation notwithstanding, eventually the Church will admit we've been working against God's will on this subject, just as we did on the subject of slavery (long endorsed by the Church as "the will of God").

I beg you to concentrate on the things you are rightly trying to address: welfare reform, budget reduction, strengthening families in every way possible. On the latter, remember that families come in many different forms, all of which need strengthening if this nation is to survive. Our lesbian daughter has lived faithfully with her partner for 13 years. They own property together and are mutually responsible for each other. This is a "family" and it in no way undermines the traditional family, in spite of the stereotype which gives rise to needless and harmful prejudice, kept alive by inflammatory rhetoric which is leading to an increased level of violence. That such a family can be denied the benefits of traditional families (and in the UAF case, even if they pay for those benefits) amounts to giving special rights to one group of people: married people! I do not think the majority of Alaskans feel that the great state of Alaska needs to get into this arena, and I'm surprised that Republicans are presenting such a bill, when one of the campaign promises was to keep government out of our private lives. Please let HB 227 die completely, and only pass HB226 if Robinson's amendment is accepted.

Sincerely,



Mrs. Mark A. Boesser
17585 Lena Loop
Juneau, Alaska 99801

(907)789-1445

POSITION PAPER
DEPARTMENT OF ADMINISTRATION


Bill No: HB 226

Contact: Eileen Plate
Phone: 465-5669

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

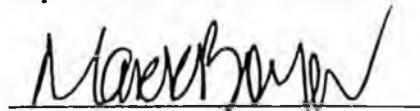
HB 226 amends Alaska's discrimination law by clarifying that different retirement and health benefits may be provided to employees based upon marital status. The provisions of this bill reaffirm current State practice in extending health insurance coverage only to employees, their spouse, and dependent children as provided in AS 39.30.090(a)(2).

The department supports the alignment of this statute with other existing law and current State practices.



Robert Stalnaker, Director
Division of Retirement & Benefits
Department of Administration

3-30-95
Date



Mark Boyer, Commissioner
Department of Administration

3/30/95
Date

Tyson Nevil
Box 82176
Fairbanks, AK 99708
(907-452-8413)

March 25, 1995

Representative Cynthia Toohey
State Capitol
Juneau, Alaska 99801-1182

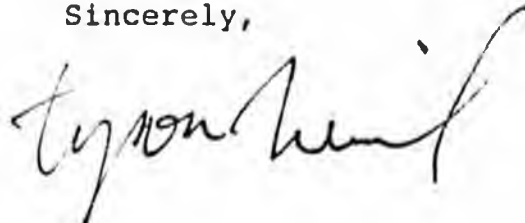
Dear Ms. Toohey,

I am writing to express my opposition to House Bills 226 and 227. I am opposed to these bills for the following reasons:

- These bills refuse to acknowledge the diverse and multicultural nature of modern American society. They seek to freeze the legal system in the past while our dynamic society continually changes.
- Expanding benefits to domestic partners would be a first step in solving the health crisis by providing health insurance through an existing network.
- Benefits are non-wage compensation for work; an employee married in the traditional sense receives more pay for the same work than a single person or a person living in a non-traditional but permanent relationship. Equal pay for equal work!
- A concern has been expressed that domestic partner benefits would be a burden to employers. This financial argument is invalid because all benefits, regardless of the persons they benefit, could be considered burdensome to an employer.

Just as a traditionally licensed and solemnized marriage between a man and a woman encourages stability (financially, legally, and emotionally) in a relationship, the codification of laws allowing for domestic partnerships and/or marriage for all different- or same-sex couples would do the same.

Sincerely,





Greater Fairbanks

Chamber

of Commerce

709 Second Avenue

(907) 452-1105

Fairbanks, Alaska 99701

FAX: (907) 456-6968

Introduced by: Governmental Affairs committee
 Date introduced: April 3, 1995
 Date passed: April 3, 1995

RESOLUTION 95-0403

A Resolution by the Greater Fairbanks Chamber of Commerce in support for the passage of HB226 and HB227.

WHEREAS, Judge Green's decision to re-write history regarding what constitutes a conjugal marriage, and

WHEREAS, that decision also allowed health insurance benefits to accrue to same sex partners in a liaison, and

WHEREAS, Judge Green's decision might be extended to any live-in relationship, and

WHEREAS, that decision may well lead to the inclusion of other social-welfare benefits, and

WHEREAS, at a time when the state is exercising fiscal restraint. Judge Green's decision could cost, not just the University of Alaska, but the entire state enormous sums of money in legal fees and health/welfare benefit payments, and

THEREFORE BE IT RESOLVED that the Greater Fairbanks Chamber of Commerce Board of Directors urges the passage of HB226, which clarifies allowable benefits and HB227 which clarifies conjugal marriages.

PASSED on April 3, 1995, by the Greater Fairbanks Chamber of Commerce Board of Directors.

