



**HB**

**482**



# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN  
ADMINISTRATION REGULATION REVIEW COMMITTEE, CHAIRMAN  
JUDICIARY COMMITTEE, VICE-CHAIR

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## Representative Tom Anderson

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### Sectional Analysis for CSHB 482 (EDU)

**Section 1:** Amends state law dealing with school safety and discipline by adding a new section Article 4 Harassment, Intimidation, and Bullying. The new Article 4 has five subsections:

**Sec. 14.33.200:** Harassment, intimidation, and bullying policy.

- (a) Requires school districts to adopt a policy on harassment, intimidation, and bullying by July 1, 2007 and share this policy with parents or guardians, students, volunteers, and school employees.
- (b) Outlines the policy adoption process, policy emphasis and other requirements to be included in the new policy.
- (c) Suggests the Department of Education to provide model policy to school districts by January 1, 2007. This will give school districts six months to adopt policy as required by (a).

**Sec. 14.33.210:** Reporting of incidences of harassment, intimidation, or bullying.

Beginning with the 2007-2008 school year, each school district may report to the Department all incidences involving harassment, intimidation, or bullying. The Department will then take all the data and report it to the House of Representatives and the Senate.

**Sec. 14.33.220:** Reporting; no reprisals.

- (a) A school employee, student, or volunteer is not allowed to engage in reprisal, retaliation, or false accusation against a victim or a witness.
- (b) A school employee, student, or volunteer who has witnessed, or has harassment information is encouraged to report the incident to an appropriate school official.
- (c) Does not prohibit actions taken with the school districts policy.

**Sec. 14.33.223:** Immunity from suit.

Any school employee, student, or volunteer who promptly reports an incident of harassment, intimidation, or bullying to an appropriate school official is immune from a cause of action for damages arising.

**Sec. 14.33.250:** Definitions.

Provides definitions of "district" and "harassment, intimidation, or bullying".

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## Representative Tom Anderson

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### SPONSOR STATEMENT FOR CSHB 482

**TITLE:** "An Act relating to harassment, intimidation, and bullying in schools."

House Bill 482 encourages school districts, city and borough offices of education, law enforcement agencies, and youth-serving agencies to develop and implement interagency strategies. Some of the possible programs may include in-service training programs and other activities to improve school attendance and reduce school crime and violence. HB 482 will reduce vandalism, drug and alcohol abuse, gang membership, gang violence, hate crimes, bullying, teen relationship violence, and discrimination and all harassment, including sexual harassment, in grades K-12.

Recent research studies suggest bullying has a negative effect on the social environment of schools. Bullying creates a climate of fear among students, inhibits their ability to learn, and leads to other anti-social behavior, such as vandalism, shoplifting, skipping and dropping out of school, fighting, and the use of drugs and alcohol. Sixty percent (60%) of the males studied who were bullies in grades six through nine were convicted of at least one crime as an adult. Thirty-five (35) to forty percent (40%) of these former bullies had three or more convictions by 24 years of age. Successful programs to recognize, prevent, and effectively intervene in bullying behavior have improved safety and create a more inclusive learning environment.

Currently, 20 states have an anti-bullying law: Arkansas, Arizona, California, Colorado, Connecticut, Georgia, Illinois, Indiana, Louisiana, Maine, New Hampshire, New Jersey, New York, Oklahoma, Oregon, Rhode Island, Tennessee, Virginia, Vermont, Washington and West Virginia. Also, 23 other states have introduced anti-bullying legislation so far for the 2005-2006 Session: Alabama, Arizona, Arkansas, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kentucky, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New York, Ohio, Pennsylvania, South Carolina, Tennessee, Utah, West Virginia, and Wisconsin. Of those states that have bullying statutes, nine are adding/revising legislation.

Our children deserve to learn without fear in a safe school environment.

I ask for your support with HB 482.

# Fairbanks Daily News-Miner

## Don't be a bully

**Wednesday, March 15, 2006** - Have things gotten so bad in Alaska schools that it's time for the state to step in with a law barring the harassment, intimidation or bullying of students? Apparently. Why else would Alaska need such a law as that under consideration later this week in the state House?

The superintendent of Fairbanks' public schools says she's noticed an increase in bullying in the past decade, and the school board in September adopted a policy against it. "Intentional and generally unprovoked attempts by one or more individuals to inflict physical harm or emotional distress upon another person or group is prohibited and may result in disciplinary action."

Seems pretty clear.

The item in the Legislature, House Bill 482, would require each school district to have a policy against such behavior, would require the state to help districts establish such policies, and would require districts to make annual reports to the Department of Education and Early Development, which would provide the results to the Legislature. Whether the bill goes anywhere is anyone's guess looking from the outside.

For the moment, though, the bill by Anchorage Republican Rep. Tom Anderson provides an opportunity to talk about bullying and the harm it can do. It's an opportunity to remind parents to talk to their children about what's right and what's wrong and how children should relate to one another.

Kids are kids, and they are mean to each other at times--often fiercely so. That's probably not going to change much, but that's no reason to accept bad behavior. Accepting it will only allow it to become more widespread. But what is bullying? How is a parent to recognize it to be able to deal with it?

Common sense will tell. Seeing some of the definitions in the school district's new policy does bring out the reaction, "Well, that's what kids do." Punching, hitting, hair pulling, biting, ostracizing, name-calling and so on. But the policy does include more serious forms of harassment and intimidation such as sexual propositioning and unwanted physical contact.

All of those, and other bullying, can disrupt a child's schooling and well-being. That's reason to strive to eliminate it.

Reducing the amount of bullying and harassment has been one of the topics in a grant-funded Safe Schools, Healthy Students program of the Fairbanks North Star Borough School District, which on April 19 is having a "Bullying Prevention" seminar for school administrators, school board members and parents.

The school district's workshop and the legislation to be discussed this week in Juneau both are opportunities to bring more public awareness to what can become a ruinous torment for a child.

# Fairbanks Daily News-Miner

**The cyber-bully: A new danger**  
By HEATHER STEWART

**Wednesday, April 05, 2006** - When you say the word bullying, everyone has a picture in their mind of the schoolyard bully. However, bullying has reached far beyond the schoolyard fences. Children are now being bullied via the Internet, cell phones, Web pages and various other media. On any given day, any one of our children could be teased, threatened, or tormented by bullies. Nationally, according to a student survey by the University of New Hampshire, 1 in 17 children age 10 through 17 have been threatened online. When you consider 605 million people are online worldwide and that 20 percent of them are kids and teens between the ages of 12 and 17, that is an alarming number. A 2002 study in Great Britain reports 1 in 4 children are bullied online.

What is this new form of bullying? Bullying itself is intentional repeated aggressive behavior that involves an imbalance of power or strength between those involved. Cyber-bullying is repeated aggression and tormenting through e-mail, instant messaging, Internet chat rooms, and electronic gadgets like camera cell phones where bullies forward and spread hurtful images and messages. Bullies use this technology to harass victims at all hours, in wide circles, and at warp speed. The anonymity offered by this technology encourages some children to say things on the computer that they would never say face-to-face. Cyber-bullies feel removed from their actions and without tangible feedback (hurt feelings, tears) there is no remorse or empathy. This behavior peaks in middle school when adolescents are figuring out who their friends are and whether they fit in. Both boys and girls bully, and both get bullied.

Bullying is not an acceptable part of growing up.

All children involved in bullying incidents are at risk. Bullied children are more likely than their peers to be depressed, lonely, anxious, have lower self-esteem, and miss days from school. Children who bully are more likely than their peers to get into frequent fights, steal, damage property, drink alcohol, drop out of school, and carry a weapon. Children who watch but don't participate are also at risk. These "bystanders" tend to have diminished empathy, decreased trust in adults, and believe that bullying and aggression are acceptable behaviors.

That's the bad news. The good news is that we can decrease bullying if everyone--students, parents, schools and the community--gets involved. Preventing and stopping bullying takes a team effort.

The Fairbanks North Star Borough School District is taking a proactive approach to addressing bullying. Policies have been developed that define and outline consequences for intimidating behavior and bullying. School staffs are training on bullying prevention, and several schools are implementing anti-bullying programs. Schools are also on the alert to squelch cyber-bullying. School computers are monitored and, if used inappropriately, students face serious consequences.

Parents need to be part of the team. Parents: It is important to talk to your children about what they can and cannot do online. Learn everything you can about the Internet. Have your children show you "what's cool." "Surf the net" as a family. Place the computer in an area where you can monitor your children on the Internet. Talk about online safety such as protecting passwords, not talking to online strangers, and never meeting in person someone they met online. Look into safeguarding-programs or

options your online service provider might offer.

The cyber-bully believes they cannot be caught, but everyone leaves cyber-footprints. If you believe your child has been a victim of cyber-bullying, you should save the information. Keep copies of the e-mails, print the Web pages, leave the computer on, and call the authorities (Internet service provider, law enforcement officials, and your child's school).

The Safe Schools/Healthy Students project has the following materials available: "Take Action Against Bullying" (guide), "Bullying is Not a Fact of Life" (booklet), and "15+ Make Time to Listen-Take Time to Talk ... About Bullying" (conversation starter cards), to provide practical guidance so parents can intervene appropriately whether their child is the bully or is being bullied. Parents can pick up these materials from the Safe Schools/Healthy Students office at Ryan Middle School or by calling 452-4751 ext. 9396. Material is also available on line at [www.northstar.k12.ak.us/safeschools/](http://www.northstar.k12.ak.us/safeschools/).

We have a responsibility to keep our children safe. By raising awareness about bullying and its negative impacts, educating ourselves on what we can do to break the cycle of violence and by addressing potentially harmful actions quickly before they escalate to chronic violent behavior, everyone's story can change for the better.

Heather Stewart is Safe Schools/Healthy Students director for the Fairbanks North Star Borough School District.

Web posted March 17, 2006

## **Legislation aims to help curb bullying** *Juneau schools have already taken action*

**By ERIC MORRISON**  
*JUNEAU EMPIRE*

It may be the school bullies who have to watch their backs in 2007.

House Bill 482, "An act relating to harassment, intimidation, and bullying in schools," was introduced to the House Special Committee on Education on Thursday morning. Sponsored by Rep. Tom Anderson, R-Anchorage, the bill allows schools to create anti-bullying policies to create safe and healthy learning environments in classrooms from Alaska.

"It's a very good thing for our students and I just hope they can learn in a very safe learning environment," legislative aide Crystal Novotney, who introduced the bill on behalf of Anderson, told the committee.

Some districts have acted already. Juneau School District's harassment policy covers bullying.

The bill would give schools the option of adopting a policy by July 1, 2007, to curb violence and intimidation in schools. It also would suggest that schools report any bullying activity to the Department of Education and Early Development by each January 31 beginning with the 2007-2008 school year. It also shields students, school employees and volunteers from reprisals or from lawsuits if they report such activity.

"A lot of time what happens in schools is they turn their other cheek, basically," Novotney said. "They understand that it's happening but the big debate is, 'Well kids will be kids.'"

The bill defines harassment, intimidation or bullying as an "intentional written, oral, or physical act" that causes physical harm, interferes with education, creates a threatening environment, or disrupts school operations.

Rep. Bob Lynn, R-Anchorage, said there are laws on the books that already protect students.

"This is another layer of paperwork that needs to be done that takes away the time of teaching basic subjects and also takes away the time supervising student behavior, which includes bullying," Lynn said.

National Education Association-Alaska Executive Director Tom Harvey testified before the committee, saying the bill provides a mechanism by which a school can produce a better climate for students to learn and teachers to teach. He said the bill would help because some schools in Alaska are getting falling grades under the federal No Child Left Behind Act, unable to meet the attendance requirements.

"Students stay home because they are bullied," Harvey said. "They stay home, they miss attendance schedules and we have a failing school under No Child Left Behind. That is not appropriate."

Rep. Carl Gatto, R-Palmer, questioned whether a certain amount of bullying is actually beneficial to a student's success.

"Is there a part of growing up where you have to have conflict or you won't tolerate society?" he said.

Sara Vitaska, a policy associate for the National Conference of State Legislatures, told the committee that 21 states have enacted anti-bullying legislation and at least 24 states introduced similar legislation in the 2005-2006 session.

With Lynn dissenting, the committee voted 4-1 to move the bill to the Health, Education and Social Services Committee. Rep. Peggy Wilson, R-Wrangell, and Rep. Woodie Salmon, D-Chalkyitsik, were absent.

## Bullying Statistics

## BULLYING STATISTICS

- Thirty percent (30%) of U.S. students in grades six through ten are involved in moderate or frequent bullying — as bullies, as victims, or as both — according to the results of the first national survey on this subject.
- Bullying is increasingly viewed as an important contributor to youth violence, including homicide and suicide. Case studies of the shooting at Columbine High School and other U.S. schools have suggested that bullying was a factor in many of the incidents.

## RECENT STATISTICS SHOW THAT:

- 1 out of 4 kids is Bullied. The American Justice Department says that this month 1 out of every 4 kids will be abused by another youth.
- Surveys Show That 77% of students are bullied mentally, verbally, & physically.
- In a recent study, 77% of the students said they had been bullied. And 14% of those who were bullied said they experienced severe (bad) reactions to the abuse.
- 1 out of 5 kids admits to being a bully, or doing some "Bullying."
- 8% of students miss 1 day of class per month for fear of Bullies.
- 43% fear harassment in the bathroom at school.
- 100,000 students carry a gun to school.
- 28% of youths who carry weapons have witnessed violence at home.
- A poll of teens ages 12-17 proved that they think violence increased at their schools.
- 282,000 students are physically attacked in secondary schools each month.
- More youth violence occurs on school grounds as opposed to on the way to school.
- Playground statistics - Every 7 minutes a child is bullied. Adult intervention - 4%. Peer intervention - 11%. No intervention - 85%.

## ACCORDING TO THE BUREAU OF JUSTICE STATISTICS - School Crime and Safety:

- 48% of males, and 26% of females reported they had been in physical fights.
- Those in the lower grades reported being in twice as many fights as those in the higher grades. However, there is a lower rate of serious violent crimes in the elementary level than in the middle or high schools.
- Teenagers say revenge is the strongest motivation for school shootings
  - — 87% said shootings are motivated by a desire to "get back at those who have hurt them."
  - — 86% said, "other kids picking on them, making fun of them or bullying them" causes teenagers to turn to lethal violence in the schools.
- Students recognize that being a victim of abuse at home or witnessing others being abused at home may cause violence in school.
  - — 61% said students shoot others because they have been victims of physical abuse at home.
  - — 54% said witnessing physical abuse at home can lead to violence in school.
- Students say their schools are not safe.

