

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

EDWARD ALEXANDER, JOSH
ANDREWS, SHELBY BECK
ANDREWS, & CAREY CARPENTER,

Plaintiffs,

v.

ACTING COMMISSIONER HEIDI
TESHNER, in her official capacity,
STATE OF ALASKA, DEPARTMENT
OF EDUCATION & EARLY
DEVELOPMENT,

Defendants,

v.

ANDREA MOCERI, THERESA.
BROOKS, and BRANDY
PENNINGTON,

Intervenors.

Case No. 3AN-23-04309CI

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MEMORANDUM IN SUPPORT OF PLAINTIFFS' OPPOSITION⁵
TO STATE OF ALASKA'S MOTION TO DISMISS /
CROSS MOTION FOR SUMMARY JUDGMENT 8

INTRODUCTION

The statutes challenged in this case—AS 14.03.300-.310—have no purpose other than to expand Alaska's correspondence study program to allow public funds, in the form of student allotments, to be spent at private or religious educational organizations for educational services. That purpose, and the payments currently taking place under these

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1 statutes, are facially unconstitutional under Article VII, Section 1 of the Alaska
2 Constitution. In a prior case directly on point, the Alaska Supreme Court has already held
3 that such payments to private educational entities are unconstitutional. During consideration
4 of these statutes, even the sponsor of the legislation conceded that this program could not be
5 deployed without amending the constitution. Finally, the fact that this program cannot be
6 salvaged is made even clearer by the fact that the statutes themselves specifically prohibit
7 DEED from imposing any additional limitations that might have kept the payments within
8 constitutional boundaries.

9 For these reasons, and as explained herein, this Court should order that AS 14.03.300-
10 .310 be stricken as unconstitutional.

11 SUMMARY

12 The State of Alaska's ("State") Motion to Dismiss relies on two main assertions: (1)
13 Plaintiffs have failed to state a claim that AS 14.03.300-.310 is facially unconstitutional under
14 Article VII, Section 1 of the Alaska Constitution;¹ and (2) although the State's Department
15 of Education & Early Development ("DEED" or "Department") is responsible for overseeing
16 public education funding and compliance, DEED has no idea how public correspondence
17 student allotments are actually being spent in school districts, and therefore school districts
18 are "indispensable" parties for an as-applied challenge seeking declaratory and injunctive
19 relief.² Neither of these assertions hold up.

20 ¹ Alaska R. Civ. Proc. 12(b)(6).

21 ² Alaska R. Civ. Proc. 12(b)(7).

1 The plain language of Article VII, Section 1, and the minutes of the Alaska
2 Constitutional Convention, dictate that “[n]o money shall be paid from public funds for the
3 direct benefit of any religious or other private educational institution.”³ The delegates’
4 understanding of the term “direct benefit” forbids public funds from being used to pay for
5 educational materials and services from private educational institutions.

6 The State concedes that “possible uses of allotment funds would be questionable, and
7 some even clearly unconstitutional.”⁴ The State nonetheless asserts that despite the plain text
8 of AS 14.03.300-.310 allowing for such “clearly unconstitutional” and “questionable” uses,
9 that Plaintiffs have failed to state a claim because “allotment funds *can* be spent in ways that
10 do not even involve ‘a religious or other private educational institution.’”⁵ But the sweep of
11 the statutes is plainly unconstitutional, allowing expenditure of public funds for the direct
12 benefit of private educational institutions, triggering the framers’ core concern in drafting the
13 direct benefit prohibition. Moreover, the sponsor’s statements are clear that the statutes were
14 drafted with the *specific intent that public funds*, in the form of student allotments, *would be*
15 *used* to purchase services from private educational institutions.

16 The State’s argument entirely ignores this legislative history and the sponsor’s intent,
17 relying solely on an Attorney General Opinion premised upon the nonsensical (and circular)

18 ³ *Turpin v. North Slope Borough*, 879 P.2d 1009, 1013 n.7 (Alaska 1994) (“We generally
19 give the word ‘shall’ mandatory effect”); *Fowler v. City of Anchorage*, 583 P.2d 817, 820 (Alaska
20 1978) (“Unless the context otherwise indicates, the use of the word shall denotes a mandatory
21 intent”).

⁴ Defendant’s Motion to Dismiss at 2 (dated March 8, 2023).

⁵ *Id.* (emphasis added).

1 foundational premise that using public funds for payments to private educational institutions
2 is constitutional *so long as it supports the public purpose of educating the student*. This
3 interpretation was considered and rejected by the framers and is facially unconstitutional.
4 This attempt to rewrite the direct benefit prohibition in the Alaska Constitution must be
5 rejected, and AS 14.03.300-.310 must be struck down as facially unconstitutional.

6 Alternatively, if the statutes are not struck down in total, this Court should declare
7 that the statutes must be interpreted more narrowly to disallow all direct expenditures to
8 private educational institutions,⁶ in order to comply with the Alaska Constitution. Either
9 way, the Plaintiffs have presented a valid legal claim for declaratory relief that Article VII,
10 Section 1 does not allow for the expenditure of public funds at private institutions as currently
11 authorized by AS 14.03.300-.310. The Motion to Dismiss should be denied and summary
12 judgment entered for Plaintiffs.

13 **FACTUAL BACKGROUND**

14 **I. The Legislative History of AS 14.03.300-.310**

15 The relevant language in AS 14.03.300-.310 was initially proposed in Senate Bill 100
16 (“SB 100”) in 2013.⁷ This legislative history indicates that members of the Senate Education
17 Standing Committee (“Committee”), including the bill’s sponsor, then-Senator Michael J.

18 ⁶ For example, this Court could conceivably delete the words “private, or religious” from
19 AS 14.03.310(b) to conform it to the constitution. However, as explained herein, doing so
20 would void the sole intended purpose of the legislation’s sponsor: to allow public education
21 funds to be spent with private educational institutions.

⁷ The legislative history was discussed in the Complaint ¶¶ 3-5, 30-41. This memorandum
is accompanied by an Affidavit of counsel with exhibits, including legislative history.

1 Dunleavy, understood that the bill was unconstitutional. The legislative history of AS
2 14.03.300-.310, and the sponsor's stated intentions, demonstrate that the core intention of AS
3 14.03.300-.310 was to allow unfettered spending of public funds that would be
4 unconstitutional without amending the education clause. First, these provisions were
5 intended to alter Alaska's existing correspondence (homeschooling) program to allow parents
6 to use public funds to purchase materials and services from private educational institutions
7 with a student allotment. In pertinent part, AS 14.03.310(b) explicitly provides, "[a] parent
8 or guardian may purchase nonsectarian services and materials from a public, private, or
9 religious organization with a student allotment." Second, AS 14.03.300-.310 was intended to
10 specifically remove DEED's ability to impose any additional restrictions on the purchase of
11 services and materials from private educational institutions, so long as educational outcomes
12 were achieved.⁸

13 Due to these constitutional issues, SB 100 was introduced as companion legislation
14 alongside Senate Joint Resolution No. 9 ("SJR 9"), which proposed amendments to Article
15 VII, Section 1 and Article IX, Section 6 of the Alaska Constitution to remove the
16 constitutional barrier to using public funds for the direct benefit of private educational
17 institutions. Despite SB 100's sponsor understanding that the intended spending was flatly
18

19 ⁸ AS 14.03.300(b) ("Notwithstanding another provision of law, the department may not
20 impose additional requirements, other than the requirements specified under (a) of this section
21 and under AS 14.03.310, on a student who is proficient or advanced on statewide assessments
required under AS 14.03.123(f).") (emphasis added).

1 prohibited by the Alaska Constitution, and the proposed constitutional amendment never
2 being adopted, AS 14.03.300-.310 was enacted in 2014.⁹

3 **A. Drafting History and Sponsor's Intentions for SB 100**

4 At the time SB 100 was proposed, "there *already* [was] a system where
5 homeschoolers [could] enroll in a public homeschool system and get access to materials
6 through approved vendors."¹⁰ SB 100, however, intended to remove restrictions on "inputs"
7 to education to focus on "outcomes."¹¹ The intention was that a focus on "outcomes" would
8 allow for "flexibility" for purchasing "inputs," and was described as a "public/private
9 partnership concept."¹² More plainly, the specific change sought in SB 100 was to allow that
10 "a parent may purchase services and materials from a private or religious organization with
11 a student allotment."¹³

12 SB 100's sponsor, then-Senator Dunleavy, explained in his sponsor statement:

13
14
15 ⁹ "[I]ssues of constitutional and statutory interpretation are decidedly questions of law, for
16 which resort to drafting history to clarify the meaning of language is common practice." *Forrer*
17 *v. State*, 471 P.3d 569, 584 (Alaska 2020).

18 ¹⁰ Exhibit 1 at 10, Sen. Educ. Comm., 28th Leg., Mar. 3, 2014, Statement of Sen. Gardner
19 at 8:30:06 AM (emphasis added), *available at* <https://www.akleg.gov/PDF/28/M/SEDC2014-03-030800.PDF>. Under 4 ACC 33.490(14), "'home school' means an educational program provided
20 in the child's home by a parent or legal guardian under AS 14.30.010(b)(12)."

21 ¹¹ *E.g.*, Exhibit 1 at 7-8, 14 (Statements of Sen. Dunleavy and Sen. Gardner).

¹² *Id.*; Exhibit 2 at 10, Sen. Educ. Comm., 28th Leg., Apr. 10, 2013, Statement of Sen.
Dunleavy at 8:29:15 AM, *available at* <https://www.akleg.gov/PDF/28/M/SEDC2013-04-100801.PDF>.

¹³ Exhibit 1 at 5 (Statement of Sen. Dunleavy at 8:01:20 AM).

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Sponsor Substitute for Senate Bill 100 . . . makes several changes to the current correspondence study programs offered by 33 school districts.

Public correspondence/homeschool study programs serve almost 10 percent of the total Alaska student population. This approach to education is one of the fastest growing options in the state. Its individualized learning, low-cost approach appeals to independent learners and policy makers alike. A focus on student proficiency is at the center of SB 100. Most programs provide a student allotment to purchase educational services or materials to meet the student's Individual Learning Plan (ILP). Under SB 100, a parent may purchase services and materials from a private or religious organization with a student allotment to meet the student's ILP. In addition, each child's allotment may be rolled over to the next school year.^{14]}

This sponsor statement explains that the purpose of SB 100 was to expand permissible uses of the student allotments already provided by many correspondence programs to include the purchase of materials or services from private educational institutions. So long as the end (a proficient student) was achieved, the means (spending of the student allotment) was left to the parent and the teacher developing the individual learning plan ("ILP"). In fact, the legislation *specifically prohibited* DEED from placing any restriction on these funds apart from student proficiency.¹⁵

As SB 100's sponsor, then-Senator Dunleavy acknowledged that a constitutional amendment was necessary to allow for the use of public funds for the direct benefit of private

¹⁴ *Id.* at 4-5 (emphasis added).

¹⁵ AS 14.03.300(b) ("Notwithstanding another provision of law, the department may not impose additional requirements, other than the requirements specified under (a) of this section and under AS 14.03.310, on a student who is proficient or advanced on statewide assessments required under AS 14.03.123(f).")

1 educational institutions as intended by SB 100.¹⁶ In Senate Education Committee meetings,
2 Dunleavy acknowledged, “for example, a parent could decide his child would take a Latin
3 course at Monroe Catholic and the teacher could agree to that in the ILP. That cannot be done
4 currently under constitutional language.”¹⁷ The intention of “SB 100, along with SJR 9, [is
5 it] allows a parent and a teacher to develop an ILP that includes a public/private partnership
6 concept with a public outcome.”¹⁸ SB 100 “is an expansion of the public education system
7 using a public/private partnership concept, under an ILP developed between a parent and a
8 teacher.”¹⁹ Then-Senator Dunleavy conceded that such public/private partnerships are
9 prohibited by the education clause.

10 As was described by Dunleavy in Committee Meetings, SB 100 “addresses a child in
11 a home correspondence school with an Individual Learning Plan (ILP) developed by a public
12 teacher with the parent. The only difference [from the existing correspondence program
13 student allotments] is that the parent with the teacher can determine the ‘how’ and an
14 expansion of it.”²⁰ In order to ensure that parents and teachers would be determining the
15 “how,” as ultimately enacted, AS 14.03.300(b) provides, “Notwithstanding another provision
16 of law, the department may not impose additional requirements, other than the requirements

17 ¹⁶ Exhibit 2 at 9-11 (Senator Dunleavy stating, “SB 100 would be the companion concept
18 to SJR 9” and “[t]he idea in SB 100 (in conjunction with SJR 9) is the ‘how.’”).

19 ¹⁷ Exhibit 2 at 10 (emphasis added).

20 ¹⁸ *Id.* (Statement of Sen. Dunleavy).

21 ¹⁹ *Id.* at 10-11 (Statement of Sen. Dunleavy).

²⁰ *Id.* at 10.

1 specified under (a) of this section and under AS 14.03.310, on a student who is proficient or
2 advanced on statewide assessments.” In other words, the language of AS 14.03.300(b)
3 explicitly precludes the Department from placing any additional restrictions on a parent’s
4 spending of their public correspondence program allotment.

5 Members of the Senate Education Committee had questions about the bill’s intention
6 in removing the Department’s ability to impose requirements. In response to a question from
7 Senator Berta Gardner, inquiring about the language that “the department may not impose
8 additional requirement other than the requirements specified under (a) of this section, on a
9 student who is proficient or advanced,”²¹ Dunleavy explained:

10 The concept of home school correspondence is to allow as much
11 freedom and flexibility possible for the parent and Individual
12 Learning Plan (ILP) teacher. . . . He maintained that an ILP
13 should support the outcome desired. The proficiency of the
14 outcome is what is important. . . . He said there is a list of
15 prohibitions for home school correspondence schools. The bill
16 aims to help the programs and the department focus on the
17 outcomes, not the inputs.^[22]

18 Senate Education Committee Chair Senator Gary Stevens then “suggested that the bill
19 removes school district and department oversight when it comes to expenditures and the
20 learning plan. The constitution says that this oversight has to be in the hands of the department
21 and the school district.”²³ Senator Dunleavy responded that he “did not think it [] was true.

21 ²¹ Exhibit 1 at 6 (Statement at 8:07:44 AM).

22 ²² *Id.* at 6-7.

23 ²³ *Id.* at 7 (Exchange between Sen. Stevens and Sen. Dunleavy at 8:11:22 AM).

1 He maintained that oversight is the district's responsibility and not the department's."²⁴
2 Dissatisfied with this response, Committee Chair Stevens "suggested the legal issues be
3 addressed."²⁵

4 Chair Stevens asked Jean Mischel, an attorney for Legislative Legal Services, "about
5 the constitutionality of SB 100 and if a change in the constitution would be required to
6 remove the responsibility from the department and the district."²⁶ Ms. Mischel explained the
7 language in version I of the bill, "creates a potential for violating both Article 7, Section 1
8 and Article 4, Section 1":

9 The difficulty with removing departmental oversight rests with
10 the concern that if the parent who has control . . . over
11 purchasing of materials, if they choose to purchase religious or
12 sectarian materials in violation of the provision, there would be
13 very little way of knowing, without some oversight, whether the
14 parent has overstepped the constitutional boundaries.^[27]

15 Ms. Mischel also noted that this SB 100 raised further constitutional questions under
16 Article VII regarding Department supervisory oversight,

17 [W]hat the legislature has done under Article 7 is given the
18 department supervisory oversight over all public schools. This
19 bill is a large change from that structure. With regard to whether
20 the school district would continue to have some oversight, there
21 is some ambiguity. The department often provides regulatory
direction to school districts in administrative code, as Senator
Dunleavy mentioned. Lines 8-11 would restrict the department
from adopting those regulations that might provide additional

24 *Id.*
25 *Id.*
26 *Id.* (Statement at 8:12:39 AM).
27 *Id.* The language was amended to limit purchases to "nonsectarian services and materials" in an attempt to address the Article 4, Section 1 concerns. *See* AS 14.03.310(b).