B.B. Allen
Chairman

William J. Robertson
President/CEO

Monday, March 27, 1995

The Honorable Cynthia Toohey and Con Bunde
Co-Chairs, HE&SS Committee
House of Representatives
Capitol Building
Juneau, Alaska 99801

Dear Representatives Toohey and Bunde:

I am vice-president of SEAGLA, the Southeast Alaska Gay and Lesbian Alliance. Our organization includes members from Ketchikan, Petersburg, Sitka, Juneau, Haines and other Southeast Alaskan communities. As a representative of SEAGLA, I oppose passage of H.B. 226 which will deny domestic partner benefits to UAS employees.

The sole argument advanced by supporters of H.B. 226 is that to extend domestic partner benefits will necessarily result in an undue financial burden on the University's health care plan. The evidence overwhelmingly suggest otherwise. In particular, I submit for your review a letter and attachments from a University of Iowa benefits administrator, a packet of seven articles on this subject, and a comprehensive listing of corporations, universities and government entities which have extended domestic partner benefits to their employees.

Those who would deny domestic partner benefits predicate a financial burden on three myths:

- * Myth #1: If UAS opens its health care plan to the domestic partners of its employees, the plan will be inundated with new enrollees.

The experience of the University of Iowa counters this myth. The U of I extended benefits to an employee's common law marriage partner in 1953; in 1992, the same benefits were extended to an employee's same sex domestic partner. Currently, the University employs approximately 26,000 people with 14,000 eligible for benefits. Of this number, only .9% are in a common law marriage, while only .2% of the population is covered under the domestic partner relationship.

The University of Iowa's experience is consistent with that of other employers. In 1993, *The Segal Company Executive Letter* reported that in those companies which extend benefits to domestic partners -- both straight and gay -- participation rates are less than 5% of the workforce and frequently less than 2%.

- * Myth #2: Extending health care benefits to the domestic partners of UAS employees will be burdensome financially to the plan.

A study appearing in the June 1994 *CCH Employee Benefits Management Directions* finds that plans offering domestic partner health coverage to same-sex couples experience about a 1% total increase in health care costs; plans offering health coverage to

all domestic partners experience approximately a 3% increase in health care costs.

- * Myth #3: The medical bills of a gay male domestic partner -- example: AIDS-related claims -- are more costly than claims of an employee's spouse or dependent.

The authors of an article in *Employee Benefits Practices* report "there is no evidence to indicate that the average health care costs of a domestic partner (same sex and/or opposite sex) will be significantly higher than that of a spouse."

For example, the average AIDS-related claim currently figures at \$119,000. A premature birth however can cost as much as \$1 million. Two weeks in intensive care following a heart attack can cost in excess of \$50,000. This figure doesn't include surgery, related expenses and follow-up.

In fact, the experience of the University of Iowa might suggest that a health plan benefits from enrolling domestic partners rather than spouses of employees. In 1994, the University of Iowa discovered that claims for persons in domestic partner relationships averaged only \$224 per person; a regular spousal claim averaged approximately \$2,700!

The facts overwhelmingly suggest that should UAS extend domestic partner benefits to its employees there would in fact be no significant added financial costs to the university health plan.

If the committee yet harbors concerns about the costs of such a benefit, I would suggest that it refer the matter to a subcommittee for a thorough examination of all financial considerations. Furthermore, I would suggest that the Robinson amendment -- which strictly defines a domestic partner relationship -- will prevent abuse of such benefits and minimize any costs to the University health plan.



Daniel Collison
PO Box 21466
Juneau, AK 99802
(home) 907/789-5001

THE UNIVERSITY OF IOWA



March 23, 1995

Mr. Daniel Collison
P. O. Box 21466
Juneau, AK 99802

Dear Mr. Collison:

The University of Iowa offers a variety of benefits to its employees who work 50% time or greater. These benefits include health, dental, vision and hearing aid insurances. In addition to the employee, an individual is permitted to insure their spouse and dependant children. A spouse is defined as an individual to whom they are legally married, in a common law relationship, or in a domestic partner relationship. The State of Iowa has recognized the common law relationship since 1953. An individual and their heterosexual partner needs only to sign a common law statement (see attached) declaring that they are living and holding themselves out as a married couple. In 1992, The University of Iowa implemented a domestic partner program which recognized the relationship of the same sex couples. These individuals must sign an affidavit (see attached) stating that they are involved in a relationship and acknowledging that certain conditions do exist concerning that relationship.

The University of Iowa employs approximately 26,000 people with 14,000 eligible for benefits. Of this number, only .9% are in a common law relationship, while only .2% of the population is covered under the domestic partner relationship.

The University has found that there has been no effect on the claims as a result of these common law and domestic partner relationships. The last twelve months of domestic partner relationships have resulted in claims averaging only \$224 per person versus a regular spouse claim average of approximately \$2,700. There has been no premium increases as a result of enrolling these groups of individuals in the total medical plans at The University of Iowa.