## STATS 2001:

## SELECTED SCHOOL VIOLENCE RESEARCH FINDINGS FROM 2001 SOURCES

- According to the latest poll, thirty-two percent of parents fear for their child's physical safety when the child is at school. Thirty-nine percent of parents with a child in grade six or higher are more likely to say they fear for their child's safety. Twenty-two percent of parents whose children are in grade five or lower fear for their child's safety. (*Parents Not Overly Concerned About School Environments for Their Children*, Gallup News Service, 2001)
- Bullying generally begins in the elementary grades, peaks in the sixth through eight grades, and persists into high school. (*Addressing the Problem of Juvenile Bullying*, Office of Juvenile Justice and Delinquency Prevention, 2001)
- Among students, homicide perpetrators were more than twice as likely as homicide victims to have been bullied by peers. (*School-Associated Violent Deaths in the United States 1994-1999*, Centers for Disease Control and Prevention and U.S. Departments of Education and Justice, 2001; findings published by the *Journal of the American Medical Association*, 2001)

- Overall, almost eleven percent of a representative sample of youth reported bullying others sometimes, and almost nine percent admitted to bullying others once a week or more. Experiencing bullying was reported with similar frequency, with almost nine percent bullied sometimes and just over eight percent bullied once a week or more. (Bullying Behaviors Among US Youth, Journal of the American Medical Association, 2001)
- Of a representative sample of youth, almost thirty percent reported some type of involvement in moderate or frequent bullying, as a bully, a target, or both. (Bullying Behaviors Among US Youth, Journal of the American Medical Association, 2001)
- Bullying was reported as more prevalent among males than females and occurred with greater frequency among middle school-aged youth than high school-aged youth. For males, both physical and verbal bullying was common, while for females, verbal bullying and rumors were more common. (Bullying Behaviors Among US Youth, Journal of the American Medical Association, 2001)
- Research shows that those who bully and are bullied appear to be at greatest risk of experiencing the following: loneliness; trouble making friends; lack of success in school; and involvement in problem behaviors such as smoking and drinking. (Addressing the Problem of Juvenile Bullying, Office of Juvenile Justice and Delinquency Prevention, 2001)
- Seventy-four percent of 8 - to 11-year-old students said teasing and bullying occur at their schools. (Talking With Kids About Tough Issues: A National Survey of Parents and Kids, Kaiser Family Foundation and Nickelodeon, 2001)
- Though recent studies show that as many as seventy-five percent of children have been victims of bullying during their school careers, about half of parents in this survey see bullying as no problem for their children. (Are We Safe?: The 2000 National Crime Prevention Survey, National Crime Prevention Council, 2001)
- Thirty-nine percent of middle schoolers and thirty-six of high schoolers say they don't feel safe at schools. (2000 Report Card: Report #1, The Ethics of American Youth: Violence and Substance Abuse: Data & Commentary, Josephson Institute of Ethics, 2001)

— North Carolina Department of Juvenile Justice and Delinquency Prevention Center for the Prevention of School Violence

Statistics compiled by Kathy Knoll at: <http://hometown.aol.com/kthynoll>

April 24, 2001 (National Institutes of Health)

Bullying Widespread in U.S. Schools, Survey Finds:

- Bullying is widespread in American schools, with more than 16 percent of U.S. school children saying they had been bullied by other students during the current term, according to a survey funded by the National Institute of Child Health and Human Development (NICHD).
- The study appears in the April 25, 2001, Journal of the American Medical Association. Overall, 10 percent of children said they had been bullied by other students, but had not bullied others. Another 6 percent said that they had both been bullied themselves and had bullied other children. Another 13 percent of students said they had bullied other students, but had not been bullied themselves.
- "Being bullied is not just an unpleasant rite of passage through childhood," said Duana Alexander, M.D., director of the NICHD. "It's a public health problem that merits attention. People who were bullied as children are more likely to suffer from depression and low self-esteem, well into adulthood, and the bullies themselves are more likely to engage in criminal behavior later in life."
- The NICHD researchers surveyed 15,686 students in grades six-through-10, in public, parochial, and other private schools throughout the U.S. The nationally representative survey was part of the U.S. contribution to the World Health Organization's Health Behavior in School Children survey, an international effort in which many countries surveyed school-age children on a broad spectrum of health-related behaviors.
- For this study, researchers defined bullying as a type of behavior intended to harm or disturb the victim, explained the study's first author, Tonja R. Nansel, Ph.D. This behavior occurs repeatedly over time and involves an imbalance of power, with the more powerful person or group attacking the less powerful one, Dr. Nansel added. Bullying may be physical, involving hitting or otherwise attacking the other person; verbal, involving name-calling or threats; or psychological, involving spreading rumors or excluding a person.
- The children were asked to complete a questionnaire during a class period that asked how often they either bullied other students, or were the target of bullying behavior. A total of 10.6 percent of the children replied that they had "sometimes" bullied other children, a response category defined as "moderate" bullying. An additional 6.8 percent said they had bullied others once a week or more, defined as "frequent" bullying. Similarly, 8.5 percent said they had been targets of moderate bullying, and 8.4 percent said they were bullied frequently.
- Out of all the students, 13 percent said they had engaged in moderate or frequent bullying of others, while 10.6 percent said they had been bullied either moderately or frequently. Some students—6.3 percent—had both bullied others and been bullied themselves. In all, 29 percent of the students who responded to the survey had been involved in some aspect of bullying, either as a bully, as the target of bullying, or both.
- Bullying occurred most frequently in sixth through eighth grade, with little variation between urban, suburban, town, and rural areas; suburban youth were 2-3 percent less likely to bully others. Males were both more likely to bully others and more likely to be victims of bullying than were females. In addition, males were more likely to say they had been bullied physically (being hit, slapped, or pushed), while females more frequently said they were bullied verbally and psychologically (through sexual comments or rumors).

- Regarding verbal bullying, bullies were less likely to make derogatory statements about other students' religion or race. "There seem to be stronger social norms against making these kinds of statements than against belittling someone about their appearance or behavior," Dr. Nansel said.
- Both bullies and those on the receiving end of bullying were more likely to have difficulty adjusting to their environment both socially and psychologically. Students who were bullied reported having greater difficulty making friends and poorer relationships with their classmates. They were also much more likely than other students to report feelings of loneliness.
- "It's likely that kids who are socially isolated and have trouble making friends are more likely to be targets of bullying," Dr. Nansel said. "In turn, other kids may avoid children who are bullied, for fear of being bullied themselves."
- The study authors also reported that bullies were more likely to be involved in other problem behaviors, such as smoking and drinking alcohol, and to do more poorly academically. However, youth who were both bullies and recipients of bullying tended to fare the most poorly of all, experiencing social isolation, as well as doing poorly in school and engaging in problem behaviors, like smoking and drinking.
- "Unfortunately, we don't know much about this group," Dr. Nansel said. "We need to learn more about them to provide them with the help they need." She added that it is not known whether these children are first bullied by others and then imitate the bullying behavior they experienced, or if they are bullies who were later retaliated against.
- The study's authors concluded that the prevalence of bullying in U.S. schools suggests a need for more research to understand, and devise ways to intervene against, bullying. The authors noted that researchers in Norway and England have shown that school intervention programs can be successful. These programs focused on increasing awareness of bullying, increasing teacher and parent supervision, establishing clear rules prohibiting bullying, and providing support and protection for those bullied.

*The NICHD is part of the National Institutes of Health, the biomedical research arm of the federal government. The Institute sponsors research on development before and after birth; maternal, child, and family health; reproductive biology and population issues; and medical rehabilitation. NICHD publications, as well as information about the Institute, are available from the NICHD Web site, <http://www.nichd.nih.gov>, or from the NICHD Information Resource Center, 1-800-370-2943; e-mail [NICHDInformationResourceCenter@mail.nih.gov](mailto:NICHDInformationResourceCenter@mail.nih.gov).*

Close

# LEGISLATIVE RESEARCH REPORT

MARCH 11, 2005



REPORT NUMBER 05.197

## ALASKA SCHOOL DISTRICT POLICIES ON BULLYING AND HARASSMENT

PREPARED FOR REPRESENTATIVE SHARON CISSNA

BY KATHLEEN L. WAKFIELD, LEGISLATIVE ANALYST

You asked about Alaska school districts' policies regarding bullying and/or harassment. Specifically, you wished to know how districts define bullying and harassment, and how they determine the motivating factors behind the behavior.

### POLICIES ON BULLYING AND HARASSMENT

We contacted all school districts in Alaska about their policies regarding bullying and/or harassment. We received responses from 17 districts: Copper River, Delta/Grady, Fairbanks North Star Borough, Haines Borough, Iditarod Area, Juneau, Kenai Peninsula Borough, Klawock, Lower Yukon, Mat-Su Borough, Mt. Edgecumbe, Northwest Arctic, Pribilof, St. Mary's, Southeast Island, Valdez, and Wrangell. We received the following responses:

- ◆ Three of these school districts have no policies on bullying or harassment: Lower Yukon, St. Mary's, and Valdez. All three districts indicated that they are developing such policies.
- ◆ Copper River, Klawock, and Mt. Edgecumbe have specific policies that prohibit bullying.
- ◆ Juneau includes bullying in its policy prohibiting harassment.
- ◆ Administrators in the Mat-Su Borough School District recently developed a policy on harassment that includes bullying. The school board will address this proposed policy at its next meeting.

- Kenai, Pribilof, and Southeast Island districts have no specific policies against bullying, but include references to bullying under "Violent and Aggressive Behavior" and/or "Positive School Climate."
- Eight districts include sexual orientation or sexuality as a protected class in their policies on bullying and/or harassment. These districts are Copper River, Fairbanks, North Star Borough, Haines, Juneau, Mat-Su, Mt. Edgecumbe, Northwest Arctic, and Pribilof.

The Association of Alaska School Boards (AASB) Policy Reference Manual also contains policies on harassment, bullying, violent and aggressive conduct, and sexual harassment. The AASB policies specifically address sexual orientation as a protected class. According to AASB officials, 43 school districts use the AASB policy system.<sup>1</sup> For example, the Iditarod, Northwest Arctic, and Pribilof school districts use the AASB policy on harassment, and administrators in Valdez are recommending that the board adopt this language on harassment, as well.<sup>2</sup> Since the policy on bullying was only released in January 2005, AASB officials do not know how many districts have adopted it, although they expect that most districts will eventually do so.

Most district policies require the school principal or a designee to investigate all reports of bullying and/or harassment, and to prepare a written report of the incident and findings. Policies provide for a range of sanctions for students found guilty of bullying or harassment, up to and including expulsion for the most serious offenses.

The attached table contains the definitions of bullying and/or harassment for the 17 districts that responded to our request, and for the AASB.

## OTHER STATES' LAWS

Other states have also grappled with the issue of bullying in schools over the past several years. According to the National Conference of State Legislatures, lawmakers in Hawaii, Indiana, Kentucky, Massachusetts, Michigan, Nebraska, Nevada, New York, South Carolina, and Texas have introduced legislation this year that addresses school bullying. New Hampshire, New Jersey, Oklahoma, Oregon, Rhode Island, Vermont, and Washington have already passed legislation requiring school districts to adopt policies on bullying. In addition, a lawmaker in Washington introduced a bill this year—SB 5849—to expand the state's anti-bullying law to include "cyber-bullying," or the use of "electronic means" such as communication via electronic mail, internet-based communications, pager service, cell phones, and electronic text messaging.<sup>3</sup>

<sup>1</sup> Personal communication from Sharon Young, Associate Executive Director, Association of Alaska School Boards, March 7, 2005.

<sup>2</sup> Personal communications from Joyce Turner, Board Secretary, Iditarod Area School District, February 28, 2005; Robert Boyle, Superintendent, Northwest Arctic School District, February 24, 2005; Malcolm Fleming, Superintendent, Pribilof School District, February 24, 2005; Ernie Manzie, Superintendent, Valdez City School District, February 27, 2005.

<sup>3</sup> We include a copy of SB 5849 as Attachment A.

In addition, the U.S. Congress has also considered bullying in schools. In 2004, Representative John Shimkus of Illinois introduced H.R. 4776 to amend the Safe and Drug-Free Schools and Communities Act to include bullying and harassment prevention programs. The bill died in committee.

### FIRST AMENDMENT CONCERNS

While states and school districts continue to work to address bullying and harassment in schools, some challenges have been mounted due to concerns about violations of the First Amendment's free speech clause. For example, in 2001 an anti-harassment policy adopted by the Pennsylvania State College Area School District was challenged in district court.<sup>4</sup> The plaintiffs—two students, and a school board member who also volunteered in the schools—argued that the policy prohibited their ability to express their beliefs about Christianity and certain moral topics such as homosexuality.

The district court disagreed with the plaintiffs, and granted the defendants' motion to dismiss. The plaintiffs appealed the case to the U.S. District Court of Appeals for the Third Circuit, which reversed the judgment, finding that the policy was "unconstitutionally overbroad since it appeared to cover substantially more speech than could be prohibited under the Tinker substantial disruption test." Maintaining that a substantial amount of offensive, distasteful speech still would not constitute actionable harassment under either federal or state law, the appeals court ruled in favor of the plaintiffs.

Also in 2001, a Christian Coalition group opposed SB 5528 and HB 1444, anti-bullying bills introduced in the Washington legislature. The group argued that the bills were "a cover for gay-rights efforts that could eventually force schools to teach about homosexuality in a positive light."<sup>5</sup> Members of the coalition also contended that "anti-bullying policies in schools could violate the free-speech rights of students who expressed opposition to homosexuality."<sup>6</sup>

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I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

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<sup>4</sup> *David Warren Saxe v. State College Area School District*, 240 F.3d; U.S. App. (2001).

<sup>5</sup> Mary Ann Zehr, "Legislatures Take on Bullies with New Laws," *Education Week*, May 16, 2001.

<sup>6</sup> Washington lawmakers subsequently passed HB 1444, and the governor signed it into law, in 2002. We include copies of HB 1444 and RCW 28A.300.285 as Attachment B. We also include a copy of "Ask the Children: Youth and Violence—Students Speak Out for a More Civil Society, Summary and Discussion Guide," prepared by the Families and Work Institute and The Colorado Trust, as Attachment C.

### School District Policies on Bullying and Harassment—Definitions

School District	Definition of Bullying	Definition of Harassment
<p>Association of Alaska School Boards</p>	<p>Bullying is the repeated intimidation of others by inflicting or threatening physical, verbal, written, electronic, or emotional abuse, or damage to another's property. Bullying may include, but is not limited to, conduct such as physical abuse, damage or theft of another's property, social exclusion from activities, verbal taunts, name-calling, rumors, innuendoes, drawings, jokes, gestures, pranks, and put-downs relating to real or perceived differences, including another's culture, race, ethnicity, gender, sexual orientation, religion, body size, physical appearance, clothing, personality, age, socioeconomic status, ability or disability, or other distinguishing characteristics. (Board Policy 5131.43(a))</p>	<p>Harassment means intimidation by threats of or actual physical violence; the creation by whatever means of a climate of hostility or intimidation; or the use of language, conduct, or symbols in such a manner as to convey hatred, contempt, or prejudice or to have the effect of insulting or stigmatizing an individual. Harassment includes, but is not limited to, harassment on the basis of race, sex, creed, color, national origin, religion, sexual orientation, marital status, pregnancy, parenthood, or disability. [Board Policy 5145.5(a)]</p>
<p>Copper River School District</p>	<p>Bullying is repeated intimidation of others by the real or threatened infliction of physical, verbal, written, electronic, or emotional abuse, or damage to another's property. Bullying may include, but is not limited to, conduct such as physical abuse, damage or theft of another's property, social exclusion from activities, verbal taunts, name-calling, rumors, innuendoes, drawings, jokes, gestures, pranks, and put-downs relating to real or perceived differences, including another's culture, race, ethnicity, gender, sexual orientation, religion, body size, physical appearance, clothing, personality, age, socioeconomic status, ability or disability, or other distinguishing characteristics. (Board Policy 5143)</p>	

Delta/Greely School District		Harassment means intimidation by threats of, or actual, physical violence; the creation by whatever means of a climate of hostility or intimidation; or the use of language, conduct or symbols in such a manner as to convey hatred, contempt or prejudice, or to have the effect of insulting or stigmatizing an individual. Harassment includes, but is not limited to, harassment on the basis of race, sex, creed, color, national origin, religion, marital status, or disability. (Board Policy 5005)
Fairbanks North Star Borough School District		Harassment includes but is not limited to any oral, written, or physical conduct relating to race, creed, sex, national origin, marital status, political or religious beliefs, physical or mental conditions, family, social or cultural background, or sexual orientation that is sufficiently severe, pervasive, or persistent that it substantially interferes with or limits an individual's academic performance or creates an intimidating, hostile or offensive academic environment. (Board Policy 1012)
Haines Borough Schools		Harassment means intimidation by threats of or actual physical violence; the creation by whatever means of a climate of hostility or intimidation; or the use of language, conduct, or symbols in such a manner as to convey hatred, contempt, or prejudice or to have the effect of insulting or stigmatizing an individual. Harassment includes, but is not limited to, harassment on the basis of race, creed, color, national origin, religion, sexual orientation, marital status, or disability. [Board Policy 4119.12(a), and 5145(a)]

Iditarod Area School District	No policies—adopted AASB policies on discrimination and sexual harassment.	
Juneau School District		<p>...the Board does not tolerate discrimination against, or harassment of, any member of the Juneau school community on the basis of race, color, creed, sex, national origin, age, political or religious beliefs, mental or physical condition or disability, marital status, changes in marital status, pregnancy, parenthood, social background, economic status, culture, or sexual orientation. Discriminatory harassment includes, but is not limited to, bullying, slurs, epithets, threats, derogatory comments, unwelcome jokes, teasing, stereotyping, sexual advances or requests for sexual favors, physical assault or abuse, or other forms of verbal or physical harassment which adversely affect a person's employment or education or creating an intimidating, hostile, or offensive educational or working environment. Harassment includes creation of a climate of hostility and intimidation; or the use of language, conduct, or symbols in such a manner as to convey hatred, contempt, or prejudice or to have the effect of insulting or stigmatizing an individual or group. (Board Policy 1120)</p>

Kenai Peninsula Borough School District	<p>No specific policy, but includes the following language on bullying under other sections:</p> <p><b>Violent and aggressive conduct:</b> Violent and aggressive acts include, but are not limited to, possession, threat with or use of a weapon, physical assault, verbal abuse, intimidation, extortion, bullying, gang participation, harassment, stalking, defiance, and racial slurs.</p> <p><b>Positive School Climate:</b> Students shall be subject to disciplinary procedures for bullying other students or for using insults, slurs, or fighting words which may disrupt school activities. (Board Policies 3522.6 and 5137)</p>	<p>Harassment means intimidation by threats of or actual physical violence; the creation by whatever means of a climate of hostility or intimidation; or the use of language, conduct, or symbols in such a manner as to convey hatred, contempt, prejudice or to have the effect of insulting or stigmatizing an individual. Harassment includes, but is not limited to, harassment on the basis of race, sex, creed, color, national origin, religion, marital status, disability, or any other real or perceived difference. (Board Policy 4119.12)</p>
Klawock City School District	<p>Bullying takes many forms: gossip, cruel comments, insults, snubbing, put-downs, threats (physical or verbal) and violent attacks. It is deliberate, hurtful behavior that is often repeated and a form of anti-social behavior that has no place at school. It is the intent of this policy to make sure all members of our school community remain vigilant and consistent to help insure that bullying behavior is actively resisted and stopped, and that we provide a safe school environment for all students. Any acts of bullying, at any level, will not be tolerated and will result in disciplinary action. (Board Policy 5131.95)</p>	
Lower Yukon School District	No formal policy.	No formal policy.
Matanuska-Susitna Borough School District	<p>Harassment, bullying, and discrimination are prohibited. Abusive language, sexual harassment, inappropriate physical contact, racial or ethnic slurs, hazing, and other similar provocative actions are included in these categories of prohibited conduct. Harassment is behavior which is intended to trouble or annoy someone. It is the exertion of power by one person over another; it may be based on misunderstanding or a deliberate act and often contains a subjective perspective. Discrimination and harassment may be based on culture, ability, physical appearance, size, sexuality, or religion, among other things. Bullying is defined as an aggressive behavior that is intentional and that involves an imbalance of power or strength. Harassment, bullying, and discrimination can take many forms such as hitting, tripping, kicking, punching, unwanted touching, name-calling, swearing, threatening, spreading rumors, ignoring, staring, gesturing, "standing over," preventing someone from joining in an activity, hiding, sending mean notes or e-mails, or damaging someone else's property. [Board Policy 5144.1(12)]</p>	