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guidance to the districts, which receive their authority both through the legislature and the department. Much of the district authority is restricted by that in the bill because the department no longer has control over the district. There is an ambiguity about whether the school district would, in fact, continue to provide oversight.^[28]

Further discussion indicated that under Senator Dunleavy’s reading of SB 100, “[v]endors need to be approved by the district.”²⁹ But the bill removes spending “oversight by the department,” because “there is a series of regulations that list things that can and cannot be purchased or done. The state determines the output – proficiency. The bill relies on the teacher, parents, and ILP to determine what the inputs are instead of department regulations.”³⁰ Committee Chair Stevens “summarized that SB 100 removes the department’s oversight of financial expenditures and the ILP,” and Sponsor Dunleavy agreed, noting “it places the oversight with the district.”³¹

Ms. Mischel then noted, “she does not have a clear enough idea of the legislative intention of removing the department from its legislatively authorized oversight role.”³² However, “[f]rom a constitutional standpoint, [under SB 100] the legislature is delegating its constitutional oversight function to a school teacher, a parent, and a district, in a more limited sense, because the regulations that restrict these district expenditures would no longer be in

28 Exhibit 1 at 8 (Statement at 8:12:39 AM) (emphasis added).
29 *Id.* (Statement at 8:17:38 AM).
30 *Id.*
31 *Id.* at 8-9.
32 *Id.* at 9 (Statement at 8:22:17 AM).

1 effect.³³ Ms. Mischel explained that the framers drafted Article 7, Section 1 to avoid the
2 exact line drawing exercise that SB 100 called for: “the Constitutional Convention was filled
3 with conversations about Article 7 and why the last sentence in Article 7, Section 1, is there.
4 It is for the very purpose that teachers and parents and districts, and even the department,
5 would not have to ‘get into the weeds’ of deciding whether it is government entanglement or
6 an Article 1, Section 4 problem.”³⁴

7 SB 100’s legislative history demonstrates that the sponsor, then-Senator Dunleavy,
8 understood that amending the constitutional language to remove the direct benefit prohibition
9 would be required, so that parents could use the allotment as intended to be allowed by SB
10 100.³⁵ Dunleavy plainly stated that SB 100’s purpose “cannot be done currently under
11 constitutional language.”³⁶ That purpose was to create “a ‘third way’ for education in
12 Alaska.”³⁷ That “third way” was to allow public funds to be spent on education at private
13 educational institutions.

14
15 ³³ *Id.* (emphasis added).

16 ³⁴ *Id.*

17 ³⁵ Senator Gardner also stated that her office “has a legal opinion that SB 100 is not
18 constitutional,” and she transmitted that opinion to members of the Committee. Sen. Educ.
19 Comm., 28th Leg., March 21, 2014 at 8:24:31 AM, <https://www.akleg.gov/PDF/28/M/SEDC2014-03-210759.PDF>. In this same exchange, Senator Dunleavy then sought clarification
20 whether the opinion concluded that “SB 100 is not constitutional or questionable,” and Senator
21 Gardner explained, “No one knows for sure unless there is a lawsuit.” *Id.* The Minutes of this
exchange are contained in Exhibit 3 at 3.

³⁶ Exhibit 2 at 10 (Statement at 8:29:15 AM).

³⁷ *Id.* at 11 (Statement of Sen. Dunleavy at 8:38:24 AM).

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B. The Companion Constitutional Amendment Senate Joint Resolution No. 9 Dies in Committee

According to sponsor Dunleavy, SB 100 was a companion bill for SJR 9.³⁸ Introduced on February 13, 2013, SJR 9 “propos[ed] amendments to the Constitution of the State of Alaska relating to state aid for education.”³⁹ SJR contained two amendments. First, SJR 9 proposed to amend Article VII, Section 1 of the Alaska Constitution by deleting the final sentence providing, “No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.”⁴⁰ Second, it proposed adding language to Article IX, Section 6 so that it would read:

No tax shall be levied, or appropriate of public money made, or public property, transferred, nor shall the public credit be used, except for a public purpose; however, nothing in this section shall prevent payment from public funds for the direct educational benefit of students as provided by law.^[41]

SJR 9 died in Committee, and the Alaska Constitution was never amended to allow spending public funds for the direct benefit of private educational institutions.

C. The Language from SB 100 is Added to Omnibus Education Legislation House Bill 278

The relevant language from AS 14.03.300-.310 was ultimately incorporated into omnibus education legislation in House Bill 278 (“HB 278”).⁴² HB 278 was a priority for

³⁸ *Id.* at 9 (Statement of Sen. Dunleavy at 8:29:15 AM).
³⁹ Exhibit 4, Sen. J. Res. No. 9, 28th Leg., 2d Sess. (introduced Feb. 13, 2013), *available at* <https://www.akleg.gov/PDF/28/Bills/SJR009A.PDF>.
⁴⁰ *Id.*
⁴¹ *Id.* (underlining in original to designate new text).
⁴² Alaska Statute 14.03.310 was originally enacted as AS 14.03.320. This provision was renumbered in 2014.

1 then-Governor Sean Parnell, as indicated by his accompanying transmittal letter.⁴³ HB 278
2 did not originally contain the provisions in AS 14.03.300-.310. These provisions were added
3 in Committee in April 2014,⁴⁴ and when Dunleavy addressed these provisions in Free
4 Conference Committee, he acknowledged that the “change” to the “correspondence
5 homeschool programs” “was originally proposed under SB 100,”⁴⁵ but neglected to mention
6 the constitutional conflict disclosed in discussions of SB 100 and SJR 9.⁴⁶ HB 278 was
7 enacted by the legislature in 2014.⁴⁷

8 **II. Alaska Statute 14.03.300-.310 Comes Under Public Scrutiny After**
9 **Taylor’s Opinion Piece Outlines Four Easy Steps to Subsidize Private**
10 **School Tuition with the Public Correspondence Student Allotment,**
11 **Prompting the Attorney General’s Office to Prepare an Opinion.**

12 In May of 2022, the Attorney General Treg Taylor’s wife, Jodi Taylor, wrote a widely
13 circulated opinion piece explaining how parents could use the public correspondence
14

15 ⁴³ Exhibit 5 at 3-6, Governor Parnell’s Transmittal Letter (dated Jan. 23, 2014), in House J.,
16 28th Leg., 2nd Sess. (Jan. 24, 2014), at 1434-37, *available at*
17 <https://www.akleg.gov/pdf/28/J/H2014-01-24.PDF>.

18 ⁴⁴ Exhibit 6 at 3, Free Conference Committee Comparison of HB 278 (listing new
19 “Correspondence study programs: ILPs; Student Allotments”), *available at*
20 https://www.akleg.gov/basis/get_documents.asp?session=28&docid=24842. Compare Exhibit
21 7 at 3-5 (Senate Finance Committee version of HB 278E from April 19, 2014, containing
correspondence program allotment provisions), *with* Exhibit 8 (House Finance Committee
version of HB 278D from April 7, 2014, without correspondence program allotment provisions).

⁴⁵ Exhibit 9 at 12-13, Free Conference Comm. on HB 278, 28th Leg. April 22, 2014,
Statement of Sen. Dunleavy at 10:55:19 AM, *available at* <https://www.akleg.gov/PDF/28/M/HHB2782014-04-221030.PDF>.

⁴⁶ *Id.* (absence).

⁴⁷ See 2014 Alaska Sess. Laws Ch. 15, § 15.

1 program student allotment to subsidize their child's private school tuition in four easy steps.⁴⁸
2 Ms. Taylor's opinion piece elaborated that parents can use AS 14.03.310 to receive thousands
3 of dollars under the State's Base Student Allotment ("BSA") as reimbursement for private
4 school courses.⁴⁹ Ms. Taylor explained, "Thanks to Dunleavy's 2014 statute, private schools
5 have been added to the list of allowable vendors for parents."⁵⁰

6 As an example of how the reimbursement process worked, Ms. Taylor explained that
7 her children attended St. Elizabeth Ann Seton ("SEAS") private school, while simultaneously
8 being enrolled in Anchorage School District's Family Partnership Charter School ("FPCS").
9 Because SEAS is an "approved FPCS vendor," Mrs. Taylor intended to request a \$4,000
10 reimbursement for each student, which would cover two-thirds of their \$6,000 private school
11 tuition.⁵¹

12 That same month, Attorney General Treg Taylor recused himself "from all matters
13 involving correspondence school allotments."⁵² Attorney General Taylor delegated his
14 authority to Deputy Attorney General Cori Mills regarding the matter of correspondence
15

16 ⁴⁸ Plaintiffs incorporated this opinion piece by reference in the Complaint ¶¶ 7, 22-24. Ms.
17 Taylor's opinion piece is attached as Exhibit 10.

18 ⁴⁹ Exhibit 10 at 2.

19 ⁵⁰ *Id.*

20 ⁵¹ *Id.* at 4.

21 ⁵² Exhibit 11, Press Release, Department of Law, Attorney General Taylor Recused from
Correspondence School Allotment Advice in May (June 6, 2022), *available at*
<https://law.alaska.gov/press/releases/2022/060622-Allotment.html>); Compl. ¶ 44.

1 school allotments.⁵³ On July 25, 2022, Alaska Deputy Attorney General Cori Mills released
2 the Department of Law's Opinion addressing whether publicly-funded correspondence
3 schools can pay for services from private schools.⁵⁴ This Opinion states that it provides
4 "guidance on the types of spending that are clearly constitutional, clearly unconstitutional,
5 and those that fall into a gray area" under AS 14.03.300-.310.⁵⁵ Although the Opinion
6 recognizes that the statutes allow public education funds to be spent at private institutions, it
7 does not concede that the Alaska Constitution provides a prohibition of such uses of public
8 funds under Article VII, Section 1. Instead, it dodges addressing the issue head on with an "it
9 depends" answer.

10 As Acting Commissioner of DEED, Heidi Teshner circulated this Opinion with a
11 "Letter to Superintendents" on July 25, 2022.⁵⁶ The Letter acknowledged that "[q]uestions
12 have arisen recently regarding the use of correspondence school program allotments,
13 specifically in regard to expenditures for students attending classes at private schools."⁵⁷ This
14 Letter summarized that "the opinion confirms that using public money to pay private vendors

15 ⁵³ Exhibit 12, Online Public Notices, State of Alaska, Delegation of Authority to Deputy
16 Attorney General Cori Mills (dated May 21, 2022), *available at* [https://aws.state.ak.us/
OnlinePublicNotices/Notices/View.aspx?id=207008](https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=207008)); Compl. ¶ 45.

17 ⁵⁴ Exhibit 13, Press Release, Deputy Attorney General's Opinion Provides Guidance to
18 School Districts on Public Correspondence School Allotments and Private School Uses (July 25,
2022), *available at* <https://law.alaska.gov/press/releases/2022/072522-SchoolsOpinion.html>;
Compl. ¶ 46.

19 ⁵⁵ Exhibit 14 at 2, State of Alaska, Dep't of Law, Op. Att'y Gen. No. 2021200228 (July 25,
2022), *available at* https://law.alaska.gov/pdf/opinions/opinions_2022/22-002_2021200228.pdf.

20 ⁵⁶ Exhibit 15; Compl. ¶ 54.

21 ⁵⁷ Exhibit 15 at 1.

1 for materials and services to fulfill an individual learning plan under a public correspondence
2 program does not violate the Alaska Constitution's education clause."⁵⁸ The Letter further
3 noted the Opinion's conclusion that spending "public funds (in the form of allotment
4 money)" for "educational services and materials provided by private vendors" is supported
5 by the Constitution when the "purpose . . . is to further the student's public school
6 correspondence education."⁵⁹ Rather, according to the Opinion, "[w]hat the constitution
7 does not support is . . . supplanting the public education with a full private school education
8 by paying the tuition for full-time enrollment in a private school."⁶⁰

ARGUMENT

9 **I. The Alaska Constitution Prohibits the Expenditure of Public Funds for the
10 Direct Benefit of Private Educational Institutions Allowed by AS 14.03.300-.310.**

11 Article VII, Section 1 of the Alaska Constitution prohibits spending public funds for
12 the direct benefit of private educational institutions. As set forth above, AS 14.03.300-.310's
13 legislative history shows that it was drafted for the specific purpose of allowing purchases of
14 private educational services with the public correspondence student allotments. The
15 sponsor's statements further demonstrated an understanding that this spending violated
16 Article VII, Section 1, such that amending the Alaska Constitution was required for the
17 statute to achieve its intended purpose.

18
19 ⁵⁸ *Id.*

20 ⁵⁹ *Id.* (emphasis in original).

21 ⁶⁰ *Id.*

1 The AG Opinion relied on by the State does not opine that Article VII, Section 1
2 prohibits spending public funds for the direct benefit of private educational institutions.
3 Instead, the AG Opinion takes the position that it is the *purpose* behind spending public funds
4 for the direct benefit of private educational institutions that determines the constitutionality
5 of the spending, adding an “intent” test not found in the Constitution itself. In other words,
6 according to the AG Opinion, the proper interpretation of AS 14.03.300-.310 is that it allows
7 the expenditure of public funds for the direct benefit of private educational institutions, and
8 this spending is allowed by Article VII, Section 1. The State’s arguments justifying the
9 expenditures as constitutional were already rejected by the framers in drafting the direct
10 benefit prohibition in the education clause *and* by the Alaska Supreme Court in the
11 controlling case, *Sheldon Jackson College v. State*.⁶¹ In light of AS 14.03.300-.310’s
12 legislative history, its sponsor’s stated intentions, and the AG Opinion, the statutes have a
13 facially unconstitutional sweep and must be struck down.

14 **A. Applicable Legal Standards**

15 “In reviewing a Rule 12(b)(6) dismissal, [Alaska courts] liberally construe the
16 complaint and treat all factual allegations in the complaint as true.”⁶² Courts have
17 “consistently held that dismissals under Rule 12(b)(6) ‘should be granted only if it appears
18 beyond doubt that the plaintiff can prove no set of facts in support of the claims that would

19 _____
20 ⁶¹ 599 P.2d 127 (Alaska 1979).
21 ⁶² *Forrer*, 471 P.3d at 583 (quoting *Patterson v. Walker*, 429 P.3d 829, 831 (Alaska 2018)).

1 entitle the plaintiff to relief.”⁶³ In other words, “[i]f, within the framework of the complaint,
2 evidence may be introduced which will sustain a grant of relief to the plaintiff, the complaint
3 is sufficient.”⁶⁴ “Motions to dismiss are viewed with disfavor and should rarely be granted.”⁶⁵

4 “[I]ssues of constitutional and statutory interpretation are decidedly questions of law,
5 for which resort to drafting history to clarify the meaning of language is common practice.”⁶⁶
6 “This is true even in the limited scope of Rule 12(b)(6) motions to dismiss.”⁶⁷ Statutes “may
7 be found to be unconstitutional as applied or unconstitutional on their face.”⁶⁸ Courts “uphold
8 a statute against a facial constitutional challenge if despite . . . occasional problems it might
9 create in its application to specific cases, [it] has a *plainly* legitimate sweep.”⁶⁹

10 On a motion for summary judgment, “[w]hen interpreting a statute, courts look to the
11 plain meaning of the statute, the legislative purpose, and the intent of the statute.”⁷⁰ “Statutes
12 should be construed, wherever possible, so as to conform to the constitutions of the United
13

14 ⁶³ *Id.* (quoting *Clemensen v. Providence Alaska Med. Ctr.*, 203 P.3d 1148, 1151 (Alaska
2009)).

