

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8563 HOUSE HEALTH EDUCATION & SOCIAL SERVICES

1 (f) Notwithstanding any provision of AS 23.40, the terms of a collective
2 bargaining agreement entered into between a school district and a bargaining organization
3 representing teachers on or after the effective date of this section may not be inconsistent
4 with the provisions of this section.

5 (g) A teacher on layoff status is not entitled to be reemployed under
6 AS 14.20.145 and does not accrue leave. However, layoff status does not constitute a
7 break in service for retaining tenure rights and accrued sick leave.

8 (h) In this section, "school district" or "district" means a city or borough school
9 district or a regional educational attendance area.

10 * Sec. 10. AS 14.20.180 is repealed and reenacted to read:

11 Sec. 14.20.180. PROCEDURES UPON NOTICE OF DISMISSAL OR
12 NONRETENTION. (a) Before a teacher is dismissed, the employer shall give the
13 teacher written notice of the proposed dismissal and a pretermination hearing. A
14 pretermination hearing under this section must comport with the minimum requirements
15 of due process, including an explanation of the employer's evidence and basis for the
16 proposed dismissal and an opportunity for the teacher to respond. If, following a
17 pretermination hearing, an employer determines that dismissal is appropriate, the
18 employer shall provide written notice, including a statement of cause and a complete bill
19 of particulars, of the decision. The dismissal is effective when the notice is delivered
20 to the teacher.

21 (b) An employer that has decided to nonretain a tenured teacher shall provide
22 the teacher with written notice, including a statement of cause and a complete bill of
23 particulars. The notice must comply with AS 14.20.140(a).

24 (c) Within 15 days after receipt of a decision of dismissal under (a) of this
25 section or nonretention under (b) of this section, a teacher may notify the employer in
26 writing that the teacher is requesting a hearing before the school board. Upon receipt
27 of a request for a hearing, the employer shall immediately schedule a hearing and notify
28 the teacher in writing of the date, time, and place of the hearing. The teacher may elect
29 to have either a public or a private hearing, and to have the hearing under oath or
30 affirmation. The parties have a right to be represented by counsel and to cross-examine
31 witnesses. The teacher has the right to subpoena a person who has made statements that
32 are used as a basis for the employer's decision to dismiss or nonretain. A written

1 transcript, tape, or similar recording of the proceedings shall be kept. A copy of the
2 recording shall be furnished to the teacher, for cost, upon request of the teacher. A
3 decision of the school board requires a majority vote of the membership, by roll call.
4 The board's decision shall be in writing and must contain specific findings of fact and
5 conclusions of law. A copy of the decision shall be furnished to the teacher within 10
6 days after the date of the decision. If the school board sustains the dismissal or
7 nonretention, the teacher may appeal the decision to the superior court, in accordance
8 with applicable rules of court, for a judicial review based on the record.

9 (d) A teacher who has acquired tenure who is dismissed or nonretained may
10 waive the right to a hearing under (c) of this section and, within 60 days after receipt of
11 the employer's decision to dismiss or nonretain the teacher, file an action in superior
12 court.

13 * Sec. 11. AS 23.40 is amended by adding a new section to read:

14 Sec. 23.40.235. PUBLIC INVOLVEMENT IN SCHOOL DISTRICT
15 NEGOTIATIONS. Before beginning bargaining, the school board of a city or borough
16 school district or a regional educational attendance area shall provide opportunities for
17 public comment on the issues to be addressed in the collective bargaining process. Initial
18 proposals, last-best-offer proposals, tentative agreements before ratification, and final
19 agreements reached by the parties are public documents and are subject to inspection and
20 copying under AS 09.25.110 - 09.25.140.

21 * Sec. 12. AS 14.20.205 is repealed.

22 * Sec. 13. APPLICABILITY TO INDIVIDUALS. The amendments to AS 14.20.147(b) and
23 14.20.150, made by secs. 2 and 4 of this Act, apply only to an individual

24 (1) first hired as a teacher by a school district or regional educational attendance
25 area, including Mt. Edgecumbe High School, on or after the effective date of this Act; or

26 (2) rehired as a teacher by a school district or regional educational attendance
27 area, including Mt. Edgecumbe High School, on or after the effective date of this Act and
28 following an interruption in continuous service that resulted in

29 (A) a loss of tenure rights under AS 14.20.160; or

30 (B) failure to acquire tenure rights under AS 14.20.150.

31 * Sec. 14. APPLICABILITY TO CONTRACTS. Nothing in this Act affects a collective
32 bargaining agreement in effect on the effective date of this Act.

3/14/96

To: AK State Legislature
House HESS Committee, Mr. Bunde, Mrs. Tooley, Mr. Vezey, Mr. G. Davis, Mr. Rokeberg, Mr. Brice, Mr. Robinson

From: Staff of
Denali Elementary School
148 E. 9th St.
Anchorage, AK, 99501

re: CSHB 465

We understand that you are receiving much pressure from Alaska School Boards to pass this bill. One of the provisions of this bill would be the ability to dismiss staff for any reason - as this bill does not define "incompetency" and that the dismissal can occur at any time during the year.

Please listen to those of us who would be the recipients of this mean-spirited and shortsighted bill.

Do you really want an Alaska school system for the children of Alaska where teaching staff can be dismissed at any time? What will happen to class sizes in these schools? What will happen to morak in those schools? Alaska has been able to attract quality educational staff in the past, but do you know of anyone who would be interested in teaching in a school district where they could be dismissed from their job, at any time in the year, because of being "incompetent", whatever that is, or because of a "so-called" drop in funding.

This bill is ill thought out, is mean-spirited and treats the teachers of your children like second-class citizens. Please do not pass this bill out of committee. Please put the Governor's substitute for this bill on a fast track for passage.

Thank you.

Kate Michael *Christine Scally*

Paula Roman *Celia Foley*

Carl Somerville *Glenn Truesdell*

Joa Charles *Inez Bortnick*

Jann Phelps *Mary A. Davis*

Dawn Marie Kiley *Nikki B. Long*

Glenn *Nancy Pulliam*

Bobbie Flood *Diane M. Hayes*

Norway Mith *Patricia B. Ligonier-Webb*

Delorah Aman *Dorothy J. Harris*

Mare Williams ("for any reason") *Peggy Ball*

Aime Lilla *Karen Schmidman*

Michelle Demaree *Frank B. Short*

Wyn Smith *Neil Aylen*

FAX

OFFICE OF THE SUPERINTENDENT

TO: Rep. Cynthia Toohey - Co Chair
AGENCY: House HESS Committee
FROM: Gordon E. Castanza, Superintendent
DATE: March 14, 1996
SENT BY: gec

FAX NUMBER: 907-465-3871

PAGES: 1

TIME: 9:17 AM

This document is being sent on a Ricoh Rapicom 230 Facsimile machine. If any of the document pages are illegible or if you do not receive a complete package, please contact the Chatham School District (907-788-3302) and inform them immediately.

Dear Representative Bunde:

I wish to urge you to support passage of **CS HB 465**. This bill answers many of the issues we as educational administrators have been struggling with for a long time.

1. Increasing the acquisition of tenure from 2 to 3 years greatly enhances administration's ability to adequately evaluate a teacher's performance.
2. The Chatham School District is way ahead of the intent and language of this bill with regards to a teacher and administrator evaluation system. We implemented a performance-based teacher evaluation system with a plan of improvement process that is very similar to that of the Toledo (Ohio) Plan. Our administrator evaluation process already incorporates everything this bill calls for. We believe we have a model teacher and administrator evaluation system.
3. A professional standards method of laying off teachers in times of revenue decline will help us meet our programmatic and student needs.
4. The elimination of de novo trial will save us many educational dollars that are better spent in the classroom where it is needed most.
5. Public comment on the collective bargaining process at specified points would enhance the public's information base with regards to initial offers, tentative agreement items, and last best offers.

Thank you for your consideration. I look forward to the passage of this bill.

Sincerely,
Gordon E. Castanza,
Superintendent

CHATHAM SCHOOL DISTRICT

P.O. BOX 109, Angoon, Alaska 99820

Phone: 907-788-3302

Fax: 907-788-3252

Angoon • Cube Cove • Elfin Cove • Gustavus • Hobart Bay • Klukwan • Tenakee Springs

4

AMENDMENT

TO: CSHB 465 ()
Draft 9-LS1586\M

BY REP. IVAN

- 1 Page 4, Line 2
- 2 Delete "shall"
- 3 Insert "may"

1

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 465() "M" version dated 3/7/96

1 Page 5, lines 12 - 17:

2 Delete "failure, after implementation of a plan of improvement, to receive an
3 evaluation of at least acceptable performance under the teacher evaluation system under
4 AS 14.20.149 [INCOMPETENCY, WHICH IS DEFINED AS THE INABILITY OR THE
5 UNINTENTIONAL OR INTENTIONAL FAILURE TO PERFORM THE TEACHER'S
6 CUSTOMARY TEACHING DUTIES IN A SATISFACTORY MANNER]"

7 Insert "incompetency, which is defined as the inability or the unintentional or
8 intentional failure to perform the teacher's customary teaching duties in a satisfactory manner,
9 or failure, after implementation of a plan of improvement, to receive an evaluation of
10 at least acceptable performance under the teacher evaluation system under
11 AS 14.20.149; the application of a plan of improvement is subject to a just cause test"

2

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 465() "M" version dated 3/7/96

- 1 Page 2, line 30:
- 2 Delete "an acceptable"
- 3 Insert "a satisfactory"

- 4 Page 3, lines 5 - 6:
- 5 Delete "less than acceptable"
- 6 Insert "incompetent"

- 7 Page 3, line 20:
- 8 Delete "less than acceptable"
- 9 Insert "incompetent"

- 10 Page 3, lines 24 - 25:
- 11 Delete "evaluated to be less than acceptable"
- 12 Insert "found to be incompetent"

- 13 Page 3, line 28:
- 14 Delete "less than acceptable"
- 15 Insert "incompetent"

- 16 Page 3, line 32:
- 17 Delete "evaluated to be less than acceptable"
- 18 Insert "found to be incompetent"

- 19 Page 4, line 16:

1 Delete "an acceptable"

2 Insert "a satisfactory"

3 Page 5, lines 12 - 17:

4 Delete "failure, after implementation of a plan of improvement, to receive an
5 evaluation of at least acceptable performance under the teacher evaluation system under
6 AS 14.20.149 [INCOMPETENCY, WHICH IS DEFINED AS THE INABILITY OR THE
7 UNINTENTIONAL OR INTENTIONAL FAILURE TO PERFORM THE TEACHER'S
8 CUSTOMARY TEACHING DUTIES IN A SATISFACTORY MANNER]"

9 Insert "incompetency, which is defined as the inability or the unintentional or
10 intentional failure to perform the teacher's customary teaching duties in a satisfactory
11 manner"

3

9-LS1586M.3
Cramer
3/12/96

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 465() "M" version dated 3/7/96

- 1 Page 3, line 20, after the period:
- 2 Insert "The evaluating administrator shall consult with the tenured teacher in setting
- 3 clear, specific performance expectations to be included in the plan of improvement."

AMENDMENT

4

TO: CSHB 465 ()
Draft 9-LS1586\M

BY REP. IVAN

- 1 Page 4, Line 2
- 2 Delete "shall"
- 3 Insert "may"

5

AMENDMENT

TO: CSHB 465 ()
Draft 9-LS1586\M

BY REP. IVAN

- 1 Page 3, Line 9, after "community members,"
- 2 Delete "peers"
- 3 Insert "teachers"

AMENDMENT #6

OFFERED IN THE HOUSE

TO: CSHB 465() M version dated 3/7/96

Delete

Page 7, lines 9 through 32

Page 8, lines 1 through 7

Insert

Page 7, line 9

1 Sec. 14.20.180. PROCEDURES UPON NOTICE OF DISMISSAL
2 OR NONRETENTION. (a) Before a teacher is dismissed and before a
3 tenured teacher is nonretained, the teacher must be given (1) oral or
4 written notice of the proposed dismissal or nonretention, and (2) a pre-
5 termination hearing. A pre-termination hearing under this section must
6 comport with the minimum requirements of due process, including an
7 explanation of the employer's evidence and basis for the proposed
8 dismissal or nonretention and an opportunity for the teacher to respond. If,
9 following a pre-termination hearing, an employer determines that
10 dismissal or nonretention is appropriate, the provisions of (b) - (d) of this
11 section apply.
12 (b) An employer shall provide written notice of a decision to dismiss a
13 teacher. As provided in AS 14.20.140(a), an employer shall provide
14 written notice of a decision not to retain a tenured teacher. Along with a
15 notice of dismissal or nonretention under this subsection, the employer
16 shall include a statement of cause and a complete bill of particulars.
17 (c) Within 15 days after receipt of a notice of dismissal or nonretention
18 under (b) of this section, a teacher may notify the employer in writing that
19 a post-termination hearing before the school board is requested. Upon
20 receipt of a notice requesting a hearing, the employer immediately shall
21 arrange for a hearing, and shall notify the teacher in writing of the date,
22 time, and place of the hearing. The teacher may elect to have either a
23 public or a private hearing, and to have the hearing under oath or

1 affirmation. The parties have a right to be represented by counsel and to
2 cross-examine witnesses. The teacher has the right to subpoena a person
3 who has made statements that are used as a basis for the employer's
4 decision to dismiss or nonretain. A written transcript, tape, or similar
5 recording of the proceedings shall be kept. A transcribed copy of the
6 recording shall be furnished to the teacher, for cost, upon request of
7 the teacher. A decision of the school board requires a majority vote of the
8 membership, by roll call. The board's decision shall be written and must
9 contain specific findings of fact and conclusions of law. A written
10 notification of the decision shall be furnished to the teacher within 10
11 days 9 after the date of the decision. If the school board sustains the
12 dismissal or 10 nonretention, the teacher, in accordance with applicable
13 rules of court, may appeal the decision to the superior court for a judicial
14 review based on the record.

15 (d) A tenured teacher who is dismissed or nonretained may waive the
16 post-termination procedures set out in (c) of this section and

17 (1) within 60 days after receipt of the notice of dismissal or
18 nonretention, file an original action in superior court, which has
19 jurisdiction under AS 22.10.020(d); or

20 (2) within 15 days after receipt of the notice of dismissal or
21 nonretention, notify the school board in writing of the teacher's request to
22 invoke and follow the grievance procedures contained in that district's
23 collective bargaining agreement; if the school board does not agree to
24 follow the grievance procedures, the teacher may, within (A) 15 days after
25 receipt of the school board's written notice of nonagreement, follow the
26 procedures in (c) of this section to request a post-termination hearing, or
27 (B) 60 days after receipt of the school board's written notice of
28 nonagreement, file an original action as described in (1) of this subsection;
29 a school board's failure to respond in writing within 30 days to a teacher's
30 request under this paragraph is considered to be the school board's
31 agreement to invoke and follow the district's grievance procedures.
32

AMENDMENT #7

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CS for HB 465 () version M 3/7/96

Page 3, line 7, after "dismissal":

Insert "under AS 14.20.170(a);"

8

AMENDMENT

TO: CSHB 465 ()
Draft 9-LS1586\M

BY REP. IVAN

Page 8, Line 8:

Insert:

(d) A teacher whc has acquired tenure who is dismissed or nonretained may waive the post termination procedures set out in (c) of this section and within 60 days after receipt of the notice of dismissal or nonretention, file action in Superior Court.

AMENDMENT #

9

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CS for HB 465 () version M 3/7/96

Page 3, line 22, after "last":

Delete "no more than one year"

Insert "not less than nine months, but no more than twelve months."

9-LS1586M
Cramer
3/7/96

CS FOR HOUSE BILL NO. 465()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE IVAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to employment of teachers and school administrators and to
2 public school collective bargaining."

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

4 * Section 1. AS 14.20.145 is amended to read:

5 Sec. 14.20.145. AUTOMATIC REEMPLOYMENT. If notification of
6 nonretention is not given according to AS 14.20.140, and if the teacher is not laid off
7 under AS 14.20.177, a teacher is entitled to be reemployed in the same district for the
8 following school year on the contract terms the teacher and the employer may agree
9 upon, or, if no terms are agreed upon, the provisions of the previous contract are
10 continued for the following school year, subject to AS 14.20.158. Except as provided
11 in AS 14.20.177(e), the [THE] right to automatic reemployment under [BE
12 REEMPLOYED ACCORDING TO] this section expires if the teacher does not accept
13 reemployment within 30 days after the date on which the teacher receives a contract of
14 reemployment. A teacher who is on family leave under AS 23.10.500 - 23.10.550 must
15 comply with the 30-day deadline in this section to retain the teacher's reemployment

1 rights under this section.