University Personnel Services
202 Easttown
Iowa City, Iowa 52242-1411
PAX 319/335-2770

Personnel Administration 319/335-2667
Employment 319/335-2656
Job Analysis 319/335-2667
Staff Benefits 319/335-2670

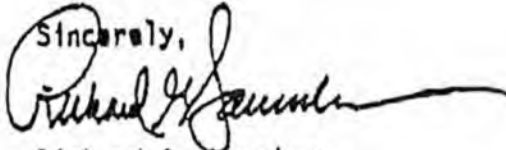
Faculty and Staff Disability
Accommodation Services 319/335-2660
Text Telephone 319/335-3495

Mr. Collison
March 23, 1995
Page Two

I have also enclosed a research study which was done when The University of Iowa investigated the inclusion of domestic partners into its insurance programs.

If you have any questions concerning any of the information presented, please feel free to contact me directly.

Sincerely,



Richard G. Saunders
Assistant Director
Personnel and Staff Benefits

RGS/ksk

Enclosures

University of Iowa Report on Costs of Health Coverage for Domestic Partner

UNIVERSITY OF IOWA DOMESTIC PARTNER COVERAGE

I. INTRODUCTION

Background

The Funded Retirement and Insurance Committee (FRIC) first considered the issue of extending health benefits to domestic partners of University faculty and merit staff in 1990. At that time a majority of the committee felt that such an extension was a humane and equitable response to the needs of University community members who live in stable long-term relationships but who are not able to provide for the health costs of their family equivalents because their relationships are not recognized by the legal system. Nonetheless some committee members were concerned about the financial implications for the University and its employees of extending these benefits at a time of rising health care costs and the uncertainties created by the advent of AIDS/HIV disease.

For that reason, the issue was tabled until 1991 when these concerns could be explored more fully. To help FRIC assess the costs of providing these benefits, a subcommittee was formed to investigate the matter further.

Sources

Domestic partnership coverage currently is an area of intense interest in both the public and private sectors. Several institutions and municipalities have already or presently are addressing this issue. For this reason, the subcommittee was able to assemble information from and rely on the experiences of those entities who have extended or are considering extending domestic partnership coverage to their employees. Particularly instructive were two task force reports from Ohio State University and the City of San Francisco.

The City of San Francisco conducted an actual survey to determine what portion of its 31,000 employees would qualify for and utilize health care benefits for their named partners if the city offered such coverage. The San Francisco task force also did an actuarial study on the HIV-related costs of domestic partner coverage. The results of its employee survey and the actuarial calculations convinced the city that extension of benefits to domestic partners was economically feasible. San Francisco began extending such coverage to its employees in June of 1991. The Ohio State University task force also concluded that domestic partnership coverage was economically feasible. To date the University has not acted on the task force recommendation.

In addition to these reports, the subcommittee did its own survey of many of the municipalities and private employers who currently offer health care coverage for domestic partners. Thus, the subcommittee was able to rely on the actual experiences of these providers in formulating its report. Currently, the cities of Seattle, Laguna Beach, Santa Cruz, Berkeley and West Hollywood extend health care coverage to named partners of their employees. Private employers such as the Village Voice, Ben & Jerry's, American Friends Service, Lotus, Levis Strauss and several others also

offer domestic partner coverage.

Finally, a report by Empire Blue Cross and Blue Shield of New York on AIDS cost and utilization, Abstract F.D. 812, which was presented at the Sixth International Conference on AIDS in San Francisco in June 1990 and a report by Fred Hellinger, senior economist with the National Center for Health Services Research, which appeared at 105 Public Health Reports No. 1, January-February 1990, were consulted for the projected lifetime health care costs of persons with AIDS.

II. COSTS OF DOMESTIC PARTNER COVERAGE

The costs to the University and its employees of extending health coverage to domestic partners fall into two main categories. One small direct cost to the University would be the additional charge paid to Blue Cross and Blue Shield of Iowa to administer the contracts for domestic partners. Another cost category to consider would be the potential increase in premiums for the group from any adverse claims experience from HIV-related disease.

Presumably all of the employees who would sign up for domestic partner health coverage already receive health care coverage through the University health insurance group. Heterosexual couples already have a mechanism for obtaining family health care coverage by filling a common-law marriage affidavit with the University benefits office. In addition, even without filing an affidavit, cohabiting couples can falsely claim they are married. The University does not require proof of marriage for family health care benefits even when couples have different surnames. In conducting its survey, the City of San Francisco found that almost 1% of the heterosexual couples responding to the survey already were obtaining domestic partner coverage by falsely claiming they were married. For the foregoing reasons, the University chose to focus on those with no avenue of gaining group coverage for a partner for whom they are economically responsible.

HIV-related Health Care Costs

The major category of additional cost considered by the subcommittee was HIV-related health care costs. For the purposes of this report, we assumed that all domestic partnerships in which both partners are male are in fact gay male partnerships. We also assumed that, within the domestic partnership population, only gay males would experience HIV-related costs. The potential number of gay partner enrollees was arrived at by using the two methods: employer survey and demographic data. The survey of employers presently offering domestic partnership coverage reveal a remarkably low utilization by gay couples.

	Total Number of Employees	Number of Gay Employees Enrolled	% of Employees Enrolled
West Hollywood, CA	105	1	0.6%
Laguna Beach, CA	225	0	0%
Santa Cruz, CA	650	0	0%
San Francisco, CA [1]	31,000	594	1.9% (projected)

Ben & Jerry's	355	0	0%
Village Voice	231	5	2%

[1] As noted earlier, these numbers were obtained from a random survey of the City of San Francisco's workforce.