15 ⁶⁴ *Kollodge v. State*, 757 P.2d 1024, 1026 (Alaska 1988).

16 ⁶⁵ *Id.*

17 ⁶⁶ *Forrer*, 471 P.3d at 584.

18 ⁶⁷ *Id.* (citing *Basey v. State, Dep’t of Pub. Safety, Div. of Alaska State Troopers, Bureau of
Investigations*, 408 P.3d 1173, 1175-76 (Alaska 2017)).

19 ⁶⁸ *State v. Planned Parenthood of the Great Northwest*, 436 P.3d 984, 991 (Alaska 2019)
(quoting *State v. ACLU of Alaska*, 204 P.3d 364, 372 (Alaska 2009)).

20 ⁶⁹ *Id.* at 991-92 (quoting *State v. Planned Parenthood (Planned Parenthood 2007)*, 171 P.3d
577, 581 (Alaska 2007)) (emphasis added).

21 ⁷⁰ *Premera Blue Cross v. State*, 171 P.3d 1110, 1115 (Alaska 2007).

1 States and Alaska.”⁷¹ “The constitutionality of a statute and matters of constitutional or
2 statutory interpretation are questions of law [with courts] adopting the rule of law that is most
3 persuasive in light of precedent, reason, and policy.”⁷²

4 In reviewing constitutional challenges involving interpretation of the constitution,
5 Alaska courts “first ‘look to the plain meaning and purpose of the provision and the intent of
6 the framers.’”⁷³ “‘Legislative history and the historical context’ assist in [the court’s] task of
7 defining constitutional terms as understood by the framers.”⁷⁴ While courts “consider
8 ‘precedent, reason, and policy,’ policy judgments do not inform [a court’s] decision-making
9 when the text of the Alaska Constitution and the framers’ intent as evidenced through the
10 proceedings of the Constitutional Convention are sufficiently clear.”⁷⁵ This in turn means
11 that where the court is “called upon . . . to exercise ‘sound judicial interpretation’ of the
12 Alaska Constitution,” this “may require referring to debates of the Constitutional
13 Convention.”⁷⁶

14
15 ⁷¹ *Id.* (quoting *Alaska Transp. Comm’n v. Airpac, Inc.*, 685 P.2d 1248, 1253 (Alaska 1984)).

16 ⁷² *Id.* (citing *State Commercial Fisheries Entry Comm’n v. Carlson*, 65 P.3d 851, 858 (Alaska 2003)).

17 ⁷³ *Forrer*, 471 P.3d at 583 (quoting *Hickel v. Cowper*, 874 P.2d 922, 926 (Alaska 1994)).

18 ⁷⁴ *Id.* (quoting *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 90 (Alaska 2016)).

19 ⁷⁵ *Id.* (quoting *Nelson v. State*, 440 P.3d 240, 243 (Alaska 2019), then citing *Se. Alaska Conservation Council v. State*, 202 P.3d 1162, 1176-77 (Alaska 2009) (holding that courts must “enforce the considered judgment of the founders” regardless of any “attractive idea” or “deserving purpose” supporting the legislature’s attempt to circumvent constitutional restrictions)).

20 ⁷⁶ *Id.* at 584.

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B. The Legislative History and Sponsor's Interpretation Show AS 14.03.300-.310 Has an Unconstitutional Purpose and Effect.

In interpreting a statute, courts look to the drafting history.⁷⁷ "The interpretation of legislation by the [bill's sponsor] is entitled to be given weight by the court in construing the intent of the statute."⁷⁸ As detailed above, the text of AS 14.03.300-310 was initially proposed by then-Senator Dunleavy as SB 100.

Alaska Statute 14.03.300-.310 contains two key components. First, its plain text allows a parent, teacher, and student to use a publicly funded correspondence program student allotment to purchase educational services and materials from a private educational institution. Second, it simultaneously prohibits the Department from imposing restrictions on those expenditures.

Specifically, AS 14.03.300(a) provides that under a "correspondence study program" an "individual learning plan" ("ILP") is "developed in collaboration with the student, the parent or guardian of the student, a certified teacher assigned to the student, and other individuals involved in the student's learning plan." To meet "instructional expenses," AS 14.03.310(a) allows a district or the Department to "provide an annual student allotment to a parent or guardian of a student enrolled in the correspondence study program." "A parent or guardian may purchase nonsectarian services and materials from a public, private, or

⁷⁷ *Id.* at 584-85.

⁷⁸ *Flisock v. Division of Retirement & Benefit*, 818 P.2d 640, 645 (Alaska 1991); *see also Division of Agric. v. Fowler*, 611 P.2d 58, 60 (Alaska 1980) ("The legislative history confirms this interpretation.").

1 religious organization with a student allotment” so long as it is consistent with the “individual
2 learning plan.”⁷⁹

3 As SB 100’s sponsor, Dunleavy understood that a constitutional amendment was
4 required to allow for the purchase of private school classes and materials, which was why he
5 argued SJR 9 needed to be passed by the Legislature and put before Alaska voters. In his
6 SJR 9 sponsor statement, Dunleavy explained, “[c]urrently the Alaska Constitution prohibits
7 the use of public funds for the direct benefit of any private educational institution. The courts
8 have determined that this ban extends to state funds being allotted to individual Alaskans
9 who choose to attend a private school.”⁸⁰ In speaking at a Senate Finance Committee
10 Meeting, Dunleavy “explained that SB 100 would be [the] program that would take place *as*
11 *a result of the language change in the constitution,*” and would “allow for private and/or
12 religious educational vendors to be recognized as legitimate educational vendors.”⁸¹ He
13 further testified that he “felt that there was a program in SB 100 which he believed would be
14 effective, but *the constitution must be amended first.*”⁸² This Court is entitled to consider the
15 fact that AS 14.03.300-.310’s legislative sponsor believed the constitution must be amended
16

17 ⁷⁹ AS 14.03.310(b).

18 ⁸⁰ Exhibit 16 at 5, Sen. Jud. Comm., 28th Leg., March 15, 2013, Statement of Sen. Dunleavy
at 1:38:37 PM, *available at* <https://www.akleg.gov/PDF/28/M/SJUD2013-03-151336.PDF>.

19 ⁸¹ Exhibit 17 at 4-5, Sen. Fin. Comm., 28th Leg., Feb. 3, 2014, Statement of Sen. Dunleavy
at 9:15:08 AM, *available at* <https://www.akleg.gov/PDF/28/M/SFIN2014-02-030902.PDF>.

20 ⁸² *Id.* at 6 (Statement of Sen. Dunleavy at 9:29:46 AM).

1 for his bill to achieve its intended purposes in determining whether the statutes have a plainly
2 legitimate sweep as required to survive review.

3 These correspondence study program provisions also prevent other provisions of law
4 from being used to impose restrictions on the use of an annual student allotment. Alaska
5 Statute 14.03.300(b) provides, “[n]otwithstanding another provision of law, the department
6 may not impose additional requirements, other than the requirements specified under (a) of
7 this section and under AS 14.03.310, on a student who is proficient or advanced on statewide
8 assessments required under AS 14.03.123(f).”⁸³ This provision means that while developing
9 the ILP, a “certified teacher,” “parent or guardian,” and “student,” can agree to a “course of
10 study for the appropriate grade level,” and the Department cannot place any limitations on
11 the purchase of services and materials outside of those contained in AS 14.03.300-.310. The
12 only actual limitation on spending the student allotment is contained in AS 14.03.310(e),
13 which provides a “student allotment . . . may not be used to pay for services provided to a
14 student by a family member.”⁸⁴

18 ⁸³ As the Alaska Supreme Court recently explained in *Exxon Mobil Corp. v. Dep’t of*
19 *Revenue*, “Notwithstanding” means “in spite of.” 488 P.3d 951, 956 n.43 (Alaska 2021) (quoting
20 *Notwithstanding*, BLACK’S LAW DICTIONARY (11th ed. 2019)).

20 ⁸⁴ AS 14.03.310(e) (“In this subsection, ‘family member’ means the student’s spouse,
21 guardian, parent, stepparent, sibling, stepsibling, grandparent, stepgrandparent, child, uncle, or
22 aunt.”).

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C. Article VII, Section 1 of the Alaska Constitution Prohibits Expenditure of Public Funds for the Direct Benefit of a Private Educational Institution.

In full, Article VII, Section 1 provides:

The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

Of crucial import, the final sentence contains a strict prohibition: "No money shall be paid from public funds for the direct benefit of any religious or other private educational institution." The minutes of the Alaska Constitutional Convention contain detailed discussions regarding the authoring Committee's intentions behind these carefully chosen words. Delegate Armstrong, speaking on behalf of the Committee which drafted Article VII, Section 1, stated that the Committee sought to "provide and protect for the future of our public schools."⁸⁵ The Committee chose the term "public funds" in acknowledgement that "state funds" may go through many hands, but the term "public funds" was meant to "guide [] every portion" of this journey:

[B]ecause we felt that state funds may at times go through many hands before reaching the point of their work for the public, and so the term "public funds" was then used as a guide to every portion of our state financing, borough, city or other entity for the disbursement of these monies.^[86]

⁸⁵ 2 Proceedings of the Alaska Constitutional Convention at 1514 (hereinafter "Proceedings"). Exhibit 18 contains an excerpt including all pages of the Proceedings cited in this Memorandum.

⁸⁶ Proceedings at 1514.

1 In writing the education clause, the delegates distinguished between public and private
2 educational institutions. The delegates were informed that the Committee meant the phrase
3 “other private educational institutions” to include “any educational institution that is not
4 supported and run by the state.”⁸⁷ This clause reflects a strict dichotomy: an educational
5 institution could either be public (run by the state) or private (not run by the state).

6 The delegates extensively debated, and ultimately made the deliberate choice, to
7 include the “direct benefit” prohibition proposed by the Committee in the education clause.
8 The Committee understood the “direct benefit” prohibition to prevent spending for
9 “maintenance” or “operation” of a private educational institution, “or other features of direct
10 help.”⁸⁸ But the Committee did not prohibit “indirect” spending, with the intention to allow
11 for spending where “it touches health and matters of welfare” of the child.⁸⁹

12 Importantly, this choice was made with an awareness that Article IX, Section 6
13 provides the baseline constitutional requirement that public funds be used for a “public
14 purpose.”⁹⁰ Accordingly, there is no basis for the State’s claim that sending public funds to

15 ⁸⁷ Proceedings at 1511 (emphasis added); *see also id.* at 1531-32 (discussing “system of
16 public schools”).

17 ⁸⁸ Proceedings at 1514.

18 ⁸⁹ *Id.* (discussing examples such as “welfare cases for children in homes and when there
19 are indigents in hospitals.”); *id.* at 1517 (explaining “[w]ell, we feared that ‘indirect’ would make
20 it impossible to give any of these welfare benefits, for instance, to children who were in private
21 schools, and we did not feel that any prohibition should go that far, and so the Committee did
carefully consider that word and unanimously agreed that we should not use it.”).

⁹⁰ *Id.* at 1515. Article IX, Section 6 provides: “No tax shall be levied, or appropriation of
public money made, or public property transferred, nor shall the public credit be used, except for
a public purpose.”

1 private educational institutions is permitted if it serves a "public purpose." The delegates did
2 not find it sufficient to limit education spending to a "public purpose," and deemed it
3 necessary to include a prohibition on using public funds for the "direct benefit" of private
4 educational institutions in the education clause to protect a strong public education system
5 open to all students in Alaska.

6 The Convention minutes illustrate that the delegates discussed and debated this very
7 point.⁹¹ As a comment by Delegate Fischer indicates, the framers understood substantive
8 differences between limiting expenditures based on a "public purpose" and including the
9 "direct benefit" prohibition in the education clause. Specifically, a "public purpose" could
10 change with prevailing attitudes, whereas a prohibition on spending for the "direct benefit"
11 of a private educational institution would restrict the ability to change appropriation of public
12 funds with policy preferences:

13 [W]hile . . . education is an important field, I do not feel that
14 when it comes to an appropriation of public funds it should
15 receive any special, either more restrictive or more favored
16 treatment. As Mr. White pointed out, the general stipulation is
17 that funds be appropriated only for public purpose. Now it
18 seems to me that the definition of public purpose must be made
19 during every age in view of the conditions prevailing at that
20 time. I think that has been one of the strong points of the Federal
21 Constitution. . . . I think the public purpose provision should be
the only guidance when it comes to appropriating public
funds.^[92]

19 ⁹¹ This proposed amendment occurred at Proceedings at 1525 (Mr. White moving to "strike
the last sentence" of "Section 1."); *see also id.* at 1526-28 (debating striking the final sentence of
Section 1).

20 ⁹² Proceedings at 1526.

1 On the other side of this debate, delegate Coghill explained that “the state has set up
2 a public educational system for all children.”⁹³ If public funds were spent supporting private
3 educational institutions, he expressed concerns that this would take “the benefit from the tax
4 dollar” away from public schools and drain the resources available for public students.⁹⁴
5 After lengthy debate, the overwhelming majority of delegates made the choice to include the
6 last sentence containing the “direct benefit” prohibition in Article VII, Section 1.⁹⁵ The
7 Convention minutes indicate the delegates’ understanding that Article VII, Section 1 would
8 foreclose spending public funds for the direct benefit of private educational institutions,
9 *regardless* of how many hands it passed through and *regardless* of whether the stated
10 intention of such spending was to further the public purpose of education. As the Alaska
11 Supreme Court has concluded: “Where the framers expressly considered and rejected the
12 State’s line of logic, we cannot in good conscience adopt it a mere six decades after-the-
13 fact.”⁹⁶

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16 ⁹³ *Id.* at 1520.

17 ⁹⁴ *Id.*

18 ⁹⁵ *Id.* at 1526. The proposed amendment to remove this direct benefit prohibition failed by
a vote of 13 yeas to 41 nays. *Id.* at 1528-29.

19 ⁹⁶ *Forrer*, 471 P.3d at 589; *see also Se. Alaska Conservation Council*, 202 P.3d at 1176-77
20 (holding that courts must “enforce the considered judgment of the founders” regardless of any
“attractive idea” or “deserving purpose” supporting the legislature’s attempt to circumvent
21 constitutional restrictions).

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1 **D. In *Sheldon Jackson College v. State*, the Alaska Supreme Court Held Reimbursing Payments to Private Colleges with Public Funds Violated Article VII, Section 1.**

2 The Alaska Supreme Court has already resolved the exact constitutional question
3 posed in this case in *Sheldon Jackson College v. State*.⁹⁷ In *Sheldon Jackson* the Alaska
4 Supreme Court considered whether a tuition grant program, under AS 14.40.751-.806,
5 violated Article VII, Section 1 of the Alaska Constitution.⁹⁸ The grant program awarded
6 Alaska residents attending private colleges in Alaska an amount equal to the difference
7 between the tuition charged by the student's private college and the tuition charged by a
8 public college.⁹⁹ The intention and public purpose of this program was to "help retain
9 qualified students in Alaska" by making attending private colleges more affordable.¹⁰⁰

10 Sheldon Jackson College, a private college benefitting from the grant program, sued
11 after the Attorney General issued an Opinion "declaring tuition grants to be invalid as a direct
12 benefit to private schools," which prompted the Department of Administration to stop paying
13 the tuition grants.¹⁰¹ And, like the history at issue here, there was an unsuccessful proposal
14 to amend the Alaska Constitution to allow for the spending.¹⁰² The Alaska Supreme Court

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17 ⁹⁷ 599 P.2d 127.
18 ⁹⁸ *Id.* at 128.
19 ⁹⁹ *Id.*
20 ¹⁰⁰ *Id.* at 131.
21 ¹⁰¹ *Id.* at 128.
¹⁰² *Id.* (explaining ballot proposition to allow for tuition grant program was rejected by voters).