2 * Sec. 2. AS 14.20.147(b) is amended to read:

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

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

14 Sec. 14.20.149. EMPLOYEE EVALUATION. (a) A school board shall adopt
15 by July 1, 1997, a certificated employee evaluation system for evaluation and
16 improvement of the performance of the district's teachers and administrators. The
17 evaluation system applies to all the district's certificated employees except the district's
18 superintendent. A school board shall consider information from students, parents,
19 community members, classroom teachers, and administrators in the design and periodic
20 review of the district's certificated employee evaluation system. An evaluation of a
21 certificated employee under this section must be based on observation of the employee
22 in the employee's workplace.

23 (b) The certificated employee evaluation system must

24 (1) establish evaluation criteria for the district's teachers and
25 administrators that are based on professional performance standards adopted by the
26 department by regulation;

27 (2) require at least two observations for the evaluation of each nontenured
28 teacher in the district each school year;

29 (3) require at least an annual evaluation of each tenured teacher in the
30 district who received an acceptable evaluation during the previous school year;

31 (4) permit the district to limit its evaluations of tenured teachers who
32 have consistently exceeded the district's professional performance standard' to one

1 evaluation every two school years;

2 (5) require the school district to perform an annual evaluation for each
3 administrator;

4 (6) require the school district to prepare and implement a plan of
5 improvement for a teacher or administrator whose performance is evaluated as less than
6 acceptable, except if the teacher's or administrator's performance warrants immediate
7 dismissal; and

8 (7) provide an opportunity for students, parents, community members,
9 peers, and administrators to provide information on the performance of the teacher or
10 administrator who is the subject of the evaluation to the evaluating administrator.

11 (c) A person may not conduct an evaluation under this section unless the person
12 holds a type B certificate, is employed by the school district as an administrator, and has
13 completed training in the use of the school district's teacher evaluation system.

14 (d) Once each school year, a school district shall offer in-service training to the
15 certificated employees who are subject to the evaluation system. The training must
16 address the procedures of the evaluation system, the standards that the district uses in
17 evaluating the performance of teachers and administrators, and other information that the
18 district considers helpful.

19 (e) A school district shall provide a tenured teacher whose performance is found,
20 after evaluation, to be less than acceptable with a plan of improvement. The plan of
21 improvement must address ways in which the tenured teacher's performance can be
22 improved and shall last for no more than one year. The school district must observe the
23 teacher at least twice during the course of the plan. If, at the conclusion of the plan of
24 improvement, the tenured teacher's performance is again evaluated to be less than
25 acceptable, the district may nonretain the teacher under AS 14.20.175(b)(1).

26 (f) A school district may place an administrator whose performance, including
27 performance as an evaluator under the district's certificated employee evaluation system,
28 is less than acceptable on a plan of improvement. The plan must address ways in which
29 the administrator's performance can be improved and shall last for no more than one
30 year. The school district must observe the administrator at least twice during the course
31 of the plan. If, at the conclusion of the plan of improvement, the administrator's
32 performance is again evaluated to be less than acceptable, the district may terminate its

1 employment contract with the administrator.

2 (g) The department shall request copies of each school district's certificated
3 employee evaluation systems and changes the district makes to the systems.

4 (h) Information provided to a school district under the school district's
5 certificated employee evaluation system is not a public record and is not subject to
6 disclosure under AS 09.25.

7 * Sec. 4. AS 14.20.150 is repealed and reenacted to read:

8 Sec. 14.20.150. ACQUISITION OF TENURE RIGHTS. (a) Except as
9 provided in (c) of this section, a teacher acquires tenure rights in a district when the
10 teacher

11 (1) possesses a valid teaching certificate that authorizes the teacher to
12 be employed as a regular classroom teacher or as an administrator under regulations
13 adopted by the department;

14 (2) has been employed as a teacher in the same district continuously
15 for three full school years;

16 (3) receives, under the district's evaluation system, an acceptable
17 evaluation in the third year of any three-year period of continuous employment with
18 the district; and

19 (4) on or before October 15 of the school year,

20 (A) accepts a contract for employment as a teacher in the
21 district for a fourth consecutive school year; and

22 (B) performs a day of teaching services in the district during
23 that school year.

24 (b) In this section, a full school year of employment means employment that
25 begins on or before the first student count day required by the department in a school
26 year or October 15, whichever occurs first, and continues through the remainder of the
27 school year.

28 (c) A superintendent may not acquire or maintain tenure in a district.

29 * Sec. 5. AS 14.20.155(a) is amended to read:

30 (a) Except as otherwise provided in this chapter, a [A] teacher who has
31 acquired tenure rights has the right to employment within the district during continuous
32 service.

1 * Sec. 6. AS 14.20.160 is amended to read:

2 Sec. 14.20.160. LOSS OF TENURE RIGHTS. Tenure rights are lost when the
3 teacher's employment in the district is interrupted or terminated. However, a teacher
4 on layoff status does not lose tenure rights during the period of layoff except as
5 provided under AS 14.20.177.

6 * Sec. 7. AS 14.20.170 is amended by adding a new subsection to read:

7 (c) A teacher who is dismissed under this section is not entitled to a plan of
8 improvement under AS 14.20.149. .

9 * Sec. 8. AS 14.20.175(b) is amended to read:

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

12 (1) failure, after implementation of a plan of improvement, to receive
13 an evaluation of at least acceptable performance under the teacher evaluation
14 system under AS 14.20.149 [INCOMPETENCY, WHICH IS DEFINED AS THE
15 INABILITY OR THE UNINTENTIONAL OR INTENTIONAL FAILURE TO
16 PERFORM THE TEACHER'S CUSTOMARY TEACHING DUTIES IN A
17 SATISFACTORY MANNER];

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

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

23 (4) A NECESSARY REDUCTION OF STAFF OCCASIONED BY A
24 DECREASE IN SCHOOL ATTENDANCE].

25 * Sec. 9. AS 14.20 is amended by adding a new section to read:

26 Sec. 14.20.177. REDUCTIONS IN FORCE. (a) A school district may
27 implement a layoff plan under this section if it is necessary for the district to reduce the
28 number of tenured teachers because

29 (1) school attendance in the district has decreased;

30 (2) there has been a significant, demonstrated reduction in per-pupil
31 expenditures due to a decrease in revenue from one year to the next.

32 (b) Before a school district lays off any tenured teacher, the school board shall

1 adopt a layoff plan. The plan must identify academic and other programs that the district
2 intends to maintain in implementing the layoff plan. The plan must also include
3 procedures for layoff and recall of tenured teachers consistent with this section.

4 (c) Except as provided in this subsection, a school district may place a tenured
5 teacher on layoff status only after the district has given notice of nonretention to all
6 nontenured teachers. However, a school district may retain a nontenured teacher and
7 place on layoff status a tenured teacher if there is no tenured teacher in the district who
8 is qualified to replace the nontenured teacher.

9 (d) For purposes of this section, a tenured teacher is considered qualified for a
10 position if the position is in

11 (1) grades K - 8 and the teacher has an elementary endorsement;

12 (2) an established middle school and the teacher has

13 (A) an elementary endorsement;

14 (B) a middle school endorsement; or

15 (C) a secondary certificate with a subject area endorsement in the
16 area of assignment in which the teacher filling the position will spend at least 40
17 percent of the teacher's time or the teacher can show evidence of acceptable
18 teaching experience in the subject; or

19 (3) grades 9 - 12 and the teacher has an endorsement for each subject
20 area in which the teacher filling the position will spend at least 40 percent of the
21 teacher's time or the teacher can show evidence of acceptable teaching experience in the
22 subject.

23 (e) For a period of three years after layoff, a teacher is on layoff status and is
24 entitled to a hiring preference in the district where the teacher had been employed. The
25 hiring preference applies only to vacant teaching positions for which the teacher is
26 qualified. If a teacher is offered a teaching position under this subsection and the teacher
27 declines the offer or fails to accept it within 30 days, the teacher is no longer considered
28 to be on layoff status and is no longer entitled to a hiring preference under this section
29 unless the teacher declines the offer because the teacher is contractually obligated to
30 provide professional services to another private or public educational program in this
31 state.

32 (f) Notwithstanding any provision of AS 23.40, the terms of a collective

1 bargaining agreement entered into between a school district and a bargaining organization
2 representing teachers on or after the effective date of this section may not be inconsistent
3 with the provisions of this section.

4 (g) A teacher on layoff status is not entitled to be reemployed under
5 AS 14.20.145 and does not accrue leave. However, layoff status does not constitute a
6 break in service for retaining tenure rights and accrued sick leave.

7 (h) In this section, "school district" or "district" means a city or borough school
8 district or a regional educational attendance area.

9 * Sec. 10. AS 14.20.180 is repealed and reenacted to read:

10 Sec. 14.20.180. PROCEDURES UPON NOTICE OF DISMISSAL OR
11 NONRETENTION. (a) Before a teacher is dismissed, the employer shall give the
12 teacher written notice of the proposed dismissal and a pretermination hearing. A
13 pretermination hearing under this section must comport with the minimum requirements
14 of due process, including an explanation of the employer's evidence and basis for the
15 proposed dismissal and an opportunity for the teacher to respond. If, following a
16 pretermination hearing, an employer determines that dismissal is appropriate, the
17 employer shall provide written notice, including a statement of cause and a complete bill
18 of particulars, of the decision. The dismissal is effective when the notice is delivered
19 to the teacher.

20 (b) An employer that has decided to nonretain a tenured teacher shall provide
21 the teacher with written notice, including a statement of cause and a complete bill of
22 particulars. The notice must comply with AS 14.20.140(a).

23 (c) Within 15 days after receipt of a decision of dismissal under (a) of this
24 section or nonretention under (b) of this section, a teacher may notify the employer in
25 writing that the teacher is requesting a hearing before the school board. Upon receipt
26 of a request for a hearing, the employer shall immediately schedule a hearing and notify
27 the teacher in writing of the date, time, and place of the hearing. The teacher may elect
28 to have either a public or a private hearing, and to have the hearing under oath or
29 affirmation. The parties have a right to be represented by counsel and to cross-examine
30 witnesses. The teacher has the right to subpoena a person who has made statements that
31 are used as a basis for the employer's decision to dismiss or nonretain. A written
32 transcript, tape, or similar recording of the proceedings shall be kept. A copy of the

1 recording shall be furnished to the teacher, for cost, upon request of the teacher. A
2 decision of the school board requires a majority vote of the membership, by roll call.
3 The board's decision shall be in writing and must contain specific findings of fact and
4 conclusions of law. A copy of the decision shall be furnished to the teacher within 10
5 days after the date of the decision. If the school board sustains the dismissal or
6 nonretention, the teacher may appeal the decision to the superior court, in accordance
7 with applicable rules of court, for a judicial review based on the record.

8 * Sec. 11. AS 23.40 is amended by adding a new section to read:

9 Sec. 23.40.235. PUBLIC INVOLVEMENT IN SCHOOL DISTRICT
10 NEGOTIATIONS. Before beginning bargaining, the school board of a city or borough
11 school district or a regional educational attendance area shall provide opportunities for
12 public comment on the issues to be addressed in the collective bargaining process. Initial
13 proposals, last-best-offer proposals, tentative agreements before ratification, and final
14 agreements reached by the parties are public documents and are subject to inspection and
15 copying under AS 09.25.110 - 09.25.140.

16 * Sec. 12. AS 14.20.205 is repealed.

17 * Sec. 13. APPLICABILITY TO INDIVIDUALS. The amendments to AS 14.20.147(b) and
18 14.20.150, made by secs. 2 and 4 of this Act, apply only to an individual

19 (1) first hired as a teacher by a school district or regional educational attendance
20 area, including Mt. Edgecumbe High School, on or after the effective date of this Act; or

21 (2) rehired as a teacher by a school district or regional educational attendance
22 area, including Mt. Edgecumbe High School, on or after the effective date of this Act and
23 following an interruption in continuous service that resulted in

24 (A) a loss of tenure rights under AS 14.20.160; or

25 (B) failure to acquire tenure rights under AS 14.20.150.

26 * Sec. 14. APPLICABILITY TO CONTRACTS. Nothing in this Act affects a collective
27 bargaining agreement in effect on the effective date of this Act.

Alaska State House of Representatives
House District 39



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Representative Ivan M. Ivan

CHANGES ADOPTED IN CSHB 465 (Draft 9-LS1586\M)

Most of the changes that were made in the Committee Substitute for House Bill 465 (Draft 9-LS1586\M) were recommended by the Department of Education and members of the Task Force on Professional Development. The star (*) following the citation reflects a change requested by the Task Force.

Section 3, Page 2, Line 15: Expands the evaluation system to certificated employees of a school district. This change reflects that administrators will be included in the evaluation process as well as teachers. Also defines that an evaluation must be based on observation of the employee in the employee's workplace.

Section 3, Page 2, Line 24: Bases the evaluation criteria on professional performance standards the Department of Education has already adopted. (Chapter 19 of 4AAC addresses these standards currently.) *

Section 3, Page 2, Line 27: Requires at least two observations of each nontenured teacher each school year. *

Section 3, Page 2, Line 31: Permits a district to limit evaluations of teachers who consistently exceed the district's professional performance standards to one evaluation every two school years. (The task force wanted to expand this to three years, however, the Alaska PTA requested yearly evaluations). *

Section 3, Page 3, Line 2: Requires an annual evaluation of an administrator.

Section 3, Page 3, Line 7: Deletes the mandate for peer review and gives the school district the discretion of using peer review in the evaluation system. *

Section 3, Page 3, Line 11: Defines who may conduct an evaluation.

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Section 3, Page 3, Line 14: In service training required for certificated employees who are subject to the evaluation system. *

Section 3, Page 3, Line 22: Requires at least two observations of a tenured teacher whose performance is less than acceptable and is under a plan of improvement. *

Section 3, Page 3, Line 26: Allows a school district to place an administrator under a plan of improvement if the performance of the administrator is found to be less than acceptable. At least two observations of the administrator are required during the course of the plan. The district may terminate its contract with the administrator if, at the conclusion of the plan, the administrator's performance is found to be less than acceptable.

Section 3, Page 4, Line 2: Gives the department the option of requesting copies of the school district's employee evaluation system and any changes made to the system. *

Section 3, Page 4, Line 4: States that information provided to a school district under the evaluation system is not a public record and is not subject to disclosure.

Section 4, Page 4, Line 8-28: Changes the rehire language to reflect a full year of employment begins on or before the first student count day required by the department. This count day usually occurs on or before October 15th. *

Section 7, Page 5, Line 7: States that a teacher who is dismissed under AS 14.20.170 (Dismissal) is not entitled to a plan of improvement. This language was previously found in Section 3 of the original bill (Teacher Evaluation). However, to clarify this language pertained to dismissal and not nonretention, it was moved to the dismissal portion of the statutes.

Section 8, Page 5, Line 12: The word "imposition" is changed to "implementation."
*

Section 9, Page 5, Line 30: Removes language in HB 465 that defined a financial emergency and replaces it with "significant, demonstrated reduction in per-pupil expenditures due to a decrease in revenue from one year to the next." *

Section 9, Page 6, Line 11-22: Changes the qualifications for tenured teachers from grades K - 5 and grades 6 - 12 to grades K - 8 with an elementary endorsement; with an established middle school with an elementary endorsement, a middle school endorsement or a secondary certificate with a subject area endorsement or evidence of acceptable teaching experience in the subject; or, grades 9 - 12 with an

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endorsement for each subject area or evidence of acceptable teaching experience in the subject. (Task force recommended a waiver for multi-grade small schools. Use of "acceptable teaching experience in the subject" addresses this.) *

Section 10, Page 7: Dismissal or Nonretention Procedures. Removed the language found in HB 465 that entitled a teacher to mandatory, advisory arbitration. *

Section 10, Page 7, Line 18: Adds that the dismissal is effective upon issuance. *

Section 14, Page 8, Line 26: Change that removes subsection (b) in Section 13 of HB 465, was recommended by the drafter who said Section 14 of the CS accurately reflected what was originally in HB 465 under Section 13.

Section 10: Repeals and reenacts AS 14.20.80, Procedures upon notice of dismissal or nonretention. Eliminates a de novo trial whenever a school district reaches an unfavorable decision to a teacher. The new section allows a tenured teacher, following written notice of the proposed dismissal, a pretermination hearing. This section describes the pretermination process. This section also states that the dismissal is effective when the notice is delivered to the teacher.

After the pretermination hearing or notice of nonretention of a tenured teacher, procedures and time lines, under which the school district must comply, are established. If the decision of the school board remains unfavorable to the teacher, the teacher may appeal to the superior court. Judicial review will be based on the already established record in previous proceedings.

Section 11: Adds a new section to AS 23.40, Labor Organizations. Prior to beginning bargaining, this section states the school board will provide opportunities for public comment on issues to be addressed in the collective bargaining process. Initial proposals, last best offer proposals, tentative agreements before ratification and final agreements reached by the parties are public documents.

Section 12: Repeals AS 14.20.205, Judicial review. Elimination of the trial de novo.

Section 13: The amendments in sections 2 and 4 of this bill apply only to;

- (1) individuals hired as a teacher on or after the effective date of the bill;
- (2) rehired teachers on or after the effective date of the bill and following an interruption in continuous service that resulted in a loss of tenure rights or failure to acquire tenure rights.