<p>MI. Edgcombe</p>	<p>Bullying is the reported intimidation of others by inflicting or threatening physical, verbal, written, electronic, or emotional abuse, or damage to another's property. Bullying may include, but is not limited to, conduct such as physical abuse, damage or theft of another's property, social exclusion from activities, verbal taunts, name-calling, rumors, innuendoes, drawings, jokes, gestures, pranks, and put-downs relating to real or perceived differences, including another's culture, race, ethnicity, gender, sexual orientation, religion, body size, physical appearance, clothing, personality, age, socioeconomic status, ability or disability, or other distinguishing characteristics.</p>	
<p>Northwest Arctic School District</p>		<p>Harassment means intimidation by threats of or actual physical violence; the creation by whatever means of a climate of hostility or intimidation; or the use of language, conduct, or symbols in such a manner as to convey hatred, contempt, or prejudice or to have the effect of insulting or stigmatizing an individual. Harassment includes, but is not limited to, harassment on the basis of race, sex, creed, color, national origin, religion, sexual orientation, marital status, pregnancy, parenthood, or disability [Board Policy 5145.5(a)]</p>
<p>Pribilof School District</p>	<p>No specific policy, but includes the following language on bullying under "Positive School Climate:" The schools shall not tolerate any comments or gestures which are vulgar or obscene or which denigrate others on account of gender, race, color, religion, ancestry, national origin, handicap or disadvantage. Students shall be subject to disciplinary procedures for bullying other students or using insults, slurs, or fighting words which may disrupt school activities. (Board Policy 5137)</p>	<p>Harassment means intimidation by threats of or actual physical violence; the creation by whatever means of a climate of hostility or intimidation; or the use of language, conduct, or symbols in such a manner as to convey hatred, contempt, or prejudice or to have the effect of insulting or stigmatizing an individual. Harassment includes, but is not limited to, harassment on the basis of race, sex, creed, color, national origin, religion, sexual orientation, marital status, pregnancy, parenthood, or disability. [Board Policy 5145.5(b)]</p>
<p>St. Mary's School District</p>	<p>No policy.</p>	<p>No policy.</p>

Southeast Island School District	No specific policy, but includes the following language on bullying under "Positive School Climate:" The schools shall not tolerate any comments or gestures which are vulgar or obscene or which denigrate others on account of gender, race, color, religion, ancestry, national origin, handicap or disadvantage. Students shall be subject to disciplinary procedures for bullying other students or using insults, slurs, or fighting words which may disrupt school activities. (Board Policy 5137)	
Valdez City School District	No policy.	May adopt Association of Alaska School Boards language for harassment.
Wrangell Public Schools	No policy.	Harassment on the basis of sex, color, race, religion, national origin, age, mental or physical disability, marital status, changes in marital status, pregnancy, or parenthood is specifically prohibited. Harassment includes, but is not limited to, slurs, epithets, threats, derogatory comments, unwelcome jokes, teasing, unwelcome sexual advances or requests for sexual favors, displaying offensive words, objects or pictures and other verbal or physical conduct which adversely affects an individual's educational opportunities, or has the purpose or effect of unreasonably interfering with an individual's education or creating an intimidating, hostile, or offensive education environment. (Board Policy IV-044.)

**Notes:** Please note that those districts that submitted their policies on bullying may also have policies on harassment. Most districts also have policies specific to sexual harassment. 1. This is the proposed policy for the Matanuska-Susitna Borough School District, which the board will address at their March 16, 2005 meeting.

**Sources:** Alaska Association of School Boards; school district superintendents.



## Education Program

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### School Bullying: Legislation and Laws

#### 2005 Enacted Legislation

##### **Tennessee**

###### **HB 2114/SB 1621**

Requires each Local Education Agency (LEA) to adopt a policy that prohibits harassment, intimidation, or bullying and to forward a copy of the policy to the commissioner of education by January 1, 2006; encourages school employees, volunteers, and students to report incidents of harassment, intimidation or bullying to the appropriate school authorities; provides school employee who promptly report an incident of harassment, intimidation, or bullying immunity against any suit based upon the reporting employee's failure to remedy the reported act; and encourages school districts to form harassment, intimidation or bullying prevention programs and task forces.

##### **Virginia**

###### **HB 2266**

Directs the Board of Education to include bullying in its standards for school board policies on student conduct and requires school boards to include (i) instruction on the inappropriateness of bullying in their character education programs and (ii) bullying provisions in their student conduct codes. In addition, the measure requires the reporting of incidents of stalking to principals and division superintendents. Finally, except as may be prohibited by federal law, regulation, or jurisprudence, principals must report certain violent acts, stalking, and other conduct to parents of the minor student who is the target of the conduct; included in this report is disclosure that the incident has been reported to law enforcement, and that the parent may contact law enforcement for further information. This bill is identical to HB 2879 (Marshall, R.G.).

###### **HB 2267**

Civil immunity; school employees or volunteers reporting alleged acts of bullying or crimes. Immunizes school employees or volunteers from civil liability for the prompt good faith reporting to the appropriate school official, in compliance with specified procedures, of any alleged acts of bullying or any crimes.

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#### 2004 Enacted Legislation

##### **New Hampshire**

###### **HB 1162**

Requires school districts to notify the parents or legal guardians of the district's policies on bullying and requires that a report of any bullying incidents be made by telephone and by a written report sent by mail to the parent or legal guardian of the pupils involved.

##### **Vermont**

###### **HB 629**

Directs schools to include bullying in their policies for responding to misconduct on and off school grounds; and directs the commissioner of education to update model policies on student discipline to include a definition of bullying, a process for reporting acts of bullying, and responses to bullying.

#### Harassment Legislation

## State Anti-bullying Policies

	State Statute	Public School Requirements	Private Schools	Teacher State Training	Prevention and Response Programs
	X		X	X	X
			X		
	X				
		X			
		X	X	X	
				X	
		X			
		X			
			X		
Alabama	X		X	X	X
Arkansas					
Oklahoma	X				
Oregon			X		X
Rhode Island	X		X	X	X
Tennessee			X		X
Vermont	X	X	X	X	
Virginia	X	X		X	
Washington	X	X	X	X	
West Virginia	X		X	X	X

Prepared by the National Conference of State Legislatures -- March 2006  
 Staff Contact: Sara Vitaska, (303) 856-1647, [sara.vitaska@ncsl.org](mailto:sara.vitaska@ncsl.org)

**Vermont****HB 113**

Makes a variety of changes to the guidelines for harassment policies that educational institutions are required to maintain. The general definition of harassment is expanded to include written or visual conduct and conduct motivated by a student's perceived as well as actual membership in a protected category. Racial harassment is defined to mean conduct directed at the characteristics of a student's or a student's family member's actual or perceived race or color and includes the use of epithets, stereotypes, racial slurs, comments, insults, derogatory remarks, gestures, threats, graffiti, displays, or circulations of written or visual material, and taunts on manner of speech and negative references to racial customs.

**Virginia****HB1331**

Relating to Including hazing in the Board's guidelines and model policies for and school boards' regulations on codes of student conduct.

**Archived Legislation****Select School Safety Enactments (1994-2003): Bullying and Student Harassment**

*National Conference of State Legislatures (NCSL)*

By Finessa Ferrell-Smith

<b>SCHOOL BULLYING LAWS</b>	
<b>STATE/TERRITORY</b>	<b>CITATION</b>
Arkansas	A.C.A § 6-18-514 (2004)
Arizona	HB 2368
California	Cal Ed Code § 32261, 32265, 32270, 35294.2
Colorado	C.R.S § 22-32-109.1 (2004)
Connecticut	Conn. Gen. Stat. § 10-222d (2003)
Georgia	O.C.G.A. § 20-2-751.4 (2004)
Guam	17 G.C.A § 3112.1
Illinois	105 ILCS 5/10-20.14 (2004)
Louisiana	La. R.S. 17:416.13 (2004)
New Hampshire	RSA 193-F3 (2004)
New Jersey	N.J. Stat § 18A:37-13 (2004)
New York	NY CLS Educ § 2801-a (2004)
Oklahoma	70 Okl. St. § 24-100.3-5 (2004)
Oregon	ORS § 339.356
Puerto Rico	L.P.R.A § 149f (2002)
Rhode Island	R.I. Gen Laws § 16-21-24 (2004)
Vermont	16 V.S.A. § 565 (2004)
Virginia	Va. Code § 22.1-208.01, 22.1-279.3:1, 22.1-279.6 (2005)
Washington	Rev. Code Wash. (ARCW) § 28A.300.285 (2004)
West Virginia	W. Va Code § 18-2C-1-5 (2004)

Source: NCSL 2005

Visitor counts for this page.

State	Bill Number	Last Action-Date	Summary
Alabama	HB 246	Jan-10, 2006—To House Committee on Education	N/A
Alaska	HB 233	Apr-28, 2005—From House Special Committee on Education: Do pass with substitute	Requires every governing body to adopt a policy prohibiting harassment, intimidation, or bullying.
Alaska	HB 482	Feb-13, 2006—To House Special Committee on Education	Outlines the requirement for adopting a policy prohibiting harassment, intimidation, or bullying. Outlines reporting procedures.
Arizona	HB 2325	Jan-17, 2006—Additionally referred to House Committee on Rules	Requires the school district to provide training to employed teachers to recognize and prohibit harassment, intimidation or bullying.
Arizona	HB 2368	Apr-20, 2005—Chapter No. 155	Requires every governing body to adopt a policy prohibiting harassment, intimidation, or bullying. Outlines reporting procedures.
Florida	HB 1303 SB 1848	Mar-29, 2005—In House. Laid on table. Apr-13, 2005—Withdrawn from further consideration.	Requires each local school district to adopt a policy prohibiting discrimination and harassment on school property, at school-sponsored functions, or on the school bus.
Florida	SB 1384	Jan-31, 2006—To Senate Committee on Education	Prohibits bullying or harassment of any student or school employee. Requires each local school district to adopt a policy prohibiting bullying and harassment on school property, at school-sponsored functions, or on the school bus. Outlines requirements for the policy.
Georgia	HB 424	Feb-10, 2005—To House Committee on Education	Allows each local education board to define bullying. Extends policies prohibiting bullying to apply to students from kindergarten to 12 <sup>th</sup> grade. Requires policies be developed in consultation with parent-teacher organizations, local school councils, and other

			community based organizations. Outlines minimum requirements for the policy.
Hawaii	HR 23 SCR 3	Apr-7, 2005—In House. Read third time. Passed House. Jan-25, 2006—Introduced	Requests schools to implement policy to reduce intimidation and promote safe and peaceful school environments that encourage learning.
Idaho	HCR 32	Feb-2, 2006—To House Committee on Education	Designates September 10-16, 2006, as Bullying Awareness Week
Illinois	SB 2630	Feb-16, 2006—Passed Senate***To House	Allows each school district to adopt policy preventing bullying in all grades
Indiana	SB 285	Apr-27, 2005—Public Law No. 106	Requires the department of education to develop training for identifying, preventing, and intervening in bullying. Outlines minimum requirements for policy preventing bullying.
Iowa	HB 382	Feb-23, 2005—In House Committee on Education	Requires the board of directors of each school district to adopt and implement a policy prohibiting bullying and harassment. Outlines minimum requirements for the policy.
Iowa	SSB 2126	Feb-8, 2006—To Senate Committee on Education	Requires the board of directors of each school district to adopt and implement a policy prohibiting bullying and harassment. Outlines minimum requirements for the policy.
Kentucky	HB 270	Feb-6, 2006—To Senate Committee on Education	Requires school districts to have plans, policies, and procedures for harassment, intimidation, or bullying. Outlines requirements for the policy.
Kentucky	SB 15	Jan-5, 2006—To Senate Committee on Education	Requires school districts to establish a code prohibiting harassment, intimidation, or bullying. Outlines requirements for the code.
Maine	HB 419	Jun-3, 2005—Public Law No. 307	Defines bullying and harassment as unacceptable student behavior.
Massachusetts	HB 1029	Sept-15, 2005—In Joint	Requires the Department of Education to adopt policy

		Committee of Education: Heard. Eligible for Executive Session	prohibiting bullying. Outlines minimum requirements for the policy.
Massachusetts	HB 1067	Sept-15, 2005—In Joint Committee on Education: Heard. Eligible for Executive Session	Establishes, in consultation with parents, guardians, teachers, administrators, students, student councils where applicable and, where appropriate, the community at large, each public school district shall promulgate and implement a safe school plan, including procedures for preventing and disciplining bullying.
Massachusetts	HB 1068	Sept-15, 2005—In Joint Committee on Education: Heard. Eligible for Executive Session	Requires each county/school board of education to establish a policy prohibiting harassment, intimidation or bullying. Outlines minimum requirements for the policy.
Massachusetts	HB 1109	Sept-15, 2005—In Joint Committee on Education: Heard. Eligible for Executive Session	Requires the commissioner of education to update and distribute a model school plan on student discipline on bullying.
Massachusetts	HB 1181	Sept-15, 2005—In Joint Committee on Education: Heard. Eligible for Executive Session	Requires the department of education to mandate every public school to create a "safe school plan." Outlines the requirements for the "safe school plan."
Massachusetts	HB 3809	Feb-15, 2006—In Joint Committee on Labor and Workforce Development: Set aside for Study	Requires the division on occupation safety to analyze the cost of psychological harassment in the workplace.
Michigan	HB 4026	Jan-27, 2005—To House Committee on Education	Requires the board of a school district or board of directors of a public school academy to adopt a bullying policy. Outlines minimum requirements for the policy.
Michigan	HB 4581	Mar-24, 2005—To House Committee on Education	Requires the board of a school district or board of directors of a public school academy to adopt a policy prohibiting harassment, intimidation or bullying at school. Outlines minimum requirements for the policy

Michigan	HB 5616	Jan-31, 2006—To House Committee on Education	Requires the board of a school district or board of directors of a public school academy to adopt a policy prohibiting harassment or bullying at school. Outlines minimum requirements.
Michigan	SB 44	Jan-25, 2005—To Senate Committee on Education	Requires the board of a school district or board of directors of a public school academy to adopt a policy prohibiting harassment, intimidation or bullying at school. Outlines minimum requirements for the policy.
Michigan	SB 369	Apr-12, 2005—To Senate Committee on Education	Requires the board of a school district or board of directors of a public school academy to adopt a policy prohibiting harassment, intimidation or bullying at school. Outlines minimum requirements for the policy.
Michigan	SB 1012	Jan-26, 2006—To Senate Committee on Education	Requires the board of a school district or board of directors of a public school academy to adopt a policy prohibiting harassment or bullying at school. Outlines minimum requirements.
Minnesota	HB 14	Jan-6, 2005—To House Committee on Education Policy and Reform	Requires the commissioner of education to make a model policy prohibiting intimidation and bullying available to school boards and schools. Requires each school board to adopt policy prohibiting intimidation and bullying of any student. Outlines minimum requirements for the policy.
Minnesota	HB 408 SB 40 SB 41	Jan-24, 2005—To House Committee on Education Policy and Reform Jan-6, 2005—To Senate Committee on Education Jan-6, 2005—To Senate Committee on Education	Requires the commissioner of education to make a model policy prohibiting intimidation and bullying available to school boards and schools. Requires each school board to adopt policy prohibiting intimidation and bullying of any student. Outlines minimum requirements for the policy.