1 held that this tuition grant program was facially invalid because it violated Article VII,
2 Section 1 of the Alaska Constitution.¹⁰³

3 In *Sheldon Jackson*, the Court considered caselaw from other states and the United
4 States Supreme Court as an interpretative aid in the meaning of “direct” versus “incidental”
5 benefits, but concluded that Alaska’s “direct benefit prohibition” is “unique” in that it “bans
6 aid to all private educational institutions, including those with no religious affiliation.”¹⁰⁴

7 In interpreting Article VII, Section 1, the Alaska Supreme Court looked to the
8 Constitutional Convention minutes discussed above. The Court found the minutes “show
9 that an unsuccessful motion was made to delete entirely the direct benefit prohibition of
10 article VII, section 1.”¹⁰⁵ “By rejecting this proposal the convention made it clear that it
11 wished the constitution to support and protect a strong system of public schools.”¹⁰⁶ And the
12 minutes also show that in “expressly rejecting alternative language that would have
13 prohibited ‘direct or indirect benefits,’ the delegates to Alaska’s Constitutional Convention
14 made it abundantly clear that they did not wish to prevent the state from providing for the
15 health and welfare of private school students.”¹⁰⁷ Looking at these minutes left the Court

16 ¹⁰³ *Id.*

17 ¹⁰⁴ *Id.* at 129, 132; *see also id.* at 132 & n.33 (concluding after reviewing the “plain language
18 of the constitution and the minutes of the constitutional debate,” that “all private educational
institutions were meant to be included.”).

19 ¹⁰⁵ *Id.* at 129.

20 ¹⁰⁶ *Id.*

21 ¹⁰⁷ *Id.* (first quoting 2 Proceedings at 1528, then citing 2 Proceedings at 1513-16, 1519-20,
1521-22,1524).

1 with the firm conviction that “Article VII, section 1 was thus designed to commit Alaska to
2 the pursuit of public, not private education.”¹⁰⁸

3 The Court distilled four factors to aid a court in determining whether spending was
4 prohibited by the direct benefit clause. The Court first looked to “the breadth of the class to
5 which statutory benefits are directed.”¹⁰⁹ In contrast to services like “police and fire
6 protection” which are provided to all members of the public, “a benefit flowing only to
7 private institutions, or to those served by them, does not reflect the same neutrality.”¹¹⁰ Under
8 this factor, spending that benefits all members of the public, such as public safety and welfare
9 are constitutionally permissible, whereas spending that benefits private institutions would be
10 prohibited. Applying this factor to the tuition grant program, the Court found that “the class
11 primarily benefitted by the tuition grant program consists only of private colleges and their
12 students.”¹¹¹ The Court noted that although Sheldon Jackson College “characterize[d] the
13 statute as merely equalizing the positions of private and public university students, effectively
14 the chief beneficiaries are the private colleges themselves.”¹¹² This is because “the only
15 incentive it creates is the incentive to enroll in a private college.”¹¹³ The Court concluded that
16 this grant was in fact a “subsidy program[]” for private colleges.¹¹⁴ Similarly, AS 14.03.300-

16 ¹⁰⁸ *Id.*

17 ¹⁰⁹ *Id.* at 130.

18 ¹¹⁰ *Id.*

19 ¹¹¹ *Id.* at 131.

20 ¹¹² *Id.*

21 ¹¹³ *Id.*

¹¹⁴ *Id.*

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1 .310 subsidizes private schools by incentivizing parents to enroll their children in a public
2 correspondence program and then receive reimbursements for private school classes.

3 As a second criterion, the Court looked to the “nature of the use to which the public
4 funds are to be put.”¹¹⁵ This inquiry was focused on “the core concern expressed in the direct
5 benefit prohibition,” which was “government aid to *Education* conducted outside the public
6 schools.”¹¹⁶ Thus, spending for the benefit of private education warranted scrutiny. In
7 applying this factor to the grant program, the Court noted that although “the program may be
8 motivated, as was stated in the preface to the statute as it was originally passed, by the desire
9 to ‘help retain qualified students in Alaska,’ such a laudable purpose cannot escape article
10 VII’s mandate that Alaska pursue its educational objectives through public educational
11 institutions.”¹¹⁷ Substantively, it was still “a subsidy of the education received by the student
12 at his or her private college, and thus implicate[d] fully the core concern of the direct benefit
13 provision.”¹¹⁸ Here too, while the stated justification of AS 14.03.300-.310 may be to further
14 educational outcomes, the chosen input is providing public funds, in the form of student
15 allotments, to parents to pay for educational materials and services at private schools. Just
16 like the Court concluded in *Sheldon Jackson*, this implicates the core concern of the direct
17 benefit prohibition.

18 ¹¹⁵ *Id.* at 130.

19 ¹¹⁶ *Id.* (emphasis in original).

20 ¹¹⁷ *Id.* at 131 (emphasis added).

21 ¹¹⁸ *Id.*

1 The third factor considered in *Sheldon Jackson* was “the magnitude of benefits
2 bestowed.”¹¹⁹ The Court was careful to note that this should not be considered “in isolation,”
3 and “[a] trivial, though direct, benefit may not rise to the level of a constitutional violation,
4 whereas a substantial, though arguably indirect, benefit may.”¹²⁰ In *Sheldon Jackson* the
5 Court concluded that under the tuition grant program, a grant of “\$1,850 for each eligible
6 student,” with plans to increase to \$2,500 crossed this threshold.¹²¹ Especially where many
7 students were eligible to receive such grants, and, as a result, private colleges like Sheldon
8 Jackson had received hundreds of thousands of dollars under the program the prior school
9 year.¹²² Under the correspondence study program, a student’s entire allotment (totaling
10 thousands of dollars per year), may be used to purchase classes from a private school. In
11 fact, in the Motion to Intervene as Defendants, Intervenor-Defendants all claimed an interest
12 in this litigation specifically because they use their correspondence program allotments to
13 “pay tuition” for their children to attend private schools.¹²³

14 ¹¹⁹ *Id.* at 130.

15 ¹²⁰ *Id.*

16 ¹²¹ *Id.* at 131.

17 ¹²² *Id.*

18 ¹²³ Motion to Intervene as Defendants at 1 (dated Jan. 26, 2023). The supporting affidavits
19 attached to the Motion to Intervene further indicate that without the substantial subsidy provided
20 by the public correspondence program allotment, these parents would have to reconsider sending
21 their children to private schools. *See, e.g.*, Affidavit of Andrea Mocerì at 3 (“Tuition to Holy
Rosary Academy is not cheap and the Program is essential to helping me pay for it. If I were no
longer eligible to receive assistance from the Program, I would almost certainly be unable to
afford the tuition at Holy Rosary Academy.”); Affidavit of Brandy Pennington at 3 (“If I am
unable to continue receiving an allotment from the Program, I will undoubtedly endure great
financial hardship to keep sending my children to SEAS. In fact, it is more likely than not that I
will have to send my children to public school if I do not receive financial assistance.”); Affidavit

1 Finally, the Court reasoned that “a direct transfer of funds from the state to a private
2 school” was clearly suspect, but so too was “channeling the funds through an
3 intermediary.”¹²⁴ The Court concluded that providing public funds to students as a grant, for
4 the students to then pay for private college tuition did not solve the constitutional problem.¹²⁵
5 Similarly, providing student allotments to parents under AS 14.03.300-.310, for the parents
6 to then pay for private school classes is still a subsidy of private education. The *Sheldon*
7 *Jackson* Court rejected such attempts to circumvent the constitutional limitations by adding
8 in a “conduit for the transmission of state funds” to private educational institutions.¹²⁶ The
9 Court emphasized, “[s]imply interposing an intermediary ‘does not have a cleansing effect
10 and somehow cause the funds to lose their identity as public funds. While the ingenuity of
11 man is apparently limitless, the court has held with unvarying regularity that one may not do
12 by indirection what is forbidden directly.’”¹²⁷

13 As the Supreme Court’s opinion in *Sheldon Jackson* clearly stated, “the superficial
14 form of a benefit will not suffice to define its substantive character.”¹²⁸ Substantively, AS
15 14.03.300-.310 allocates public funds in the form of student allotments for the direct benefit

16 of Theresa Brooks at 3 (“When L.B. graduates from SEAS at the end of this school year, I would
17 like to send her to another private school, but I will probably not be able to do so without the
18 allotment.”).

19 ¹²⁴ *Sheldon Jackson College*, 599 P.2d at 130.

20 ¹²⁵ *Id.* at 132.

21 ¹²⁶ *Id.*

¹²⁷ *Id.* (quoting *Wolman v. Essex*, 342 F. Supp. 399, 415 (S.D. Ohio), *aff’d mem.*, 409 U.S.
808 (1972)).

¹²⁸ *Id.* at 131.

1 of private educational institutions. The plain text of AS 14.03.310(b) provides that a “parent
2 . . . may purchase nonsectarian services and materials from a public, private, or religious
3 organization with a student allotment.” Regardless of the stated purpose of such spending,
4 this language collides with the direct benefit prohibition in Article VII, Section 1.

5 **E. Alaska Statute 14.03.300-310 is Facially Unconstitutional.**

6 At a minimum, Plaintiffs’ Complaint clearly meets the requirements to survive a
7 motion to dismiss. But review of the relevant legislative history, Constitutional Convention
8 minutes, and binding precedent of *Sheldon Jackson College v. State*, indicates that Plaintiffs
9 are entitled to summary judgment on the merits of their facial challenge.

10 Tellingly, the State’s Motion to Dismiss avoids discussion of the Alaska
11 Constitutional Convention, and even avoids applying the plain text of Article VII, Section 1,
12 to AS 14.03.300-310. The State’s argument also fails to address the legislative history and
13 sponsor’s intent for AS 14.03.300-310. Instead, as legal authority, it relies heavily on the
14 AG Opinion.¹²⁹

15 The AG Opinion is an *interpretation* of precedent, not legal precedent. But regardless,
16 even the AG Opinion—which attempts to defend the constitutionality of 14.03.300-310—
17 concludes that certain uses of public funds allowed by the plain text of AS 14.03.300-310
18 would be unconstitutional. In a section titled “[u]sing public correspondence school

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20 ¹²⁹ See, e.g., Defendant’s Motion to Dismiss at 5-7.

1 allotments to pay most or all of a private educational institution's tuition is almost certainly
2 unconstitutional," the Opinion provides:

3 In contrast to paying for discrete course materials and
4 services, using the student allotments to pay for the tuition of a
5 student being educated full-time at a private institution would
6 be highly unlikely to survive constitutional scrutiny. Spending
7 public funds in this manner would appear to violate the plain
8 language of the constitutional prohibition against using public
9 funds to pay for a direct benefit to a private school. It would also
10 be contrary to the purpose of the constitutional provision, which
11 was to commit the state to a strong system of public
12 education.^[130]

13 The Opinion further concluded that adding intermediaries, such as through
14 distributing an allotment to parents, would not make otherwise unconstitutional uses of public
15 funds constitutional:

16 Likewise, simply placing the public money in another person's
17 hands—such as a parent or guardian in a correspondence school
18 program—so that the person can deliver the money to a private
19 educational institution to pay tuition is irrelevant to the analysis.
20 As the Alaska Supreme Court noted in *Sheldon Jackson*,
21 "merely channeling the funds through an intermediary will not
save an otherwise improper expenditure of public monies." This
is also why the Department of Law has consistently advised
legislators and agencies that school voucher programs allowing
parents to pay for public or private schools are not permitted
under the Alaska Constitution—the framers were clearly
concerned about where the money ultimately ended up, not the
means by which it got there.^[131]

This AG Opinion acknowledges that *Sheldon Jackson* concluded that adding
intermediaries—such as parents or guardians—does not make paying for private school

130 Exhibit 14 at 13 (Op. Att'y Gen. No. 2021200228).

131 *Id.*

1 tuition with public funds constitutional. The framers were concerned about where the money
2 ultimately ended up, and so sending public funds to school districts, that in turn reimburse
3 parents who enroll their children in private school classes under an ILP, cannot pass
4 constitutional muster either.

5 The AG Opinion attempts to avoid directly applying the language of “article VII’s
6 direct benefit prohibition, which bans aid to all private educational institutions,”¹³² by instead
7 suggesting that the *purpose of spending* is the touchstone that makes otherwise
8 unconstitutional spending consistent with constitutional requirements. In a Letter to
9 Superintendents circulating the Opinion, DEED’s Acting Commissioner Heidi Teshner
10 summarized the Opinion’s conclusion as the “Alaska Constitution supports using allotments
11 to pay for educational services and materials provided by private vendors including paying
12 for courses *when the main purpose of purchasing the services and materials is to further the
student’s public school correspondence education.*”¹³³

13 However, the prohibition on spending public funds for the direct benefit of private
14 educational institutions does not contain an allowance for such spending if intended for a
15 public purpose. The Convention minutes indicate that the delegates were aware of other
16 constitutional restrictions limiting the use of “public funds” to “public purposes” and made
17 the deliberate choice to prohibit expenditure of public funds for the direct benefit of a private
18 educational institution regardless of the purported purpose. Despite the plain text of the

19 _____
20 ¹³² *Sheldon Jackson College*, 599 P.2d at 132.

21 ¹³³ Exhibit 15 at 1.

1 education clause, and the delegates explicitly choosing to prohibit spending for the “direct
2 benefit” of private educational institutions, the Opinion nonetheless erroneously concludes
3 that some undefined threshold of public spending in direct support of private educational
4 institutions is constitutionally permissible by continuing to draw this distinction that it is the
5 *purpose* of the spending for the direct benefit of a private educational institution that
6 determines the constitutionality.

7 The Opinion thereby reasons that even in “the space in between,” *i.e.*, taking some
8 unspecified number of “individual classes provided by private institutions,”¹³⁴ there could be
9 both constitutional and unconstitutional spending. The Opinion contends that using public
10 “allotment money for one or two” private school classes “to support a public correspondence
11 school program is likely constitutional.”¹³⁵ On the other hand, “if attendance in private school
12 classes is, for example, in response to a private school encouraging parents to enroll in a
13 public correspondence school and then use public allotments to offset the cost of private
14 tuition, there would be a significant likelihood that the use of allotments would be found
15 unconstitutional.”¹³⁶ There is not, however, a specific intent or *mens rea* requirement in the
16 education clause—either form of spending involves unconstitutionally spending public funds
17 for the direct benefit of a private educational institution. Asserting that using public funds to
18 pay for courses at private schools supports public correspondence schools is a circular

19 ¹³⁴ Exhibit 14 at 13.

20 ¹³⁵ *Id.* at 14.