Using demographic data, one learns that 1.8% of the national adult population live in same-sex relationships. Assuming that gay males form domestic partnerships at the same rate that lesbians do, then 0.9% of same-sex relationships in the general population are gay males. At the high end of projected utilization (San Francisco survey), we can expect that 1.9% of the University's 8,000 eligible employees or 152 of the faculty and staff enrolling for domestic partner health benefits will be gay men. The mid range utilization rate based on demographic data would be 0.9% of the University's 8,000 employees or 72 gay male employees who would sign up for domestic partner coverage. At the low end, we can expect that no gay men in the university's eligible employee population would sign up for domestic partner coverage.

To estimate the potential HIV-related costs, the subcommittee relied on the actuarial calculations used by the City of San Francisco to forecast these same costs for its employee population. These calculations were performed to arrive at the load factor the city would pay per employee per month to its health care providers to defray the potential additional costs of domestic-partner coverage. The San Francisco load factor was based on actuarial calculations of the cost of prophylactic AZT for HIV-positive individuals and the lifetime health care costs for persons with AIDS once an active diagnosis is made. Based on actual studies of the gay population in San Francisco, the city determined that 50% of the gay population is HIV-positive. Of that number, 13% who did not have an active case of AIDS were taking AZT at any given time. Finally, the city determined that the conversion rate from sero-positive to an active case of AIDS was 6 percent per year. The figure used by San Francisco for the lifetime health care costs once an AIDS diagnosis is made was \$50,000. All of these figures were well substantiated by the City and accepted by the three HMO's which will be providing the actual coverage.

The subcommittee's estimate of HIV-related costs deviated from the San Francisco projections in one respect. They used a figure of \$65,000 for the lifetime health care costs of individuals who have been diagnosed with AIDS. That figure was obtained from the Empire Blue Cross/Blue Shield Report and represents that insurer's experience of costs for 10,483 cases of AIDS among its insured's over a seven-year period. A copy of that abstract is available.

Based on the actuarial data of the San Francisco task force report, we estimated expected HIV-related costs at the medium and high end ranges of utilization as follows.

Medium Range Utilization

.09% gay domestic partners (demographic data)

$.009 \times .50 \times .13 \times \$ 3200/12 = \0.156 or \$0.16

$.009 \times .50 \times .06 \times \$65000/12 = \$1.46$

Total cost per active employee/per month of prophylactic AZT and active AIDS cases = 1.66.

Total cost per year = $\$1.66 \times 8,000 \times 12 = \$159,360$.

Stated otherwise:

$$\begin{aligned} 72 \times .50 \times .13 \times \$3200 &= \$ 14,976 \\ 72 \times .50 \times .06 \times \$65000 &= \$140,400 \\ \text{Total cost per year} &= \$155,376 \end{aligned}$$

High End Utilization

$$\begin{aligned} &1.9\% \text{ gay domestic partners} \\ .019 \times .50 \times .13 \times \$3200/12 &= \$0.33 \\ .019 \times .50 \times .06 \times \$65000/12 &= \$3.08 \end{aligned}$$

Total cost per active employee per month of prophylactic AZT and active AIDS cases = $\$3.41$.

Total cost per year = $3.41 \times 8,000 \times 12 = \$327,360$

Stated otherwise:

$$\begin{aligned} 152 \times .50 \times .13 \times \$3200 &= \$ 31,616 \\ 152 \times .50 \times .06 \times \$65000 &= \$296,400 \\ \text{Total cost} &= \$328,016. \end{aligned}$$

At the low end of 0% utilization, the extension of domestic partner health benefits would not entail any additional HIV-related costs. (It should be noted that the University already has incurred HIV-related claims for members of its faculty and staff who have suffered from AIDS.)

To give some basis for comparing the projected HIV-related costs to current health care costs, one should note that the total claims for the employee population was \$18,971,309. Thus the HIV-related costs at a mid-range utilization represent only .8% of our current costs. At the high end of utilization, these costs represent 1.7% of the current expenditures.

The City of San Francisco which arrived at a lower projection of HIV-related costs of \$3.00 per active employee per month felt the cost projections were overstated for a number of reasons. Specifically, the City felt that the survey overstated the actual rate of utilization by gay domestic partners, that an estimate of \$50,000 for lifetime costs of AIDS after diagnosis was too high, and finally, that an estimated 50% HIV infection rate among gay domestic partners was too high.

This assumption is borne out by the actual experience of those employees offering domestic partner coverage. Of those responding to the survey, only the Village Voice had a utilization rate approaching the San Francisco survey results. The cities of Santa Cruz and Laguna Beach and Ben & Jerry's Ice Cream of Vermont had no gay male employees enrolled in their domestic partner plan. West Hollywood, California, which has a substantial gay population, had only one gay employee take advantage of domestic partner coverage.