Section 14: States that nothing in this legislation affects a collective bargaining agreement in effect on the effective date of this legislation.

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Representative Ivan M. Ivan

SECTIONAL ANALYSIS - House Bill 465 (Draft 9-LS1586\M)

Section 1: Amends AS 14.20.145, Automatic Reemployment. States that if a teacher is not given a notice of nonretention and is not laid off under the new provisions of AS 14.20.177 (Section 9 of this bill), the teacher is entitled to be reemployed in the same school district for the following school year. Should the teacher not accept reemployment within thirty days of the contract offer, this section would not be applicable. If a teacher is in lay off status and is working in another school district and is contractually obligated to provide services to another educational program within the state, then this section does not apply.

Section 2: Amends AS 14.20.147(b), Transfer or Absorption of Attendance Area or Federal Agency School. Changes tenure from two to three 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 3: Adds a new section to AS 14.20, Teachers and School Officials. This section establishes an evaluation system and improvement of performance plan for a district's certificated employees. The evaluation system must:

- (1) establish evaluation criteria based on professional performance standards;
- (2) require at least two observations for the evaluation of each nontenured teacher in the district;
- (3) require an annual evaluation of each tenured teacher who received an acceptable evaluation during the previous school year;
- (4) permit the school district to limit evaluations of tenured teachers who consistently exceed the district's professional performance standards to one evaluation every two years;

- (5) require an annual evaluation for each administrator;
- (6) require the district to prepare and implement a plan of improvement for a teacher or administrator whose performance is evaluated as less than acceptable; and,
- (7) provide an opportunity for students, parents, teachers, community members and administrators to provide evaluation information on the teacher's performance.

The school board will consider information from students, parents, community members, classroom teachers and administrators in the design and periodic review of the evaluation system.

Before an evaluation can be conducted, the evaluator has to complete training in the use of the district's evaluation system and in service training must be offered to those who are subject to the evaluation system.

A tenured teacher whose performance is found to be less than acceptable after evaluation, must be provided a plan of improvement which must address ways the tenured teacher's performance can be improved. This plan is to last for no more than one year. If, at the conclusion of the plan of improvement, the teacher's performance is again evaluated at less than acceptable, the district may nonretain the teacher.

An administrator must be provided a plan of improvement which must address ways the administrator's performance can be improved if the administrator's evaluation is less than acceptable.. This plan is to last for no more than one year. If, at the conclusion of the plan of improvement, the administrator's performance is again evaluated at less than acceptable, the district may terminate its contract with the administrator.

Section 4: Repeals and reenacts AS 14.20.150, Acquisition of Tenure Rights. Changes acquisition of tenure from two to three years. Tenure is acquired when the teacher possesses a valid teaching certificate; has been employed in the same district continuously for three full school years; receives an acceptable evaluation in the third year of any three year period of continuous employment; and, accepts a contract for employment in the district for a fourth consecutive year. A full school year means employment beginning on or before the first student count day which is October 15th.

Section 5: Amends AS 14.20.155(a), Effect of tenure rights. States that a teacher who has acquired tenure has the right to employment within the district with the exceptions noted in AS 14.20.

Section 6: 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 AS 14.20.177 (Section 9 of this bill).

Section 7: Adds a new subsection to AS 14.20.170, Dismissal. States that a teacher dismissed under this section is not entitled to a plan of improvement.

Section 8: Amends AS 14.20.175(b), Nonretention. Deletes incompetence as a reason for nonretention and replaces it with failure to receive an evaluation of at least acceptable performance in the evaluation system after the implementation of a plan of improvement.

Section 9: Adds a new section to AS 14.20, Teachers and School Officials. This new section provides for layoff of a tenured teacher when there is a decrease in school attendance or there has been a significant, demonstrated reduction in per pupil expenditures due to a decrease in revenue from one year to the next.

Before a school district lays off any tenured teacher, a lay off plan must be adopted which must include academic and other programs that the district intends to maintain in implementation of the plan. This section also establishes standards for qualifications in which a school district may retain a nontenured teacher if there is no tenured teacher in the district to replace the nontenured teacher. Procedures addressing 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 are provided under this section. In the event a teacher is offered a teaching position in another school district while on layoff status, the teacher may remain on the layoff list for retention within the school district where tenure was acquired.

ASSOCIATION OF ALASKA SCHOOL BOARDS

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Rep. Ivan Accommodates Governor's Task Force Incorporates Recommendations In HB 465

Commissioner Holloway reconstituted the governor's Task Force on Professional Excellence to comment on HB 465 - Rep. Ivan's new bill dealing with tenure, evaluations, layoffs, and de novo trials. The task force helped draft a similar bill introduced by Gov. Knowles. The group conferred via audio conference on Feb. 25, and again, face to face, on Feb. 26 with Rep. Ivan to recommend changes to Ivan's bill. Since the meeting, 13 of 16 recommendations have been incorporated into the latest version of HB 465.

At the meeting Feb. 26, Rep. Ivan was joined by Commissioner Holloway, Nancy Buell and Kimberly Homme of DOE. Members of the committee included: Norm Wooten, president of the Association of Alaska School Boards; Terry McDermott with Alaska PTA; Tony Harduar with the elementary school principals; Larry LeDoux with the secondary school principals; Claudia Douglas with NEA-Alaska; and Suzy Carey a principal in the Juneau School District.

Speaking for the committee, Commissioner Holloway offered the following recommendations:

Teacher Evaluations...

- The evaluation system's standards should be based on the professional performance standards outlined in DOE regulations.
- A copy of the evaluation system should be filed with DOE to be used as a resource for other districts.
- The evaluation system should include support for new teachers.
- Everyone should be able to give information on the evaluation of a teacher.
- Staff should be trained about the evaluation system prior to being evaluated by the system.
- If a teacher is doing well they should be evaluated a minimum of every three years. Ideally an evaluation system would differentiate between non-tenured teachers, teachers who are doing well, and teachers on plans of improvement.
- Delete section (e) under teacher evaluations which provides for immediate dismissal of teachers found to be incompetent -- because it is not consistent with current practice.
- Administrator's should be allowed a plan of improvement for failure to carry out their duties in regards to evaluations.
- Peer review should not be mandated (difficult to do in small schools), but could be included as an option for adoption at the local level.

Reasons for Non-retention and Dismissal...

- The word "imposition" of a plan of improvement might be replaced with "implementation" (more positive).
- The use of the term "continuing employment status" was suggested because it invites people to remember an evaluation process is in place for tenured professionals.
- The provision for rehiring by October 15 clarifies when tenure is provided.

Layoffs...

- Replace the 2% decrease in per pupil revenue, the inability to keep up with inflation, and a board's inability to meet its financial obligations as a reason for layoffs with "a significant demonstrated reduction in per-pupil expenditures due to a decrease in revenue from one year to the next."
- Prefer allowing districts to determine what is "qualified" for purposes of layoff rather than the subject endorsements.
- Suggested waiver for multi-grade small rural schools.
- Recommended no number of years required to give hiring preference to teachers.

Comments:

- School board representatives noted that mandatory advisory arbitration is a costly step that seems to be another layer of a bureaucratic process.
- Teachers expressed concern that tenured teachers have no "truly independent third-party review" in arbitration.
- School administrators suggested language in sec. 9 (b) "The dismissal shall be effective when issued." This would allow districts to place teachers off pay status during the pendency of a board hearing or judicial proceeding.

Rep. Ivan told committee members he had not quite known what to expect from the meeting that day, but wants to see the bill pass and was glad for their input. I felt out of the loop when I was not invited to discuss these issues with you during the interim, said Ivan, but I am glad to bear your viewpoints. The bill will move through the committee process, Rep. Ivan pointed out. It is an important tool, said Ivan, and I hope to see it passed.

Comparison of Key Issues: **BILLS AFFECTING TEACHER EMPLOYMENT**

THE ISSUES	HB 217 (Rep. Ivan) '95	HB 398 (Gov. Knowles)	HB 465 (Rep. Ivan) '96	CSHB 465 (Rep. Ivan) '96
TEACHER TENURE A form of job protection provided to no other class of public employees; promotes unchecked, lifelong employment security.	TENURE STATUS	CONTINUING EMPLOYMENT STATUS • Changes name from <i>tenure</i> to <i>continuing employment status</i> (CES) because "tenure connotes a right to lifelong employment."	TENURE STATUS	CONNOTES A RECOMMENDATION BY (OR ACCOMMODATION TO) THE 1996 RECONSTITUTED TASK FORCE ON PROFESSIONAL DEVELOPMENT TENURE STATUS
ACQUISITION OF TENURE Currently teachers acquire tenure status after only 2 consecutive years of teaching in the same district. Technically, tenure status begins on the first day of the 3rd year. All bills listed propose extending tenure acquisition.	ACQUISITION OF TENURE • Changes tenure acquisition from 2 years (acquisition of tenure begins on the first day of the 3rd year) to 4 full years from the date of hire.	ACQUISITION OF C.E.S. • Changes tenure acquisition from 2 years (acquisition of tenure begins on the first day of the 3rd year) to C.E.S. acquisition after 3 full school years.	ACQUISITION OF TENURE • Changes tenure acquisition from 2 years to 3 years (acquisition of tenure begins on the first day of the 4th year).	ACQUISITION OF TENURE • Changes tenure acquisition from 2 years to 3 years (acquisition of tenure begins on the first day of the 4th year). ✓ Rehire on or before October 15 does not constitute a break in service. (Clarifies when tenure is provided.)
EVALUATION/IMPROVEMENT Current law requires annual evaluations of teachers who have acquired tenure status. All bills listed propose an improved evaluation process.	EVALUATION/IMPROVEMENT • Establishes a Career Path for teachers that includes advancement based on teaching performance • Evaluations may be performed by other teachers in district • Districts may establish mentoring positions.	EVALUATION/IMPROVEMENT • Requires districts to adopt a Professional Assessment System for all teachers. • Evaluation criteria based on professional performance standards by DOE, multiple observations/evaluation for first-year teachers, annual evaluation for teachers. • Board to ensure teachers, community, students, parents and administrators collaborate in the design and review of the assessment system. • Requires training in assessment system.	EVALUATION/IMPROVEMENT • Requires districts to adopt a teacher evaluation system for all teachers. • Evaluation criteria based on professional performance standards, annual observation/evaluation for teachers. • Board to ensure teachers, community, students, parents and administrators have input in the design and review of the final evaluation system. • Requires training in evaluation system. • Peer review. • Nonretention statute is amended to replace <i>incompetency</i> with "failure, after imposition of a plan of improvement, to receive an evaluation of at least acceptable performance ..."	EVALUATION/IMPROVEMENT • Requires districts to adopt a teacher evaluation system for all teachers ✓ and administrators. ✓ Evaluation criteria based on professional performance standards by DOE. ✓ Multiple observations/evaluation for nontenured teachers, annual evaluation for teachers. ✓ Tenured teachers who consistently exceed standards may be evaluated every two years ✓ Evaluation systems filed with DOE. ✓ Board to ensure teachers, community, students, parents and administrators have input in the design and review of the evaluation system. ✓ Requires training in evaluation system • Requires a Plan of Improvement for less than acceptable performance. ✓ Replace "imposition" of a plan of improvement with "implementation." (More positive) ✓ Peer review is not mandated. • Nonretention statute is amended to replace <i>incompetency</i> with "failure, after imposition of a plan of improvement, to receive an evaluation of at least acceptable performance under the teacher evaluation system..." (✓ Note: Reconstituted Task Force recommended deleting this language from the dismissal section. CSHB 465 deletes this language from the nonretention section and properly places it in the dismissal section.)

1996 RECONSTITUTED TASK FORCE ON PROFESSIONAL DEVELOPMENT
 Commissioner Holloway reconstituted the Task Force on Professional Excellence to comment on HB 465. The group met on Feb. 26 with Rep. Ivan to recommend changes to HB 465. Nearly all the recommendations are reflected in CSHB 465.
 ✓ Connotes recommendations accepted or accommodations made by Rep. Ivan.

Comparison of Key Issues: **BILLS AFFECTING TEACHER EMPLOYMENT**

THE ISSUES	HB 217 (Rep. Ivan) '95	HB 398 (Gov. Knowles)	HB 465 (Rep. Ivan) '96	CSHB 465 (Rep. Ivan) '96
<p>LAYOFF STATUS</p> <p>Currently there is no layoff status, which may be temporary. Teachers may only be "nonretained" <u>permanently</u>.</p> <p>Statutory reasons for nonretention include:</p> <ol style="list-style-type: none"> (1) Incompetence (2) Immorality (3) Substantial noncompliance (4) Decrease in student enrollment <p><i>All bills listed propose layoff status, but with differing triggers.</i></p>	<p>LAYOFF STATUS</p> <ul style="list-style-type: none"> • Provides layoff status for tenured staff due to decrease in enrollment or funding ("basic need") decreases by 1% or more from previous year. • All non-tenured staff must be nonretained before a tenured staff may be placed on layoff status. Non-tenured primary teachers may be retained to protect primary school programs; same for secondary school teachers and programs. • Rehire rights are provided. 	<p>LAYOFF STATUS</p> <ul style="list-style-type: none"> • Provides layoff status for tenured staff due to a "financial emergency" determined by school board. • All non-tenured staff must be nonretained before a tenured staff may be placed on layoff status unless there is no "qualified" CES (tenured) teacher to replace the non-CES teacher. DOE defines "qualified." • Requires a district Reduction in Force (RIF) plan if one is currently not in a collective bargaining agreement. • Rehire rights are provided. 	<p>LAYOFF STATUS</p> <ul style="list-style-type: none"> • Provides layoff status for tenured staff due to: (a) decrease in enrollment (b) anticipated decrease of 2% in revenue (c) 5 year revenue average fails to keep pace with inflation (d) local board determines district is unable to meet financial obligations. • Requires a Layoff Plan that identifies academic and other programs the district intends to maintain in implementing the layoff. • All non-tenured staff must be nonretained before a tenured staff may be placed on layoff status unless there is no "qualified" tenured teacher to replace the nontenured teacher. "Qualified" is determined as follows: <ul style="list-style-type: none"> • in grades K-5 an elementary endorsement is necessary • in grades 6-12 a teacher must have an endorsement for each subject area in which the teacher is to spend 40% of their time, or the teacher can show evidence of acceptable teaching experience in the subject. • Rehire rights are provided. 	<p>✓ CONNOTES A RECOMMENDATION BY (OR ACCOMMODATION TO) THE 1998 RECONSTITUTED TASK FORCE ON PROFESSIONAL DEVELOPMENT</p> <p>LAYOFF STATUS</p> <ul style="list-style-type: none"> ✓ Provides layoff status for tenured staff triggered by a significant demonstrated reduction in per pupil expenditures due to a decrease in revenue from one year to the next. • All non-tenured staff must be nonretained before a tenured staff may be placed on layoff status unless there is no "qualified" tenured teacher to replace the non-tenured teacher. • "Qualified" determined by DOE endorsement as follows: <ul style="list-style-type: none"> -K-8 teacher must have elementary endorsement. -Middle teacher endorsement. -Grade 9-12 teacher has endorsement for each subject area in which he/she spends 40% of time or can show acceptable teaching experience in the subject. (✓ Note: Reconstituted Task Force recommended a waiver for multi-grade small rural schools. Use of "acceptable teaching experience in the subject" addresses that concern.) • Requires a district Layoff plan. • Rehire rights are provided.
<p>NONRETENTION HEARING JUDICIAL REVIEW (DE NOVO)</p> <p>If a nonretention hearing by the school board is unfavorable to a tenured teacher, and the teacher appeals the decision by the board to superior court, a school district is obligated to submit to a trial de novo (an entirely new trial).</p> <p><i>All bills listed propose a revised process for nonretention hearings.</i></p>	<p>NONRETENTION HEARING JUDICIAL REVIEW (DE NOVO)</p> <ul style="list-style-type: none"> • Eliminates the duplicative "de novo trial." Instead, if a school board reaches a decision unfavorable to a tenured teacher, that teacher is entitled to judicial review based on the record of the original hearing. 	<p>NONRETENTION HEARING JUDICIAL REVIEW (DE NOVO)</p> <ul style="list-style-type: none"> • CES (tenured) teacher is entitled to a pre-termination hearing, notice of termination, and post-termination hearing. • CES teacher may then seek judicial review (not based on the record of the original hearing). • CES teacher may waive post-termination hearing and (1) immediately seek judicial review, or (2) request to follow the district's grievance procedure. A denied request allows the teacher to seek judicial review. An unanswered request automatically results in use of the grievance procedure. 	<p>NONRETENTION HEARING JUDICIAL REVIEW (DE NOVO)</p> <ul style="list-style-type: none"> • A teacher is entitled to: Notice of dismissal, pretermination hearing, termination hearing. • If terminated, teacher is entitled to mandatory advisory arbitration. • If the arbitration remains unfavorable, the teacher is entitled to judicial review based on the record of the original hearing and the arbitration. 	<p>NONRETENTION HEARING JUDICIAL REVIEW (DE NOVO)</p> <ul style="list-style-type: none"> • A teacher is entitled to: Notice of dismissal, pretermination hearing, termination hearing. • If the arbitration remains unfavorable, the teacher is entitled to judicial review based on the record of the original hearing and the arbitration. ✓ Note by Reconstituted Task Force: Administrators suggested the following language in sec. 9 (b)—"Dismissal shall be effective when issued." ✓ Note by Reconstituted Task Force: Mandatory advisory arbitration offered in HB 465 was deleted at request of school boards. Teachers also did not favor.