21 ¹³⁶ *Id.*

1 argument that collapses the distinction between public and private institutions recognized by
2 the framers in Article VII, Section 1. It also lacks any limiting principle, and instead leaves
3 “DEED and school districts [to] consult with legal counsel” in the massive “gray area.”¹³⁷

4 Because even this AG Opinion failed to delineate constitutional from unconstitutional
5 spending under its own flawed internal logic, it now attempts to foist this line drawing
6 exercise off onto Plaintiffs and this Court. However, engaging in this line drawing in the first
7 instance is not required. The central pillar of AS 14.03.300-.310 is that parents and a teacher
8 can decide to use a public funds to purchase materials or services from private educational
9 institutions.¹³⁸ And so long as the student achieves proficiency, DEED cannot impose
10 additional restrictions on those expenditures outside those recognized in AS 14.03.300-.310.
11 These provisions have a plainly illegitimate sweep and a plainly illegitimate purpose.
12 “[W]hen the invalidation of a central pillar ‘so undermines the structure of the Act as a
13 whole,’ then ‘the entire Act must fail.’”¹³⁹

14 As the Alaska Supreme Court concluded in *Forrer v. State*, when reversing the trial
15 court’s grant of a motion to dismiss a facial challenge, “[The Court] need not formulate a
16 bright-line test to delineate [a specific expenditure threshold that would be constitutional] in
17 this instance. The plain text of the constitution and the Delegates’ unambiguous rejection of

18 ¹³⁷ *Id.* at 19.

19 ¹³⁸ See *North Slope Borough v. Sohio Petroleum Corp.*, 585 P.2d 534, 540 (Alaska 1978)
(explaining “a fundamental principle of statutory interpretation is that a statute means what its
20 language reasonably conveys to others”).

21 ¹³⁹ *Forrer*, 471 P.3d at 598 (quoting *State v. Alaska Civil Liberties Union*, 978 P.2d 597,
633 (Alaska 1999)).

1 the State's arguments control [the Court's] decision today."¹⁴⁰ The State cannot now rewrite
2 constitutional language so that public funds may be spent for the direct benefit of a private
3 educational institution if the stated justification is that it furthers a public purpose.

4 **II. Alternatively, Even Assuming AS 14.03.300-310 Could Somehow Be Narrowly**
5 **Interpreted to Disallow Unconstitutional Spending, This Too Would Entitle**
6 **Plaintiffs to the Relief Sought in Their Complaint.**

7 The Motion to Dismiss concedes that at least some uses of student allotments—such
8 as reimbursing parents enrolling their public correspondence students in private educational
9 institutions for some unlimited number of classes or full-time tuition—would be “clearly
10 unconstitutional” or “questionable.”¹⁴¹ The State argues, however, that because it can
11 identify hypothetical possible uses of allotments under AS 14.03.300-.310 that do not involve
12 a private educational institution *at all*,¹⁴² “[f]or example, a parent could use funds to pay for
13 classes at a *public* educational institution like the University of Alaska,”¹⁴³ that the statutes
14 cannot be declared facially unconstitutional. That argument ignores, entirely, the purpose of
15 the challenged statutes and the language specifically allowing “[a] parent or guardian [to]

16 ¹⁴⁰ *Id.*

17 ¹⁴¹ Defendant's Motion to Dismiss at 2, 5 (noting Alaska Constitution “would bar some uses
18 of allotment funds like ‘pay[ing] tuition for full-time enrollment in a private school.’” (quoting
19 Op. Att’y Gen. No. 2021200228 at 2)).

20 ¹⁴² *See, e.g.*, Defendant's Motion to Dismiss at 11 (“Nothing in AS 14.03.300 requires that
21 individual learning plans involve religious or private educational institutions, nor requires that
any public funds be used to benefit such institutions. A school district could develop individual
learning plans for its correspondence school students . . . without even approaching any
constitutional lines.”).

¹⁴³ Defendant's Motion to Dismiss at 13 (emphasis in original).

1 purchase nonsectarian services and materials from a . . . private, or religious organization
2 with public funds.¹⁴⁴

3 The Alaska Supreme Court has directed that “when constitutional issues are raised,
4 this court has a duty to construe a statute, where reasonable, to avoid dangers of
5 unconstitutionality. Rather than strike a statute down, [the court] will employ a narrowing
6 construction, if one is reasonably possible.”¹⁴⁵ Because the statutes expressly authorize public
7 funds to be paid to private institutions, and specifically preclude the Department from
8 narrowing this authorization, Defendants are incorrect that the statutes can be narrowly
9 interpreted to avoid its facial constitutional defects.

10 But if it were possible to so narrowly interpret AS 14.03.300-.310 to disallow public
11 funds going to private institutions, Plaintiffs would still be entitled to the relief requested in
12 their Complaint: a “declaration that AS 14.03.300-.310, [cannot constitutionally allow] for
13 the reimbursement of payments to private educational institutions using public funds,
14 [because it would] violate[] Article VII, Section 1 of the Alaska Constitution.”¹⁴⁶

15 Defendants gloss over the fact that the statutes explicitly allow for purchases of
16 educational “services or materials from a . . . private, or religious organization with a student
17 allotment.”¹⁴⁷ Moreover, the statutes expressly preclude DEED from placing any limits on

18 ¹⁴⁴ AS 14.03.310(b) (emphasis added).

19 ¹⁴⁵ *ACLU of Alaska*, 204 P.3d at 373.

20 ¹⁴⁶ Compl. ¶ 70.

21 ¹⁴⁷ AS 14.03.310(b); *see also* Defendant’s Motion to Dismiss at 13 (conceding “possible applications—like using the funds to pay full-time private school tuition—are unconstitutional,”

1 these public funds being paid to private entities: "Notwithstanding another provision of law,
2 the department may not impose additional requirements, other than the requirements
3 specified under (a) of this section and under AS 14.03.310, on a student who is proficient or
4 advanced on statewide assessments required under AS 14.03.123(f)."¹⁴⁸ At a minimum, this
5 statutory limitation that disallows the very interpretation Defendants now argue for is facially
6 unconstitutional, and would need to be severed from the statute in order to even allow the
7 limitations the State now advances: a limitation that funds only be used at public institutions
8 such as the University of Alaska.

9 As the Alaska Supreme Court recently outlined in *Forrer v. State*, courts are directed
10 to excise constitutionally infirm portions of laws, and to save the remainder where possible:

11 Laws duly enacted by the legislature are endowed with a
12 presumption of constitutionality, and even if one or more
13 sections of a law are constitutionally infirm, AS 01.10.030
14 directs us to excise those portions to save the remainder if this
15 is possible.^[149] A provision is severable if "the portion
16 remaining . . . is independent and complete in itself so that it
17 may be presumed that the legislature would have enacted the
18 valid parts without the invalid part." However, when the
19 invalidation of a central pillar "so undermines the structure of
20 the Act as a whole," then "the entire Act must fall."^[150]

21 but defending the AG Opinion's conclusion that "paying for discrete private school classes—
would not necessarily use funds for the 'direct benefit' of that institution, depending on the
specific circumstances.").

¹⁴⁸ AS 14.03.300(b).

¹⁴⁹ The Alaska Supreme Court has held that the general clause in AS 01.10.030 "creates an
even weaker presumption" than a specific severability clause. *Lynden Transp., Inc. v. State*, 532
P.2d 700, 712 (Alaska 1975).

¹⁵⁰ *Forrer*, 471 P.3d at 598 (footnotes omitted).

1 Defendants' contortions to advance a constitutionally permissible interpretation of AS
2 14.03.300-.310 illustrate the violation of the education clause. The difficulty of reconciling
3 this allotment program with constitutional limitations is especially glaring where Defendants
4 concede that school voucher programs are unconstitutional.¹⁵¹ They fail to meaningfully
5 distinguish vouchers from the allotment program under AS 14.03.300-.310. As Plaintiffs
6 argued above, the central pillar of this regime is to allow parents to purchase educational
7 services and materials from private educational institutions with public funds. And it
8 simultaneously "offers very precise limiting language for the issues that are to be
9 considered"¹⁵² by including a provision stating, "the department may not impose additional
10 requirements."¹⁵³ It would be unreasonable to interpret AS 14.03.300-.310 as providing or
11 allowing limitations on spending of public correspondence student allotments under an ILP
12 to conform with constitutional requirements when this possibility is foreclosed by the
13 statutes' plain text. Because the legislative history, sponsor's statements, and plain text of
14 AS 14.03.300-.310 are clear that the overarching purpose of the statutes is to allow for a
15 "third-way" of "public/private partnerships" and to prevent the Department from imposing
16 restrictions so long as educational outcomes are achieved, it is not "reasonably possible" for

17 ¹⁵¹ Exhibit 14 at 13 ("[T]he Department of Law has consistently advised legislators and
18 agencies that school voucher programs allowing parents to pay for public or private schools are
19 not permitted under the Alaska Constitution—the framers were clearly concerned about where
20 the money ultimately ended up, not the means by which it got there.").

¹⁵² *Javed v. Dep't of Pub. Safety, Div. of Motor Vehicles*, 921 P.2d 620, 625 (concluding
21 "that AS 28.15.166(g) cannot be interpreted constitutionally.").

¹⁵³ See AS 14.03.300(b).

1 the Court to “employ a narrowing construction.”¹⁵⁴ “[T]o do so” would require this Court to
2 “impermissibly rewrite the statute.”¹⁵⁵

3 **III. School Districts Are Not Indispensable Parties Under Rule 19.**

4 This Court need not decide the State’s Rule 19 motion if this Court denies the State’s
5 Motion to Dismiss the facial challenge. But assuming that only an as-applied challenge is
6 allowed, the State’s second argument to dismiss is that “the Court should not allow an as-
7 applied challenge to AS 14.03.300-.310 to go forward without the school districts as
8 parties.”¹⁵⁶ Dodging the question of whether there is a prohibition on public funds being used
9 to reimburse payments to private institutions, the State effectively argues that this Court
10 should be the arbiter of delineating all “the gray areas” of what funding of private institutions
11 is constitutional and what is not. As argued above, there is no need for the Court to engage
12 in the line-drawing exercise invited by the State because there is no public purpose exception
13 in the Alaska Constitution.¹⁵⁷ But even if this Court were to rule that only an as-applied
14 challenge may be pursued in this case, the school districts are not indispensable parties.

15
16
17 ¹⁵⁴ *ACLU of Alaska*, 204 P.3d at 373 (advancing pre-enforcement challenge to statute
criminalizing possession of marijuana as-applied in specific circumstances).

18 ¹⁵⁵ *Javed*, 921 P.2d at 624-25.

19 ¹⁵⁶ Defendant’s Motion to Dismiss at 2.

20 ¹⁵⁷ *Id.* at 14 (asserting that because the “parties surely disagree on where to draw the lines,”
and “[a]s is clear from the Department of Law’s opinion, attempting to draw these lines in the
21 abstract is a difficult task,” that this Court should have to consider every possible application
“involving specific facts.”).

1
2 **A. The Declaratory and Injunctive Relief Requested by Plaintiffs May Be**
3 **Granted Without Joining School Districts.**

4 Under a Rule 19 analysis, the State has failed to carry its burden to prove that any
5 school districts are a “necessary” party, much less an “indispensable” one. “The proper test
6 for determining whether parties are indispensable is set out in Civil Rule 19.”¹⁵⁸ The Alaska
7 Supreme Court has described the required three-part analysis as follows:

8 A finding of indispensability requires a three-part
9 analysis. First, the court must determine whether the parties are
10 “necessary,” according to the standards set forth in Civil Rule
11 19(a). Second, only if the parties are found to be necessary, the
12 court must then determine if they can be joined. At this point in
13 the inquiry, the court must decide whether it can exercise
14 personal jurisdiction over the parties. Finally, if the court
15 concludes that the parties are necessary and cannot be joined, it
16 must determine whether they are “indispensable” by weighing
17 the factors provided in Civil Rule 19(b).¹⁵⁹

18 The State’s argument fails in part one: individual school districts are not “necessary”
19 under Rule 19(a). Rule 19(a)(1) indicates that a party is necessary if “in the person’s absence
20 complete relief cannot be accorded among those already parties.” In other words, whether a
21 party is necessary depends on the relief requested. As the State acknowledges, Plaintiffs are
seeking “[a]n order declaring AS 14.03.300-.310 is unconstitutional” and “[a]n order

18 ¹⁵⁸ *Pacific Marine Ins. Co. v. Harvest States Coop. (In re Pacific Marine Ins. Co.)*, 877
P.2d 264, 268 (Alaska 1994).

19 ¹⁵⁹ *Id.* at 268-69; *see also Nordin v. Zimmer*, 373 P.2d 738, 742 (Alaska 1962) (“The
20 mandatory duty under Civ. R. 19(a) to order other parties brought in is shown only when the trial
21 court finds or the record indisputably discloses that such parties are indispensable to a complete
determination of the controversy.”).

1 enjoining any current or future use of public funds to reimburse payments to private
2 educational institutions pursuant to AS 14.03.300-310.”¹⁶⁰ This declaratory and injunctive
3 relief may be granted without joining school districts.

4 But even for an as-applied challenge, the school districts are not necessary parties. In
5 making these arguments, the State is apparently disclaiming DEED’s responsibility for
6 ensuring public funds distributed to school districts are being used in a manner that complies
7 with the Alaska Constitution. The Motion to Dismiss simultaneously admits,
8 “correspondence schools are publicly funded,” “subject to DEED’s general oversight,” and
9 correspondence “students are held to state educational standards.”¹⁶¹ And “DEED is
10 statutorily authorized to provide a centralized correspondence school,” but “does not
11 currently do so.”¹⁶² DEED in fact has the duty to “exercise general supervision over the
12 public schools of the state,” and to “exercise general supervision over elementary and
13 secondary correspondence study programs.”¹⁶³ Yet DEED adamantly asserts that it does not
14 know how public funds are being used from the correspondence program allotments, and
15 therefore individual school districts would apparently have to defend the constitutionality of
16 how allotments are used in that school district on a case-by-case and student-by-student basis.
17 This contention—that DEED does not know how allotments are being applied, and therefore

18 ¹⁶⁰ Defendant’s Motion to Dismiss at 7 (citing Complaint p. 22).

19 ¹⁶¹ *Id.* at 3.

20 ¹⁶² *Id.*

21 ¹⁶³ AS 14.07.020(a)(1), (9).

1 cannot adequately defend any such expenditures—conflicts with DEED’s obligation to
2 provide oversight, including oversight to public school funding.¹⁶⁴

3 By design, AS 14.03.300(b) removes DEED’s ability to “impose additional
4 requirements” to ensure that spending under the program in fact satisfies constitutional
5 requirements.¹⁶⁵ DEED’s concession that it does not know enough about how these
6 allotments are actually being spent to defend the constitutionality of expenditures, only
7 underscores Plaintiffs’ arguments that AS 14.03.300-.310 has a plainly unconstitutional
8 sweep. But despite its lack of knowledge and the unconstitutional restrictions placed on its
9 oversight in AS 14.03.310, DEED as the State agency overseeing education funding has the
10 ultimate responsibility to ensure public funds are used in accordance with our Constitution.
11 Relief can and should therefore be granted without joining individual districts.

12
13 ¹⁶⁴ The public education fund, created by statute in 2005, holds funds appropriated for
14 education from the general fund. *See* AS 14.17.300(a). *See also* AS 14.17.430 (providing
15 “funding for the state centralized correspondence study program or a district correspondence
16 program . . . includes an allocation from the public education fund”); 14.07.020(a)(9) (describing
17 DEED’s duty to “exercise general supervision over elementary and secondary correspondence
18 study programs offered by municipal school districts or regional educational attendance areas”);
19 14.07.020(a)(1) (describing DEED’s duty to “exercise general supervision over the public
20 schools of the state”).