Likewise our projections are based on lifetime AIDS costs of \$65,000 per AIDS diagnosis while the San Francisco calculations are based on lifetime costs of \$50,000. To the extent San Francisco is correct that the \$50,000 figure is too high, our projections for HIV-related costs are grossly overstated. Finally, San Francisco and New York have been the epicenter of the HIV/AIDS epidemic. Consequently, even if the 50% infection rate for San Francisco is accurate, the rate of infection in Iowa is likely to be much lower and cost projections based on that rate would be too high.

It should also be noted that fears about adverse impact on health care insurance because of catastrophic AIDS claims have not been borne out by the experience of employees offering domestic partnership coverage. For example, the monthly surcharge imposed by the Kaiser Health Maintenance Organization in 1985 when the City of Berkeley began to offer domestic partner coverage was first reduced and then eliminated after three years of experience failed to justify the need for a loading factor to cover the expected additional claims of domestic partners. Likewise, the early experience with claims of Seattle's domestic partners has been better than that of spouses and much less than the amount budgeted by the city for such claims. The experience of these two employers is similar to that of employers responding to our survey who uniformly reported no adverse claims experience from the extension of domestic partner coverage. Finally, a report on domestic partner coverage released by Hewitt Associates, a national health care consulting firm, found that the fears about catastrophic AIDS claims were not realized in any of the domestic partner plans that were studied.

One explanation for the favorable claims experience of domestic partners could be that domestic partners on the whole are younger than the general employee population and thus have fewer health problems associated with mid to later life. Another reason could be that this group utilizes pregnancy benefits less than married employees. Pregnancy claims accounted for 27% of SUI hospitalization charges for 1989-90 and consistently represent the largest cost component of our inpatient charges. Interestingly, Kaiser, one of the HMO's that will be providing domestic partner coverage for the City of San Francisco, was more concerned about the high cost of maternity claims than HIV-related costs.

While HIV-related costs are a valid concern in considering the extension of health benefits to domestic partners, they have not proven to have a seriously negative effect on other plans and should not be the linchpin upon which we make our decision.

IV. COST CONTAINMENT AND PHASED INTRODUCTION

One of the concerns about providing domestic partner coverage has been a fear that individuals with catastrophic health needs will overutilize this benefit or that employees will establish a domestic partnership with friends who have such needs for the sole purpose of obtaining this coverage. As noted earlier, adverse selection has not been a problem for those entities offering health care benefits to domestic partners.

One way to minimize the risk of adverse selection is to require domestic partners to contractually assume financial responsibility for the common necessities of life, including health care costs, the same financial obligations undertaken by individuals when they marry.

Few individual will be willing to obligate their assets and future earnings for another's health

care, particularly for one with catastrophic health needs, unless they have a true domestic partner relationship. The University has established this requirement.

The next step to limit risk to the health insurance group would be to provide a mechanism for domestic partners to obtain health care coverage while controlling to some degree the enrollment costs and the amount of the claims until the scope of the potential eligible population can be ascertained. One method of controlling the enrollment costs is to allow employees to sign up for domestic partner coverage but require those signing up to pay the additional cost of the coverage. In other words, such employees would have to pay the difference between what the University pays for individual health care coverage and the total cost of the particular family coverage they choose. In that case, the only additional cost to the University would be the third party administrative costs. The cost of claims from domestic partner coverage could also be controlled partially by requiring domestic partners to enroll only the Chip II plan. Under this plan, the first \$800 of health care costs (up to a total of \$2600 per year) for the employee and each alternative family would be paid out of pocket in any given year.

V. CONCLUSION

One impetus for extending health care benefits to domestic partners is the principle of equity, or the equalization of employee benefits. Stated otherwise, the extension of health benefits to domestic partners is the provision of equal pay for equal work of similarly situated employees. Thus to the extent the provision of health benefits seeks to distribute the risk of health care costs among the employee population and to avoid pauperization of an employee with a costly family illness, then employers are having to change the basis on which benefits are provided to meet the changing needs of their employee population.

The extension of health care benefits to domestic partners is an issue of growing interest among employers. The cities of East Lansing, Michigan; Boston, Massachusetts; Madison, Wisconsin; and Minneapolis, Minnesota currently are considering the extension of health coverage for domestic partners.

Montefiore Hospital in New York City recently extended domestic partner health benefits to its 9,000 employees, and the City of San Francisco extended such coverage to its 31,000 employees last June. Moreover, the experience of those employers who have extended such coverage, some of which have had domestic partner plans in place since as early as 1982, has not borne out the fears about adverse selection and catastrophic health care claims among the domestic partner population. Indeed, the utilization rate among the perceived high-risk group, gay men, has been exceedingly low. It would appear from that experience that the extension of health care benefits to domestic partners is not only eminently fair but also economically feasible.

Report of the Subcommittee on Domestic Partners' Benefits
University Committee on Faculty and Staff Benefits
June, 1992

SUMMARY

At the request of the University Committee on Faculty and Staff Benefits, this subcommittee has studied the implications of Stanford's extending fringe benefits that are now made available to employees' spouses and children to the domestic partners of employees and such partners' children. We considered a number of factors, including the ethical, administrative, legal, and cost implications of extending coverage. The following summarizes the analysis and conclusions contained in the body of the report.