Comparison of Key Issues: **BILLS AFFECTING TEACHER EMPLOYMENT**

THE ISSUES	HB 217 (Rep. Ivan) '95	HB 398 (Gov. Knowles)	HB 465 (Rep. Ivan) '96	CSHB 465 (Rep. Ivan) '96
<p>SCHOOL BARGAINING The public has requested more access to the collective bargaining process with school employees.</p> <p><i>All bills listed propose more access.</i></p>	<p>SCHOOL BARGAINING</p> <ul style="list-style-type: none"> Initial negotiations proposals and final agreements are public records available for public review. 	<p>SCHOOL BARGAINING</p> <ul style="list-style-type: none"> Initial negotiations proposals, last-best-offer proposals, tentative agreements before ratification, and final agreements are public records available for public review. 	<p>SCHOOL BARGAINING</p> <ul style="list-style-type: none"> Initial negotiations proposals, last-best-offer proposals, tentative agreements before ratification, and final agreements are public records available for public review. 	<p>SCHOOL BARGAINING</p> <ul style="list-style-type: none"> Initial negotiations proposals, last-best-offer proposals, tentative agreements before ratification, and final agreements are public records available for public review.
<p>RETIREMENT INCENTIVE PROGRAM (RIP) Last year the legislature chose to include the RIP in its tenure reform bill.</p> <p><i>Both employee groups and elected school boards support an RIP.</i></p>	<p>RETIREMENT INCENTIVE PROGRAM (RIP)</p> <ul style="list-style-type: none"> Provides a RIP for school employees. Requires the program to be cost effective and must be desirable to districts. 	<p>RETIREMENT INCENTIVE PROGRAM (RIP)</p> <ul style="list-style-type: none"> None 	<p>RETIREMENT INCENTIVE PROGRAM (RIP)</p> <ul style="list-style-type: none"> None 	<p>RETIREMENT INCENTIVE PROGRAM (RIP)</p> <ul style="list-style-type: none"> None

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Representative Ivan M. Ivan

SPONSOR STATEMENT - House Bill 465

I introduced House Bill 465 to allow our school districts a degree of flexibility when dealing with increased costs associated with our educational system.

House Bill 465 would allow school districts to lay off teachers who have acquired tenure rights, but only if the school district finds it necessary to reduce the number of teachers due to declining enrollment or declining revenues. Qualifications for rehire purposes are also established in this bill.

The bill also increases tenure from two to three years and removes the costly trial de novo portion of our statutes which allows a school district employee who, if not satisfied with a district led investigation, to go to the court system to begin an entirely new trial. The district's investigation, most often, must be recreated. The deletion of the trial de novo provides our educators the same protections as provided to other state employees. New procedures for appealing a decision to dismiss or nonretain a tenured teacher are established in House Bill 465. The record established during the various hearings will be available for use if a suit is filed in superior court.

An extensive evaluation system and an improvement of performance plan is included in House Bill 465. The evaluation system can be used for nonretention purposes. Should a tenured or nontenured teacher receive a less than acceptable evaluation, a plan of improvement would be imposed. If, after imposition of the plan of improvement, the teacher receives another less than acceptable evaluation, the teacher is subject to nonretention.

Sections 2 and 4 of House Bill 465 apply only to those teachers who are hired after the bill is signed into law. The remaining sections of the bill dealing with loss of tenure rights, evaluations, layoff and rehire and elimination of trial de novo go into effect after the bill is signed and will have an effect on all teachers.

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Representative Ivan M. Ivan

SECTIONAL ANALYSIS - House Bill 465

Section 1: Amends AS 14.20.145, Automatic Reemployment. States that if a teacher is not given a notice of nonretention and is not laid off under the new provisions of AS 14.20.177 (Section 8 of this bill), the teacher is entitled to be reemployed in the same school district for the following school year. Should the teacher not accept reemployment within thirty days of the contract offer, this section would not be applicable. If a teacher is in lay off status and is working in another school district and is contractually obligated to provide services to another educational program within the state, then this section does not apply.

Section 2: Amends AS 14.20.147(b), Transfer or Absorption of Attendance Area or Federal Agency School. Changes tenure from two to three 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 3: Adds a new section to AS 14.20, Teachers and School Officials. This section establishes an evaluation system and improvement of performance plan for a district's teachers. The system is to include:

- (1) evaluation criteria based on professional performance standards;
- (2) an annual observation and evaluation of each teacher in the district;
- (3) an opportunity for students, parents, community members and administrators to provide evaluation information on the teacher's performance; and
- (4) peer review of the teacher.

The school board will consider information from students, parents, community members, classroom teachers and administrators in the design and periodic review of the evaluation system.

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SECTIONAL ANALYSIS

Before an evaluation can be conducted, the evaluator has to complete training in the use of the district's teacher evaluation system.

A tenured teacher whose performance is found after evaluation to be less than acceptable must be provided a plan of improvement which must address ways the tenured teacher's performance can be improved. This plan is to last for no more than one year. If, at the conclusion of the plan of improvement, the teacher's performance is again evaluated at less than acceptable, the district may nonretain the teacher.

An administrator who fails to carry out duties concerning evaluations may be dismissed.

Section 4: Amends AS 14.20.150, Acquisition of Tenure Rights. Changes acquisition of tenure from two to three years. The teacher gains tenure on the first day the teacher performs teaching services in the district during the school year immediately following three full school years.

Section 5: Amends AS 14.20.155(a), Effect of tenure rights. States that a teacher who has acquired tenure has the right to employment within the district with the exceptions noted in AS 14.20.

Section 6: 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 AS 14.20.177 (Section 8 of this bill).

Section 7: Amends AS 14.20.175(b), Nonretention. Deletes incompetence as a reason for nonretention and replaces it with failure to receive an evaluation of at least acceptable performance in the evaluation system after the implementation of the plan of improvement.

Section 8: Adds a new section to AS 14.20, Teachers and School Officials. This new section provides for layoff of a tenured teacher when there is a decrease in school attendance, the school board has determined there will be a decrease of at least two percent in per pupil revenue for the next school year over the per pupil revenue available in the current school year, the district revenue has failed to keep pace with inflation or the cost of changes in the requirements imposed on the district by state or federal law or the school board is not able to meet its financial obligations with available revenue.

Before a school district lays off any tenured teacher, a lay off plan must be adopted which must include academic and other programs that the district intends to maintain in implementation of the plan. This

section also establishes standards for qualifications in which a school district may retain a nontenured teacher if there is no tenured teacher in the district to replace the nontenured teacher. Procedures addressing 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 are provided under this section. In the event a teacher is offered a teaching position in another school district while on layoff status, the teacher may remain on the layoff list for retention within the school district where tenure was acquired.

Section 9: Repeals and reenacts AS 14.20.80, Procedures upon notice of dismissal or nonretention. Eliminates a de novo trial whenever a school district reaches an unfavorable decision to a teacher. The new section allows a tenured teacher, following written notice of the proposed dismissal, a pretermination hearing. This section describes the pretermination process.

After the pretermination hearing or notice of nonretention of a tenured teacher, procedures and time lines, under which the school district must comply, are established. If the school board decision is sustained, the teacher is entitled to mandatory advisory arbitration to be conducted by a neutral third party. If the decision of the school board remains unfavorable to the teacher, the teacher may appeal to the superior court. Judicial review will be based on the already established record in previous proceedings.

Section 10: Adds a new section to AS 23.40, Labor Organizations. Prior to beginning bargaining, this section states the school board will provide opportunities for public comment on issues to be addressed in the collective bargaining process. Initial proposals, last best offer proposals, tentative agreements before ratification and final agreements reached by the parties are public documents.

Section 11: Repeals AS 14.20.205, Judicial review. Elimination of the trial de novo.

Section 12: The amendments in sections 2 and 4 of this bill apply only to;

- (1) individuals hired as a teacher on or after the effective date of the bill;
- (2) rehired teachers on or after the effective date of the bill and following an interruption in continuous service that resulted in a loss of tenure rights or failure to acquire tenure rights.

Sec. 14.20.140. NOTIFICATION OF NONRETENTION.

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

(b) If a teacher who has not acquired tenure rights is not to be retained for the following school year the employer shall notify the teacher of the nonretention by writing delivered on or before the last day of the school term or by registered mail postmarked on or before the last day of the school term.

(c) Notwithstanding a teacher's right to continued employment under AS 23.10.500 - 23.10.550, a school district may notify a teacher of nonretention under this section for the following school year for a permissible reason.

History -

(sec. 1 ch 92 SLA 1960; am sec. 15 ch 98 SLA 1966; am sec. 3 ch 96 SLA 1992)

Amendment Notes -

The 1992 amendment, effective September 16, 1992, added subsection (c).

Decisions -

Notice of nonretention sufficient. - See *Griffin v. Galena City Sch. Dist.*, 640 P.2d 829 (Alaska 1982); *Martinez v. Anchorage Sch. Dist.*, 699 P.2d 330 (Alaska 1985).

Quoted in *State v. Redman*, 491 P.2d 157 (Alaska 1971).

Cited in *Kleven v. Yukon-Koyukuk Sch. Dist.*, 853 P.2d 518 (Alaska Ct. App. 1993).

Collateral Refs -

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

CORRECTION

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Sec. 14.20.140. NOTIFICATION OF NONRETENTION.

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(sec. 1 ch 92 SLA 1960; am sec. 15 ch 98 SLA 1966; am sec. 3 ch 96 SLA 1992)

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Collateral Refs -

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

Sec. 14.20.145. AUTOMATIC REEMPLOYMENT.

If notification of nonretention is not given according to AS 14.20.140, a teacher is entitled to be reemployed in the same district for the following school year on the contract terms the teacher and the employer may agree upon, or if no terms are agreed upon, the provisions of the previous contract are continued for the following school year, subject to AS 14.20.158. The right to be reemployed according to this section expires if the teacher does not accept reemployment within 30 days after the date on which the teacher receives a contract of reemployment. A teacher who is on family leave under AS 23.10.500 - 23.10.550 must comply with the 30-day deadline in this section to retain the teacher's reemployment rights under this section.

History -

(sec. 16 ch 98 SLA 1966; am sec. 4 ch 96 SLA 1992)

Amendment Notes -

The 1992 amendment, effective September 16, 1992, added the last sentence and made a punctuation change.

AG Opinions -

A teacher who has not been given proper notice of nonretention has an enforceable right to a written contract of employment for the next school year. That contract would contain terms like those in the teacher's contract for the preceding year, subject to modification under AS 14.20.158 or in ways not specifically enumerated by AS 14.20.158 where such modifications are necessary to protect the reasonable expectations of the parties. The teacher would be entitled to a new written contract each year based on the terms of the preceding year's contract, unless the terms were varied by agreement. March 25, 1987 Op. Att'y Gen.

Decisions -

The purpose of tenure laws - is to give job security to experienced teachers and to ensure that they will not be discharged for inadequate reasons. *Redman v. Department of Educ.*, 519 P.2d 760 (Alaska 1974).

This section seeks to achieve this result - by treating an improperly nonretained teacher as if the teacher had been retained, with no prejudice to result from the fact of nonretention. *Redman v. Department of Educ.*, 519 P.2d 760 (Alaska 1974).

The effect of this section - is to give an improperly nonretained teacher the enforceable right to a written contract of employment for the next school year containing provisions like those in the teacher's contract for the preceding year. *Redman v. Department of Educ.*, 519 P.2d 760 (Alaska 1974).

This section does not automatically continue a teacher's prior contract - in the event proper notice of nonretention is not given. *Redman v. Department of Educ.*, 519 P.2d 760 (Alaska 1974).

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

No action for damages may be based on prior, expired contract. - Where the employer has refused to tender the teacher a new contract, the teacher may enforce the teacher's statutory right to be given a new contract and may then sue for breach of that contract, but an action for damages cannot be based upon a prior contract that has expired. *Redman v. Department of Educ.*, 519

P.2d 760 (Alaska 1974).

Quoted in *State v. Redman*, 491 P.2d 157 (Alaska 1971).

Cited in *Kleven v. Yukon-Koyukuk Sch. Dist.*, 853 P.2d 518 (Alaska Ct. App. 1993).

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. 14.20.155. EFFECT OF TENURE RIGHTS.

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

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

History -

(sec. 18 ch 98 SLA 1966)

Collateral Refs -

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

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. 14.20.170. DISMISSAL.

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

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

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

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

(b) A teacher may be suspended temporarily with regular compensation during a period of investigation to determine whether or not cause exists for the issuance of a notification of dismissal according to AS 14.20.180.

History -

(sec. 2 ch 92 SLA 1960; am sec. 21 ch 98 SLA 1966; am sec. 1, 2 ch 104 SLA 1966)

History Reports -

For report on ch. 104, SLA 1966, see 1966 House Journal, p. 988.

Decisions -

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

Subsection (b) of this section is in a permissive form - and allows temporary suspension during the investigation. *Nichols v. Eckert*, 504 P.2d 1359 (Alaska 1973).

A right of nontenured teachers to a hearing prior to dismissal for cause is not to be found in this section. - *Nichols v. Eckert*, 504 P.2d 1359 (Alaska 1973).

The express language of subsection (b) of this section clearly lacks any indication that the legislature intended to provide a hearing prior to dismissal for cause of a nontenured teacher. *Nichols v. Eckert*, 504 P.2d 1359 (Alaska 1973).

Despite the reference to AS 14.20.180. - The reference to AS 14.20.180 in this section cannot reasonably be interpreted to extend the hearing rights given to tenured teachers under that section to nontenured teachers. *Nichols v. Eckert*, 504 P.2d 1359 (Alaska 1973).

The distinction in treatment between tenured and nontenured teachers is quite clear - from the express terms of AS 14.20.180. *Nichols v. Eckert*, 504 P.2d 1359 (Alaska 1973).

Validity of dismissal proceedings. - When a discharged teacher had not demonstrated any way in which his dismissal was tainted by his temporary suspension with pay under subsection (b), nor any other way in which he was prejudiced by the suspension, his contention that the dismissal proceedings were void as a matter of law was found to be without merit. *Renfroe v. Green*, 626 P.2d 1068 (Alaska 1980).

Dismissal for immorality. - In subsection (a)(2), the act must constitute a crime involving moral turpitude; a criminal conviction is not necessary. *Kenai Peninsula Borough Bd. of Educ. v. Brown*, 691 P.2d 1034 (Alaska 1984).

Although the Board of Education could not dismiss a teacher on an assumption that a violation of AS 42.20.030(a)(7) (wilfully diverting electricity) always constitutes a theft, the board had sufficient evidence to conclude that the teacher had committed theft, and the dismissal for immorality was therefore valid even if the teacher was not convicted under a theft statute. *Kenai Peninsula Borough Bd. of Educ. v. Brown*, 691 P.2d 1034 (Alaska 1984).

So long as a school district has sufficient evidence to conclude that a teacher committed an act or acts which constituted a crime of moral turpitude, a dismissal is valid, even in the absence

of a conviction, and even though the act or acts occurred over 10 years ago, prior to the current employment. *Toney v. Fairbanks N. Star Borough Sch. Dist.*, 881 P.2d 1112 (Alaska 1994).

Instructions. - There was no error in the court's inclusion of an instruction on provisions of the Professional Teaching Practices Commission Code of Ethics although there had been no determination that a dismissed teacher had violated the code by the commission when fair minded jurors, in the exercise of reasonable judgment, could differ on whether certain actions by the dismissed teacher were unethical or otherwise constituted substantial noncompliance under subsection (a) of this section. *Renfroe v. Green*, 626 P.2d 1068 (Alaska 1980).

Directed verdict. - When there was evidence that a dismissed teacher had verbally and physically abused another member of the teaching profession in front of students; and fair minded jurors, in the exercise of reasonable judgment, could differ on whether those actions violated provisions of the code of ethics of the Professional Teaching Practices Commission or otherwise constituted incompetency or substantial noncompliance under subsection (a) of this section, the superior court did not err in failing to direct a verdict in the dismissed teacher's favor. *Renfroe v. Green*, 626 P.2d 1068 (Alaska 1980).

Cited in *Skagway City Sch. Bd. v. Davis*, 543 P.2d 218 (Alaska 1975).

Collateral Refs -

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 14.20.175. NONRETENTION.