Minnesota	HB 2152 SB 1939	Mar-29, 2005—To House Committee on Civil Law and Elections Mar-29, 2005—To Senate Committee on Judiciary	Allows school districts to release information on a juvenile pertaining to incidences of bullying to the juvenile justice system.
Missouri	HB 1218	Jan-27, 2006—To House Committee on Elementary and Secondary Education	Requires each school district to establish and adopt a policy prohibiting harassment, intimidation, or bullying at school. Outlines minimum requirements for the policy.
Missouri	HB 1502	Jan-26, 2006—To House Committee on Elementary and Secondary Education	Prohibits bullying or discrimination on school property, at any school function, or on a school bus. Requires each school district to establish and adopt a policy prohibiting harassment, intimidation, or bullying at school. Outlines minimum requirements for the policy.
Nebraska	LR 55	Mar-23, 2005—Passed Legislature	Designates September 12-16, 2005, as Nebraska School Bullying Awareness Week.
Nebraska	LR 109	May-9, 2005—To Legislative Committee on Executive Board	Authorizes a study to determine the feasibility of establishing a policy prohibiting bullying behavior in public schools.
New Jersey	AB 744 AB 3791 SB 993 SB 2222	Jan-10, 2006—To Assembly Committee on Education Feb-14, 2005—To Assembly Committee on Education Jan-17, 2006—To Senate Committee on Education May-23, 2005—From Senate Committee on Education	Prohibits bullying, intimidation and harassment from occurring through electronic communication including but not limited to, a telephone, cellular phone, computer or pager.
New Jersey	AB 1181	Jan-10, 2006—To Assembly Committee on Education	Appropriates \$70,000 in FY 2005 to the Department of Education to reimburse school districts for the costs of establishing programs for the prevention of

			harassment and bullying.
New Mexico	HJM 8	Jan-19, 2006—To Senate Committee on Corporations and Transportation.	Requests the Labor Department to convene a task force to study bullying in the workplace.
New York	AB 1755	Jan-21, 2005—To Assembly Committee on Education	Requires instruction on civility, citizenship and character education to include methods of discouraging bullying. Prohibits bullying on school property or school functions. Requires school employees to report suspected bullying. Specifies bullying shall be disciplined according to the district's code of conduct. Establishes aggravated harassment of a teacher or school personnel is a class B misdemeanor.
New York	AB 3185 AB 9406	Feb-1, 2005—To Assembly Committee on Codes Jan-11, 2006—To Assembly Committee on Codes	Prohibits bullying on school property or school functions. Requires school employees to report suspected bullying. Specifies bullying shall be disciplined according to the district's code of conduct. Grants immunity to school employees that report bullying. Requires the commissioner to create a central registry for reporting alleged bullying or hazing.
New York	AB 8218	May-12, 2005—To Assembly Committee on Education	Requires the commissioner, in consultation with parents, school personnel and other interested parties, to promulgate rules and regulations prohibiting bullying, harassment, or intimidation.
New York	SB 5703	Jun-15, 2005—To Senate Committee on Rules	Creates an anti-bullying act. Prohibits bullying on school property or school functions. Specifies bullying shall be disciplined according to the district's code of conduct.
Ohio	HB 276	Jan-31, 2006—To Senate Committee on Education	Requires each board of education, in consultation with parents, school employees, school volunteers,

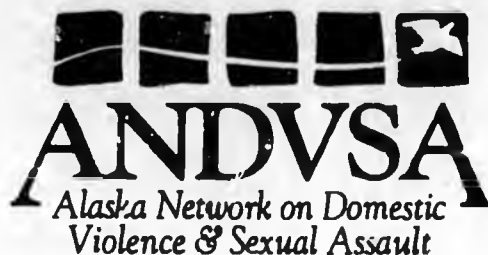
			students, and community members, to establish policy prohibiting bullying, harassment, or intimidation.
Pennsylvania	HB 178	Jun-29, 2005—In House. Laid on Table	Requests school entities to adopt policy prohibiting bullying, harassment, or intimidation.
Pennsylvania	HB 772 SB 1013	Mar-14, 2005—To House Committee on Education Nov-14 2005—To Senate Committee on Education	Requires each school district to develop a coordinated bullying and student intimidation prevention plan. Requires the plan to be submitted to the Department of Education for approval.
Pennsylvania	SB 71	Jan-31, 2005—To Senate Committee on Education	Requires all school entities to establish policy or student code of conduct prohibiting bullying.
South Carolina	HB 3573	Feb-16, 2005—To House Committee on Education and Public Works	Requires each local school district, in consultation with parents and guardians, school employees, volunteers, students, administrators, and community representatives, to adopt a policy prohibiting harassment, intimidation, or bullying at school.
Tennessee	HB 2114	May-19, 2005—Public Chaptered. Chapter No. 202	Requires each school district to adopt policy prohibiting harassment, intimidation or bullying. Outlines minimum requirements for the policy.
Tennessee	HB 2470 SB 2687	Feb-8, 2006—To House Committee on Education Feb-9, 2006—Introduced	Requires local education agency to adopt a policy prohibiting harassment, intimidation, or bullying of teachers by principals or administrators. Outlines minimum requirements for the policy.
Utah	SCR 1	Feb-16, 2006—To House Committee on Health and Human Services	Request parents, individuals, and organizations to review and assist in the adoption of policies prohibiting bullying.
Virginia	HB 2266 HB 2879	Mar-21, 2005—Acts of Assembly. Chapter No. 461 Mar-21, 2005—Acts of Assembly. Chapter No. 484	Requires bullying to be included in the code for student conduct.
Virginia	HB 2267	Mar-21, 2005—Acts of Assembly.	Prohibits a school employee or school volunteer from

		Chapter No. 462	being held liable for reporting alleged acts of bullying.
Washington	HB 1968	Mar-3, 2005—Referred to House Committee on Appropriations	Encourages employers to create policy prohibiting bullying in the workplace.
Wisconsin	AB 627 SB 310	Aug-30, 2005—To assembly Committee on Education Jan-6, 2006—In assembly. Amendment No. 3 offered.	Requires the Department of Public Instruction to create a model school policy on bullying. Requires each school board to develop and adopt a policy prohibiting bullying.

Created February 24, 2006

Source: Lexis Search

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April 6, 2006

The Honorable Tom Anderson  
State House of Representatives  
Alaska State Capitol  
Juneau, AK 99801-1182

Dear Representative Anderson:

The Alaska Network on Domestic Violence & Sexual Assault is a statewide coalition of member shelter and community based programs that provide direct services and advocacy for victims of domestic violence and sexual assault. We would like to thank you for introducing House Bill 482, "An Act related to harassment, intimidation, and bullying in schools", and offer our support.

Bullying in our schools is a form of interpersonal violence. As with all such violence, there can be devastating consequences and we must rise up as a community to condemn and prevent it. Many of our member programs work in schools across Alaska to teach children and staff about the damaging effects of bullying, and to teach them positive, effective responses. Unfortunately, all too often children tell us there is lots of bullying in their schools, they expect it and they think there's nothing adults can do to change it. We believe this legislation will be a positive influence and help protect children.

Thank you for your leadership in addressing this issue.

Please let me know if I can offer other support for this legislation.

Sincerely,

Peggy Brown  
Executive Director

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Member Programs

Anchorage AWAIC, AWRC, STAR Barrow AWIC Bethel TWC Cordova CFRC Dillingham SAFE Fairbanks IAC  
Homer SPHH Juneau AWARE Kenai LeeShore Center Ketchikan WISH Kodiak KWRCC Kotzebue MFCC  
Nome BSWG Palmer AFS Seward SCS Sitka SAFV Unalaska USAFV Valdez AVV

**TESTIMONY HB 482**  
**TOM HARVEY, NEA-ALASKA EXECUTIVE DIRECTOR**

Chairman Neuman and members of the House Special Committee on Education. My name is Tom Harvey and I serve as the Executive Director for NEA-Alaska. NEA-Alaska represents over 11,400 active public school employees and over 1,300 retired public school teachers.

NEA-Alaska thanks Rep. Anderson for bringing this legislation forward. NEA-Alaska has adopted several resolutions that address the issues of harassment, intimidation and bullying.

We believe that a safe and effective school climate is necessary for promoting educational excellence in public schools. The Association also believes that all education employees, parents/guardians, students, school governing boards, and community members and agencies must work cooperatively to establish and maintain safe and orderly school communities. Students and education employees must be safe from physical, verbal, and psychological violence, the threat thereof, and all forms of harassment. There must be procedures to prevent and eliminate all types of harassment that might occur. Plans and procedures regarding discipline and/or harassment must include due process.

These plans and procedures must be provided to police and other community agencies that might be called upon when harassment, intimidation or bullying is detected. Parents/guardians must be made aware of the existence of these plans.

The Association also believes that students must be taught strategies and skills, including conflict resolution, that develop respect, self-discipline, and self-control. Students must learn to distinguish between their own rights and responsibilities and the rights and responsibilities of others. There must be appropriate services and placement within regular education and alternative education programs and/or with state and/or community agencies for students who disrupt the learning environment or who are dangerous to other students, education employees, and themselves.

The Association believes that a safe and effective school has a positive environment in which education employees, students, parents/guardians, and the community care for, communicate with, respect, understand, and trust each other.

The Association has developed several resources for schools, parents, students and community groups to utilize in their efforts to combat harassment, intimidation and bullying. Those resources are attached to this testimony.

Every school in Alaska ought to be a sanctuary where all students can learn, teachers can teach, and other school employees can work without the fear of intimidation or harassment. Many school districts are already engaged in good efforts to address these issues. Rep. Anderson's proposed legislation guarantees that every school will take the steps necessary to provide a good school climate for learning.

## **Safe Schools Manual: A Resource on Making Schools, Communities, and Families Safe for Children**

NEA's *Safe Schools Manual: A Resource on Making Schools, Communities, and Families Safe for Children* synthesizes the best research on school safety and offers guidelines on making children safe in three broad areas: schools, communities, and families. This important publication was updated in October 2005. Please use this resource in your community. <http://www.nea.org/schoolsafety/safeschoolsmanual.html>

## **NEA School Safety Resources**

<http://www.nea.org/schoolsafety/nearesources-schoolsafety.html>

## **NEA's National Bullying Awareness Campaign**

NEA has been working with other national organizations to reduce, and eventually eradicate, bullying in America's public schools. Read [more about the problem and how you can help](#). And here are some additional resources here on [www.NEA.org](http://www.NEA.org) on bullying:

- [The ABCs of School Bullying](#): Tips for parents and teachers
- [Stop Bullying Now!](#): activities to teach tolerance and prevent bullying
- [Conflict Resolution](#): From bullying to international justice, activity ideas from PBS TeacherSource address conflict resolution
- [A Child's Plea Becomes an Adult's Crusade](#): Author Jodee Blanco talks about bullying
- [Are You a Bully?](#): Do teachers bully, too? Or, is it good classroom management?

**Testimony in Favor of HOUSE BILL No. 482 (EDU)**

**Submitted by**

**Allan A. Morotti, Ph.D.**

**Associate Professor**

**University of Alaska Fairbanks**

I am in favor of this legislation as it addresses directly a significant safety issue facing public and private education today. I offer the following studies as cited in the book titled *Bullying from Both Sides: Strategic Interventions for Working with Bullies and Victims* by Dr. Walter Roberts, Jr. (2005) for support for my position. In addition to this work, Dr. Roberts and I have published and presented on this topic together at the national level.

**American Association of University Women Educational Foundation**  
***Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School (2001)***

2,064 students, ages 8-11, were surveyed on their experiences with both sexual and generic harassment.

83% of girls and 79% of boys reported having experienced some form of harassment in their schools.

76% of all students indicated that this harassment was nonphysical.

58% of all students indicated that this harassment was physical.

28% of boys and 15% of girls indicated that the gym locker room as a location to receive nonphysical harassment.

15% of boys and 9% of girls indicated that the restroom was also a location to receive nonphysical harassment.

Approximately 56%-to-61% of both physical and nonphysical harassment was reported as happening in the classroom where a teacher was present.

Approximately 64%-to-71% of both physical and nonphysical harassment occurred in school hallways.

**Kaiser Family Foundation and Nickelodeon Television**  
***Talking with Kids About Tough Issues: A National Survey of Parents and Kids (2001)***

This survey included responses from 823 children and adolescents.

55% of 8-11 year olds and 68% of 12-15 year olds said that bullying was a significant problem for children their age.

74% of 8-11 year olds and 86% of 12-15 year olds indicated that children were bullied or teased in their schools.

43% of 8-11 year olds and 67% of 12-15 year olds indicated that peers in their schools were treated badly because they were different.

38% of 8-11 year olds and 60% of 12-15 year olds reported that peers in their schools were threatened with violence.

54% of 8-11 year olds and 40% of 12-15 year olds said that they would like to know more about ways to stop bullying and teasing.

**The Journal of the American Medical Association (JAMA)  
*Bullying Behaviors Among U.S. Youths: Prevalence and Association with Psychological Adjustment (2001)***

JAMA surveyed approximately 16,000 6<sup>th</sup> through 10<sup>th</sup> grade students in both American public and private schools.

Approximately 30% of the students said that they were somehow involved in a bully-victim relationship either as a bully, victim, or both.

Approximately 56% of the students reported either being hit, slapped, or pushed.

Nearly 60% of the students indicated that they had been subjected to rumors at one time or another.

More than 50% of the students stated that they had been the victim of comments regarding their sexuality, or of a sexual nature, or had sexual gestures made toward them.

Furthermore, a fact commonly cited in the ultimate act of violence toward others (i.e., school shootings) is that over 50% the "school shooter(s)" have been reported as having a history of being bullied or harassed at school. In utilizing research on this topic in our national presentations (Roberts & Morotti) there identifiable consequences related to the fear of being victimized in school. These include: distraction from educational goals; decline in academic performance as evidenced by the correlation between fearfulness and lower GPAs; increased absence rates with no attending illnesses; and a decline in students' ability to learn in class. Therefore, based upon this knowledge I fully support HB 482 in order to make our schools a safe learning environment for all children and adolescents.

Respectfully yours,

Allan Morotti, Ph.D.

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSHB 482(EDU)  
 (H) Publish Date: 3/20/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
 Title "An Act relating to harassment, intimidation, RDU CIVIL  
and bullying in schools." Component Labor and State Affairs  
 Sponsor Representative Anderson  
 Requester House Special Committee on Education, Health.. Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill creates Article 4 in AS 14.33 requiring each school district to adopt a policy that prohibits the harassment, intimidation, or bullying of any student. It also requires that the policy be shared with parents or guardians, students, volunteers, and school employees. The bill further requires that violations of the policy be reported to the Department of Education and Early Development, and it prohibits reprisal against and provides immunity from suit to those who report violations of the policy in good faith.

Passage of this legislation will not have a fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director  
 Division: Administrative Services Division  
 Approved by: Kathryn Daughhete for David Márquez, Attorney General  
 Agency: Department of Law

Phone 465-3673  
 Date/Time 3/14/06 9:54 AM  
 Date 3/14/2006

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
Bill Version: CSHB 482(EDU)  
(H) Publish Date: 3/20/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: EED  
Title An Act relating to harassment, intimidation, RDU Teaching & Learning Support  
and bullying. Component Student & School Achievement  
Sponsor Anderson  
Requester House Education Component No. 2796

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	35.0					
Travel	5.0					
Contractual	60.0					
Supplies	10.8					
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>110.8</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	110.8					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>110.8</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time	1					
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill would require EED staff to meet and work with a variety of statewide groups to develop model policies and training materials on harassment, intimidation, and bullying prevention and disseminate those resources to school districts. EED staff would need to research nationally recommended models, develop a sample model policy, and plan and facilitate specific training requirements for school district staff. This bill also requires the department to report currently uncollected incidents of harassment to the Legislature in an unspecified format.

Prepared by: Barbara Thompson Phone 465-8727  
Division: Teaching & Learning Support Date/Time 3/15/06 1:30 PM  
Approved by: Roger Sampson, Commissioner Date 03/15/2006  
Agency: Education and Early Development

**HB**

**486**

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
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Mail Stop 3101

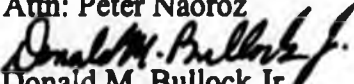
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 14, 2005

**SUBJECT:** Codification of the rule of necessity relating to the disqualification of judicial officers (Work Order No. 24-LS0781\A)

**TO:** Representative Max Gruenberg  
Attn: Peter Naoroz

**FROM:**   
Donald M. Bullock Jr.  
Legislative Counsel

Enclosed is a draft bill that would amend AS 22.20.020 by adding a new subsection that codifies the rule of necessity for a judge in a civil action.<sup>1</sup> AS 22.20.020 relates to the disqualification of a judicial officer for cause. The draft bill also amends Rule 42(c), Alaska Rules of Civil Procedure, by incorporating the rule of necessity.

Do you want to further define what "judge available" means? Is a judge "available" if the judge is too busy but could not be disqualified for cause?

Who should decide if there is an available judge? Under the court rule, the presiding judge decides whether there is an available judge in the district, and if not, the chief justice assigns the case to another judge. Is this okay?

Please let me know if you want to incorporate the rule for criminal proceedings. I did not include criminal actions within this bill draft because of the limited peremptory challenges under Rule 25, Alaska Rules of Criminal Procedure, and the strong likelihood of finding an impartial judge from within all judges in the state.

The two cases in Alaska in which the rule or doctrine of necessity was discussed by the Supreme Court involved a challenge to the law requiring judges appointed after July 1, 1978 to contribute to a judicial retirement system,<sup>2</sup> and a disciplinary case against a lawyer before the Alaska Supreme Court.<sup>3</sup> In the first case, the decision noted that the

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<sup>1</sup> The "rule of necessity" is sometimes referred to as the "doctrine of necessity." See, for example, *In the Matter of Neil S. MacKay*, 416 P.2d 823, 838, n. 18 (Alaska 1964).