1. Recommendations.

The subcommittee unanimously recommends that the University extend all benefits now available to spouses and children of faculty and staff to the same-sex (gay and lesbian) and opposite-sex domestic partners of faculty and staff and such partners' children. The relevant benefits include health benefits, benefits under the tuition grant program, athletic privileges, library privileges, the right to audit University courses, and the partner's right to remain in on-campus housing after an employee's death under the same terms now provided for surviving spouses. The subcommittee is unanimous in the view that the case for extending benefits to heterosexual partners is weaker than for gay and lesbian partners. As a result, the subcommittee recommends that if current cost considerations militate against extending coverage to both groups, coverage be extended now to gays and lesbians, and the question of coverage for heterosexual partners be reconsidered at a later date.

We recommend that "domestic partnership" for these purposes be defined to mean two individuals who live together in an intimate, longterm relationship of indefinite duration, with an exclusive mutual commitment similar to that of marriage, in which the partners share the necessities of life and agree to be financially responsible for each other's wellbeing, including basic living expenses, and each others' debts to third parties. It should further be stipulated that partners are not married to anyone else, do not have another domestic partner, and are not related by blood, closer than would bar marriage in their state of residence. Employees should be required to sign a declaration that the foregoing conditions have been met, as part of the process of enrolling their partners.

The definition of "domestic partnership" we propose here is similar, but not identical, to that currently used by Stanford for domestic partners of students. Unlike the definition for students, this definition explicitly requires that the partners agree to be financially responsible for each others' debts. We recommend that the same definition be used for students and employees, and would recommend changing the student definition to coincide with the more stringent requirements outlined above.

2. Policy Considerations in Extending Coverage.

The core case for extending benefits to domestic partners and their children rests on the University's express policy barring discrimination in employment (including in compensation) on the basis of sexual orientation or marital status. Were Stanford to pay a different cash salary to employees based on their marital status or sexual orientation, it would clearly violate Stanford's nondiscrimination policy. The effect of the current benefits program is on its face identical. Employee benefits are a form of compensation, currently representing a significant percentage (roughly 30 percent) of total compensation. By providing benefits to married employees that are not available to unmarried employees living in domestic partnerships that are the functional equivalents of marriage, it is argued, Stanford therefore discriminates in compensation on the basis of sexual orientation and/or marital status.

In evaluating the nondiscrimination claim, the subcommittee has followed the conventional philosophical interpretation given to the principle of nondiscrimination. Under that view, Stanford is not barred from making any distinctions between married and unmarried, or heterosexual and gay or lesbian, employees. Rather, it must show that any distinction it does make between the groups has a strong justification that overrides the presumption of equal treatment. We considered a number of grounds that are frequently suggested, or might be suggested, for differentiating between traditional families and domestic partnerships in setting the benefits portion of compensation. They include the claims that (1) Stanford must offer benefits to traditional families in order to remain competitive with other employers, but need not offer them to domestic partners; (2) the tax advantages of employer-provided family benefits are available only for traditional families; (3) traditional families have greater financial needs that family benefits are intended to alleviate; (4) Stanford ought not to endorse domestic partnerships by treating them as the moral equivalent of marriage; and (5) the costs to Stanford of extending coverage to domestic partners would be prohibitive.

We conclude that the first three arguments do not justify differentiating between domestic partnerships and marriages. As to (1), we believe the optimal competitive strategy for Stanford is at best indeterminate. More importantly, we believe it would violate important norms of fairness, reflected in Stanford's general compensation policies, to discriminate against unmarried employees simply because competitive forces make it economically efficient to do so. As to (2), at least some of the family benefits Stanford provides would be tax-preferred for domestic partners as well. Moreover, the existence of tax advantages for employer-provided benefits does not explain why we pay employees different total compensation based on the composition of their families. It merely explains why we provide the option for employees to use a portion of their compensation to purchase tax-preferred benefits. As to (3), we believe that need-based considerations explain at least partly the most costly family benefits Stanford provides— subsidized family health coverage and college tuition grants to employees' children. If family benefits were extended to domestic partnerships, we presume that "domestic partnerships" would be defined to reach those relationships that are the functional equivalents of marriage---longterm, intimate, committed relationships, in which as a practical (and in some cases legal) matter the partners assume financial responsibility for each other, akin to the responsibility that is practically and legally imposed by marriage. Given that fact, we see no reason for assuming that the financial needs of an employee in a domestic partnership would differ from those in a traditional marriage.

Thus, we believe that the case for domestic partner benefits ultimately turns on the last two

issues: whether the University should treat domestic partnerships as the moral equivalent of marriage, and how it should weigh cost considerations.

The moral equivalence of domestic partnerships and marriage. We believe there is a strong claim on behalf of gay men and lesbians to have their longterm, committed relationships treated with the same respect as marriage for purposes of Stanford's benefits program. While we think there is a case to be made on behalf of heterosexual domestic partners in longterm, committed relationships, we think the case is considerably weaker. We base this conclusion on a number of considerations.