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

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

- (1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform the teacher's customary teaching duties in a satisfactory manner;
- (2) immorality, which is defined as the commission of an act that, under the laws of the state, constitutes a crime involving moral turpitude;
- (3) substantial noncompliance with the school laws of the state, the regulations or bylaws of the department, the bylaws of the district, or the written rules of the superintendent; or
- (4) a necessary reduction of staff occasioned by a decrease in school attendance.

History -

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

Decisions -

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

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

Despite the broad language of subsection (a), the board's discretion is subject to certain limitations; for example, a school board may not deny continued employment to a teacher because of the teacher's exercise of first amendment rights, nor may a school board deny continued employment to a teacher if to do so would deprive the teacher of other rights that are guaranteed by constitution or statute. *Shatting v. Dillingham City Sch. Dist.*, 617 P.2d 9 (Alaska 1980).

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

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

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

The grievance procedure may be of value to a nontenured teacher - in attempting to

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

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

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

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

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

Collateral Refs -

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

Sec. 14.20.180. PROCEDURE AND HEARING UPON NOTICE OF DISMISSAL OR NONRETENTION.

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

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

(c) Upon receipt of the notification requesting a hearing, the employer shall immediately arrange for a hearing, and shall notify the tenured teacher or administrator in writing of the date, time, and place of the hearing. A written transcript, tape, or similar recording of the proceedings shall be kept. Transcribed copies shall be furnished to the tenured teacher for cost upon request of the tenured teacher. A final decision of the school board requires a majority vote of the membership. The vote shall be by roll call. The final decision shall be written and contain specific findings of fact and conclusions of law. A written notification of the decision shall be furnished to the tenured teacher within 10 days of the date of the decision.

History -

(sec. 3a ch 92 SLA 1960; am sec. 23 ch 98 SLA 1966; am sec. 2, 3 ch 11 SLA 1968; am sec. 14 ch 46 SLA 1970; am sec. 16, 17 ch 124 SLA 1975)

Decisions -

Section describes procedure. - This section describes the administrative procedure, which includes a hearing, when a tenured teacher has been given a notice of dismissal or nonretention. *Corso v. Commissioner of Educ.*, 563 P.2d 246 (Alaska 1977).

Reference to section in AS 14.20.170 does not extend hearing rights to nontenured teachers. - The reference to this section in AS 14.20.170 cannot reasonably be interpreted to extend the hearing rights given to tenured teachers under this section to nontenured teachers. *Nichols v. Eckert*, 504 P.2d 1359 (Alaska 1973).

But constitutional due process requirements overcome any statutory rule. - Even though a hearing is not accorded to nontenured teachers by statute, the constitutional requirements of due process overcome any statutory rule. *Nichols v. Eckert*, 504 P.2d 1359 (Alaska 1973).

And nontenured teachers are entitled to hearing upon dismissal. - Where a mid-year dismissal is at issue, clearly the teachers have been deprived of an interest in property, namely, their present teaching post. This is an interest protected by the 14th amendment to the United States Constitution and by the first article of the Alaska Constitution, and thus they are entitled to a hearing. *Nichols v. Eckert*, 504 P.2d 1359 (Alaska 1973).

When dismissal effective. - The "notification of dismissal" is a notice that the board has voted in favor of dismissal, but the dismissal cannot be effective until the teacher has had an opportunity to request a hearing if one is desired. *Kenai Peninsula Borough Bd. of Educ. v. Brown*, 691 P.2d 1034 (Alaska 1984).

Since this section gives the teacher 15 days in which to request a hearing, the termination is not effective until at least 15 days following the notification of dismissal. *Kenai Peninsula Borough Bd. of Educ. v. Brown*, 691 P.2d 1034 (Alaska 1984).

If the teacher does not request a hearing, the dismissal becomes effective immediately following the expiration of the 15 day period; if the teacher does request a hearing, the dismissal can only be effective after a final majority vote following the hearing. *Kenai Peninsula Borough Bd. of Educ. v. Brown*, 691 P.2d 1034 (Alaska 1984).

Meeting resulted in a dismissal prior to a hearing in violation of teacher's due process rights where the teacher was notified that the Board of Education had approved a recommendation for his immediate dismissal and that his pay was terminated effective the day of the meeting, and he was told that he could request a hearing, but the dismissal was nonetheless effective prior to the hearing. *Kenai Peninsula Borough Bd. of Educ. v. Brown*, 691 P.2d 1034 (Alaska 1984).

A hearing is the procedure most likely to lead to a fair determination - regarding the dismissal of a nontenured teacher. The stigma which attaches to a discharge for incompetence is sufficiently injurious to call for this type of safeguard. *Nichols v. Eckert*, 504 P.2d 1359 (Alaska 1973).

A full judicial hearing is not necessary, - but a hearing that allows the administrative authority to examine both sides of the controversy will protect the interests and rights of all who are involved. *Nichols v. Eckert*, 504 P.2d 1359 (Alaska 1973).

But nontenured teachers must be given opportunity to present defense by testimony. - *Nichols v. Eckert*, 504 P.2d 1359 (Alaska 1973).

Hearing complied with section and teacher's due process rights. - See *Kenai Peninsula Borough Bd. of Educ. v. Brown*, 691 P.2d 1034 (Alaska 1984).

Bill of particulars applicable to judicial review. - The bill of particulars provision of this section operates as a limitation on the scope of the de novo trial guaranteed by AS 14.20.205. Thus, a school district may not deviate from the original bill of particulars and show other grounds during a de novo review. *Linstad v. Sitka Sch. Dist.*, 863 P.2d 838 (Alaska 1993).

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

Applied in *Renfroe v. Green*, 626 P.2d 1068 (Alaska 1980).

Collateral Refs -

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

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

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

Sufficiency of notice of intention to discharge or not to rehire teacher, under statutes requiring such notice. 52 ALR4th 301.

Sec. 09.25.110. PUBLIC RECORDS OPEN TO INSPECTION AND COPYING; FEES.

(a) Unless specifically provided otherwise, the public records of all public agencies are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of the fee established under this section or AS 09.25.115 a certified copy of the public record.

(b) Except as otherwise provided in this section, the fee for copying public records may not exceed the standard unit cost of duplication established by the public agency.

(c) If the production of records for one requester in a calendar month exceeds five person-hours, the public agency shall require the requester to pay the personnel costs required during the month to complete the search and copying tasks. The personnel costs may not exceed the actual salary and benefit costs for the personnel time required to perform the search and copying tasks. The requester shall pay the fee before the records are disclosed, and the public agency may require payment in advance of the search.

(d) A public agency may reduce or waive a fee when the public agency determines that the reduction or waiver is in the public interest. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated. A public agency may waive a fee of \$5 or less if the fee is less than the cost to the public agency to arrange for payment.

(e) Notwithstanding other provisions of this section to the contrary, the Bureau of Vital Statistics, the library archives in the Department of Education, and the division of banking, securities, and corporations in the Department of Commerce and Economic Development may continue to charge the same fees that they are charging on September 25, 1990 for performing record searches, and may increase the fees as necessary to recover agency expenses on the same basis that is used by the agency immediately before September 25, 1990.

(f) Notwithstanding other provisions of this section to the contrary, the Board of Regents of the University of Alaska may establish reasonable fees for the inspection and copying of public records, including record searches.

(g) Notwithstanding other provisions of this section to the contrary, the board of directors of the Alaska Railroad Corporation may establish reasonable fees for the inspection and copying of public records, including record searches.

(h) Notwithstanding other provisions of this section to the contrary, the judicial branch may establish by court rule reasonable fees for the inspection and copying of public records, including record searches.

(i) Electronic information that is provided in printed form shall be made available without codes or symbols, unless accompanied by an explanation of the codes or symbols.

History -

(sec. 3.22 ch 101 SLA 1962; am sec. 2, 3 ch 200 SLA 1990)

Cross References -

For proof of public records, see Evid. R. 1005; for management and preservation of public records, see AS 40.21.

For legislative findings and intent in connection with the 1990 amendments to this section, see sec. 1, ch. 200, SLA 1990 in the Temporary and Special Acts.

Amendment Notes -

The 1990 amendment rewrote subsection (a) and added subsections (b)-(i).

AG Opinions -

As to confidentiality of oil and gas documents held by state agencies, see Nov. 24, 1980 Op. Att'y Gen.

When the taxpayer files the notice of appeal, a Department of Revenue hearing decision may be made public because the taxpayer is, in effect, waiving any right to confidentiality he may have had. June 16, 1983 Op. Att'y Gen., modifying March 12, 1980 Op. Att'y Gen. to the extent that the time when the decision becomes a part of the public record is changed from the issuance of a court order to prepare the record to the filing of the notice of the appeal.

Certain provisions contained in a Subscriber Service Agreement with the Credit Bureau of Alaska, which provided that the subscriber (the Division of Accounting and Collections) agreed to make available to the credit bureau "all its consumer credit experience records pertaining to individuals located with the Bureau's geographic area of file building," did not violate the individual privacy of borrowers. May 11, 1984 Op. Att'y Gen.

All materials received in response to the request for proposals (RFP) for the Anchorage Office Complex (AOC) were "public documents" subject to disclosure, but disclosure of certain records could have been delayed until a tentative contract award. During the evaluation process, the financial component of any proposal was not subject to disclosure. Further, the state or its agents could have properly declined to disclose records which would have compromised the anonymity of the aesthetic evaluation process. Jan. 30, 1985 Op. Att'y Gen.

The Office of Management and Budget (OMB) has the authority to provide the public with copies of the audits it receives under 2 AAC 45.010 (audits submitted by entities that have received state financial assistance from state agencies). Aug. 12, 1987 Op. Att'y Gen.

The Mental Health Board may have access to documents reflecting communications between the Department of Law and the Department of Health and Social Services to the extent that the commissioner of health and social services believes is appropriate. To the extent that the commissioner authorizes such access for documents which nonetheless are not subject to public disclosure (e.g., subject to the attorney/client privilege or the executive privilege), the board is required to preserve that confidentiality. Aug. 15, 1988 Op. Att'y Gen.

The names of purchasers of homes and condominiums, and the sales prices, are not confidential, and thus may be released to the public. Jan. 9, 1989 Op. Att'y Gen.

College transcripts of certified teachers or certificate applicants are not confidential, and they must be released at the request of a member of the public. Nov. 4, 1992 Op. Att'y Gen.

Decisions -

For discussion of the history of this section, - see *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Broad policy. - This section and AS 09.25.120 articulate a broad policy of open records. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

The "agencies and departments" language - used in this section must be read as referring to the agencies and departments of the governments to which the statute applies, but that language itself does not define what the applicable level of government is. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982) (decided prior to 1990 amendment).

The word "public" - as used in this section and AS 09.25.120 with "officer" refers both to state and local officials. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Application to municipalities. - The provisions of this section are applicable to municipalities. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

In light of the common law rule, legislative history, and the court's reading of the sections, the state supreme court will construe this section and AS 09.25.120 as that court would have

construed them prior to 1957, which is as a strong legislative declaration that records in the possession of municipalities shall be available for public inspection, subject to exceptions based on need. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Disclosure of applications for public posts. - Strong public interest in the disclosure of the affairs of government generally, and in an open selection process for high public officials in particular, requires public disclosure and inspection of applications for posts having substantial discretionary authority. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Lawsuit settlement agreement terms. - A public agency may not circumvent the statutory disclosure requirements by agreeing to keep the terms of a lawsuit settlement agreement confidential. *Anchorage Sch. Dist. v. Anchorage Daily News*, 779 P.2d 1191 (Alaska 1989).

University of Alaska. - The legislature intended to include the University of Alaska within the scope of state agencies subject to the public records statute. *Carter v. Alaska Pub. Employees Ass'n*, 663 P.2d 916 (Alaska 1983).

The president of the University of Alaska is a public officer for purposes of this section. *Carter v. Alaska Pub. Employees Ass'n*, 663 P.2d 916 (Alaska 1983).

Letters sent by citizens to governor regarding appointments - are public records within the scope of the public records statute, AS 09.25.110 - 09.25.120. *Doe v. Alaska Superior Court*, 721 P.2d 617 (Alaska 1986).

Exceptions to disclosure requirements. - Exceptions to the disclosure requirements of this section are construed narrowly in furtherance of the legislature's expressed bias in favor of broad public access. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

The Open Meetings Act, - which provides for closed executive sessions when subjects potentially prejudicial to reputation are discussed, does not establish an express exception to the pro-disclosure requirements of the Public Records Act or otherwise permit the suppression of documents produced at such sessions. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

Report of mayor's blue ribbon fiscal policy committee, - appointed to investigate city's economic condition, was not exempt from ordinary disclosure requirements, where the report was the product of a public process and was intended for public dissemination. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

Superior court order - requiring city library advisory board to release to a newspaper a performance evaluation report pertaining to a head librarian was affirmed, where the evaluation did not in any way deal with the personal, intimate, or otherwise private life of the librarian. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

Government bears burden of justifying denial of access. - When the government seeks to deny access to a particular public document, it is the government which bears the initial burden of presenting evidence justifying denial. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

A governmental agency is not entitled to delay access - to a public document through the use of depositions where it has presented no prima facie defense to release. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

Applied in *Meiners v. Bering Strait Sch. Dist.*, 687 P.2d 287 (Alaska 1984).

Cited in *O'Leary v. Superior Court*, 816 P.2d 163 (Alaska 1991).

Collateral Refs -

Finding of draft board as evidence of physical condition of one registered. 16 ALR 247.
Admissibility of report of public officer or employee on cause of or responsibility for injury to person or damage to property. 153 ALR 163; 69 ALR2d 1148.

Sec. 09.25.115. ELECTRONIC SERVICES AND PRODUCTS.

(a) Notwithstanding AS 09.25.110(b) - (d) to the contrary, upon request and payment of a fee established under (b) of this section, a public agency may provide electronic services and products involving public records to members of the public. A public agency is encouraged to make information available in usable electronic formats to the greatest extent feasible. The activities authorized under this section may not take priority over the primary responsibilities of a public agency.

(b) The fee for electronic services and products must be based on recovery of the actual incremental costs of providing the electronic services and products, and a reasonable portion of the costs associated with building and maintaining the information system of the public agency. The fee may be reduced or waived by the public agency if the electronic services and products are to be used for a public purpose, including public agency program support, nonprofit activities, journalism, and academic research. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated.

(c) Notwithstanding (b) of this section, the fee for duplicating a public record in the electronic form kept by a public agency may not exceed the actual incremental costs of the public agency.

(d) Public agencies shall include in a contract for electronic services and products provisions that

(1) protect the security and integrity of the information system of the public agency and of information systems that are shared by public agencies; and

(2) limit the liability of the public agency providing the services and products.

(e) Each public agency shall notify the state library distribution and data access center established under AS 14.56.090 of the electronic services and products offered by the public agency to the public under this section. The notification must include a summary of the available format options and the fees charged.

(f) When offering on-line access to an electronic file or data base, a public agency also shall provide without charge on-line access to the electronic file or data base through one or more public terminals.

(g) Each public agency shall establish the fees for the electronic services and products provided under this section. The Telecommunications Information Council may cancel the fees established by a public agency in the executive branch, except the fees of the University of Alaska and the Alaska Railroad Corporation, if the council determines that the fees are unreasonably high.

(h) A public agency may not make electronic services and products available to one member of the public and withhold them from other members of the public.

(i) A public agency other than a municipality or the Alaska Railroad Corporation shall separately account for the fees received by the agency under this section and deposited in the general fund. The annual estimated balance in the account may be used by the legislature to make appropriations to the agency to carry out the activities of the agency.

History -

(sec. 4 ch 200 SLA 1990; am sec. 102 ch 4 FSSLA 1992)

Cross References -

For legislative findings and intent in connection with the enactment of this section, see sec. 1, ch. 200, SLA 1990 in the Temporary and Special Acts.

Amendment Notes -

The 1992 amendment, effective July 1, 1992, in subsection (g), substituted "except the fees of" for "including the Alaska State Housing Authority, but not including."

Sec. 09.25.120. PUBLIC RECORDS; EXCEPTIONS; CERTIFIED COPIES.

(a) Every person has a right to inspect a public record in the state, including public records in recorders' offices, except

(1) records of vital statistics and adoption proceedings which shall be treated in the manner required by AS 18.50;

(2) records pertaining to juveniles unless disclosure is authorized by law;

(3) medical and related public health records;

(4) records required to be kept confidential by a federal law or regulation or by state law;

(5) to the extent the records are required to be kept confidential under 20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g in order to secure or retain federal assistance;

(6) records or information compiled for law enforcement purposes, but only to the extent that the production of the law enforcement records or information

(A) could reasonably be expected to interfere with enforcement proceedings;

(B) would deprive a person of a right to a fair trial or an impartial adjudication;

(C) could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness;

(D) could reasonably be expected to disclose the identity of a confidential source;

(E) would disclose confidential techniques and procedures for law enforcement investigations or prosecutions;

(F) would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law; or

(G) could reasonably be expected to endanger the life or physical safety of an individual.