<sup>2</sup> *Hudson v. Johnstone*, 660 P.2d 1180, 1183 (Alaska 1983).

<sup>3</sup> *MacKay*, *supra*.

Representative Max Gruenberg  
March 14, 2005  
Page 2

resolution of the case "[was], indirectly at least, of financial interest to the members of [the] court."<sup>4</sup> In the latter case, the lawyer sought to disqualify the court because the Alaska Supreme Court was involved in litigation in federal court against the lawyer and the bar association over the issue of whether the Alaska Supreme Court had the authority to establish the procedure for and conclude disciplinary action against an attorney.<sup>5</sup>

The chronology provided by Mike Barnhill to you, concerning the Amerada Hess litigation and the issue of whether the eligibility to receive an Alaska Permanent Fund Dividend should disqualify a judge, presents a situation in which the rule of necessity could have been applied. However, the doctrine apparently was not considered because the basis for the disqualification was arguably removed and the case settled.

One interesting aspect of the Amerada Hess litigation and the doctrine of necessity was the attempt by the oil companies to go to federal court because of perceived bias in state court. Although the issue of bias was never fully litigated in Amerada Hess, there is a possibility that a party seeking disqualification for cause in state court may move a case to federal court, providing the requirements for federal jurisdiction are met.

If I may be of further assistance, please advise.

DMB:med  
05-177.med

Enclosure

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<sup>4</sup> *Hudson*, 660 P.2d at 1183.

<sup>5</sup> *MacKay*, 416 P.2d 835, n. 1.

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C

West Headnotes

Editor's Note: Additions are indicated by <<+Text  
 +>> and  
 deletions by <<-Text->>.

Supreme Court of Alaska.  
 William HUDSON, Commissioner of  
 Administration and the State of Alaska,  
 Appellants,

v.

Karl JOHNSTONE and Richard Avery, Appellees.  
 No. 5938.

March 4, 1983.

A Superior Court judge who was appointed to the bench after July 1, 1978, and who thus had a percentage of his salary deducted as his contribution to the judicial retirement system, brought suit challenging the constitutionality of statute requiring justices and judges appointed after July 1, 1978 to contribute seven percent of their base annual salary to the retirement system. The Superior Court, Third Judicial District, Anchorage, S.J. Buckalew, Jr., J., entered summary judgment in favor of plaintiff, and the State appealed. The Supreme Court, Matthews, J., held that justices and judges do not commence new "terms of office," for purposes of the Alaska Constitution's compensation clause, upon gaining the electorate's approval in a retention election, and it follows that the legislature, in implementing a contributory judicial retirement system, cannot constitutionally require members of the judiciary already in office to contribute to such a system via a salary deduction; accordingly, statute requiring only those justices and judges appointed after July 1, 1978 to contribute a percentage of their base annual salary to the judicial retirement system was constitutional under the equal protection clause.

Reversed.

Rabinowitz, J., filed a concurring opinion.

[1] Judges ⇨22(2)

227k22(2) Most Cited Cases

Were the legislature to implement a contributory judicial retirement system by exacting salary deductions from justices and judges "during their terms of office," it would clearly run afoul of the compensation clause of the Alaska Constitution, providing that "Compensation of Justices and Judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of the State." Const. Art. 4, § 13.

[2] Judges ⇨22(11)

227k22(11) Most Cited Cases

If there is to be a contributory retirement system for justices and judges, exempting those justices and judges already in office from the duty of contribution during their terms of office would be constitutionally compelled by the compensation clause of the Alaska Constitution. AS 22.25.011; Const. Art. 4, § 13.

[3] Constitutional Law ⇨238.5

92k238.5 Most Cited Cases

[3] Judges ⇨22(2)

227k22(2) Most Cited Cases

Since no suspect classifications or fundamental rights are involved, Alaska statute requiring contribution by justices and judges to a retirement system does not violate either the federal or state equal protection clauses. AS 22.25.011; U.S.C.A. Const.Amend. 14.

[4] Judges ⇨42

227k42 Most Cited Cases

It may become necessary for a court to render a decision notwithstanding that the court has a financial interest in the matter; under the rule of necessity, a judge is not disqualified to try a case because of his personal interest in the matter at issue if there is no other judge available to hear and decide the case.

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[5] Judges ~~8~~  
227k8 Most Cited Cases

[5] Judges ~~22(7)~~  
227k22(7) Most Cited Cases  
Phrase "terms of office," as used in provision of the Alaska Constitution stating that compensation of justices and judges "shall not be diminished during their terms of office," means the period during which a justice or judge is entitled to hold office; a justice or judge commences office when appointed by the governor to fill a vacancy and the office does not become vacant until 90 days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself; between such times, the office is not vacant and the justice or judge appointed to the office is thus entitled to hold it. Const. Art. 4, § 13; AS 22.25.011

[6] Constitutional Law ~~238.5~~  
92k238.5 Most Cited Cases

[6] Judges ~~22(2)~~  
227k22(2) Most Cited Cases  
Justices and judges do not commence new "terms of office," for purposes of the Alaska Constitution's compensation clause, upon gaining the electorate's approval in a retention election, and it follows that the legislature, in implementing a contributory judicial retirement system, could not constitutionally require members of the judiciary already in office to contribute to such a system via a salary deduction; accordingly, statute requiring only those justices and judges appointed after July 1, 1978 to contribute a percentage of their base annual salary to the judicial retirement system was not unconstitutional under the equal protection clause. Const. Art. 4, § 13; AS 22.25.011.  
\*1181 David T. LeBlond, Asst. Atty. Gen., Anchorage, and Wilson L. Condon, Atty. Gen., Juneau, for appellants.

Robert H. Wagstaff, D. John McKay, Wagstaff, Middleton & Pope, Anchorage, for appellees.

Before BURKE, C.J., and RABINOWITZ, MATTHEWS, and COMPTON, JJ.

#### OPINION

MATTHEWS, Justice.

This case involves a constitutional challenge to AS 22.25.011 requiring contribution by justices and judges to a retirement system. We find that the lower court erred in declaring the statute unconstitutional on equal protection grounds, and therefore reverse.

AS 22.25.011 states that "[e]ach justice and judge appointed after July 1, 1978, shall contribute seven per cent of the base annual salary received by the justice or judge to the judicial retirement system." [FN1] Justices and judges appointed prior to that date are not required to contribute, even though the criteria for eligibility (AS 22.25.010) and the retirement pay (AS 22.25.020) are the same for both categories.

FN1. AS 22.25.011 has been amended since this case was argued by Ch. 137, § 30, SLA 1982. It now reads, with 1982 additions underlined and deletions in brackets:

Each justice and judge appointed after July 1, 1978, shall contribute seven percent of <<+the+>> <<-[HIS]->> base annual salary <<+received by the justice or judge +>> to the <<+judicial+>> retirement system. Contributions shall be made for all creditable service under this chapter to a maximum of 15 years. This contribution is made in the form of a deduction from compensation, and is made <<+even if+>> <<-[NOTWITHSTANDING THAT]->> the compensation paid in cash to the justice or judge is reduced <<-[THEREBY]->> below the minimum prescribed by law. Each justice and judge is considered to consent to the deduction <<-[MADE]->> from <<-[HIS]->> compensation. Payment of compensation less the deduction constitutes a full <<-[AND COMPLETE]->> discharge <<-[AND ACQUITTANCE]->> of all claims and demands for the services rendered by <<+the justice or judge+>> <<-[HIM]->> during the period covered by the payment, except as to the benefits provided for under <<+this chapter+>> <<-[AS

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22.25.010-22.25.090]->>. The contributions shall be credited <<+to the retirement fund established in accordance with AS 22.25.048+>> <<-[INTO THE GENERAL FUND OF THE STATE]->>. The 1982 changes have no bearing on the equal protection issue raised in this case.

Superior court judge Karl Johnstone was appointed to the bench after July 1, 1978, and thus has seven per cent of his salary deducted as his contribution to the judicial retirement system. On August 7, 1980 he filed a complaint in superior court against William Hudson, the Commissioner of Administration, and the State of Alaska (hereinafter collectively referred to as "the state"). Judge Johnstone sought a declaratory judgment that AS 22.25.011 was unconstitutional and an injunction restraining the state from making further deductions under that statute. [FN2]

FN2. The action was originally brought by Judge Johnstone and district court judge Richard Avery. Judge Avery has since resigned from the judiciary and is therefore no longer an active party in this case.

\*1182 On March 5, 1981 the lower court entered summary judgment in favor of Judge Johnstone. The basis for its decision was as follows:

It is declared that AS 22.25.011 is unconstitutional as a denial of equal protection under the law for it creates two separate classes of judges doing identical work and the first class appointed before July 1, 1978, can never be subject to the requirements of the statute even though they may commence new terms or new judicial positions after July 1, 1978.

The lower court directed the state to cease deducting seven per cent from Judge Johnstone's salary and further ordered it to return to him all amounts previously collected. It also awarded Judge Johnstone \$1,500 in attorney's fees. The state has appealed.

It is clear from the record below that had AS 22.25.011 read, "Each justice and judge commencing a new term of office after July 1, 1978 shall contribute seven per cent," the lower court would have found the statute constitutionally valid.

Article IV, section 13 of the Alaska Constitution provides:

Justices, judges and members of the judicial council and the Commission on Judicial Qualifications shall receive compensation as prescribed by law. *Compensation of justices and judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of the State.*

(Emphasis added).

[1][2] Were the legislature to implement a contributory judicial retirement system [FN3] by exacting salary deductions from justices and judges "during their terms of office," it would clearly run afoul of the compensation clause of article IV, section 13. Requiring a judge to contribute via a salary deduction to a retirement system diminishes a judge's compensation. See *Carper v. Stiffel*, 384 A.2d 2, 6-7 (Del.1977); *Wilson v. Marsh*, 162 Neb. 237, 75 N.W.2d 723, 730 (Neb.1956). If there is to be a contributory retirement system, exempting justices and judges already in office from the duty of contribution during their terms of office would therefore be constitutionally compelled by article IV, section 13.

FN3. That the state may validly implement a contributory judicial retirement system is clear. Alaska Const. art. IV, § 11 provides in relevant part:

Justices and judges shall be retired at the age of seventy except as provided in this article. The basis and amount of retirement pay shall be prescribed by law.

[3] Institution of a contributory retirement system, rather than one which is noncontributory, will substantially further a legitimate economizing purpose. Since no suspect classifications or fundamental rights are involved, AS 22.25.011 does not violate either the federal or the state equal protection clauses. See *Rose v. Commercial Fisheries Entry Commission*, 647 P.2d 154, 158-59 (Alaska 1982); *Pharr v. Fairbanks North Star Borough*, 638 P.2d 666, 669-70 (Alaska 1981). Differences in compensation between otherwise similarly situated judges which result from a state's compensation clause have readily withstood federal equal protection scrutiny. See *Kavanagh v. Brown*,

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(Cite as: 660 P.2d 1180)

206 F.Supp. 479, 482-85 (E.D.Mich.), *aff'd per curiam*, 371 U.S. 35, 83 S.Ct. 143, 9 L.Ed.2d 112 (1962); *Taylor v. State*, 360 Mich. 146, 103 N.W.2d 769, 773-74 (Mich.1960); *Shubat v. State*, 157 Mont. 143, 484 P.2d 278, 284-86 (Mont.1971). Furthermore, if the disparate treatment occasioned by AS 22.25.011 is mandated by article IV, section 13 of the Alaska Constitution, a state equal protection challenge will similarly be of no avail. *Cf. Park v. State*, 528 P.2d 785, 786-87 (Alaska 1974) ("It is a well accepted principle of judicial construction that whenever reasonably possible, every provision of the Constitution should be given meaning and effect, and related provisions should be harmonized").

AS 22.25.011 states, however, that justices and judges "appointed" after July 1, 1978 must contribute. As is evident from the trial court's memorandum of decision, it is the legislature's use of that word which the court found repugnant. The lower court reasoned that since justices and judges appointed prior to July 1, 1978 "may \*1180 commence new terms" after that date, article IV, section 13 does not require that the legislature forever exempt such justices and judges from having to contribute to the retirement system. The lower court obviously construed the phrase "terms of office" in article IV, section 13 as referring to the ten year and six year intervals between retention elections for justices and judges, respectively, established by article IV, section 6 of the Alaska Constitution. [FN4] Judge Johnstone argues that this is the proper construction of that phrase. The state, on the other hand, maintains that for purposes of article IV, section 13 justices and judges serve a single term of office until rejected by the electorate.

FN4. Alaska Const. art. IV, § 6 provides:  
Each supreme court justice and superior court judge shall, in the manner provided by law, be subject to approval or rejection on a nonpartisan ballot at the first general election held more than three years after his appointment. Thereafter, each supreme court justice shall be subject to approval or rejection in a like manner every tenth year, and each superior court judge, every sixth year.

→ Before addressing this issue, we think it

appropriate to note that its resolution is, indirectly at least, of financial interest to the members of this court. For example, were we to construe the phrase "terms of office" in article IV, section 13 as urged by Judge Johnstone, and hold AS 22.25.011 unconstitutional, it is conceivable that the legislature might enact a statute requiring justices and judges presently on the bench to contribute to the retirement system upon gaining approval at their next retention election. The existence of such a financial interest calls into question the propriety of this court deciding the case. *See* Code of Judicial Conduct, Canon 3(C)(1). While article IV, section 16 of the Alaska Constitution confers authority on the Chief Justice to "assign judges from one court or division thereof to another for temporary service," all such judges likewise have a financial interest in the outcome of this case.

[4] Fortunately, this dilemma has been dealt with before. In cases such as this, the law recognizes that it may become necessary for a court to render a decision notwithstanding that the court has a financial interest in the matter. *See, e.g., United States v. Will*, 449 U.S. 200, 213-16, 101 S.Ct. 471, 480-81, 66 L.Ed.2d 392, 405-06 (1980); *Atkins v. United States*, 556 F.2d 1028, 1035-40 (Ct.Cl.1977); *Olson v. Cory*, 27 Cal.3d 203, 164 Cal.Rptr. 217, 220, 609 P.2d 991, 994 (Cal.1980). Under the rule of necessity "a judge is not disqualified to try a case because of his personal interest in the matter at issue if there is no other judge available to hear and decide the case." *Atkins v. United States*, 556 F.2d at 1036. To hold otherwise "would result in a denial of a litigant's constitutional right to have a question, properly presented to such court, adjudicated." *State ex rel. Mitchell v. Sage Stores Co.*, 157 Kan. 622, 143 P.2d 652, 655 (Kan.1943) (quoted with approval in *United States v. Will*, 449 U.S. at 214, 101 S.Ct. at 480, 66 L.Ed.2d at 405). The rule of necessity is applied in cases where "[i]f to disqualify one would disqualify all...." *Olson v. Cory*, 164 Cal.Rptr. at 220, 609 P.2d at 994. That being the situation here, we conclude that this case is a proper one in which to invoke the rule.

Turning to the merits, both parties rely heavily on *Buckalew v. Holloway*, 604 P.2d 240 (Alaska 1979) in support of their respective positions concerning the meaning of "terms of office" for purposes of article IV, section 13. In that case the court was

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called upon to construe the meaning of the word "terms" as used in article IV, section 4 of the Alaska Constitution. That section states:

Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law. Judges of other courts shall be selected in a manner, *for terms*, and with qualifications prescribed by law.

(Emphasis added). At issue was the validity of AS 22.15.170(c), which in pertinent part provides that "[e]ach magistrate serves \*1184 at the pleasure of the presiding judge of the superior court in the district for which appointed." (Emphasis added). Holloway, a magistrate who had been terminated pursuant to this statute, claimed that "at the pleasure of" did not comport with the requirement of article IV, section 4 that "[j]udges of other courts shall be selected ... for terms ... prescribed by law." According to Holloway, the word "terms" as used in that section referred to a period of service fixed in time. We disagreed, stating that: "[W]e do not believe it was intended to imply such a precise limitation. A broader definition of the word, 'the time for which something lasts' ... is in closer accord with the apparent purposes of article IV, section 4." 604 P.2d at 244 (footnote omitted).

In reaching our decision in *Buckalew*, we did note in passing that article IV, section 6, governing judicial retention elections, "specifies the 'terms' of the justices and judges of the supreme and superior courts." *Id.* According to Judge Johnstone, this statement is dispositive of the issue raised here. However, that sentence must be read in its proper context. For we went on to explain that "[t]he 'terms' thus delineated constituted a rejection of the federal judicial system, in which federal judges serve no 'term', but remain in office for life unless impeached." *Id.* (footnote omitted). By no means were we purporting to say that the word "terms" for purposes of article IV, section 13 necessarily refers to the intervals between retention elections set forth in article IV, section 6. Indeed, we suggested that the word "terms" as used in article IV, section 13 had a different meaning:

As originally adopted, the constitution ... used "term" generally to describe the period in office of all justices and judges, art. IV, § 13.