First, we believe Stanford has already implicitly committed itself to treat domestic partnerships as equivalent to marriage for these purposes in its internal nondiscrimination policy. While that policy probably has no legal force in determining benefits policy, we believe it has significant moral force. If we conclude otherwise, we are in effect stating that while unmarried heterosexual, gay and lesbian employees are entitled to equal treatment and respect with married employees, the intimate, longterm committed relationships they form are not. At least in the case of gay and lesbian employees---for whom such relationships are the core fact of group identity---we do not think that is a morally persuasive reading of Stanford's nondiscrimination policy. In the case of heterosexual partners, who have the legal option to marry, the question is more complicated. We believe the argument for covering heterosexual domestic partnerships notwithstanding the availability of marriage is that for some heterosexual partners, the choice not to marry reflects a political or ideological opposition to marriage, not merely the absence of commitment. The argument that the University ought not to penalize such political or ideological convictions is reasonably powerful. But we believe the argument that it ought not to penalize the longterm relationships of those (gay and lesbian) who do not have the option to marry at all is more compelling.

Second, Stanford has already concluded that its nondiscrimination policy commits it to benefits parity for the domestic partners of "students". In October 1990, citing among other things the University policy "against discrimination on the basis of sexual orientation," the University extended all benefits available to students' spouses to students' domestic partners as well. These benefits include access to campus housing previously reserved to married students, access to medical services through Cowell Student Health Center, and a courtesy card permitting access to libraries, athletic facilities and campus events on an equal basis with spouses. Benefits parity for employees would obviously be far more costly than for students, as the University does not subsidize medical coverage for student spouses or provide any other derivative benefits of significant cost. But it is hard to see how the principles of fairness implicated in the decision would be any different for employees than for students. Indeed, the mere fact that we now have two different policies for employees and students is one important reason for change.

Third, we think that redefining "family" for purposes of the benefits program to include longterm, committed domestic partnerships appropriately reflects the changing social reality and values of the Stanford community.

Finally, we believe that a decision to extend benefits will have enormous symbolic significance for all gays and lesbians at Stanford, conveying more forcefully than any general statement of nondiscrimination ever could the University's belief that they are full and valued members of this community, whose relationships and whose needs are as deserving of attention as others'. In this respect as well, we believe the case for extending coverage to heterosexual domestic partners is less compelling. Unmarried heterosexuals face little if any social stigma at Stanford or

most other parts of American society anymore. Few if any would think to conceal their private living arrangements out of fear of social or professional ostracism, loss of jobs, or physical or verbal violence. All of these are daily realities for gays and lesbians in our society. Given the almost total acceptance that heterosexual partners can count on in the rest of their lives, the symbolic importance of this additional gesture is (we believe) relatively slight.

Cost considerations: Finally, some may agree in principle that Stanford ought to extend family benefits to domestic partners, but be reluctant to incur the costs that entails. Our conclusions as to costs are summarized below. In brief, our best guess is that out-of-pocket costs will be relatively small, given the overall benefits budget. We find it harder to estimate potential costs in alumni/ae relations.

We do not believe such practical considerations should be ignored. However, they must inevitably be weighed against the arguments for extending coverage. The stronger the arguments for extending benefits on fairness grounds, the heavier the burden on the University to show that practical considerations outweigh it. We believe that at least with respect to gays and lesbians, the fairness arguments for extending benefits are very strong.

3. Costs to the University of Extending Coverage.

Out-of-pocket costs: Of the benefits at issue, only three are likely to involve any significant out-of-pocket costs for the University: medical coverage, dental coverage, and the tuition grant program (TGP).

With respect to medical coverage, our best guess, based on the experience of other employers to date, is that between 40 and 60 employers would enroll same-sex domestic partners, and between 90 and 135 employees would enroll opposite-sex domestic partners. On those assumptions, our best guess is that it would cost the University in the range of \$30,000 to \$60,000 a year to cover gay and lesbian partners, and \$70,000 to \$140,000 a year to cover gay, lesbian and heterosexual partners. These estimates represent a relatively trivial portion of the University's current \$24 million budget for medical benefits---ranging from 0.014 percent to 0.05 percent. The estimates are based on the assumptions that the percentage of Stanford employees that would enroll would be consistent with the experience of other comparable employers; that Stanford would contribute the same amount to domestic partner coverage as it does now to spousal and family coverage; and that domestic partner coverage would be no more expensive than spousal coverage. The last assumption is supported by the experience of all employers to date who have adopted domestic partner coverage. The first assumption (that our enrollments will be consistent with comparable employers) is the more troubling one. Unlike the available data on cost per enrollee---which consistently points to the conclusion that domestic partner coverage is no more expensive than spousal coverage---the percentages of employees that have enrolled domestic partners has varied significantly for different plans. We have based our projections on the experience of those employers whose medical plans we believe are most comparable to Stanford's (principally in the percentage of the total premium cost borne by the employee), and within that range have chosen what we think is a fairly conservative figure. However, it is possible that Stanford's experience will diverge in ways that cannot now be anticipated. We believe if our "best guess" projections are vulnerable, it is more likely to be on the *numbers* of domestic partners enrolled than the *cost* per enrollee.