(b) Every public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and on payment of the fees under AS 09.25.110 - 09.25.115 a certified copy of the record, and the copy shall in all cases be evidence of the original.

(c) Recorders shall permit memoranda, transcripts, and copies of the public records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described in the public records, making abstracts of title or guaranteeing or insuring the titles of the real estate, or building and maintaining title and abstract plants; and shall furnish proper and reasonable facilities to persons having lawful occasion for access to the public records for those purposes, subject to reasonable rules and regulations, in conformity to the direction of the court, as are necessary for the protection of the records and to prevent interference with the

regular discharge of the duties of the recorders and their employees.

History -

(sec. 3.23 ch 101 SLA 1962; am sec. 5 ch 200 SLA 1990; am sec. 1 ch 113 SLA 1994)

Revisors Notes -

Reorganized into subsections in 1994.

Cross References -

For provisions related to personal information in public records, see AS 44.99.300 - 44.99.350.

Amendment Notes -

The 1990 amendment rewrote this section.

The 1994 amendment, effective September 1, 1994, made a minor stylistic change in the introductory language and added "unless disclosure is authorized by law" at the end of paragraph (a)(2).

AG Opinions -

Disclosing library use records, while deleting any references which would allow the library patron to be identified, should, in most cases, satisfy the policies underlying the Freedom of Information Act without interfering with privacy interests. There may, however, be some instances in which the release of names is necessary to accomplish an important public interest. Such requests should be reviewed on a case-by-case basis with advice from the Department of Law. July 13, 1984 Op. Att'y Gen.

The Alaska Judicial Council is a public agency, and its records are public records subject to the provisions of this section. Oct. 3, 1984 Op. Att'y Gen.

The Judicial Council is authorized to adopt rules and regulations regarding the confidentiality of its own records, provided they are consistent with state statutes, including this section. For those cases where considerations favoring disclosure are nearly equal to those favoring confidentiality, rules or regulations may, and indeed should, be adopted to set guidelines for use in deciding whether disclosure should be made. Oct. 3, 1984 Op. Att'y Gen.

Any letters concerning judicial applicants which are transferred by the Judicial Council to the governor remain confidential in the hands of the governor and should not be disclosed to the public. Oct. 3, 1984 Op. Att'y Gen.

Portions of trip memoranda prepared by the governor which related to personal matters were not public records subject to release. Further, the "public record" portion of the trip memoranda were communications which the governor's office, in its discretion, could have declined to release under the doctrine of executive privilege. Finally, even if the governor waived any claim to executive privilege, he should have declined to release material which compromised an individual's privacy rights, unless a waiver was obtained. Sept. 24, 1985 Op. Att'y Gen.

The radio frequencies of the Department of Fish and Games telemetry transmitters that are used to track wildlife in the state should not normally be disclosed to the public because this disclosure would be against the public interest. While there is no state statute specifically requiring these radio frequencies to be kept confidential, there are two other sources of "state law" under which records may be required to be kept confidential: (1) the right of privacy specified in article I, section 22 of the Alaska Constitution; and (2) the common-law "public interest" exception. Oct. 21, 1985 Op. Att'y Gen.

In response to a public records request received by the Division of Retirement and Benefits concerning former state troopers, firemen, and fish and wildlife protection officers who were receiving occupational disability benefits under the Public Employees' Retirement System

(PERS), which request included asking for the recipients' names, former positions with the state, dates of injury, types of injury or disability, retirement dates, and amounts of monthly benefits, the public interest was served by providing the requested information, but, in order to protect the privacy interests of the benefit recipients, all personal references and information that would have easily allowed identification of individuals had to be deleted. Aug. 6, 1986 Op. Att'y Gen.

The names and addresses of individual trappers, contained on Alaska Department of Fish and Game wolf sealing forms, are not expressly exempted from the public disclosure requirements of AS 09.25.110, and there is no constitutional or common-law requirement for confidentiality. Sept. 3, 1986 Op. Att'y Gen.

Certain private business records in the possession of the Department of Commerce and Economic Development, which were submitted voluntarily, in order for the department to carry out its statutory duty to conduct economic development studies relating to domestic fish harvesting, which records included those used by seafood processors to formulate business plans for future years - data on volume/species mixes, target areas of the state, and market share information - were probably not a matter of public record, but this result may have varied depending on the content of particular documents. Without a regulation based on statutory or constitutional authority, the department had to, in each case, balance the interest of the business with the public's right to know. Dec. 8, 1986 Op. Att'y Gen.

Active investigation files of the Alaska Public Offices Commission (APOC) cannot be viewed and copied. There are at least three demonstrable public and private interests which, at least in the aggregate, outweigh the public's right to have access to these files: (1) the agency and the public have an interest in preserving the integrity and effectiveness of law enforcement investigations, and that interest may be jeopardized by the release of active investigative files; (2) release of unevaluated information to the public may unfairly impair the reputation of the subjects of the investigation, and may come perilously close to violating their due process rights guaranteed by the state and federal constitutions; and (3) Alaska's constitutional right to privacy requires APOC to use extreme caution in disclosing unverified or unevaluated charges of materials obtained by the agency in the course of an investigation. Apr. 30, 1987 Op. Att'y Gen.

The Child Support Enforcement Division could release a list of child support obligors who are in arrears, pursuant to a request by a newspaper under the state's public records statutes. In releasing this information, however, the division could not identify those cases which were related to Aid to Family with Dependent Children. The division also had to explain to the newspaper that the existence of arrears was disputable by the individual obligors. May 30, 1989 Op. Att'y Gen.

The Workers' Compensation Division may not, in response to a public information request, release its electronic data base in its entirety, but may release the information contained in the data base if social security numbers are deleted. Public agencies are prohibited under the federal Privacy Act of 1974 from disclosing claimants' social security numbers if the claimants were not informed whether the disclosure was voluntary or mandatory or told of the potential uses of the numbers when the number was provided. Furthermore the release of an electronic data base that contains names matched with individual social security numbers in response to a public information request appears to violate the protections intended under the Privacy Act. Nov. 13, 1992 Op. Att'y Gen.

Decisions -

For discussion of the history of this section, - see *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Broad policy. - AS 09.25.110 and this section articulate a broad policy of open records. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Effect of "in the state" language. - When the legislature chose to say "in the state," and not "of the state" in the first sentence of this section, they were conscious of the fact that they were defining scope and had it been intended to limit the application of this section to state agencies and departments, it could easily and clearly have done so. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

The word "public" - as used in AS 09.25.110 and this section with "officer" refers both to state and local officials. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Application to municipalities. - The provisions of AS 09.25.110 and this section are applicable to municipalities. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

In light of the common law rule, legislative history, and the court's reading of the sections, the state supreme court will construe AS 09.25.110 and this section as that court would have construed them prior to 1957, which is as a strong legislative declaration that records in the possession of municipalities shall be available for public inspection, subject to exceptions based on need. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Disclosure of applications for public posts. - Strong public interest in the disclosure of the affairs of government generally, and in an open selection process for high public officials in particular requires public disclosure and inspection of applications for posts having substantial discretionary authority. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Lawsuit settlement agreement terms. - A public agency may not circumvent the statutory disclosure requirements by agreeing to keep the terms of a lawsuit settlement agreement confidential. *Anchorage Sch. Dist. v. Anchorage Daily News*, 779 P.2d 1191 (Alaska 1989).

University of Alaska. - The legislature intended to include the University of Alaska within the scope of state agencies subject to the public records statute. *Carter v. Alaska Pub. Employees Ass'n*, 663 P.2d 916 (Alaska 1983).

Letters sent by citizens to governor regarding appointments - are public records within the scope of the public records statute, AS 09.25.110 - 09.25.120. *Doe v. Alaska Superior Court*, 721 P.2d 617 (Alaska 1986).

Exceptions to disclosure requirements. - Exceptions to the disclosure requirements of this section are construed narrowly in furtherance of the legislature's expressed bias in favor of broad public access. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

The Open Meetings Act, - which provides for closed executive sessions when subjects potentially prejudicial to reputation are discussed, does not establish an express exception to the pro-disclosure requirements of the Public Records Act or otherwise permit the suppression of documents produced at such sessions. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

Report of mayor's blue ribbon fiscal policy committee, - appointed to investigate city's economic condition, was not exempt from ordinary disclosure requirements, where the report was the product of a public process and was intended for public dissemination. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

Superior court order - requiring city library advisory board to release to a newspaper a

performance evaluation report pertaining to a head librarian was affirmed, where the evaluation did not in any way deal with the personal, intimate, or otherwise private life of the librarian. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

Government bears burden of justifying denial of access. - When the government seeks to deny access to a particular public document, it is the government which bears the initial burden of presenting evidence justifying denial. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

A governmental agency is not entitled to delay access - to a public document through the use of depositions where it has presented no prima facie defense to release. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

Governor's Reapportionment Board. - Where the Governor's Reapportionment Board ignored some written requests for records and released certain materials in an untimely manner, the Board violated the Public Records Act. *Hickel v. Southeast Conference*, 868 P.2d 919 (Alaska 1994).

Collateral Refs -

66 Am. Jur. 2d, Records and Recording Laws, sec. 12-31.

76 C.J.S., Records, sec. 34-41.

Validity, construction, and application of statutes making public proceedings open to the public, 38 ALR3d 1070.

Confidentiality of records as to recipients of public welfare, 54 ALR3d 768.

Validity, construction, and application of statutory provisions relating to public access to police records, 82 ALR3d 19.

Restricting access to judicial records of state courts, 84 ALR3d 598.

Payroll records of individual government employees as subject to disclosure to public, 100 ALR3d 699.

Sec. 09.25.121. COPIES OF PUBLIC RECORDS FOR VETERANS.

When a copy of a public record is required by the Department of Military and Veterans' Affairs, the Department of Commerce and Economic Development, or by the United States Veterans' Administration to be used in determining the eligibility of a person to participate in benefits, the official custodian of the public record shall, without charge, provide the applicant for the benefits, a person acting on behalf of the applicant, or an authorized representative of the department or the United States Veterans' Administration with a certified copy of the record.

History -

(sec. 1 ch 35 SLA 1981; am sec. 2 ch 21 SLA 1985)

Revisors Notes -

Enacted as AS 09.25.123. Renumbered in 1981.

Cross References -

As to records of veterans of the armed forces, see AS 26.10.070.

Sec. 09.25.122. LITIGATION DISCLOSURE.

A public record that is subject to disclosure and copying under AS 09.25.110 - 09.25.120 remains a public record subject to disclosure and copying even if the record is used for, included in, or relevant to litigation, including law enforcement proceedings, involving a public agency, except that with respect to a person involved in litigation, the records sought shall be disclosed in accordance with applicable court rules. In this section, "involved in litigation" means a party to

litigation or representing a party to litigation, including obtaining public records for the party.
History -
(sec. 6 ch 200 SLA 1990)

Sec. 09.25.123. SUPERVISION AND REGULATION.

(a) The Telecommunications Information Council shall supervise and adopt regulations for the operation and implementation of AS 09.25.110 - 09.25.140 by public agencies in the executive branch, except the Alaska Railroad Corporation.

(b) The legislative council shall supervise and adopt procedures for the operation and implementation of AS 09.25.110 - 09.25.140 by public agencies in the legislative branch.

(c) The administrative director of courts shall supervise and adopt procedures for the operation and implementation of AS 09.25.110 - 09.25.140 by public agencies in the judicial branch.

(d) The Board of Regents of the University of Alaska shall supervise and adopt procedures for the operation and implementation of AS 09.25.110 - 09.25.140 by the University of Alaska.

(e) The regulations and procedures adopted under this section must include the establishment of procedures for making an administrative appeal of public agency action that is taken under AS 09.25.110 - 09.25.140.

(f) In this section,

(1) "action" includes the calculation of a fee, the denial of a fee reduction or waiver, and the denial of a request to inspect or copy a public record;

(2) "public agency" does not include a municipality.

History -

(sec. 6 ch 200 SLA 1990; am sec. 103 ch 4 FSSLA 1992)

Amendment Notes -

The 1992 amendment, effective July 1, 1992, in subsection (a), deleted a reference to the Alaska State Housing Authority and made a stylistic change.

Sec. 09.25.124. APPEALS.

A person may appeal to the superior court the final administrative order made by a public agency under AS 09.25.110 - 09.25.140.

History -

(sec. 6 ch 200 SLA 1990)

Sec. 09.25.125. ENFORCEMENT: INJUNCTIVE RELIEF.

A person having custody or control of a public record who denies, obstructs, or attempts to obstruct, or a person not having custody or control who aids or abets another person in denying, obstructing, or attempting to obstruct, the inspection of a public record subject to inspection under AS 09.25.110 or 09.25.120 may be enjoined by the superior court from denying, obstructing, or attempting to obstruct, the inspection of public records subject to inspection under AS 09.25.110 or 09.25.120. A person may seek injunctive relief under this section without exhausting the person's remedies under AS 09.25.123 - 09.25.124.

History -

(sec. 1 ch 74 SLA 1975; am sec. 7 ch 200 SLA 1990)

Amendment Notes -

The 1990 amendment, in the first sentence, substituted "denies, obstructs," for "obstructs" near the beginning and twice inserted "denying," preceding "obstructing" near the middle, and added the second sentence.

Sec. 09.25.130. *RENUMBERED AS AS 09.25.095.*

Repealed or Renumbered

Sec. 09.25.140. CONFIDENTIALITY OF LIBRARY RECORDS.

(a) Except as provided in (b) of this section, the names, addresses, or other personal identifying information of people who have used materials made available to the public by a library shall be kept confidential, except upon court order, and are not subject to inspection under AS 09.25.110 or 09.25.120. This section applies to libraries operated by the state, a municipality, or a public school, including the University of Alaska.

(b) Records of a public elementary or secondary school library identifying a minor child shall be made available on request to a parent or guardian of that child.

History -

(sec. 1 ch 35 SLA 1985)

Cross References -

For provisions related to personal information in public records, see AS 44.99.300 - 44.99.350.



POSITION PAPER

HB 465

"An Act relating to employment of teachers and school administrators and to public school collective bargaining."

The Alaska Council of School Administrators supports many of the concepts of this legislation.

We support the need for a comprehensive evaluation system which will assist in strengthening the classroom environment becoming a place of learning for all children in Alaska. We view a comprehensive evaluation system to be an important ingredient to an effective school system.

We believe that a plan of improvement is a necessary step in the improvement of instruction. Should that individual not take the necessary steps in becoming a more effective educator then there must be a less complicated process in place for finding a replacement for that person.

The Alaska Council of School Administrators would support a more all inclusive evaluation process to include building principals. If, indeed the teacher is allowed a plan of improvement to strengthen their skills and effectiveness in the classroom, so should the administrator be given a plan of improvement to strengthen their effectiveness in evaluation and all other areas of administration before they be terminated. Therefore, we would submit to you substitute language for Page 3, line 8 (f): *An administrator who fails to carryout duties concerning evaluation under this section may be placed on a plan of improvement. If, at the conclusion of the plan of improvement, the administrator continues to show failure in this area, the district may find this violation grounds for dismissal.*

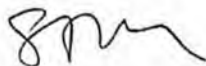
We do have some question regarding whether the peer review of a teacher can be the annual evaluation for the tenured teacher without an additional evaluation by the immediate administrator. This practice is currently being done in some school districts and seems to be effective in creating a dialogue between teachers about effective delivery of instruction in the classroom.

ACSA supports the extension of the time to acquire tenure from the current two years to three years. Further, we support the need to reduce staff because of the district's financial obligations and available revenue.

For the benefit of the students, districts must have the ability to place qualified teachers in the classroom who can teach in the subject matter they are trained in whether they are tenured or non-tenured.

We question the need for an additional hearing under mandatory advisory arbitration by a neutral third party in the SEC. 14.20.180.PROCEDURES UPON NOTICE OF DISMISSAL OR NONRETENTION. It would appear to us that if the teacher has requested a full hearing before the board and the teacher has the right to subpoena persons and to cross examine witnesses, and the board still sustains the dismissal or nonretention then the next step would be judicial review. The judicial review would allow a third party examination of the record and would bring about a more immediate resolution to the question of dismissal or nonretention than the mandatory advisory arbitration.

The Alaska Council of School Administrators believes that the schools are here for the children of Alaska. When they set foot in their school they should enter into a safe and nurturing environment. We are committed to assisting this legislature in anyway possible to insure that is happening.



Stephen McPhetres
ACSA/AASA Executive Director

ASSOCIATION OF ALASKA SCHOOL BOARDS

Advocates for Alaska's Youth

316 West Eleventh Street, Juneau, Alaska 99801

Tel. (907) 586-1083 Fax (907) 586-2995

POSITION PAPER IN SUPPORT OF HB 465

ADDRESSING QUALITY EDUCATION

Issues...

- Quality
- Performance
- Fairness
- Accountability

...through...

Mechanisms...