With the exception of art. IV, wherever "term" or "service at the pleasure of" appears in the constitutional text originally adopted ... the reference is to a period of service for a particular office, thus allowing the drafters to be precise, in their terminology. The language of art. IV, §§ 4 and 13, on the other hand, applies to any judge of any court the legislature might create, and "term" in that context may intend only the more general, though equally valid connotation of any limitation on a period of service. *Cf.* Webster's Third New International Dictionary (1971) ("a limited or definite extent of time"); Black's Law Dictionary (4th ed. 1968) ("the period during which elected officer or appointee is entitled to hold office").

604 P.2d at 244 nn. 13, 14.

[5] In our view, the phrase "terms of office" as used in article IV, section 13 means the period during which a justice or judge is entitled to hold office. Under our constitutional framework, a justice or judge commences office when appointed by the Governor to fill a vacancy. Alaska Const. art. IV, § 5. The office does not become vacant until "ninety days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself." *Id.* art. IV, § 7. Between such times the office is not vacant and the justice or judge appointed to the office is thus entitled to hold it.

To hold otherwise would, in our judgment, vitiate the proscription against diminishing the compensation of justices and judges during their terms of office. In discussing the compensation clause found in article III, section 1 of the federal constitution, the United States Supreme Court has noted:

The Compensation Clause has its roots in the longstanding Anglo-American tradition of an independent Judiciary. A Judiciary free from control by the Executive and the Legislature is essential if there is a right to have claims decided by judges who are free from potential domination by other branches of government... Hamilton, in *The Federalist* No. 79, p. 491 (1818) (emphasis deleted), emphasized the importance of protecting judicial compensation:

\*1185 "In the general course of human nature, a

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power over a man's subsistence amounts to a power over his will."

*United States v. Will*, 449 U.S. 200, 217-18, 101 S.Ct. 471, 482, 66 L.Ed.2d 392, 407-08 (1980). That the drafters of Alaska's constitution sought to insulate the judiciary from political pressure that might interfere with its impartiality is clear: "There is no doubt that judicial independence was a paramount concern of the delegates...." *Buckalew v. Holloway*, 604 P.2d 240, 245 (Alaska 1979) (footnote omitted); see 1 Proceedings of the Constitutional Convention 586-602. Were we to construe article IV, section 13 as urged by Judge Johnstone, the legislature could diminish a justice's or judge's compensation every ten or six years, respectively. Such a construction, we believe, would be contrary to the underlying purpose of the compensation clause.

[6] Accordingly, we hold that justices and judges do not commence new "terms of office" for purposes of article IV, section 13 upon gaining the electorate's approval in a retention election. It follows that the legislature, in implementing a contributory judicial retirement system, could not constitutionally require members of the judiciary already in office to contribute to such a system via a salary deduction. That being the case, the legislature's use of the word "appointed" in AS 22.25.011 of necessity passes muster under equal protection. See, e.g., *Kavanagh v. Brown*, 206 F.Supp. 479, 482-85 (E.D.Mich.), *aff'd per curiam*, 371 U.S. 35, 83 S.Ct. 143, 9 L.Ed.2d 112 (1962). The lower court therefore erred in holding AS 22.25.011 unconstitutional on equal protection grounds.

Judge Johnstone also has argued that the judgment of the superior court can be affirmed on another ground. His argument is that AS 22.25.011 violates article XII, section 7 of the Alaska Constitution [FN5] because the statutory requirement that judicial contributions be credited into the general fund rather than a separate account constitutes an impairment of accrued benefits. This argument has, however, been mooted by the 1982 amendments to AS 22.25.011 [FN6] and by related legislation establishing a judicial retirement system. AS 22.25.048.

FN5. Art. XII, § 7 of the Alaska Constitution states:

*Retirement Systems.* Membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of these systems shall not be diminished or impaired.

FN6. See note 1 *supra*.

The judgment of the superior court is REVERSED.

CONNOR, J., not participating.

RABINOWITZ, Justice, concurring.

I disagree with the court's conclusion that justices and judges do not commence new "terms of office" for purposes of article IV, section 13 upon gaining the electorate's approval in a retention election. Thus, I would hold that article IV, section 13 does not compel the use of the word "appointed" in AS 22.25.011.

My reasons for disagreeing with the court's holding that the phrase "terms of office," as used in article IV, section 13, refers to the periods which a justice or judge is entitled to hold office are as follows:

In *Buckalew v. Holloway*, 604 P.2d 240 (Alaska 1979), we said in part:

Article IV, section 6 specifies the "terms" of the justices and judges of the supreme and superior courts:

Each supreme court justice and superior court judge shall, in the manner provided by law, be subject to approval or rejection on a nonpartisan ballot at the first general election held more than three years after his appointment. Thereafter, each supreme court justice shall be subject to approval or rejection in a like manner every tenth year, and each superior court judge, every sixth year.

The "terms" thus delineated constituted a rejection of the federal judicial system, in \*1186 which federal judges serve no "term", but remain in office for life unless impeached. The framers of the Alaska Constitution expressly sought a system in which justices and judges would be accountable for their performance in office.

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604 P.2d at 744 (footnote omitted).

In my view, this language supports Judge Johnstone's contention that the *Buckalew* court concluded that judicial terms delineated by article IV last from one retention election to the next. The rejection of the federal scheme essentially repudiated a system in which it was presumed that a judge sat on the bench indefinitely once appointed. Furthermore, a judge had a right to stay on the bench for life unless impeached. Alaska adopted a compromise between "elective" and "appointive" methods of selection of the judiciary, creating a system in which a judge has a right to remain on the bench only until the next retention election, barring impeachment. Thus, he has a definite "term of office," which may be renewed but is not his by right thereafter. Cases interpreting constitutional clauses limiting the power of the legislature to alter official salaries during a "term of office" almost unanimously construe "term" to refer to the period during which an officer occupies his position by right. [FN1]

FN1. See the following cases construing "term" as used in constitutional clauses prohibiting decreases or increases in compensation during the terms of office of designated officials. *Bayley v. Garrison*, 190 Cal. 690, 214 P. 371 (Cal.1923):

"The general rule, however, seems to be that this constitutional prohibition against changing the salary of a public officer during his term of office applies only to officers who have a fixed and definite term, and does not apply to appointive officers, who hold only at the pleasure of the appointing power."

214 P. at 872, quoting 37 L.R.A.(N.S.) 389. *Kratzer v. Commonwealth*, 228 Ky. 684, 15 S.W.2d 473 (Ky.App.1929):

As applied to office the word "term" speaks with reference to the office itself, and not to the tenure of the incumbent .... It means the fixed period of time during which an officer or appointee is entitled to hold the office, perform its functions, enjoy its privileges and emoluments.

15 S.W.2d at 474-75 (citation omitted). *State v. Board of Commissioners*, 29 N.M. 209, 222 P. 654 (N.M.1924):

It has been many times held that such a provision does not apply to an office held during the pleasure of and subject to removal of the appointing power .... This is due to the fact that such persons have no "term of office" within the intendment of such constitutional provision. To come within its terms an office must have a fixed and definite tenure of office.  
 222 P. at 655.

The conclusion that judges and justices serve a single term during their tenure on the bench is belied by the words of George McLaughlin, Chairman of the Constitutional Judicial Committee. After explaining the rationale for the proposed article IV compromise between "appointive" and "elective" judicial systems, he set out the scheme for retention elections:

I might carry on a bit and point out *what happens in terms after the governor does appoint from the list presented to him* as under the Missouri Plan. Roughly, three and one-half or four years later, the judge is required, every judge without exception, is required to go on the ballot for approval by the voters. Does he have to spend any money? No sir. What is the requirement?

The only requirement on a nonpartisan ballot could be, "Shall Judge 'Blank' be retained in office?" The Missouri Plan provides and the New Jersey Plan in substance provides (my figures are rough), that roughly a year and one-half after appointment the judge will be put on the ballot to determine whether or not the public desires to retain him. It was the view of the Committee that in order to attract good men to become candidates, the only way we could assure the attraction of good candidates was to assure them they would be in office at least for a period of three and one-half years.

1 Proceedings of the Constitutional Convention 585-86 (emphasis added).

In discussing particularities, he again referred to the interval between retention elections as a "term":

As I presume, the question is, why did we determine that the judges of the supreme \*1187 court should serve ten years. I personally voted for twelve. The Committee decided that ten was the average, and the Committee when it decided

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that ten was the average, followed the recommendation of the conference of the Chief Justices of the United States, at which they recommended that *the term of judges of the appellate courts be not less than ten years*. In fact, as I say, I reduced it two years, and Mr. Robertson decreased his an intangible amount, from lifetime to ten years. As the practice is in other courts, that is those which have revised their judiciary article in recent years, California, *the supreme court has a term of twelve years*. All justices of the supreme court, district court—that is the intermediate appellate courts—is twelve years, and the superior court, which is the trial court, is six years. In New Jersey, the supreme court judges *hold for seven years* ... It is the feeling of the Committee, because of the selective process, that is, screening for initial appointment and the fact that four years thereafter, every judge, that is, a maximum of four years, every supreme court judge and every superior court judge would be up for re-election, that there would be enough of a public control over them that *long terms* would be more desirable.

*Id.* at 611-12 (emphasis added).

Delegate Victor Rivers, also used "term" to refer to that interval:

Now we ask that the judge sit inviolate in that position for ten years. If he is a good judge, a fair and just judge, it is my opinion that he should have no fear in going before the electorate, because it has been my observation that a man who sticks to his principles and does not compromise principles with expediency and is generally known to be honest will even be elected and re-elected to political office. Six years is a *term* for which we elect a senator.

*Id.* at 613 (emphasis added). From these excerpts, it is clear that the framers conceived of the "terms" of judges and justices enduring until the electorate expressed its opinion at scheduled retention elections.

Despite my conclusion that article IV, section 13, does not furnish justification for the use of "appointed" in AS 22.25.011, I concur in the court's holding that the statute "passes muster under equal protection."

Article XII, section 7 of the Alaska Constitution provides:

Membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. *Accrued benefits ... shall not be diminished or impaired.* (emphasis added)

In my view, the existence of this constitutional provision justifies the use of the word "appointed" in AS 22.25.011. For under the provisions of article XII, section 7, justices and judges appointed on or before July 1, 1978, are constitutionally entitled to receive benefits under the non-contribution retirement system established prior to the enactment of AS 22.25.011. Thus the legislature is precluded from requiring such judges to contribute toward their retirement benefits even when they commence new "terms of office."

In *State v. Allen*, 625 P.2d 844 (Alaska 1981), we considered whether officials who were participating in the Elected Public Officers Retirement System (EPORS) at the time of its repeal by referendum, but who were not then entitled to benefits, would be entitled to benefits under that system upon retirement. Although the system had remained in effect for only 9 1/2 months, this court concluded, on the strength of article XII, section 7, that they would. In reaching this holding we further concluded that "rights accrued by [public officials] under EPORS were not subject to any implied condition subsequent to repeal by the electorate and that those rights remain fully enforceable." [FN2]

FN2. See *Allen*, 625 P.2d at 849.

In *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981), we again addressed the requirements of article XII, section 7. The issue was the validity of certain amendments \*1188 to Public Employees Retirement System << [PERS] >> which reduced disability and death benefits. We held that an employee's rights in a system such as PERS vest upon employment and enrollment in the system, rather than at the time an employee became eligible for benefits. We further held the amendments unconstitutional as to those employees which had been hired prior to the amendments and who did not elect to be covered by the system as amended. [FN3]

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FN3. See *Hammond*, 627 P.2d at 1055-57, 1059.

In my view, *State v. Allen* and *Hammond v. Hoffbeck* preclude the legislature from requiring the members of the judiciary appointed on or before July 1, 1978, from contributing toward their retirement benefits, absent some offsetting comparable new advantage. [FN4] Therefore, I concur with the court's holding that the superior court erred in ruling AS 22.25.011 unconstitutional on equal protection grounds.

FN4. In *Hammond*, we said that article XII, section 7 "does not preclude modifications of the system; [it] does, however, require that any changes in the system that operate to a given employee's disadvantage must be offset by comparable new advantages to that employee." 627 P.2d at 1059.

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**EXXON CORPORATION, Plaintiff-Appellant-Cross-Appellee, v. HAROLD C. HEINZE; CHARLES E. COLE, Attorney General for the State of Alaska; RONALD SWANSON, Director of the Division of Lands; JAMES E. EASON, Director of the Division of Oil and Gas, Defendants-Appellees-Cross-Appellants.**

Nos. 92-35266, 92-35323

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

*32 F.3d 1399; 1994 U.S. App. LEXIS 21908; 94 Cal. Daily Op. Service 6273; 94 Daily Journal DAR 11467*

November 2, 1993, Argued, Submitted, Seattle, Washington  
August 17, 1994, Filed

**PRIOR HISTORY:** **[\*\*1]** Appeal from the United States District Court for the District of Alaska. D.C. No. CV-91-543-JKS. James K. Singleton, District Judge, Presiding.

**DISPOSITION:** VACATED and REMANDED

**LexisNexis(R) Headnotes**

**COUNSEL:** Thomas Gibbs Gee and David D. Sterling, Baker & Botts, Houston, Texas; and Joseph R. D. Loescher, Hughes, Thorsness, Gantz, Powell & Brundin, Anchorage, Alaska, for the plaintiff-appellant-cross-appellee.

Bruce M. Botelho, Deputy Attorney General, Juneau, Alaska; and Deborah L. Williams, Hellen, Partnow & Condon, Anchorage, Alaska, for the defendants-appellees-cross-appellants.

**JUDGES:** Before: Eugene A. Wright, Alfred T. Goodwin, and Procter Hug, Jr., Circuit Judges. Opinion by Judge Goodwin.

**OPINIONBY:** ALFRED T. GOODWIN

**OPINION:** [\*1400] OPINION

GOODWIN, Circuit Judge:

Exxon Corporation ("Exxon") n1 appeals an order dismissing its 42 U.S.C. § 1983 lawsuit and denying its prayer to enjoin certain Alaska state court litigation over state oil and gas royalties. Exxon contends that the state court litigation violates its due process right to an unbiased forum. Because a partial settlement has substantially changed the posture of the case, we vacate the fac-

tual record is now insufficient to review Exxon's claims on their **[\*\*2]** merits, we dismiss for lack of ripeness, vacating the district court's order.

n1 Chevron U.S.A., Inc. ("Chevron") was originally a coparty to Exxon's appeal; however, Chevron and Alaska settled, agreeing to dismiss Chevron's appeal, No. 92-35389, and to dismiss Chevron as a party to the State's cross-appeal, No. 92-35323. For convenience, we refer to Exxon as the sole appellant and cross-appellee throughout.

I.

In 1977, the State of Alaska filed a state court action against Exxon and eighteen other companies producing gas and oil on Alaska's North Slope ("the producers"). See *Alaska v. Amerada Hess Corp. et al*, Civil No. LJU-77-847 (hereinafter "the *ANS Royalty Litigation*"). The State sought a declaration of its rights under certain mineral leases which require the producers to pay [\*1401] royalties on the gas and oil they extract from state lands.

In 1983, the State amended its complaint to add a claim for underpayment of past royalties, alleging that the producers had systematically underestimated the value of certain **[\*\*3]** gas and oil. The producers counterclaimed for overpayment of royalties. The parties agreed to sever the gas royalty and other gas claims from the oil royalty claims and to litigate the oil royalty claims first.

In 1987, after extensive discovery on the oil royalty claims, several producers, including Exxon, filed suit in federal court, contending that the pending *ANS Royalty Litigation* violated their due process rights and requesting injunctive and declaratory relief under 42 U.S.C. § 1983. *Standard Alaska Production Co. v. Schaible*, No.

87-621 (D. Alaska, Nov. 2, 1987). The complaint alleged that the outcome of the *ANS Royalty Litigation* would substantially affect the Alaska Permanent Fund, and, consequently, the annual Permanent Fund dividends Alaska residents receive each year. n2 Because Alaska state judges and potential jurors are eligible to receive Permanent Fund dividends, the producers argued, they had a financial interest in the case, rendering them unconstitutionally biased.

n2 The Alaska State Constitution requires state administrators to place 25% of all state oil and gas royalties in the Alaska Permanent Fund which is used only for income-producing investments. Alaska Const. Art. IX § 15. Under the Permanent Fund Dividend Program, enacted in 1982, the State pays Alaska residents approximately 50% of the income received each year from these investments. *Alaska Stat. §§ 43.23.045(b)*, 37.13.140. Each person who has resided in Alaska for a year or more - and thus all Alaska state judges, potential jurors, and their family members - are eligible to receive these payments or Permanent Fund dividends. In fact, since Alaska judges must have resided in Alaska for five years and Alaska jurors are selected from a list of Permanent Fund recipients, see *Alaska Stat. § 09.20.050(b)*, jurors and judges are, by definition, eligible to receive Permanent Fund dividends. Between 1988 and 1992, the annual Permanent Fund dividend paid to each resident ranged from \$826.90 to \$952.63, or approximately \$3,600 for a family of four.