21 ¹⁶⁵ AS 14.03.300(b) (“Notwithstanding another provision of law, the department may not
impose additional requirements, other than the requirements specified under (a) of this section
and under AS 14.03.310, on a student who is proficient or advanced on statewide assessments
required under AS 14.03.123(f).”). In SB 100’s legislative history, Ms. Mischel, attorney for
Legislative Legal Services, discussed problems related to Article VII, “point[ing] out that one of
the regulations that the department sets up for district correspondence programs requires a
reporting from the district on who is attending and what the performance is. Without the
department looking at that it would be left up to the district to do. The department would not have
a role in reviewing the report and making adjustments under SB 100.” Exhibit 1 at 11 (Sen. Educ.
Comm., 28th Leg., March 3, 2014 at 8:32:54 AM).

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B. The Schools Districts Have Not Claimed an Interest Under Rule 19(a)(2).

Joinder is also not required by Rule 19(a)(2)(ii). “Because Rule 19(a)(2)(ii) only applies to parties who ‘claim[] an interest relating to the subject of the action.’”¹⁶⁶ Here, the school districts have not “claimed” an interest in this action: “Rather, [DEED] has asserted several interests on [the school districts’] behalf.”¹⁶⁷ DEED’s “self-serving attempts to assert interests on behalf of [school districts] fall outside the language of Rule 19(a)(2), and thus cannot be the basis for [DEED’s] necessary party argument.”¹⁶⁸

DEED suggests that “[a]n as-applied challenge claiming allotment funds are being used in unconstitutional ways . . . calls the school districts’ actions into question,” and “DEED simply cannot stand in for the school districts, defending their actions and representing their interests.”¹⁶⁹ DEED further argues that school districts have an “interest[] in operating their correspondence programs as they see fit and receiving state funding for those programs.”¹⁷⁰

Despite DEED’s statutory obligations to provide oversight, DEED implies that somehow Plaintiffs and this Court must provide this constitutional oversight by first joining individual school districts to this lawsuit, and second parsing each usage of student allotments

¹⁶⁶ *Botelho ex rel. Members of Alaskan Sports Bingo Joint Venture v. Griffin*, 25 P.3d 689, 696 (Alaska 2001).

¹⁶⁷ *ConnTech Dev. Co. v. Univ. of Conn. Educ. Props.*, 102 F.3d 677, 683 (2nd Cir. 1996), cited affirmatively by *Botelho ex rel. Members of Alaskan Sports Bingo Joint Venture*, 25 P.3d at 696 n.38.

¹⁶⁸ *Id.*

¹⁶⁹ Defendant’s Motion to Dismiss at 2.

¹⁷⁰ *Id.* at 18.

1 to determine whether it unconstitutionally provides a "direct benefit" to "private educational
2 institution[s]." These positions only bolster Plaintiffs' arguments that the spending allowed
3 under the plain text of AS 14.03.300-.310 is unconstitutional.¹⁷¹ Rather than facing the
4 uncomfortable reality that even the Attorney General Opinion found certain spending
5 allowed under AS 14.03.300-.310 would be "almost certainly unconstitutional,"¹⁷² and could
6 not define clear parameters for constitutionally spending public funds for the direct benefit
7 of private schools in what it identified as the "gray area,"¹⁷³ the State tries to shift this
8 impossible, unnecessary burden to this Court in order to argue this Court must dismiss this
9 lawsuit on the technicality that school districts, not DEED, currently *run* the correspondence
10 programs and decide what funding should go to private institutions.¹⁷⁴ The school districts,
11 who have not themselves claimed an interest in this litigation, should not be blamed for
12 failing to ensure spending meets constitutional requirements where the plain text of the
13 statutes permit, and encourage, unconstitutional spending. This is especially true where the
14 so-called "guidance" from the Attorney General Opinion advances an unconstitutional
15 interpretation to dodge its responsibility to ensure public funds are not used in violation of
16

17 ¹⁷¹ As described above, AS 14.03.300-.310's provisions were intended to remove DEED's
18 ability to impose restrictions on "inputs" (i.e., expenditures of public funds) so long as
19 "outcomes" (i.e., student proficiency) were achieved. *Supra* notes 10-14, 29-30, and
20 accompanying text.

19 ¹⁷² Exhibit 14 at 13.

20 ¹⁷³ *Id.* at 2, 13-14, 19.

21 ¹⁷⁴ Defendant's Motion to Dismiss at 17.

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1 the Alaska Constitution, recommending instead that school districts "consult with legal
2 counsel."¹⁷⁵

3 The State's conclusory arguments that school districts are indispensable parties should
4 be rejected. This Court may provide the declaratory and injunctive relief requested without
5 joining school districts.

6 **CONCLUSION**

7 Based on the foregoing, the State's Motion to Dismiss should be denied. Rather, this
8 Court should grant summary judgment in favor of Plaintiffs, declare AS 14.03.300-.310
9 unconstitutional, and enjoin future expenditures of public funds for the direct benefit of
10 private educational institutions under AS 14.03.300-.310.

11 **CASHION GILMORE & LINDEMUTH**
12 Attorneys for Plaintiffs

13 DATE: April 28, 2023

/s/Scott M. Kendall

14 Scott M. Kendall
15 Alaska Bar No. 0405019
16 Lauren L. Sherman
17 Alaska Bar No. 2009087

18
19
20 ¹⁷⁵ Exhibit 14 at 19.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

EDWARD ALEXANDER, JOSH
ANDREWS, SHELBY BECK
ANDREWS, & CAREY CARPENTER,

Plaintiffs,

v.

ACTING COMMISSIONER HEIDI
TESHNER, in her official capacity,
STATE OF ALASKA, DEPARTMENT
OF EDUCATION & EARLY
DEVELOPMENT,

Defendants,

v.

ANDREA MOCERI, THERESA
BROOKS, and BRANDY
PENNINGTON,

Intervenors.

FILED in the Third Judicial District
State of Alaska at Anchorage

01/01/2023

Clerk of the Third Judicial District
Anchorage, Alaska

Case No. 3AN-23-04309CI

AFFIDAVIT OF LAUREN L. SHERMAN

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Lauren L. Sherman, being first duly sworn and deposed, hereby state as follows:

1 1. I am co-counsel representing Plaintiffs Edward Alexander, Josh Andrews,
2 Shelby Beck Andrews, and Carey Carpenter (collectively "Plaintiffs") in the above-
3 captioned matter.

4 2. Attached as Exhibit 1 is a true and correct copy of a 15-page excerpt from
5 the Minutes of the Alaska State Legislature, Senate Education Standing Committee on
6 March 3, 2014, starting at 8:00 a.m. addressing SB 100. The Minutes were downloaded
7 from <https://www.akleg.gov/PDF/28/M/SEDC2014-03-030800.PDF>.
8

9 3. Attached as Exhibit 2 is a true and correct copy of a 12-page excerpt from
10 the Minutes of the Alaska State Legislature, Senate Education Standing Committee on
11 April 10, 2013, starting at 8:01 a.m. addressing SB 100. The Minutes were downloaded
12 from <https://www.akleg.gov/PDF/28/M/SEDC2013-04-100801.PDF>.
13

14 4. Attached as Exhibit 3 is a true and correct copy of a 3-page excerpt from
15 the Minutes of the Alaska State Legislature, Senate Education Standing Committee on
16 March 21, 2014, starting at 7:59 a.m. addressing SB 100. The Minutes were downloaded
17 from <https://www.akleg.gov/PDF/28/M/SEDC2014-03-210759.PDF>.
18

19 5. Attached as Exhibit 4 is a true and correct copy of Senate Joint Resolution
20 No. 9 as introduced on February 13, 2013. SJR 9 was downloaded from
21 <https://www.akleg.gov/PDF/28/Bills/SJR009A.PDF>.

22 6. Attached as Exhibit 5 is a true and correct copy of a 6-page excerpt from
23 the House Journal of January 24, 2014, containing Governor Sean Parnell's transmittal
24

1 letter accompanying HB 278. The House Journal was downloaded from
2 <https://www.akleg.gov/pdf/28/J/H2014-01-24.PDF>.

3 7. Attached as Exhibit 6 is a true and correct copy of the HB 278 Comparison
4 from the House and Senate Free Conference Committees Prepared by Representative
5 Hawker's Office. This Comparison was downloaded from [https://www.akleg.gov/basis/
6 get_documents.asp?session=28&docid=24842](https://www.akleg.gov/basis/get_documents.asp?session=28&docid=24842).

7
8 8. Attached as Exhibit 7 is a true and correct copy of a 5-page excerpt from
9 the Senate Finance Committee's version, HB 278E, including "Article 3. Correspondence
10 Study Programs" offered on April 19, 2014. This version of HB 278 was downloaded
11 from <https://www.akleg.gov/PDF/28/Bills/HB0278E.PDF>.

12
13 9. Attached as Exhibit 8 is a true and correct copy of the House Finance
14 Committee's version, HB 278D, offered on April 3, 2014 and amended on April 7, 2014,
15 which does not contain the correspondence study program provisions. This version of
16 HB 278 was downloaded from <https://www.akleg.gov/PDF/28/Bills/HB0278D.PDF>.

17
18 10. Attached as Exhibit 9 is a true and correct copy of a 13-page excerpt from
19 the Free Conference Committee on HB 278 on April 22, 2014, including addressing
20 changes originally proposed under SB 100. The Free Conference Committee Minutes
21 were downloaded from [https://www.akleg.gov/PDF/28/M/HFHB2782014-04-
22 221030.PDF](https://www.akleg.gov/PDF/28/M/HFHB2782014-04-221030.PDF).

23
24 11. Attached as Exhibit 10 is a true and correct copy of Jodi Taylor's "Opinion:
25 Private school, state reimbursement: Family Choice," as published by the Anchorage

Cashion Gilmore & Lindemuth
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Anchorage, Alaska 99501
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1 Daily News on May 19, 2022. The Opinion was downloaded from
2 [https://www.adn.com/opinions/2022/05/19/opinion-private-school-state-reimbursement-](https://www.adn.com/opinions/2022/05/19/opinion-private-school-state-reimbursement-family-choice/)
3 [family-choice/](https://www.adn.com/opinions/2022/05/19/opinion-private-school-state-reimbursement-family-choice/).

4 12. Attached as Exhibit 11 is a true and correct copy of the Press Release from
5 the Department of Law, titled "Attorney General Taylor Recused from Correspondence
6 School Allotment Advice in May" (June 6, 2022). The Press Release was downloaded
7 from <https://law.alaska.gov/press/releases/2022/060622-Allotment.html>.

8 13. Attached as Exhibit 12 is a true and correct copy of the Notice of Attorney
9 General Taylor's delegation of authority to Deputy General Cori Mills on May 21, 2022,
10 and attachment titled "Delegation of Authority re Correspondence School
11 Allotments.pdf." This Notice and attachment were downloaded from
12 <https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=207008>.

13 14. Attached as Exhibit 13 is a true and correct copy of the July 25, 2022, Press
14 Release from the Department of Law, titled "Deputy Attorney General's Opinion
15 Provides Guidance to School Districts on Public Correspondence School Allotments and
16 Private School Uses." This Press Release was downloaded from
17 <https://law.alaska.gov/press/releases/2022/072522-SchoolsOpinion.html>.

18 15. Attached as Exhibit 14 is a true and correct copy of the State of Alaska,
19 Department of Law, Attorney General Opinion No. 2021200228 (dated July 25, 2022),
20 addressing the use of correspondence school allotments. This Opinion was downloaded
21 from https://law.alaska.gov/pdf/opinions/opinions_2022/22-002_2021200228.pdf.

1 16. Attached as Exhibit 15 is a true and correct copy of the Letter to
2 Superintendents (dated July 25, 2022) from Heidi Teshner, DEED's Acting
3 Commissioner, circulating Attorney General Opinion No. 2021200228, and summarizing
4 its conclusions. This letter was downloaded from [https://education.alaska.gov/Alaskan](https://education.alaska.gov/Alaskan_Schools/corres/pdf/07.25.22%20Correspondence%20Allotments%20Letter.pdf)
5 [_Schools/corres/pdf/07.25.22%20Correspondence%20Allotments%20Letter.pdf](https://education.alaska.gov/Alaskan_Schools/corres/pdf/07.25.22%20Correspondence%20Allotments%20Letter.pdf).

6 17. Attached as Exhibit 16 is a true and correct copy of a 13-page excerpt of
7 the Minutes from the Senate Judiciary Standing Committee on March 15, 2013,
8 addressing Senate Joint Resolution No. 9 ("SJR 9"). The Minutes were downloaded from
9 <https://www.akleg.gov/PDF/28/M/SJUD2013-03-151336.PDF>.
10

11 18. Attached as Exhibit 17 is a true and correct copy of the Minutes of the
12 Senate Finance Committee on February 3, 2014, discussing SJR 9. The Minutes were
13 downloaded from <https://www.akleg.gov/PDF/28/M/SFIN2014-02-030902.PDF>.
14

15 19. Attached as Exhibit 18 is a true and correct copy of the 48th Day of the
16 Proceedings of the Alaska Constitutional Convention, January 9, 1956, including pages
17 1475, 1509-32.
18
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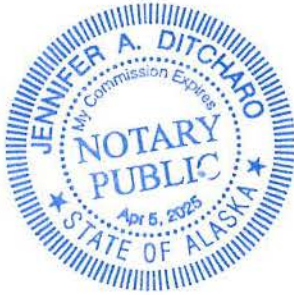
1 FURTHER AFFIANT SAYETH NAUGHT.

2 Lauren Sherman

3 Lauren L. Sherman

4 Alaska Bar No. 2009087

5 SUBSCRIBED AND SWORN to before me this 28th day of April, 2023.



6 [Signature]
7 Notary Public in and for Alaska
8 My Commission Expires: 4/5/25

9
10
11
12 **CERTIFICATE OF SERVICE**

13 I hereby certify that a copy of the
14 foregoing was served via email on
15 April 28, 2023, on the following:

16 Margaret Paton-Walsh, AAG
17 Alaska Attorney General's Office
margaret.paton-walsh@alaska.gov

18 Craig Richards
19 Law Offices of Craig Richards
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20 Kirby West
21 Institute for Justice
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22 CASHION GILMORE & LINDEMUTH

23 By: s/Jennifer Ditcharo

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ALASKA STATE LEGISLATURE
SENATE EDUCATION STANDING COMMITTEE

March 3, 2014

8:00 a.m.

MEMBERS PRESENT

Senator Gary Stevens, Chair
Senator Mike Dunleavy, Vice Chair
Senator Charlie Huggins
Senator Berta Gardner

MEMBERS ABSENT

Senator Bert Stedman

COMMITTEE CALENDAR

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 100

"An Act establishing a grant program to be administered by the Association of Alaska School Boards for the purchase of student equipment and technology services; establishing a grant program for innovative approaches to learning; relating to correspondence study programs and student allotments; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 113

"An Act increasing the stipend for boarding school students; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 139

"An Act increasing the base student allocation used in the formula for state funding of public education; repealing the secondary student competency examination and related requirements; relating to high school course credit earned through assessment; relating to a college and career readiness assessment for secondary students; relating to charter school application appeals and program budgets; relating to residential school applications; increasing the stipend for boarding school students; extending unemployment contributions for the Alaska technical and vocational education program; relating to earning high school credit for completion of vocational education courses offered by institutions receiving technical and

vocational education program funding; relating to education tax credits; making conforming amendments; and providing for an effective date."