- Tenure Reform
- Evaluation Process
- Layoff Status vs Nonretention
- Non-retention Standards
- De novo
- Public Information

★ HISTORICAL REVIEW

The Association of Alaska School Boards has, for over 15 years, passed resolutions designed to improve the quality of education. Tenure acquisition, layoff status, de novo trials, and public access to negotiations are issues that have been around for years. Over the last five years there has been a steady increase in public awareness of these issues not only in Alaska, but throughout the country.

Last year the Legislature passed a bill addressing the issues listed above. Gov. Knowles vetoed that legislation, primarily due to a provision calling for tenure acquisition after four years. In place of HB 217, Gov. Knowles introduced HB 398 and SB 204 this session, putting forth recommendations by a Task Force on HB 217 that deliberated over the interim. Keys to the governor's proposal include: (1) three-year tenure acquisition, (2) greater emphasis on the evaluation process, (3) requires a reduction in force and layoff plan, (4) addresses the de novo process, and (5) provides greater public access during collective bargaining. In November 1995 the membership of the Association of Alaska School Boards passed a resolution supporting these concepts.

Most recently, Rep. Ivan Ivan, original sponsor of HB 217, introduced HB 465. The bill incorporates some of the proposals forwarded in the governor's bill as well as some new ideas. In drafting the measure, Rep. Ivan has tried to create more flexibility for school boards, especially when facing a funding picture that remains flat or includes reductions.

★ ASSOCIATION OF ALASKA SCHOOL BOARDS POSITION

The Association of Alaska School Boards supports this latest effort. It incorporates the concerns of school boards and addresses concerns of the governor regarding: tenure acquisition after three years, a more thorough evaluation process for educators, layoff and reduction in force (RIF) plans, addresses the de novo process, and grants greater public access throughout the collective bargaining process.

★ TENURE ACQUISITION

Improving education in the classroom starts with quality educators. Current tenure laws provide inadequate time for administrators to thoroughly evaluate teachers. It also gives insufficient time for teachers to improve. This can shortchange a new educator's career or result in less than fully qualified teachers receiving tenure.

★ AASE Recommendation

- *The key is to ensure new people entering the teaching profession, and experienced teachers whose skills may have become less than adequate, are provided an opportunity to attain*

quality in the classroom. AASB resolutions call for extending tenure. Even NEA-Alaska has agreed to three years for acquisition of tenure.

- *This provision should effect only teachers hired after the effective date of the bill and to rehired teachers who have lost tenure or failed to acquire tenure.*

★ EVALUATION

Current regulation requires that evaluations be conducted for tenured teachers. Critics of tenure reform argue that evaluations are, in some cases, simply not done. Establishing a new evaluation process in statute may be necessary to ensure that evaluations are properly conducted. Input from students, parents, public, teachers, and administrators in the design and periodic review of an evaluation process is desirable, as is requiring *input* from a teacher's peers, the public, and students, with the evaluation conducted by administrators.

★ AASB Recommendation

- *Teacher evaluations are important to an educator's success. AASB believes that input in the evaluation process from teachers, students, and the public is desirable.*

★ LAYOFF

Current law does not allow our schools to layoff tenured staff when a district's revenue declines (only if enrollment declines). This has resulted in deterioration of children's education programs, and nonretention of other critical staff (even nontenured teachers that have been actively recruited). This is especially unfair to children. Nontenured teachers who are outstanding in the classroom may have to be nonretained due to current tenure laws. It is also unfair to tenured teachers; layoff may be temporary, nonretention is permanent.

Creating a layoff status for teachers is long overdue. AASB supports creating a layoff status when it is necessary to reduce the number of teachers because of a decrease in school attendance or because it is determined by the local school board that a financial crisis exists.

An important issue when discussing layoff status is teacher qualifications. During financially difficult times, or at any time for that matter, teachers should be retained first by qualifications, then by seniority. HB 465 allows a district to retain a nontenured teacher over a tenured teacher only if there is no "qualified" teacher to replace the nontenured teacher. Defining the word "qualified" is critical.

★ AASB Recommendation

- *Create a layoff status in statute, with rehire rights, that is designed to meet the needs of kids and treat teachers fairly. Ensuring that the most qualified teachers are retained, especially during financially difficult times, is paramount to a successful educational program for kids.*
- *AASB supports qualification based on grades K-8 requiring an elementary endorsement, and grades 9-12 "requiring an endorsement for each subject area in which the teacher is to spend 40% of their time, or can show evidence of acceptable teaching experience in the subject."*
- *Waivers may be necessary to protect educational programs in rural areas or in small districts with multi-grade level teachers who are likely to be generalists.*

★ NONRETENTION STANDARDS

Under AS 14.20.175 tenured teachers may only be nonretained for reasons of 1) incompetence, 2) immorality, 3) substantial noncompliance, and 4) a decrease in enrollment. In statute, incompetence is defined as "the inability or the unintentional or intentional failure to perform the teacher's customary teaching duties in a *satisfactory* manner." We emphasize that the statute states that teaching duties must be accomplished in a "satisfactory manner." Courts, however, emphasize a stricter standard of incompetence.

★ AASB Recommendation

- *Re-examine use of the word "incompetence." If it is the legislature's intent that teachers are required to perform duties in a satisfactory manner, then that should be more clearly reflected in statute.*

★ DE NOVO

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 tenured teacher, and the teacher appeals the decision by the board. 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 entire process again before the court, usually at a much later date, and incur the financial cost once again.

★ AASB Recommendation

- *AASB views this requirement as duplicative and 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. Judicial 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 to determine that due process has been followed.*
- *AASB's primary concern is that the record be established one time only so that any duplicate legal costs are minimized.*

★ PUBLIC INFORMATION/NEGOTIATIONS

AASB believes that school boards should provide opportunities for public comment on the issues addressed in the collective bargaining process. Initial proposals, last-best-offer proposals, tentative agreements before ratification, and final agreements should be made public records and available for the public to review.

From:
Nancy Harris
Legislative Liason, Petersburg Board of Education
P.O. Box 750
Petersburg, AK 99833
772-4160
FAX 772-9360

To:
Rep. Cynthia Toohy
Co-Chair, House HESS Committee


On behalf of the Petersburg Board of Education, I urge you to support CS HB 465. Passage of this measure will give our school board and administrators valuable tools for improving the quality of instruction for all children in this district.

The tenure acquisition and evaluation provisions will help assure that we maintain high expectations for all teachers in the district, while assuring that those who can improve, and choose to do so, are supported. The layoff procedures and nonretention standards will meet the needs of students while treating teachers fairly, and the elimination of de novo trials will remove another costly stumbling block to maintaining a quality teaching staff.

The citizens of Petersburg, and throughout the state, are looking to their school boards for improvement in the quality of public education. Passage of CS HB 465 will help us address many local concerns about the our schools. It is the result of a great deal of work by school boards, parents, teachers, administrators, the Governor's Task Force on Professional Excellence, and legislators. Please give it your support.

Thank you for your work on behalf of the citizens of Alaska.

Sincerely,



Nancy Harris
Petersburg Board of Education



ALASKA

Post-it Fax Note 7671		Date 3/14/96	# of pages 1
To Rep Bunde	From FBX 210		
Co/Dept HUES CO-CHUR	Ca.		
Message WRITTEN TESTI	Phone MAIL FOR HB465		
Fax	Fax		

RE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE House Hess
 COMMITTEE ON HB 465 DATED 3-13-96
 BILL/SUBJECT COMMITTEE NAME

I oppose HB 465 and ask the members of the Hess committee to consider the following:

--This bill removes the finding of incompetence as a reason to get rid of a tenured teacher. Why? Do you want to keep incompetent teachers? To remove a teacher for any reason, abridges our right to academic freedom and treats us with disrespect.

--This bill singles out tenured teachers for layoffs...not highly paid administrators.

--This bill will allow school districts to get rid of their most highly qualified and experienced teachers. How can this help students?

--Lastly, unless the committee substitute for reductions in force is accepted, then school districts can claim any kind of financial need...without proof. Thus there is no incentive to manage funds carefully. Poor financial planning can thus be the reason for laying off the best teachers in a school district.

In conclusion, I can only wonder why HB 465 is even necessary. HB 398 came about as a result of all stake holders getting together, discussing the issues and most importantly, AGREEING on the issues.

SIGNED Cathy McCarquodale
 TESTIFIER

REPRESENTING (OPTIONAL)
737 9th Ave Fairbanks 99701
 ADDRESS/PHONE NUMBER 452-8459

Anchorage Education Association



Affiliated with The National Education Association
1840 South Bragaw Street, Suite 103, Anchorage, Alaska 99508
☎ - (907) 274-0536

To: House HESS Committee
From: Rob Pfisterer *RP*
President, Anchorage Education Association
Subject: HB 465
Date: February 13, 1996

I am unable to give oral testimony to the committee today. Therefore, I am sending you this written testimony on HB 465.

The Anchorage Education Association is opposed to this piece of legislation. The main reason is because the tenure statutes were designed to protect teachers from indiscriminate firings. This concept of tenure was created because we lived in volatile times and it was not unusual for school boards and communities to carry personal issues to the extreme of removal from employment.

This bill, HB 465, is intended to weaken the individual teacher's protection from indiscriminate action by administrators and school boards. It lengthens the time for acquiring tenure, changes the requirements for firing, gives school boards more latitude in laying off tenured teachers, and eliminates independent review for termination.

The impact of passage of this bill will be to demoralize teachers throughout the state of Alaska. We often teach in communities where politics enters into our job sites. Would the committee feel comfortable in teaching controversial topics knowing your job may be on the line? Would you feel comfortable knowing district revenues over 5 years had not kept pace with inflation (please name one district whose revenues have!)? What if a district determines it can't meet financial obligations (one district went into default and its administrator is now leading a rich district again)?

The only redeeming feature of this bill is that it at least touches upon evaluation. Yet even here the bill is not up to HB 398.

Once again the bills that come out of Juneau are not thoughtful, collaborative, or positive towards educational reform. In most aspects of this legislation it is weighted heavily towards the school board's agenda at the expense of the employee. This year we have seen the majority caucus recommend budget cuts for entitlement programs, reduction of wages and salaries, a Tier III retirement (comparable to the worst system in the country), a drastically

changed tenure process, giving public school money to private school students, and no increase to funding for school districts that are in desperate need.

Perhaps the committee needs to think of the unintended consequences of the combined effect of these legislative actions upon our profession. Would you advise people new to our profession to become a teacher here? Will this attract the best and the brightest to our profession? Will students be better prepared for the future if these types of legislation are passed?

For me the answer is clear. HB 465 and the other pieces of legislation are counterproductive to improved education in Alaska.

Alaska State Legislature

Please enter into the record my testimony to the H.E.S.S.
committee on HB 465 Employment of teachers et. (committee name) dated 2/13/96
bill/subject

I oppose the provisions of HB 465.
HB 465 would substantially change the
relationship between the School District and
the District's certificated staff.

Specifically, I oppose deletion of A de
novo hearing which allows an impartial
third party to examine all information that
might pertain to a teacher dismissal case.

I also object to a district being
allowed to reduce tenured staff due to
reduction in per pupil revenue. Reduced
student population makes sense and is part
of the current law for staff reduction.

I recommend that you kill HB 465-

Signed: John A. Cote John A. Cote Phone (907) 225-3678
Testifier

Representing (Optional)
P.O. Box 9350, Ketchikan 99901
Address

Fax transmitted from Ketchikan Legislative Information Office
Phone: 225-9675 Fax: 225-8546

465-2137

Alaska State Legislature

Please enter into the record my testimony to the HESS
committee on #HD 465 (committee name) dated 2/13/96
bill/subject

This bill is far worse than what passed the legislature and was vetoed last year. This bill is unadulterated garbage and will not improve education one iota. Why is this bill even receiving a hearing? This is not the compromise agreed to by various groups at the request of the governor. The governor will veto this bill if it makes it that far. Why are you wasting all our time? Kill this bill!

Signed: Bruce A. Stanton Phone: 907-225-4470
Testifier

Representing (Optional)
177 Shoup St. S, Ketchikan, AK 99901
Address

Fax transmitted from Ketchikan Legislative Information Office
Phone: 225-9675 Fax: 225-8546



ALASKA COUNCIL OF SCHOOL ADMINISTRATORS

326 Fourth St., Suite 404, Juneau, AK 99801-1101 • (907) 586-9702 • (800) 478-9702 • FAX (907) 586-5879

POSITION PAPER

CSHB 465

"An Act relating to employment of teachers and school administrators and to public school collective bargaining"

The Alaska Council of School Administrators supports the CS of House Bill 465.

We believe that the focus of every school in Alaska must be on the children. To that end, we believe that they deserve to have effective, talented and knowledgeable educators in their classrooms and their schools. This is why we are willing to be accountable as administrators for the responsibility bestowed on us as principals.

We believe Sec. 3, AS 14.20 **Employee Evaluation** to be fair to all professional educators who have direct contact with students. It allows for a thorough review of the performance and if necessary a period of improvement which will provide time for professional growth and evaluation.

It is unfortunate that we must consider reductions in force due to significant, demonstrated reduction in per-pupil expenditures. We would much prefer the necessary increases of school funding to allow for significant class size reductions. However, understanding the reality of the current revenue forecasts and budget deliberations, there must be a mechanism in place to allow school districts to reduce staff due to **serious financial shortfalls**. The process outlined in this legislation allows for a student focused process.

It has been proven that a school district which allows for **public involvement** in all areas of their schools is more productive and publicly supported. To that end, the allowance for public input in the negotiations process is a positive step in that direction.

Overall, this legislation will set up a procedure which will provide one more avenue for providing an educational standard to our schools which will have far reaching benefits to Alaska's children.

Stephen McPhetres, Executive Director, ACSA



Alaska State Legislature

Please enter into the record my testimony to the House HESS
committee name
 committee on HB 465, dated March 14, 1996.
bill/subject

I am opposed to HB 465. The bill takes away local control in bargaining rights. It is also inconsistent in its wording which makes it unclear. Please consider the Governor's bill.

Signed: [Signature]
 Testifier

Representing (Optional)
523 Quicksilver Circle, Palmer, AK 99645
 Address
907-745-0103
 Phone No.

Notes for HB 485

Good afternoon, committee members, I am Marilyn Leahy, president of Valdez City School Board. I appreciate the opportunity to speak to you again on this issue. Since the last time I spoke to you the committee has taken a good bill and turned it into an excellent bill, one that challenges school districts to set high standards and gives Boards the tools they need to achieve those community standards. I commend the author of the bill, and those who have worked so hard to craft such good legislation.

Strengths of this bill

- are in the community and teacher involvement in the process of setting standards. Both the community and teachers will be involved in setting the local evaluation criteria, and the public will have input to the evaluation process itself.
- layoff procedures are clarified, so that if circumstances require a school board to resort to this drastic measure, we can do so without tearing our educational programs to pieces. Rehire rights for the affected teachers are ensured.
- the change in the dismissal proceedings takes into account the legal protections for individuals that already exist, and that are part of the obligations of school board members. The new law provide for oversight of school boards without attempting to replace our authority. I believe that the rights of the individuals have been fully addressed by the proposed legislation, and our role as elected officials has been reinforced

I believe that this bill strikes exactly the right balance between the rights of the individual employee and the needs of the citizens to establish and maintain education standards for their communities. If passed, I believe that this law will improve the quality of instruction, improve school board accountability to their districts, and call us all to raise our expectations of education in Alaska.

Post-It™ Fax Note	7671	Date	# of pages ▶ 1
M. Hess		From	Valdez R10
Co. Dep. (60528)		Co.	
Phone # HB 465		Phone #	835-2111
Fax # 465-3871		Fax #	

Bill would chill Teachers ability to discuss controversial topics -
School Board hires Super. to set educ. tone.

* The fundamental roots of democracy rest in the hands
of teachers. This legislation supports a democratic
institution becoming autocratic - instilling a
fear of retribution should a teacher question
mainstream beliefs.

We have many examples of having found our
greatest truths in the voices of the minority.
We recently celebrated Ely. Peratrovich as we
listened to her words regarding treatment of
Native Alaskans.

Define the difference between political vs instructional
evaluations

John Norton
Juneau, Alaska



NEA-ALASKA Position Paper

Teacher Tenure In Alaska

Alaskan teachers have enjoyed statutory tenure rights since at least 1960 [Alaska became a state in 1959]. The two year probationary period has remained constant. The reasons to justify dismissal of a tenured teacher - incompetency, substantial non-compliance, or immorality have remained unchanged. In 1966 the legislature adopted a bill that provided for a trial *de novo* for a tenured teacher who has been dismissed for one of those reasons. A trial *de novo* is a new trial in Superior Court to ensure a new and complete examination of the evidence and testimony against the teacher rather than a procedural review of the school board hearing that resulted in the teacher's dismissal. The objective of a trial *de novo* is to determine the facts of the dismissal and whether or not those facts support the charge of incompetence, substantial non-compliance, or immorality and, therefore, warrant dismissal.