[\*\*4]

Then-District Judge Kleinfeld, an Alaska state resident, recused himself from the federal case, agreeing that one might question the impartiality of a judge who receives Alaska Permanent Fund dividends, but expressly declining to reach the due process issue or rule on the fairness of the state court forum. R.T. March 8, 1988. The Chief Judge of the Ninth Circuit then appointed Judge Belloni, a non-Alaskan, to hear the case.

Judge Belloni ultimately dismissed the producers' § 1983 complaint without prejudice, rejecting the State's Eleventh Amendment defense, but holding that the controversy was not ripe for federal review because the producers had not raised the bias issue in a state court motion to disqualify. Judge Belloni challenged the State to provide a fair forum, and invited the producers "to re-open this federal case" if "the State Officials fail to provide an unbiased forum within a reasonable time." *Standard Alaska Prod. Co. v. Schraible*, No. 87-521, Unpublished Opinion at 7 (D. Alaska June 20, 1988). We affirmed,

agreeing that "until a proper motion for disqualification is made in the state court, the disputed factual questions concerning the alleged bias of all Alaska [\*\*5] judges and jurors cannot be reviewed by any federal court." *Standard Alaska Prod. Co. v. Schraible*, 874 F.2d 624, 630 (9th Cir. 1989), cert. denied, 495 U.S. 904 (1990).

After we decided *Schraible*, the Alaska legislature amended the Permanent Fund dividend legislation to provide that "income earned on money awarded after trial" in the *ANS Royalty Litigation* would "not [be] available for distribution to the dividend fund." *Alaska Stat. § 43.23.045(b)* (1989) (repealed 1991). In addition, the Alaska Supreme Court amended Alaska Rule of Civil Procedure 47(c) to provide that an Alaska juror's eligibility to receive Permanent Fund dividends did not constitute grounds for challenging the juror for cause. n3

n3 The amended rule allows challenges for cause when the juror "has a financial interest, other than that of a taxpayer or a permanent fund dividend recipient in the outcome of the case." Alaska R. Civ. P. 47(c)(12) (1989).

After the Supreme Court denied [\*\*6] certiorari, *Schraible*, 495 U.S. 904 (1990), and the state court imposed [\*\*1402] a deadline for filing a motion to disqualify, Exxon moved to disqualify Alaska Superior Court Judge Carpeneti, who was presiding over the state court litigation. n4 Exxon argued that the 1989 amendment had not cured the bias problem because it did not address: (1) payments received pursuant to a declaratory judgment; (2) payments received as a result of a settlement or summary judgment; or (3) payments received as a result of royalty-in-kind adjustment clauses. Judge Carpeneti issued a "Notice of Intention to Grant Motion for Disqualification," concluding that judges who receive Permanent Fund dividends have a "direct financial interest or another interest which strongly resembles a direct interest in the outcome of this case," and ruling that the 1989 amendments had not eliminated that interest. *In re ANS Royalty*, No. LJU-77-847, Order No. 91-9 at 9 (Sup. Ct. Alaska March 14, 1991). Judge Carpeneti also found that the "Rule of Necessity" did not apply. *Id.* He gave the state seventy days to remedy the bias problem.

n4 Exxon contends that this motion was based exclusively on state law and argues that it expressly reserved its "right" to have federal courts decide federal constitutional issues. Appellants' Br. at 14 n.6 (citing *England v. Louisiana State Bd. of Med. Examiners*, 375 U.S. 411, 11 L. Ed. 2d 440, 84 S. Ct. 461 (1964)).

[\*7]

In response, in May 1991, the Alaska legislature again amended *Alaska Stat. § 43.23.045*, replacing the 1989 amendment with an amendment requiring any award received as a result of the *ANS Royalty Litigation* (including royalty-in-kind adjustments from third parties and interest earned on such funds) to be deposited into the Permanent Fund principal and not made available for distribution as dividends. *Alaska Stat. § 43.23.045(e)* (1991) (current version at *Alaska Stat. § 37.13.145(d)* (1992)).<sup>n5</sup> The legislature also enacted a section providing that the amendment would be automatically repealed if the Alaska Supreme Court held that eligibility to receive Permanent Fund dividends under the unamended statute would not disqualify a judge or juror from hearing the *ANS Royalty Litigation*. *Alaska Stat. § 43.23.045(e)* (1991) (current version at *Alaska Stat. § 37.13.145(d)* (1992)).

<sup>n5</sup> The amended statute provides that

... income earned on money awarded in or received as a result of [the *ANS Royalty Litigation*], including settlement, summary judgment, or adjustment to a royalty-in-kind contract that is tied to the outcome of this case, or interest earned on the money, or on the earnings of the money shall be treated in the same manner as other income of the Alaska permanent fund, except that it is not available for distribution to the dividend fund, and shall be annually deposited into the principal of the Alaska permanent fund.

[\*8]

Judge Carpeneti ruled that these amendments cured the bias problem and denied Exxon's motion to disqualify. Exxon filed a motion to reconsider, arguing that the newest amendments did not eliminate the bias problem because they did not address the producers' counterclaims and because the repeal provision "reinforced" each Alaskan's interest. Judge Carpeneti denied the motion to reconsider, ruling that the producers had waived any challenge based on the counterclaims and rejecting Exxon's reliance on the repeal provision on its merits. A second superior court judge affirmed, and the Alaska Supreme Court summarily denied Exxon's petition for review and motion for an expedited appeal. *BP Exploration v. Alaska*, No. S-4654, S-4662, S-4689 (Alaska filed Aug. 23, 1991).

Exxon and Chevron then filed the instant § 1983 action in federal court, again seeking to enjoin the *ANS Royalty Litigation*. Exxon moved to disqualify Judge Singleton, the Alaska District Judge assigned to the federal case. Judge Singleton denied Exxon's motion to disqualify, rul-

ing that a citizen's eligibility to receive Permanent Fund dividends is a "bare expectancy," not a financial interest, and noting that even [\*9] if justification for recusal existed, the Rule of Necessity might require him to hear the case. *Exxon Corp. v. Heinze*, 792 F. Supp. 72, 76 (D. Alaska 1992) (citing *United States v. Will*, 449 U.S. 200, 212-16, 66 L. Ed. 2d 392, 101 S. Ct. 471 (1980)). Chief Judge Holland, reviewing Judge Singleton's ruling pursuant to 28 U.S.C. § 144, affirmed. *Exxon Corp. v. Heinze*, 792 F. Supp. 77, 79 (D. Alaska 1992).

Judge Singleton then denied the producers' motion for a preliminary injunction and [\*1403] dismissed the complaint with prejudice, relying on the Rule of Necessity. R.T. March 12, 1992 at 17. Exxon and Chevron appealed. Thereafter, in April 1992, Chevron and Exxon settled the oil royalty claims and counterclaims. The severed gas claims and counterclaims remain.

II.

Both parties agree that the posture of this case has changed significantly since Judge Singleton dismissed it. Both parties, however, urge us to reexamine Judge Singleton's orders in light of the facts as they then existed. We decline to do so. Because of the settlement, the [\*10] correctness of Judge Singleton's rulings, on the facts as they then existed, is moot. *Northern Alaska Envtl. Ctr. v. Hodel*, 803 F.2d 466, 469 (9th Cir. 1986). We will not issue an advisory opinion on the merits of Judge Singleton's various orders regarding the settled oil claims.

However, Exxon urges that its appeal is not entirely moot, as the severed gas claims and counterclaims remain. It asks us to decide if the same bias problems apply to the remaining claims and notes that Judge Singleton's dismissal with prejudice may preclude it from returning to federal court. Exxon also emphasizes that litigation before financially interested judges and jurors raises fundamental issues of due process, even when the judges' financial interest is relatively small. See *Connally v. Georgia*, 429 U.S. 245, 251, 50 L. Ed. 2d 444, 97 S. Ct. 546 (1977) (paying magistrates a \$5 fee for granting a search warrant application, but nothing for denying warrant applications, violates due process); *Tumey v. Ohio*, 273 U.S. 510, 523, 532, 71 L. Ed. 749, 47 S. Ct. 437 (1927) [\*11] (paying adjudicator \$12 per conviction, but nothing for acquittals, violates due process).

We agree that "the Due Process Clause entitles a person to an impartial and disinterested tribunal," *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 64 L. Ed. 2d 182, 100 S. Ct. 1610 (1980), and that "[a] fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison*, 349 U.S. 133, 136, 79 L. Ed. 942, 75 S. Ct. 623 (1955).

n6 Moreover, like the more stringent federal judges' disqualification statute, 28 U.S.C. § 455, the Constitution is concerned not only with actual bias but also with "the appearance of justice." *Id.* Thus, the question is not whether the Alaska judges and jurors are actually biased or even whether they "would do their very best to weigh the scales of justice equally between contending parties," *Id.*, but whether the alleged pecuniary interest is sufficiently "direct, personal, [and] substantial" that it "would offer a possible temptation to the average man." *Tumey*, 273 U.S. at 523, 532. [\*12] n7 Regardless of his personal integrity, "no man can be the judge in his own case [or] try cases where he has an interest in the outcome." *In re Murchison*, 349 U.S. at 136.

n6 See also *Aetna Life Ins. Co. v. Laviole*, 475 U.S. 813, 822, 89 L. Ed. 2d 823, 106 S. Ct. 1580 (1986); *Withrow v. Larkin*, 421 U.S. 35, 47, 43 L. Ed. 2d 712, 95 S. Ct. 1456 (1975) (The "probability of actual bias on the part of a judge or decision-maker is too high to be constitutionally tolerable" when "the adjudicator has a pecuniary interest in the outcome."); *Gibson v. Berryhill*, 411 U.S. 564, 36 L. Ed. 2d 488, 93 S. Ct. 1689 (1973); *Ward v. Village of Monroeville*, 409 U.S. 57, 34 L. Ed. 2d 267, 93 S. Ct. 80 (1972).

n7 But see *In re New Mexico Natural Gas Antitrust Litigation*, 620 F.2d 794 (10th Cir. 1980) (reversing judge's decision to recuse himself from a case which might reduce state residents' utility bills); *In re Virginia Elec. & Power Co.*, 539 F.2d 357 (4th Cir. 1976) (same).

[\*\*13]

However, as Alaska emphasizes, this case also implicates other serious issues, such as a state's sovereign interest in its courts, the need to prevent the federal system from being used as a strategic forum for delay, and litigants' interest in the speedy resolution of cases. Federal courts have long hesitated to interfere with on-going state litigation, and have repeatedly recognized the dangers of doing so. See, e.g., *Younger v. Harris*, 401 U.S. 37, 43, 27 L. Ed. 2d 669, 91 S. Ct. 746 (1971). Given the disruptive effect of allowing parties to transform every challenge to a state tribunal into a federal due process claim, we will not lightly interfere with pending state litigation. *Schaible*, 874 F.2d at 629.

[\*1404] Balancing these interests, and examining the case as it currently exists, we conclude that Exxon's due process claim is not ripe for federal review. See *Abbott Lab. v. Gardner*, 387 U.S. 136, 148-49, 18 L. Ed. 2d 681, 87 S. Ct. 1507 (1967). Whether a dispute is ripe de-

pends on "the fitness of the issues for judicial decision and [\*14] the hardship to the parties of withholding court consideration." *Id.* at 149; *Assiniboine & Soutx Tribes of the Fort Peck Indian Reservation v. Bd. of Oil & Gas*, 792 F.2d 782, 789 (9th Cir. 1986). A claim is "fit for decision if the issues raised are primarily legal, do not require further factual development, and the challenged action is final." *Schaible*, 874 F.2d at 627.

Here, Exxon's bias claims require further factual development. The parties have filed no pleadings and conducted only limited discovery on the remaining gas claims and counterclaims. Without any information on these claims' value or their potential impact, if any, on Permanent Fund dividends, we cannot weigh intelligently the potential bias of Alaska judges and jurors or determine whether their alleged interest has "sufficient substance to disqualify them, given the context in which this case arose." *Gibson*, 411 U.S. at 579.

Moreover, Exxon concedes that the settlement and Alaska's curative legislation have eliminated much of the bias [\*15] problem. It argues that bias remains (1) because the gas counterclaims might reduce the funds available for dividend distribution and (2) because the repeal provision implies that State litigation proceeds might ultimately be distributed as dividends and has a subjective impact on jurors.

However, on the counterclaims, Exxon has shown only that the curative legislation does not mention the counterclaims by name. It has not shown that state courts will interpret the law in such a way that the counterclaims will actually affect the Permanent Fund dividends. State courts might, for example, rule that, any recovery on the counterclaims will simply reduce the State's recovery on other claims, such as the settled oil claims. We cannot tell, based on the record, whether state courts will interpret state law so as to eliminate the counterclaims' potential impact on Permanent Fund dividends. Nor can we determine whether any of Exxon's counterclaims have merit: The State argues that, on some claims, Exxon has paid no royalties, and thus cannot counterclaim for overpayment of royalties. Such issues require further factual development.

Exxon's arguments about jurors' subjective perceptions of [\*16] the Fund or lack of understanding of the curative legislation do not apply to ongoing discovery and will have no impact unless and until the case goes before a jury. Exxon concedes that Alaska judges will understand the curative legislation, and will not be confused about the litigation's capacity to increase their dividends. Moreover, as the State emphasizes, any "subjective" juror bias might be addressed by a properly conducted voir dire. *Los Angeles Memorial Coliseum Comm'n v. NFL*,

32 F.3d 1399, \*1404, 1994 U.S. App. LEXIS 21908, \*\*16;  
94 Cal. Daily Op. Service 6273; 94 Daily Journal DAR 11467

726 F.2d 1381, 1400 (9th Cir.), cert. denied, 469 U.S. 990 (1984).

Exxon has not shown that withholding review will cause it substantial hardship. *Abbott Lab.*, 387 U.S. at 148. Extensive discovery must occur before the case is ready for trial. Exxon does not allege that any remaining bias problems affect Alaska judges' fitness to rule on discovery issues and does not object to Alaska judges ruling on discovery issues. In fact, Exxon emphasizes that, if necessary, the case can be removed to another forum after discovery is complete.

Because the parties have not yet developed a factual [\*\*17] record on the value of the remaining claims or their potential impact (if any) on Alaska Permanent Fund dividends, we cannot evaluate Exxon's bias claims on

their merits. Exxon does not object to state judges presiding over discovery, and many of its arguments pertain to jurors, not judges. This case may never go to a jury, and, if it does, the State may be able to remedy any problems of subjective juror bias with a properly conducted voir dire. Thus, the case is not ripe for review.

We express no opinion on the merits of the parties' arguments regarding abstention and [\*1405] the Rule of Necessity. The district court order dismissing Exxon's complaint with prejudice is VACATED, and the case is REMANDED to the district court to dismiss without prejudice.

VACATED and REMANDED, neither party to recover costs on appeal.

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## MEMORANDUM

February 16, 2006

**SUBJECT:** No disqualification of judges and jurors when no other juror is available (Work Order No. 24-LS1711A)

**TO:** Representative Lesil McGuire,  
Chair of the House Judiciary Committee  
Attn: Shalon

**FROM:** Dennis C. Bailey *DCB*  
Legislative Counsel

This memo accompanies a draft House Judiciary Committee Bill related to disqualification of judges or jurors when no other judge or juror is available. Please note the following.

The phrase "personal interest in the matter" in both sections of the bill is not defined and may create future difficulties.

### **Disqualification of jurors**

Civil Rule 47 uses the term "for cause" and extensively defines the grounds for a challenge for cause. I suggest that in AS 09.20.020 proposed by the bill, "for cause" replace "because of a personal interest in the matter at issue" or that the boundaries of that phrase be defined.

### **Disqualification of judges**

AS 22.20.022 creates a substantive right of preemptory disqualification of judges; Civil Rule 42(c) controls the procedure and scope of such disqualification. *Staso v. State, Dept. of Transportation*, 895 P.2d 988, 990 (Alaska 1995).

AS 22.20.020 addresses disqualification of judicial officers for cause. Civil Rule 42(c)(10) allows a presiding judge to allow an additional change of judge to a party whose interests in the action are hostile or adverse to the interests of another party on the same side. You may wish to consider eliminating the reference to "personal interest in the matter" at issue and just use the existing phrase, may not be disqualified, if no other judge is available. Alternatively, a definition of the boundaries of "personal interest in the matter" is advisable.

A judicial rule of necessity was applied with approval by the Alaska Supreme Court in *Hudson v. Johnstone*, 660 P.2d 1180, 1183 (Alaska 1983). The court noted that:

Representative Lesil McGuire  
February 16, 2006  
Page 2

... [T]he law recognizes that it may become necessary for a court to render a decision notwithstanding that the court has a financial interest in the matter. Under the rule of necessity, "a judge is not disqualified to try a case because of his personal interest in the matter at issue if there is no other judge available to hear and decide the case." To hold otherwise "would result in a denial of a litigant's constitutional right to have a question properly presented to such court, adjudicated." The rule of necessity is applied in cases where "to disqualify one would disqualify all ...."

*Id* (cites omitted), see also *In re Discipline of McKay*, 416 P.2d 823, 838 n. 18. (Alaska 1964). Since the judicial rule addresses the issue, particularly with regard to judges, it may not be necessary to pass sec. 2 of the bill.