- SCHEDULED BUT NOT HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 100

SHORT TITLE: EDUCATION GRANTS; CORRS STUDY; ALLOTMENTS

SPONSOR(s): SENATOR(s) DUNLEAVY

04/06/13	(S)	READ THE FIRST TIME - REFERRALS
04/06/13	(S)	EDC
04/10/13	(S)	EDC AT 8:00 AM BELTZ 105 (TSBldg)
04/10/13	(S)	Heard & Held
04/10/13	(S)	MINUTE(EDC)
02/07/14	(S)	SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
02/07/14	(S)	EDC, FIN
03/03/14	(S)	EDC AT 8:00 AM BELTZ 105 (TSBldg)

BILL: SB 113

SHORT TITLE: STIPEND FOR BOARDING SCHOOLS

SPONSOR(s): SENATOR(s) COGHILL

01/22/14	(S)	PREFILE RELEASED 1/10/14
01/22/14	(S)	READ THE FIRST TIME - REFERRALS
01/22/14	(S)	EDC, FIN
03/03/14	(S)	EDC AT 8:00 AM BELTZ 105 (TSBldg)

WITNESS REGISTER

JEAN MISCHER, Attorney
Legislative Legal Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions related to SB 100.

LON GARRISON, President
Sitka School Board
Sitka, Alaska

POSITION STATEMENT: Testified in favor of SB 100.

SUE HULL, Past-President
Alaska Association of School Boards (AASB)
Fairbanks, Alaska

POSITION STATEMENT: Testified in favor of SB 100.

STEWART MCDONALD, Superintendent
Kodiak Island Borough School District
Kodiak, Alaska
POSITION STATEMENT: Testified in support of SB 100.

JERRY COVEY, Education Consultant
JSC Consulting
Anchorage, Alaska
POSITION STATEMENT: Testified in support of SB 100 and SB 113.

STEVE NOONKESSER, Technology Director
Southwest Region School District
Dillingham, Alaska
POSITION STATEMENT: Testified in support of SB 100.

PETER HOEPFNER, President
Cordova School Board
Cordova, Alaska
POSITION STATEMENT: Testified in support of SB 100.

BOB WHICKER, Director
Consortium for Digital Learning
Alaska Association of School Boards (AASB)
Juneau, Alaska
POSITION STATEMENT: Answered questions regarding SB 100.

MICHAEL HANLEY, Commissioner
Department of Education and Early Development (DEED)
Juneau, Alaska
POSITION STATEMENT: Answered questions related to SB 100 and SB 113.

SENATOR JOHN COGHILL
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SB 113.

RYNNIEVA MOSS, Staff
Senator John Coghill
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented SB 113 on behalf of the sponsor.

NORMAN ECK, Ph.D.
Superintendent
Northwest Arctic Borough School District

Kotzebue, Alaska

POSITION STATEMENT: Testified in support of SB 113.

ERIC GEBHART, Superintendent

Nenana School District

Nenana, Alaska

POSITION STATEMENT: Testified in support of SB 113.

JEANETTE IYA, Member

Bering Strait School Board

Savoonga, Alaska

POSITION STATEMENT: Testified in support of SB 113.

ACTION NARRATIVE

8:00:32 AM

CHAIR GARY STEVENS called the Senate Education Standing Committee meeting to order at 8:00 a.m. Present at the call to order were Senators Huggins, Dunleavy, and Chair Stevens. Senator Gardner arrived shortly thereafter.

SB 100-EDUCATION GRANTS; CORRS STUDY; ALLOTMENTS

8:01:20 AM

CHAIR STEVENS announced that the first order of business would be SB 100.

SENATOR DUNLEAVY, sponsor of SB 100, introduced the bill. He said it is a bill that encompasses several concepts to help with innovative delivery systems. He read the sponsor statement:

Students come to school from diverse backgrounds with very different learning styles and issues unique to their particular circumstance. As a result, no one approach to education can meet the specific needs of all Alaska's children. Sponsor Substitute for Senate Bill 100 recognizes this challenge and makes several changes to the current correspondence study programs offered by 33 school districts.

Public correspondence/homeschool study programs serve almost 10 percent of the total Alaska student population. This approach to education is one of the fastest growing options in the state. Its individualized learning, low-cost approach appeals to independent learners and policy makers alike. A focus on student proficiency is at the center of SB 100.

Most programs provide a student allotment to purchase educational services or materials to meet the student's Individual Learning Plan (ILP). Under SB 100, a parent may purchase services and materials from a private or religious organization with a student allotment to meet the student's ILP. In addition, each child's allotment may be rolled over to the next school year. The funding received by the school district for each student will go from 80% of the Base Student Allocation (BSA) to 100% of the BSA, currently \$5,680.

Two educational grant programs are established in SB 100. Through one grant program, school districts may combine local funds with grant dollars to purchase technology, along with professional development. With the assistance of this grant program, opportunities for one-on-one learning will increase statewide.

The second grant program recognizes that sometimes an innovative idea needs financial support to get started. Under SB 100, a school district may apply for small, one-time grant funds to help plan a different approach to learning that has promise. Residential schools, charter schools, correspondence schools, virtual schools are just a few of the possibilities in this grant program.

Sponsor Substitute of Senate Bill 100 embraces innovative approaches to learning and encourages school districts do develop such approaches in order to meet the educational needs of a growing diverse population of Alaska public school students.

SENATOR DUNLEAVY read the sectional analysis of the bill:

Section 1. Establishes two new grant programs: (1) a personalized learning opportunity grant program in the Department of Education and Early Development to provide funding to the Alaska Association of School Boards for the purpose of awarding subgrants to school districts to provide technological equipment, support, and training; and (2) an innovative approach to learning grant to provide grants to school districts to encourage innovative approaches to learning.

Section 2. Requires correspondence study programs to include an individual learning plan, as described in the bill, for each student enrolled. Prohibits the Department of Education and Early Development from imposing requirements on a student enrolled in a correspondence study program if the student is proficient or advanced except for requirements described in sec. 2 of the bill. Provides for annual student allotments to be paid to a student's parent or guardian for the purpose of meeting instructional expenses of a correspondence student. Allows for the purchase of materials from a private or religious organization under specified conditions and for a carry-over of an annual allotment for a student from year to year.

Section 3. Increases state funding for correspondence programs from 80 percent of ADM to the full ADM of the program.

Section 4. Provides for an effective date.

8:05:41 AM

SENATOR DUNLEAVY moved to adopt Amendment 1: On page 4, line 17, following "purchase", insert "nonsectarian". He explained that the amendment provides that public funds not be used to purchase religious materials. Schools may use vendors that have a religious background to provide courses to home school correspondence students.

There being no objection, Amendment 1 was adopted.

8:07:44 AM

SENATOR GARDNER inquired about Section [2], item (b), "notwithstanding another provision of the law, the department may not impose additional requirements other than the requirements specified under (a) of this section, on a student who is proficient or advanced . . ." She asked what requirements this might be referring to.

SENATOR DUNLEAVY asked if the question was asking what concerns brought about the need for this provision.

SENATOR GARDNER said yes.

SENATOR DUNLEAVY said education is switching from a Carnegie Unit concept to one of performance. The concept of home school

correspondence is to allow as much freedom and flexibility possible for the parent and Individual Learning Plan (ILP) teacher. He provided an example. He maintained that an ILP should support the outcome desired. The proficiency of the outcome is what is important. He described the difference between an ILP in a charter school and in the public school. He said there is a list of prohibitions for home school correspondence schools. The bill aims to help the programs and the department focus on the outcomes, not the inputs.

SENATOR GARDNER requested to see the list of prohibitions.

8:11:22 AM

CHAIR STEVENS suggested that the bill removes school district and department oversight when it comes to expenditures and the learning plan. The constitution says that this oversight has to be in the hands of the department and the school district.

SENATOR DUNLEAVY did not think it that was true. He maintained that oversight is the district's responsibility and not the department's.

CHAIR STEVENS suggested the legal issues be addressed.

8:12:39 AM

JEAN MISCHEL, Attorney, Legislative Legal Services, Legislative Affairs Agency, Juneau, Alaska, answered questions related to SB 100.

CHAIR STEVENS asked about the constitutionality of SB 100 and if a change in the constitution would be required to remove the responsibility from the department and the district.

MS. MISCHEL questioned which version of the bill he was addressing.

CHAIR STEVENS said it was version I.

MS. MISCHEL said the language on page 4, lines 8 - 11, combined with lines 17 - 21, creates a potential for violating both Article 7, Section 1, and Article 4, Section 1. The difficulty with removing departmental oversight rests with the concern that if the parent who has control, under lines 17 - 21, over purchasing of materials, if they choose to purchase religious or sectarian materials in violation of that provision, there would be very little way of knowing, without some oversight, whether the parent has overstepped the constitutional boundaries.

MS. MISCHEL continued to say what the legislature has done under Article 7 is given the department supervisory oversight over all public schools. This bill is a large change from that structure. With regard to whether or not the school district would continue to have some oversight, there is some ambiguity. The department often provides regulatory direction to school districts in administrative code, as Senator Dunleavy mentioned. Lines 8-11 would restrict the department from adopting those regulations that might provide additional guidance to the districts, which receive their authority both through the legislature and the department. Much of the district authority is restricted by that in the bill because the department no longer has control over the district. There is an ambiguity about whether the school district would, in fact, continue to provide oversight. For example, school districts now must approve textbooks for correspondence students. She said she does not know if the sponsor's intention is to remove the district's oversight over textbook purchases and selections.

8:17:38 AM

SENATOR DUNLEAVY clarified that in the bill, any purchase must be done in line with ILP and the teacher. He explained that vendors are approved by school district boards; parents do not seek purchases outside of the ILP and the teacher who has a selection of vendors. The public school district approves of purchases.

CHAIR STEVENS noted textbooks have to be approved by the district currently.

SENATOR DUNLEAVY agreed and said that does not change under the bill. Vendors need to be approved by the district.

CHAIR STEVENS asked what change the bill makes to the oversight by the department.

SENATOR DUNLEAVY said there is a series of regulations that list things that can and cannot be purchased or done. The state determines the output - proficiency. The bill relies on the teacher, parent, and ILP to determine what the inputs are instead of department regulations.

CHAIR STEVENS summarized that SB 100 removes the department's oversight of financial expenditures and the ILP.

SENATOR DUNLEAVY agreed. He said it places the oversight with the district.

CHAIR STEVENS requested further comments on whether that impacts the constitution as mentioned by legislative legal.

8:22:17 AM

MS. MISCHEL said she does not have a clear enough idea of the legislative intention of removing the department from its legislatively authorized oversight role. The description provided by Senator Dunleavy is the current procedure that the districts are restricted by the regulations that this bill would override. From a constitutional standpoint, the legislature is delegating its constitutional oversight function to a school teacher, a parent, and a district, in a more limited sense, because the regulations that restrict these district expenditures would no longer be in effect. She reiterated that she does not know the legislative intent for doing so.

MS. MISCHEL noted that the Constitutional Convention was filled with conversations about Article 7 and why the last sentence in Article 7, Section 1, is there. It is for the very purpose that teachers and parents and districts, and even the department, would not have to "get into the weeds" of deciding whether it is government entanglement or an Article 1, Section 4 problem. The framers of the state constitution discussed very clearly the desire to spend public money for private school students when it addressed their public health and welfare issues, a legislative and state function.

She explained that other states that lack Article 7 prohibitions have to determine whether there is a neutral affect or whether the magnitude of the benefit, such as under the Sheldon Jackson Case, is so great that it is a direct benefit to the school. She said she does not know whether purchasing BYU courses, currently, would be upheld by the Alaska Supreme Court. Under the Sheldon Jackson precedent, they would have to go through the 3-step test to determine if the effect was neutral, whether the magnitude was great, and whether there was an incentive to purchase private materials.

She said it is an interesting question in this context because when the constitutional conventioners were discussing the issue, they had the opposite question; "can we provide private school students with a public correspondence program." Today's discussion is the opposite of that. She concluded that under the Sheldon Jackson analysis, the benefit may be neutral if there

are other public correspondence materials and courses that a student or parent could choose.

8:26:55 AM

SENATOR DUNLEAVY remarked that the original question is oversight. He emphasized that this bill is a public school issue. The next step is an independent approach under the guidance of a public school teacher governed by an ILP. He said it has nothing to do with going to a private school. The bill would stop the department from regulating schools because the local level should be regulating them. The ultimate performance model is the test for credit. The bill focuses on performance, not on sending kids to private schools. It allows teachers to purchase public materials, not sectarian, and not religious.

CHAIR STEVENS said he needs to understand what the advantage for removing the department from oversight is.

8:30:06 AM

SENATOR GARDNER pointed out that there already is a system where homeschoolers can enroll in a public homeschool system and get access to materials through approved vendors. She asked what else is new in the bill, besides the ILP.

SENATOR DUNLEAVY said most correspondence programs require an ILP and the bill would require them all to have an ILP. The bill would also require that if a child is proficient, no one meddles with proficiency; whatever they are doing is working. For those students who are not proficient, time and resources would be spent to find out why they are not successful. The teacher and parent would amend the ILP to address the lack of proficiency.

SENATOR GARDNER asked if that is not what should be done for all students.

SENATOR DUNLEAVY agreed.

SENATOR GARDNER asked why it is limited to correspondence homeschoolers in the bill.

SENATOR DUNLEAVY replied because SB 100 deals with homeschool correspondence programs.

SENATOR GARDNER suggested input versus output is the same as form over function.

SENATOR DUNLEAVY said it is looking at results.

8:32:54 AM

CHAIR STEVENS requested that Ms. Mischel explain Article 7.

MS. MISCHEL explained that it states that "No money shall be paid from public funds for the direct benefit of any religious or other private educational institutions." She pointed out that one of the regulations that the department sets up for district correspondence programs requires a reporting from the district on who is attending and what the performance is. Without the department looking at that it would be left up to the district to do. The department would not have a role in reviewing the report and making adjustments under SB 100.

8:34:24 AM

LON GARRISON, President, Sitka School Board, Sitka, Alaska, testified in favor of SB 100. He said he especially liked the one-to-one digital initiative program which would have a tremendous impact to the district. He said he is also in support of innovation - options which offer the public various choices of public education. He noted Sitka has a thriving home school program. He concluded that Alaska is unusual and is on the right path for offering various paths to education, including home school programs.

8:38:04 AM

SUE HULL, Past-President, Alaska Association of School Boards (AASB), Fairbanks, Alaska, testified in favor of SB 100. She suggested that adding tools to the choices for students for personal learning is a good idea, as is the one-to-one proposal for technology. The bill would enable large districts like Fairbanks to move forward with access to programs. The district can show that is it currently spending more money now than would be required to adopt a lease program.

She also testified in favor of the second provision in the bill, innovation grants, and the third provision related to correspondence programs. She opined that the change in funding makes it more attractive for districts to participate. She concluded that options are the future.

STEWART MCDONALD, Superintendent, Kodiak Island Borough School District, Kodiak, Alaska, testified in support of SB 100. He shared the profile of the students who would be affected by the bill. Some students live in remote sites and it is expensive to provide them correspondence courses. He said he is in favor of the increase in funding. He also liked the innovation grants. He

shared the suicide rate in his district and maintained that innovative programs help to reduce this rate. He concluded that after 5.5 years of innovative programs, there have been no suicides.

8:45:20 AM

JERRY COVEY, Education Consultant, JSC Consulting, Anchorage, Alaska, testified in support of SB 100. He predicted that the Governor's proposal and SB 100, or a similar program by AASB, would merge to provide the type of service that covers the state. He spoke about the oversight issue. He said he sees it as mastery of learning versus the Carnegie Unit. The current education system is built around process versus outcome. He expected the oversight issues with the constitution will resolve themselves. He opined that the bill creates an opportunity for school districts to deliver education in the proposed fashion.