Since the cost experience of other employers to date is rather limited, we also developed

numbers for what we considered to be the plausible worst-case scenario. For these purposes, we hypothesized very pessimistic cost experience for the domestic partner pool (primarily as a result of HIV-related illnesses) and a significant degree of adverse selection. Under that worst-case scenario, assuming the same range of enrollments as above, the incremental cost of coverage, over the costs of covering the same numbers of spouses, would range from \$115,000 to \$175,000 a year for gay and lesbian partners only, and from \$135,000 to \$200,000 for gay, lesbian and heterosexual partners. If the University bore that incremental cost itself, its total annual costs would range from \$150,000 to \$230,000 for gay and lesbian partners only, and from \$220,000 to \$325,000 for gay, lesbian and heterosexual partners. If the incremental cost were instead added to all employees' share of the premiums, it would increase employee costs by amounts ranging from \$1 a month for 40 same-sex partners to \$1.85 a month for 135 same-sex and opposite-sex partners. {We wish to stress that these worst-case numbers do not reflect any employer's actual experience to date with domestic partner medical coverage.}

As to dental and TGP benefits, we have no data available from other employers on which to estimate the likely costs of extending coverage under either program to domestic partners and their children. With respect to dental benefits, we expect the numbers of enrollees to be higher than for medical benefits, because the University subsidizes a higher portion of the costs. On the other hand, the per enrollee costs to the University are relatively trivial as compared to medical care. With respect to TGP grants, the opposite is true: the annual costs per child receiving TGP grants are quite high, but we believe the numbers of additional children that would claim such benefits each year if the benefits were extended to domestic partners' children is likely to be extremely small. Given the foregoing, and given that both programs are only a small portion of the benefits budget as compared to medical costs, our best guess is that extending either program would not entail significant costs for the University. However, the absence of any empirical data from other employers makes it difficult to be certain.

Administrative costs: Based on the experience of other employers, we estimate that the costs of administering a domestic partners' benefits program will be relatively trivial. The main costs are likely to be the one-time costs of collecting and circulating eligibility, tax, and other information to employees, and setting up the payroll systems to withhold taxes for those employees who are subject to tax on the University's contribution to benefits. Unless enrollment figures are much higher than anticipated, we expect the ongoing administrative costs of handling additional enrollments to be negligible.

Costs in alumni/ae relations: There are also potential costs to the University in loss of alumni/ae support as a result of a decision to extend domestic partner benefits. Based on the response to Stanford's decision two years ago extending student spousal privileges to domestic partners of employees, we expect that a comparable decision with respect to employees would be unpopular with at least a vocal minority of alumni/ae. Whether that displeasure would translate into a significant loss of moral or financial support for the University is much harder to say. On the other side, we note that the recent decisions of high profile employers like Levi Strauss, Lotus and MCA extending health benefits to domestic partners have received uniformly positive press coverage. We also assume that a decision to extend benefits would generate good will among some (particularly gay and lesbian) alumni/ae, although it is again impossible to guess how much of that good will would translate to vocal, concrete support. On balance, we expect that at least in the shortrun, a decision to extend benefits will adversely affect alumni/ae support.

4. Legal Considerations in Extending Coverage.

Antidiscrimination law. We conclude that all of the alternatives under consideration---Stanford's current policy, a policy expanding the definition of family to include same-sex partners only, or one that includes same-sex and opposite-sex partners---are likely to be upheld under current antidiscrimination law. Thus, we believe the decision must be made on policy grounds, not legal ones.

Tax considerations. Under current federal and state tax law, at least some of the benefits provided on behalf of the employee's domestic partner or partner's children will be treated as taxable income to the employee. These include college tuition grants for a partner's child, and Stanford's contribution towards health benefits for the partner or partner's child, unless the employee can claim the covered party as a dependent for tax purposes. For those employees who are taxable on such benefits, Stanford will be obligated to withhold both income and payroll taxes.

5. Administration Or Domestic Partners' Benefits:

(a) **Definition of "Domestic Partnership":** Most employers offering some form of domestic partners' benefits have adopted the same basic requirements for a domestic partnership, with minor variations. We have followed that definition in our recommendation in section 1 above.

(b) **Registration and Deregistration Process:** We recommend that one central registration process be used for all employees' domestic partners' benefits, analogous to that now used by Stanford for student domestic partner benefits. Where possible, we recommend that the same process be used for partners and spouses---the current procedure for students. We recommend that as part of the registration process, all employees seeking to cover a domestic partner be required to sign a declaration that they meet all the requirements of "domestic partnership," and advise Stanford whether, under applicable tax laws, the University should withhold taxes on its contribution towards benefits. Finally, all employees should be informed at the time of registering that they are required to notify the University of any change in eligibility, and that the same time period for notification in the case of termination of marriage apply to termination of domestic partnerships.

Subcommittee on Domestic Partners' Benefits,
University Committee on Faculty and Staff Benefits

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