Creation of a statutory rule of necessity demonstrates the tension between the need to adjudicate a case when there may not be a judge available with the principal of having a fair and unbiased judge. Any party might call foul if a judge were allowed to hear a case under the necessity rule even though the judge is clearly biased. Depending on the case or the degree of the bias, assigning an otherwise disqualified judge, may be constitutionally challenged as a due process violation of fundamental fairness under Article I, Section 7, of the Alaska Constitution.

It may be advisable to define when a judge is "available." Geographically, the pending bill says that the rule applies if no judge is available in any court in the state, but no other parameters defining availability are included. Currently, if a judge is disqualified, the presiding judge in each judicial district makes judicial assignments of new judges. If all the judges in a judicial district are disqualified, the Chief Justice makes the assignment. Rule 42(c)(5), Alaska Rules of Civil Procedure. Presumably these judges are making a discretionary determination of whether a judge is available.

If I may be of further assistance, please advise.

DCB:med  
06-133.med

Enclosure

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB486-Courts-2-21-06  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title Disqualifying Judges/Jurors From Cases RDU Alaska Court System  
 Component Trial Courts  
 Sponsor House Judiciary Committee  
 Requester \_\_\_\_\_ Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 486.

Prepared by: Doug Wooliver, Administrative Attorney Phone 463-4750  
 Division: Alaska Court System Date/Time 2-21-06 @ 1:40 pm  
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 2/21/2006  
 Agency: Alaska Court System

**HB**

**2002**

# Greenberg Traurig

## Memorandum

**TO:** Alaska State Legislature  
Legislative Budget and Audit Committee  
Attention: Senator Gene Therriault and Representative Ralph Samuels

**FROM:** Phillip C. Gildan

**DATE:** June 2, 2006

**RE:** SB 2002 Re Jurisdiction of Alaska Supreme Court for Review of Alaska Stranded Gas Fiscal Contract

---

At your request we have reviewed SB 2002, revising the judicial review provisions of Alaska Stranded Gas Development Act. SB 2002 appears to unintentionally be too broad a delegation of jurisdiction to the Alaska Supreme Court. It would arguably extend to breaches of contract between and among the parties and involve the Supreme Court in fact finding trials. SB 2002 may also be too narrow as it does not appear to cover Collateral Agreements entered into under AS 43.82.437. Suggested legislative amendments to SB 2002 to address those concerns are set forth below:

---

Amend Section 1 of SB 2002 to read as follows:

Section 1. AS 43.82.440 is repealed and reenacted to read:

**Sec. 43.82.440. Judicial Review.** The Alaska Supreme Court has original and exclusive jurisdiction of any judicial review [OF A CONTRACT DEVELOPED UNDER THIS CHAPTER] challenging the constitutionality of a of a law authorizing a contract entered into under AS 43.82.435 or AS 43.82.437, the enforceability of a contract executed under a law authorizing a contract entered into under AS 43.82.435 or AS 43.82.437, or the statute of limitations provided by this section (collectively referred to as an AS 43.82 Challenge). A person may not bring an AS 43.82 Challenge unless the action is commenced within 60 days after the date that the contract was executed by parties to the contract. [A PERSON MAY NOT BRING AN ACTION CHALLENGING THE CONSTITUTIONALITY OF A LAW AUTHORIZING A CONTRACT UNDER AS 43.82.435, THE ENFORCEABILITY OF A

CONTRACT EXECUTED UNDER A LAW AUTHORIZING A CONTRACT ENTERED INTO UNDER AS 43.82.435, OR THE STATUTE OF LIMITATIONS PROVIDED FOR IN THIS SECTION, UNLESS THE ACTION IS COMMENCED WITHIN 60 DAYS AFTER THE DATE THAT THE CONTRACT WAS EXECUTED BY THE STATE AND THE OTHER PARTIES TO THE CONTRACT.]

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 2002  
 (H) Publish Date: 5/31/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Natural Resources  
 Title Court Review of Stranded Gas Contract RDU Resource Development  
 Component Oil and Gas Development  
 Sponsor Rules by Request of the Governor  
 Requester Governor Component No. 439

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

There is no anticipated fiscal impact for DNR associated with implementation of this bill.

Prepared by: William Van Dyke, Acting Director Phone 269-8800  
 Division Oil and Gas Date/Time 5/15/2006  
 Approved by: Michael Menge, Commissioner Date 5/15/2006  
 Agency Natural Resources

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: HB 2002  
 (H) Publish Date: 5/31/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
 Title SGDA Original Jurisdiction RDU Administration and Support  
 Component Commissioner's Office  
 Sponsor Rules Committee  
 Requester Governor Component No. 123

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
Bond Proceeds						
Bond Bank Investment Earnings						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill confers original jurisdiction on the Alaska Supreme Court for the purpose of providing judicial review of a contract executed under the Alaska Stranded Gas Development Act and sets time limits for challenges to that contract. Passage of this bill will reduce any period of uncertainty after a contract is finalized, thus allowing the gasoline project to proceed in a timely manner.

Prepared by: Jerry Burnett Phone 465-2312  
 Division Administrative Services Date/Time 5/9/06 12:00 AM  
 Approved Steve Porter Date 5/9/2006  
 Agency Department of Revenue

**LEGAL SERVICES****COPY****DIVISION OF LEGAL AND RESEARCH SERVICES  
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Mail Stop 3101State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 79 Eth St., Rm. 329**MEMORANDUM**

April 20, 2006

**SUBJECT:** House Bill 502: Your inquiry concerning language of provisions authorizing a time-limited judicial review of TAPS authorization as possible model (Work Order No. 24-LS1858VA)

**TO:** Representative Lesil McGuire  
Chair of the House Judiciary Committee

**FROM:** Jack Chenoweth  
Assistant Revisor

Expedited appeal of the Trans-Alaska Pipeline Authorization appears in sec. 203(d), P.L. 93-153, codified as 43 U.S.C. 1652(d). It reads as follows:

(d) National Environmental Policy Act of 1969 bypassed; issuance of authorizations for construction and operation not to be subject to judicial review; time limits on charges of invalidity or unconstitutionality; jurisdiction; hearings; review. The actions taken pursuant to this title [43 USCS §§ 1651 et seq.] which relate to the construction and completion of the pipeline system, and to the applications filed in connection therewith necessary to the pipeline's operation at full capacity, as described in the Final Environmental Impact Statement of the Department of the Interior, shall be taken without further action under the National Environmental Policy Act of 1969; and *the actions of the Federal officers concerning the issuance of the necessary rights-of-way, permits, leases, and other authorizations for construction and initial operation at full capacity of said pipeline system shall not be subject to judicial review under any law except that claims alleging the invalidity of this section may be brought within sixty days following its enactment [enacted Nov. '6, 1973], and the claims alleging that an action will deny rights under the Constitution of the United States, or that the action is beyond the scope of authority conferred by this title [43 USCS §§ 1651 et seq.], may be brought within sixty days following the date of such action. A claim shall be barred unless a complaint is filed within the time specified.* Any such complaint shall be filed in a United States district court, and such court shall have exclusive jurisdiction to determine such proceeding in accordance with the procedures hereinafter provided, and no other court of the United States, of any State, territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any

Representative Lesil McGuire  
April 20, 2006  
Page 2

such claim whether in a proceeding instituted prior to or on or after the date of the enactment of this Act [enacted Nov. 16, 1973]. Such court shall not have jurisdiction to grant any injunctive relief against the issuance of any right-of-way, permit, lease, or other authorization pursuant to this section except in conjunction with a final judgment entered in a case involving a claim filed pursuant to this section. An interlocutory or final judgment, decree, or order of such district court may be reviewed only upon petition for a writ of certiorari to the Supreme Court of the United States.

[Emphasis added].

JBC:med  
06-324.med

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**MEMORANDUM**

April 20, 2006

**SUBJECT:** House Bill 502: considering amendments applicable to modifying provisions related to judicial review (Work Order No. 24-LS1858\A)

**TO:** Representative Lesil McGuire  
Chair of the House Judiciary Committee

**FROM:** Jack Chenoweth  
Assistant Revisor

Whatever you may decide to do to the bill to modify *judicial* review provisions currently part of the Stranded Gas Development Act (AS 43.82), you should understand that the following provisions of AS 43.82 apply and may have to be amended --

First; AS 43.82.150 limits the persons who have standing to challenge a determination by the commissioner of revenue that a party qualifies to negotiate a contract. Only an applicant -- presumably, an applicant who has been denied standing to negotiate or who has not been able to successfully negotiate, may bring an action:

**Sec. 43.82.150. Actions challenging determinations on applications.** (a) Only an applicant under AS 43.82.120<sup>1</sup> who is aggrieved by a determination of the commissioner of revenue or the commissioner of natural resources under AS 43.82.140 may seek judicial review of the determination.

(b) The only grounds for judicial review of a determination made under AS 43.82.140 are

---

<sup>1</sup> "[A]pplicant under AS 43.82.120" is a reference to "a qualified sponsor or qualified sponsor group" that submits to the commissioner of revenue an application for development of a contract. The contract, developed through the process of negotiation, would be expected to contain provisions authorized by the Act, among which are, principally, provisions for (1) periodic payment in lieu of one or more taxes that otherwise would be imposed by the state or a municipality on the qualified sponsor or members of the qualified sponsor group as a consequence of the sponsor's or group's participation in an approved qualified project under this chapter, and (2) certain adjustments regarding royalty under AS 43.82.220.

Representative Lesil McGuire  
April 20, 2006  
Page 2

- (1) failure to follow the qualification and application procedures set out in AS 43.82.100 - 43.82.180; or
- (2) abuse of discretion that is so capricious, arbitrary, or confiscatory as to constitute a denial of due process.

Second, under current law, anyone may challenge the final findings and determination of the commissioner that support the contract in the form submitted to the legislature:

**Sec. 43.82.430. Final findings, determination, and proposed amendments; execution of the contract.** (a) Within 30 days after the close of the public comment period under AS 43.82.410(4), the commissioner of revenue shall

- (1) prepare a summary of the public comments received in response to the proposed contract and the preliminary findings and determination;

- (2) after consultation with the commissioner of natural resources, if appropriate, and with the pertinent municipal advisory group established under AS 43.82.510, prepare a list of proposed amendments, if any, to the proposed contract that the commissioner of revenue determines are necessary to respond to public comments;

- (3) make final findings and a determination as to whether the proposed contract and any proposed amendments prepared under (2) of this subsection meet the requirements and purposes of this chapter.

(b) After considering the material described in (a) of this section and securing the agreement of the other parties to the proposed contract regarding any proposed amendments prepared under (a) of this section, if the commissioner determines that the contract is in the long-term fiscal interests of the state, the commissioner shall submit the contract to the governor.

(c) The commissioner's final findings and determination under (a) of this section are final agency decisions under this chapter.<sup>2</sup>

---

<sup>2</sup> "Final findings and determination" probably would be considered as equating to a "final administrative order" or "final administrative decision" which, under AS 44.62.560(a), may be made the basis of an administrative appeal to the superior court:

- (a) Judicial review by the superior court of a final administrative order may be had by filing a notice of appeal in accordance with the applicable rules of court governing appeals in civil matters. Except as otherwise provided in this section, the notice of appeal shall be filed within 30 days after the last day on which reconsideration can be ordered, and served on each party to the proceeding. The right to appeal is not affected by the failure to seek reconsideration before the agency.

Representative Lesil McGuire  
April 20, 2006  
Page 3

Finally, AS 43.82.440 imposes a limitation on questions that may be submitted for judicial review as related to an executed contract:

**Sec. 43.82.440. Judicial review.** A person may not bring an action challenging the constitutionality of a law authorizing a contract enacted under AS 43.82.435 or the enforceability of a contract executed under a law authorizing a contract enacted under AS 43.82.435 unless the action is commenced within 120 days after the date that the contract was executed by the state and the other parties to the contract.

You will see, I'm sure, that the limitations of this section of state law are not dissimilar to the limited scope of review for Trans-Alaska Pipeline Authorization Act-related claims in the material that I provided to you earlier. The TAPS provision limits review to "claims alleging the invalidity of this section (that is, the section that limits judicial review of TAPS decisions)" and "claims alleging that an action will deny rights under the Constitution of the United States, or that the action is beyond the scope of authority conferred by this title."

JBC:lmb  
06-142.lmb

eight percent a year until paid, and shall be collected by foreclosure in the manner provided for the foreclosure of mortgages. (§ 3(1) ch 12 SLA 1951)

*Collateral references.* — 3 Am. Jur. 2d, Aviation, §§ 58, 59.

**Sec. 02.25.070. Variances.** A person desiring to erect a structure, or increase the height of a structure, or permit the growth of a tree, or otherwise to use the person's property in violation of airport zoning regulations adopted under this chapter may apply to the department for a variance from the zoning regulations. Variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but would do substantial justice and would be in accordance with the spirit of the regulations and this chapter. (§ 3(2) ch 12 SLA 1951)

*Revisor's notes.* — See Revisor's notes to AE 02.25.080.

*Sec. 02.25.080. Obstruction marking and lighting. [Repealed, § 14 ch 56 SLA 2001.]*

### Article 3. General Provisions.

Section	Section
90. Action by department	110. Definitions
100. Criminal liability for violation	120. Short title

**Sec. 02.25.090. Action by department.** The department may institute an action in the superior court to prevent, restrain, correct, or abate a violation of this chapter or of airport zoning regulations adopted under this chapter or of an order or ruling made in connection with their administration or enforcement, and the court shall give relief, by way of injunction or otherwise as may be proper, in order to fully effectuate the purposes of this chapter and of the regulations adopted and orders and rulings made under this chapter. (§ 6 ch 12 SLA 1951)

**Sec. 02.25.100. Criminal liability for violation.** Each violation of this chapter or of a regulation, order, or ruling adopted or made under this chapter is a misdemeanor and is punishable by a fine of not more than \$500 or by imprisonment for not more than 90 days or by both. (§ 6 ch 12 SLA 1951)

**Sec. 02.25.110. Definitions.** In this chapter, unless the context otherwise requires,

(1) "airport" means an area of land or water designed for the landing and taking-off of aircraft and used or to be used as a point of arrival or departure by air;

(2) "airport hazard" means anything that may obstruct or interfere with the navigation or operation of aircraft on or in the vicinity of an airport, including man-made structures of all kinds, trees and other natural growths, lights or beacons, and electrical or electronic devices emitting signals capable of disrupting radio communication;

(3) "airport hazard area" means an area in the vicinity of an airport in which a hazard to the operation of aircraft might be situated, and that may be designated as such by the department;

(4) "department" means the Department of Transportation and Public Facilities;

(5) "person" means an individual, firm, copartnership, corporation, company, association, joint stock association, or body politic, and includes a trustee, receiver, assignee, or similar representative;

(6) "structure" means an object constructed or installed by man, including buildings, towers, smokestacks, and overhead transmission lines;

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## Memorandum

**TO:** Alaska State Legislature  
Legislative Budget and Audit Committee  
Attention: Senator Gene Therriault and Representative Ralph Samuels

**FROM:** Phillip C. Gildan

**DATE:** June 2, 2006

**RE:** SB 2002 Re Jurisdiction of Alaska Supreme Court for Review of Alaska Stranded Gas Fiscal Contract

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At your request we have reviewed SB 2002, revising the judicial review provisions of Alaska Stranded Gas Development Act. SB 2002 appears to unintentionally be too broad a delegation of jurisdiction to the Alaska Supreme Court. It would arguably extend to breaches of contract between and among the parties and involve the Supreme Court in fact finding trials. SB 2002 may also be too narrow as it does not appear to cover Collateral Agreements entered into under AS 43.82.437. Suggested legislative amendments to SB 2002 to address those concerns are set forth below:

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Amend Section 1 of SB 2002 to read as follows:

**Section 1.** AS 43.82.440 is repealed and reenacted to read:

**Sec. 43.82.440. Judicial Review.** The Alaska Supreme Court has original and exclusive jurisdiction of any judicial review [OF A CONTRACT DEVELOPED UNDER THIS CHAPTER] challenging the constitutionality of a of a law authorizing a contract entered into under AS 43.82.435 or AS 43.82.437, the enforceability of a contract executed under a law authorizing a contract entered into under AS 43.82.435 or AS 43.82.437, or the statute of limitations provided by this section (collectively referred to as an AS 43.82 Challenge). A person may not bring an AS 43.82 Challenge unless the action is commenced within 60 days after the date that the contract was executed by parties to the contract. [A PERSON MAY NOT BRING AN ACTION CHALLENGING THE CONSTITUTIONALITY OF A LAW AUTHORIZING A CONTRACT UNDER AS 43.82.435, THE ENFORCEABILITY OF A

CONTRACT EXECUTED UNDER A LAW AUTHORIZING A CONTRACT ENTERED INTO UNDER AS 43.82.435, OR THE STATUTE OF LIMITATIONS PROVIDED FOR IN THIS SECTION, UNLESS THE ACTION IS COMMENCED WITHIN 60 DAYS AFTER THE DATE THAT THE CONTRACT WAS EXECUTED BY THE STATE AND THE OTHER PARTIES TO THE CONTRACT.]