The records indicate that the legislative thinking at the time this legislation was enacted included at least the following points:

- ◆ Academic freedom requires more than the usual employment protections - otherwise teachers will avoid, for their own security, studies of controversial issues, innovative approaches to instruction, or even disciplining students if it might prove to be too difficult.
- ◆ Teachers often have valuable ideas or viewpoints about educational systems, and policies that must be heard - even if contrary to the ideas or viewpoints of school administrators or school boards. In order to ensure that teachers would contribute their ideas and viewpoints there has to be protection from those who have the power to terminate the employment relationship.
- ◆ There needed to be a system by which the hearing process was fair for a dismissed teacher. It is fundamentally unfair that the accuser is also the

judge and jury. School board members do not usually have the expertise or skills to ensure that the hearing is fair and impartial.

- ◆ Continuity in the teaching staff and instructional program was important enough to justify greater employment protections for teachers. Frequent and/or massive turnovers because a new superintendent or school board members decided to use their authority to hire and fire in order to employ friends or political allies was deemed to be not in the best interests of children or the society as a whole.

These discussions about providing tenure and trial *de novo* for teachers took place in a decade of turbulent political debate. The Vietnam war, Cold War politics, and civil rights activism permeated American life including life in Alaska. The legislators understood very well that schools were caught up in the national debate on these and other volatile topics. They also understood that teachers courageous enough to engage in these debates - and courageous enough to ensure that the locally unpopular position in the debate was given a fair hearing - needed the added employment protections of tenure and trial *de novo*.

Are these protections antiquated? No longer needed in the 1990's? Certainly not. As much as ever, school personnel, curriculum, access, academic freedom and funding have their critics and are focal points of controversy. Teachers - what they say and how they teach - have never been free of critical scrutiny or litigious challenge and the future promises no relief. Tenure and trial *de novo* continue to be the most reasoned and fairest approaches to protecting our society's interest in educating our youth for their participation in a democracy that values much individual freedom [but that is inherently controversial] - and still see to it that competent, disciplined, and moral teachers are not fired for political or personal reasons.

TENURE - MYTHS AND REALITIES

MYTH # 1: Tenure means a life time job.

REALITY: The term tenure applies to a teacher who has successfully passed the two year probation period and can only be dismissed for specific failures as a professional employee. A teacher who is incompetent, insubordinate, or immoral can be terminated. The incompetence, insubordination, or immorality needs to be documented and provable. Prior to acquiring tenure a teacher can be dismissed for any cause the employer deems appropriate, even if the teacher's evaluations have been outstanding. Also, a teacher dismissed for gross moral misconduct potentially could have her/his teaching certificate suspended or revoked by the Professional Teaching Practices Commission [PTPC].

MYTH # 2: Tenure means a teacher can slack off or coast on the job.

REALITY: There is simply no evidence that shows that tenure causes teachers to become lazy in their professional pursuits. However, if any teacher - tenured or not - slacks off or coasts on the job, the school district administration should identify the lack of performance in that teacher's evaluations. If the teacher's performance does not improve, the administration has established the documentation and proof necessary to terminate the employee for incompetence, or possibly insubordination.

MYTH # 3: Tenure protects bad teachers

REALITY: If a "bad teacher" is defined as one who is incompetent, insubordinate, or immoral then tenure does nothing what-so-ever to protect that teacher [see above points].

Administrators who have the power to evaluate, but fail to do so - or fail to do so fairly and objectively - or overlook shortcomings because of a personal relationship with the teacher - are the real protection for incompetent teachers.

If, however, a "bad teacher" is defined as one who addresses curriculum-related controversial issues in the classroom, or who, for whatever reason, is unpopular with the administration - then the protections of tenure are absolutely necessary.

MYTH # 4: Two years is an inadequate probationary period - it ought to be longer

REALITY: Probationary periods are generally much shorter for other employees - three to six months for other district employees and not more than a year in most other industries. Dismissal after the probationary period must generally be for cause - incompetence, insubordination or moral fault. Two school years is sufficient to make a decision - and if the district administrators or board members have any doubts about the teacher's abilities, current law allows them to terminate that teacher for any cause they deem appropriate.

MYTH # 5: Tenure benefits only the teachers - not the students or the society at large

REALITY: While it is true that tenured teachers do enjoy increased job security over non-tenured teachers, they are not the only beneficiaries. The interests of our democracy are better served when teachers feel secure enough to address controversial issues in the classroom and to engage in critical discussion of policies and procedures. Another benefit accrues when students and schools do not have to endure the stress of frequent turnovers in the faculty because of a new administration or local politics.





NEA-ALASKA

Affiliated with the National Education Association

NEA-ALASKA POSITION ON TEACHER TENURE

March 14, 1996
House HESS Hearing

General Comments:

Historically, NEA-Alaska has opposed changes to the current tenure laws. We believe that our tenure laws have been good for public education and for our state. Tenure provides for a more stable teaching staff within school districts and plays a major role in the successful learning process.

Originally, the principal purpose of teachers' tenure laws were to secure stability and continuity in the teaching force. Tenure laws do not protect poor teachers, but do protect the "continuing service status" of teachers. The laws protect "good" teachers from cancellation of their contracts for political, personal or arbitrary reasons.

One factor shown to be significant in the achievement level of students is the stability of the teaching staff. The greater degree of experience within the district and within teaching, the higher the achievement of students. Several districts in Alaska have cited high teacher turnover as a serious problem within their respective districts.

According to the 1995 UAF Teacher Placement's Statewide Educator Supply and Demand Report, "The demand for educators in the State of Alaska remains high. With 817 new hires in 1995, the number of educators hired has remained extremely consistent over the last four years. Teacher shortages still exist in rural areas."

For several years we have heard concerns from administrators and school boards that two years was not enough time to evaluate a nontenured teacher, as well as concerns about increasing cost in dismissal cases. In the spirit of compromise and with a sincere desire to improve the quality of education, last year NEA-Alaska agreed to several significant changes to the existing tenure laws. This was a departure from our more traditional union position; however, for many years we've said that the problem was not tenure, but that there were problems in the area of evaluation, professional development, and supervision.

I was part of a group (including school board members, parents, administrators) that met and with the assistance of the Commissioner and Department of Education developed a bill whose purpose was to improve our profession and at the same time address some of the issues.

We agreed, as a group, to changes which included:

1. Changing the probationary period from two to three years,

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2. Adding an evaluation section to state law, as opposed to evaluation being part of state regulations,
3. Providing options, in the dismissal process, for both teachers and school districts, saving money for both,
4. Adding layoff language if a district determined a financial emergency existed, and
5. Changing the term "tenure" to continuing employment status for purpose of clarification.

The Association of Alaska School Boards' position paper in support of HB 465 states that "Improving education in the classroom starts with quality educators. Current tenure laws provide inadequate time for administrators to thoroughly evaluate teachers. It also gives insufficient time for teachers to improve. This can shortchange a new educator's career or result in less than full qualified teachers receiving tenure." With those ideas in mind, I agreed to last year's compromise bill -- to improve the quality of education and educators.

However, in the most recent comparison of key issues which supports HB 465, AASB describes teacher tenure as "A form of job protection provided to no other class of public employees; accused of promoting unchecked, lifelong employment security and hindering efforts to improve quality education." If that is the spirit and attitude behind CS HB 465, I am very disappointed and disheartened. I feel that we are caught in a cycle of blaming and punishing. Some seem to believe that if they say how terrible tenure is enough times, then surely it must be true.

NEA-Alaska's Position on CS HB 465

"An Act relating to employment of teachers and school administrators and to public school collective bargaining."

As one of the members of the committee that met last year and developed a compromise bill, I appreciate the efforts of the sponsor to include some of the recommendations in the Committee Substitute for HB 465. However, speaking for members and as President of NEA-Alaska, I must address serious concerns about CS HB 465 as written.

Sec.3. Employee Evaluation (p.2)

NEA-Alaska's Position on the Employee Evaluation Section.

As I have stated, NEA-Alaska supports a comprehensive evaluation process for both tenured and non-tenured teachers. We believe that the design and content of an evaluation system should be made at the local level. Evaluations systems should include professional performance standards, as well as a clear and objective assessment instrument. CS HB 465 mandates certain aspects of an evaluation system, some we support and others we do not.

In the amended bill, we support:

1. The requirement of an evaluation system included in state law,
2. A system based on professional performance standards adopted by the department,
3. Including students, parents, community members, teachers and administrators in the design and review of the evaluation system,
4. Evaluations that are based on classroom observations,
5. Additional observations of nontenured teachers, and
6. A required, annual evaluation of tenured teachers.

We do not support:

1. Students, parents, community members, peers, and administrators providing information on the performance of a teacher, if it is to be used in the formal evaluation. That is the responsibility of the district and the school administrators.
2. Requiring a plan of improvement without specifics. It will cause many questions, many opportunities for individual and arbitrary decisions, and misuse. For example, does one part of an evaluation that is found to "less than acceptable" mean that a teacher will be given a plan of improvement? And if so, what will be the timeline for the plan? Will there be help from the district to address the unacceptable area? Will the teacher be provided an opportunity to refute the negative evaluation?

NEA-Alaska's Recommendations:

Since this section of the bill includes specific language regarding the evaluation system, we feel that additional and precise language should be included.

An evaluation process should include:

1. The establishment of job descriptions, as well as professional performance standards,
2. A pre-evaluation interview which includes but is not limited to the establishment of performance goals for the teacher, based on the job description and professional performance standards,
3. An annual, comprehensive evaluation based on written criteria which include the performance goals,
4. A post-evaluation in which (a) the results of the evaluation are discussed with the teacher and (b) a written program of assistance for improvement is established, if one is needed to remedy the problem,
5. Including the evaluation instrument in the personnel files of the district office,
6. Placing the written evaluation in the teacher's personnel file after reasonable notice to the teacher,
7. Providing a teacher an opportunity to make a written statement relating to any evaluation, reprimand, charge, action or any matter placed in the teacher's personnel file and to place the teacher's written statement in the personnel file, and
8. The personnel file shall be open for inspection by the teacher, the teacher's designee and the district school board and its designee. District school boards shall adopt rules governing access to personnel files, including rules specifying whom school officials may designate to inspect personnel files.

Other considerations for this section:

1. Evaluation of non-tenured teachers is not addressed.
2. There is not a clear definition of "less than acceptable." What is the criteria that will be used?
3. Is there an opportunity for non-tenured teachers to be placed on a plan of improvement if their evaluations are found "to be less than acceptable?"
4. Specific guidelines for the time for the plan of improvement. Why does the bill state that it "shall not last for more than one year"? Since this section of the bill is related to the nonretention section of state statute and the date for notifying a tenured teacher about nonretention is by March 16, could a plan of improvement be limited to the time between March 16 and the end of the school year? Is that sufficient time to demonstrate improvement? (Evaluations for tenured teachers are often conducted during the first two weeks of March.)

Sec. 4. Acquisition of Tenure Rights (p. 4)

NEA-Alaska's Position:

Although we have resisted changing to the current time for acquiring tenure, but we are willing support the additional year, if other sections of this bill address concerns about evaluation, layoff, and dismissal.

We support including the October 15 date.

Sec. 8. Nonretention (p. 5)

NEA-Alaska's Position:

We do not support substituting the standard of "incompetency" for the new language "failure, after implementation of a plan of improvement, to receive an evaluation of at least acceptable performance under the teacher evaluation system..."

The language is too vague. It has the potential to be used and interpreted differently in all 53 school districts and in the 400 plus schools in our state. There is a definition, an understanding, and a legal record of the term "incompetence."

Sec. 9. Reductions in Force (p.5)

NEA-Alaska's Position:

The section that deals with layoff assumes that there will be a reduction of expenditures for our public schools. If Alaska is to keep up with technology and maintain a quality public education system for all students, we should be working for ways to increase, not decrease the per pupil expenditures.

NEA-Alaska's Recommendations:

The layoff section should include:

1. The layoff plan should include a "public report" by the school board before taking any layoff action relative to the full impact of layoffs and include positions, programs, services which will be cut, changed or diminished.
2. All discussions/documents leading to a local school board decision to effect layoffs must be public, a matter of public record, and available in a timely manner to interested parties and to recognized bargaining agents.
3. The district must exhaust all viable and reasonable alternatives before layoff of teachers and classified employees.

4. The district is required to negotiate with the recognized bargaining agent(s) the impact of any layoff decision.

5. District-wide seniority will prevail within bargaining units unless the parties have mutually agreed to something different in negotiations.

6. There should be some provision for a statewide hiring preference for anyone on a school district recall list as a result of layoff because of a financial emergency if the teacher is qualified for openings in other districts and the teacher should be required to serve a probationary period of no more than one year in his/her new district.

7. The plan should include proportional layoff for school administrators and central office personnel. The impact on the classroom should be the greatest consideration for the district.

8. If teachers are assigned to teach out of their endorsement area for more than 40% of their time, the following should be applied:

a. Within 5 years, the teachers will earn, at the district's expense, the equivalent of an academic minor in the area to which he/she has been assigned

b. Classroom experience should be accepted in the assigned area for credit in lieu of the academic coursework necessary for an endorsement.

c. A teacher who has previously taught outside his/her endorsed area(s) for four or more years will be awarded an endorsement in that area. To receive the endorsement, the teacher will submit to the DOE a notarized statement from the district of those teaching assignments.

Sec. 10. Procedures of Dismissal or Nonretention (p. 7)

NEA-Alaska's Position:

We support a judicial appeal that assures a tenured teacher will receive an independent, unbiased review of his/her dismissal or non-retention by a judge.

Sec. 11. Public Involvement in School District Negotiations (p.8)

NEA-Alaska's Position:

We support this section of the bill.



Alaska

Post-It™ brand fax transmittal memo 7571		# of pages = 26
To	HOUSE HESS	From MAT-SU L10
Co.	Rep BUNDE	Co.
Dept.	465-4843	Phone # 376-3704
Fax #	465-3871	Fax # 376-6180

Please enter into the record my testimony to the House Hess
 committee on HB 465, dated 3/14/96
 committee name
 bill/subject

I would like to voice my opinion
 in opposition to this bill there is too
 much confusion on how a plan of improvement
 for a teacher and ability of being fired before
 carrying out plan of improvement.

I think much more work needs to
 be done on this bill.

Signed: Linda Beachard
 Testifier

Representing (Optional)
Box 71, Willow AK
 Address
728-1550
 Phone No.



Please enter into the record my testimony to the House HESS
committee name
committee on HB 465, dated March 14, 1996
bill/subject

I am opposed to H.B 465. This bill puts the tenured teacher on "unstable ground." Job security is threatened. The plan for improvement is contradictory. Specifics to be included in this plan of improvement are lacking. This bill will affect teacher moral in a negative manner. HB 465 takes the professionalism away from the educator.

Signed: Tom Hermon
Testifier

Representing (Optional)
P.O. Box 3645 Palmer, AK 99645
Address
907-746-3482
Phone No.



KASHUNAMIUT SCHOOL DISTRICT

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

March 13, 1996

Members of House HESS Committee
Juneau, AK 99801

Re: CS for HB 465

Dear Representative:

I urge your careful consideration of CS for HB 465. This bill supports excellence in instruction, it provides substantial safeguards for teachers while requiring accountability, and it helps school districts conserve scarce resources.

Based upon my experience in public school management of almost thirty years, I believe this is an excellent bill, with the exception of two areas wherein minor modifications would serve to strengthen it. The first area of concern is Sec. 14.20.149 (b)(7), which requires opportunity for incorporation into the evaluation process of information provided by "students, parents, community members," Such procedures are likely to produce side effects that are inappropriate and counterproductive to a professional evaluation process designed to improve instruction and to assist in making personnel decisions. For example, educators might cater to those students, parents, and others who they believe might be influential in their evaluations, public campaigns might be waged for or against particular educators, and educators might inappropriately reward or punish those who made reports affecting their evaluations.

Although the possible catering, campaigns, and paybacks would tend to detract from a serious professional process, another issue is of greater concern. An educator would have the right to confront and cross examine at a hearing any person who provided information used in an adverse personnel decision. It takes little imagination to see that having students, parents, and community members routinely brought in as witnesses in quasi judicial proceedings would probably be much more detrimental than beneficial.

For the reasons cited, I strongly recommend that this section be permissive rather than mandatory. Thus, if districts encountered the types of problems indicated above, they could discontinue the practice of formally incorporating input from students, parents, and others into the evaluation process itself.

The other area of concern is Sec. 14.20.149 (c), which seems to limit evaluators to regularly employed district administrators, to the exclusion of persons who might be retained on a contractual basis. I believe this is unnecessarily restrictive. A district should be able to contract with a person with expertise in supervision of instruction who has a Type B certificate and is trained in the district's evaluation system but who is not a regular employee of the district.

With the two minor modifications suggested above, I urge your support of CS for HB 465 as an excellent bill that will benefit public education in Alaska.

Sincerely,

A handwritten signature in dark ink, appearing to read "B. A. Weinberg". The signature is fluid and cursive, written over a light-colored background.

B. A. Weinberg, Superintendent
KASHUNAMIUT SCHOOL DISTRICT