SENATOR GARDNER asked about the one-to-one approach.

MR. COVEY said he looks at the approach as a way to work with school districts that puts technology in their hands. It has significant reporting expectations.

SENATOR GARDNER said the Governor, the State School Board, and the sponsor have proposals. She inquired how they differ.

MR. COVEY said he probably was not the best one to answer that question.

8:49:16 AM

STEVE NOONKESSER, Technology Director, Southwest Region School District, Dillingham, Alaska, testified in support of SB 100. He said he would like to address the first provision in the bill. He noted his district was an original member of the Consortium for Digital Learning in 2006. The focus at that time, and currently, is the access to resources - quality learning tools. He said in order to take advantage of the opportunity, the district took several steps, guided by AASB and the grant process. The district had to ensure that the networks, infrastructure, and support were ready to handle the increased loads and demands. They installed new hardware and, most importantly, trained staff. He stressed the importance of a three-legged approach; readiness and support, hardware, and training. He concluded that Section 1 of the bill does that, as well as puts leadership and management on AASB and focuses on tablet technology, which fits in with a district focus on early literacy.

8:51:37 AM

PETER HOEPFNER, President, Cordova School Board, Cordova, Alaska, testified in support of SB 100. He said technology is the way of the world and the district wants its children to be prepared for the future. He gave an example of a student who was able to keep up with AP courses via technology while away from school for six weeks. Cordova has been a one-to-one district since 2005.

CHAIR STEVENS said he is impressed by Cordova School District.

8:54:36 AM

BOB WHICKER, Director, Consortium for Digital Learning, Alaska Association of School Boards (AASB), Juneau, Alaska, answered questions regarding SB 100. He called personalized learning opportunity grants the answer for all kids to move forward with learning. He added that the one thing that is different with this bill is that AASB is ready to take this on in Alaska. Other states are not as ready as Alaska is.

SENATOR GARDNER reiterated her question about the differences between the three proposals.

MR. WHCKER replied that he answered this question for the Alaska Society of Technology Educators last week. He described the one-to-one as a program that targets every student. It includes using internet as an option. The Governor's proposal is a demonstration program that moves things forward in distance delivery, which the one-to-one can do also. He said that there are many initiatives out there, but all are pieces. The one-to-one creates the environment for all the rest to move forward.

8:58:30 AM

MICHAEL HANLEY, Commissioner, Department of Education and Early Development (DEED), Juneau, Alaska, answered questions related to SB 100. He said the bill is very similar to the Governor's proposal last year, in purpose and intent. The Governor this year chose a more focused, targeted, and modest proposal to build on current strengths. The Digital Teaching Initiative is designed to focus on best practices already in place and provide a critical professional development component through teaching academies. He saw the programs as complementary to each other; however, the Governor's initiative is more focused.

CHAIR STEVENS requested more information about removing the department's role regarding the monitoring of expenditures and ILP's and putting it on the district.

COMMISSIONER HANLEY said there are a few items in the bill that need further examination. He quoted the line "notwithstanding another provision of law the department may not impose additional requirements on students" and stated that the department does not monitor individual students; they work with districts and set requirements that districts need to follow. The wording removes perceived barriers from students who are proficient; the department focuses on what is required of districts.

He referred to page 4, line 12, and noted that all students are currently required to have ILP's in correspondence programs. Regulations state how the ILP must be developed - with a certified teacher and parents, and have common, recognized curriculum. He read, "The department or district that provides the correspondence study program may provide an annual student allotment to a parent or a guardian of a student enrolled in the correspondence study program for the purpose of meeting instructional expenses for the student enrolled in the program as provided in this section." He said that part is key because he sees public money for a public purpose for educating students. The sentence above is concerning because it removes restrictions that are in regulation, such as family travel, and family gym memberships. The "notwithstanding" provision removes that restriction, but it still is required to meet instruction expenses for the student, so it would be public money for a public purpose.

CHAIR STEVENS asked the sponsor what his intention is.

9:04:22 AM

SENATOR DUNLEAVY said his intention is to focus on the outputs instead of the inputs. He noted a discussion with the commissioner regarding the concern that some of the money may be used for non-educational materials or trips.

COMMISSIONER HANLEY agreed.

SENATOR DUNLEAVY maintained that "the line below" seems to satisfy the commissioner and himself. He said he wants as much flexibility at the district school teacher level to come up with programs and ILP's that meet the individual needs of children. He opined that unnecessary regulations interfere with having

acceptable outputs. The bill personalizes instruction under a public school system.

9:06:03 AM

CHAIR STEVENS asked if the commissioner is comfortable with this component of SB 100.

COMMISSIONER HANLEY said yes, because of the lines relating to instructional expenses, which seem to negate several items that are removed from regulation. The department could still monitor instructional expenses for a district.

SENATOR GARDNER inquired if the language "notwithstanding" includes anything else the district might want to do or currently does that would be prohibited under that provision on page 4, line 8.

COMMISSIONER HANLEY said no. He said the department has identified the sections that would be removed. He offered to provide that information to the committee.

CHAIR STEVENS held SB 100 in committee.

SB 113-STIPEND FOR BOARDING SCHOOLS

9:08:29 AM

CHAIR STEVENS announced that the next order of business would be SB 113.

SENATOR JOHN COGHILL, Alaska State Legislature, Juneau, Alaska, sponsor of SB 113, said he appreciates the committee hearing SB 113.

RYNNIEVA MOSS, Staff, Senator John Coghill, Alaska State Legislature, Juneau, Alaska, presented SB 113 on behalf of the sponsor. She said SB 113 is a follow up to a similar bill last year that the legislature passed increasing the potential for boarding schools in Alaska and recognizing that it is very valuable for education. Last year SB 47 removed restrictions for the number of boarding homes that can be in place, and expanded the program to include magnet schools for vocational training. Because of that legislation, there are now seven boarding schools instead of three. She said SB 113 asks for the stipend to be increased by 50 percent for boarding schools. She noted a document provided by Galena that shows that increasing the stipend by 50 percent still leaves the school short of actual costs.

ALASKA STATE LEGISLATURE
SENATE EDUCATION STANDING COMMITTEE
April 10, 2013
8:01 a.m.

MEMBERS PRESENT

Senator Gary Stevens, Chair
Senator Mike Dunleavy, Vice Chair
Senator Bert Stedman
Senator Berta Gardner

MEMBERS ABSENT

Senator Charlie Huggins

COMMITTEE CALENDAR

SENATE BILL NO. 91
"An Act relating to hazing."

- MOVED CSSB 91(EDC) OUT OF COMMITTEE

SENATE BILL NO. 89
"An Act relating to education tax credits and a tax credit for gifts to the Alaska Fire Standards Council; providing for an effective date by repealing the effective dates in sec. 57, ch. 92, SLA 2010, as amended by sec. 15, ch. 7, FSSLA 2011, and in sec 32, ch. 74, SLA 2012; and providing for an effective date."

- HEARD AND HELD

SENATE BILL NO. 100
"An Act relating to correspondence study programs; and providing for an effective date."

- HEARD AND HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 154(EDC)
"An Act relating to natural and cultural history repositories."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 91
SHORT TITLE: HAZING

SPONSOR(s): SENATOR(s) FAIRCLOUGH

03/29/13 (S) READ THE FIRST TIME - REFERRALS
03/29/13 (S) EDC, JUD
04/05/13 (S) EDC AT 8:00 AM BELTZ 105 (TSBldg)
04/05/13 (S) Heard & Held
04/05/13 (S) MINUTE(EDC)
04/10/13 (S) EDC AT 8:00 AM BELTZ 105 (TSBldg)

BILL: SB 89

SHORT TITLE: TAX CREDITS FOR EDUCATIONAL CONTRIBUTIONS

SPONSOR(s): SENATOR(s) DUNLEAVY

03/27/13 (S) READ THE FIRST TIME - REFERRALS
03/27/13 (S) EDC, FIN
04/10/13 (S) EDC AT 8:00 AM BELTZ 105 (TSBldg)

BILL: SB 100

SHORT TITLE: CORRESPONDENCE STUDY PROGRAM; ALLOTMENTS

SPONSOR(s): SENATOR(s) DUNLEAVY

04/06/13 (S) READ THE FIRST TIME - REFERRALS
04/06/13 (S) EDC
04/10/13 (S) EDC AT 8:00 AM BELTZ 105 (TSBldg)

BILL: HB 154

SHORT TITLE: MUSEUM OF THE NORTH

SPONSOR(s): REPRESENTATIVE(s) THOMPSON

03/04/13 (H) READ THE FIRST TIME - REFERRALS
03/04/13 (H) EDC
04/05/13 (H) EDC RPT CS(EDC) NT 5DP 1NR
04/05/13 (H) DP: SEATON, REINBOLD, DRUMMOND, LEDOUX,
GATTIS
04/05/13 (H) NR: SADDLER
04/05/13 (H) EDC AT 8:00 AM CAPITOL 106
04/05/13 (H) Moved CSHB 154(EDC) Out of Committee
04/05/13 (H) MINUTE(EDC)
04/08/13 (H) TRANSMITTED TO (S)
04/08/13 (H) VERSION: CSHB 154(EDC)
04/09/13 (S) READ THE FIRST TIME - REFERRALS
04/09/13 (S) EDC
04/10/13 (S) EDC AT 8:00 AM BELTZ 105 (TSBldg)

WITNESS REGISTER

TIM LAMKIN, Staff

Senator Gary Stevens
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Introduced the CS for SB 91.

SENATOR ANNA FAIRCLOUGH
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: As sponsor, answered questions related to SB 91.

TALLEY TEAL, Staff
Senator Anna Fairclough
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Provided information related to SB 91.

LES MORSE, Deputy Commissioner
Department of Education and Early Development
Juneau, Alaska
POSITION STATEMENT: Spoke in support of SB 91.

EMILY SEXTON, President
Alaska Association of Student Government
Anchorage, Alaska
POSITION STATEMENT: Spoke in support of SB 91.

JEFFREY MITTMAN, Executive Director
American Civil Liberties Union (ALCU)
Anchorage, Alaska
POSITION STATEMENT: Testified in support of SB 91.

CARL ROSE, Executive Director
Association of the Alaska School Boards (AASB)
Anchorage, Alaska
POSITION STATEMENT: Testified in support of SB 91.

BRUCE JOHNSON, Executive Director
Alaska Council of School Administrators (ACSA)
Juneau, Alaska
POSITION STATEMENT: Testified in support of SB 91.

JOHANNA BALES, Deputy Director
Tax Division
Department of Revenue (DOR)
Juneau, Alaska
POSITION STATEMENT: Answered questions related to SB 89.

MIKE HANLEY, Commissioner
Department of Education and Early Development (DEED)
Juneau, Alaska

POSITION STATEMENT: Testified that there needs to be clarification on the fiscal note and other issues in SB 89.

REPRESENTATIVE STEVE THOMPSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced HB 154 as sponsor of the bill.

LYNETTE BERGH, Staff
Representative Steve Thompson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided information related to HB 154.

KEVIN WINKER, Chief Curator and Acting Director
University of Alaska Museum of the North
Fairbanks, Alaska

POSITION STATEMENT: Provided information related to HB 154.

LINDA THIBODEAU, Director
Division of Libraries, Archives, and Museums
Department of Education and Early Development (DEED)
Juneau, Alaska

POSITION STATEMENT: Answered questions related to HB 154.

ACTION NARRATIVE

8:01:37 AM

CHAIR GARY STEVENS called the Senate Education Standing Committee meeting to order at 8:01 a.m. Present at the call to order were Senators Stedman, Gardner, Dunleavy, and Chair Stevens.

8:02:01 AM

CHAIR STEVENS reviewed the committee calendar.

SB 91-HAZING

8:02:22 AM

CHAIR STEVENS announced the consideration of SB 91.

8:02:27 AM

SENATOR DUNLEAVY moved to adopt the CS for SB 91, labeled 28-LS0720\N, as the working document.

CHAIR STEVENS objected for discussion purposes.

TIM LAMKIN, Staff, Senator Gary Stevens, Alaska State Legislature, explained the changes in version N. He began with a change on page 1, line 6; language was added that is consistent with existing criminal code. It now says "substantial risk of serious physical injury." The second change is on line 9 of the original bill, where the language was changed from "normal and customary activity" to "arises from conduct reasonably expected through participation."

MR. LAMKIN related that, in response to testimony at the last hearing about a study that indicated church groups have some of the highest percentages of students involved in hazing, faith-based groups are included on page 2, lines 1 and 2.

He noted that the next change is on page 2, lines 4 and 5 of the original bill, and addresses penalties. The reference to hazing as a class B felony is removed. On page 3, line 8, the wording is changed to say "to report the results" to the appropriate committee.

He related that in version A, section 7, lines 14 to 18, deal with the recourse for failing to report hazing.

8:07:37 AM

CHAIR STEVENS clarified that was found on page 3, line 16.

MR. LAMKIN summarized the final change on page 4, line 1; the definition of hazing was changed to "an act knowingly committed." On page 4, line 5, "normal and customary" was again changed to "arises from conduct reasonably expected through participation." On line 9, "faith-based group" was again added.

8:08:47 AM

SENATOR GARDNER suggested that changing the consequences in Section 1 addresses ACLU's concerns.

8:09:16 AM

SENATOR ANNA FAIRCLOUGH, Alaska State Legislature, sponsor, answered questions related to SB 91. She related that she received the ACLU's letter late last night and she hoped the changes in the CS address their concerns.

CHAIR STEVENS noted that a representative from the ACLU would be testifying.

8:10:39 AM

SENATOR FAIRCLOUGH pointed out that when making changes to the bill, something was missed on page 3, line 17. She said it is the sponsor's intent that "failure to report results in appropriate disciplinary action by the school." The words "by the school" were inadvertently omitted by the drafter.

SENATOR GARDNER said that since the requirement applies to volunteers, she did not think the school has a role in disciplining volunteers.

CHAIR STEVENS suggested also adding religious organizations on page 3, as well.

SENATOR FAIRCLOUGH replied that the section is specific to activities at schools.

8:12:08 AM

TALLEY TEAL, Staff, Senator Anna Fairclough, Alaska State Legislature, provided information related to SB 91. She explained that the aforementioned change was requested and simply left off by the drafter.

CHAIR STEVENS stated it was an easy change and he wished to move the bill from committee today. He suggested an amendment.

SENATOR FAIRCLOUGH deferred to the committee's wishes. She said she believes a school should have some type of oversight in a facility that they are maintaining.

SENATOR GARDNER moved to adopt Conceptual Amendment 1: add "by the school" on page 3, line 17, after "disciplinary action". There being no objection, Conceptual Amendment 1 was adopted.

CHAIR STEVENS asked if the Department of Education and Early Development had any concerns or comments.

LES MORSE, Deputy Commissioner, Department of Education and Early Development, spoke in support of SB 91. He said the department does not have any issues with the changes made to the bill.

CHAIR STEVENS opened public testimony.

8:13:50 AM

EMILY SEXTON, President, Alaska Association of Student Government (AASG), testified in support of SB 91. She related that AASG believes that all students should feel safe from bullying in their schools and bullies should understand the severity of their actions.

JEFFREY MITTMAN, Executive Director, American Civil Liberties Union (ALCU), testified in support of SB 91. He thanked the sponsor for introducing the bill, noting that hazing and bullying are problems that are endemic across the country and are often targeted at the most vulnerable students. A bill that states hazing will not be tolerated in the schools is very important and will have a very positive effect.

He said he has had a chance to review the CS and it does address many of ACLU's concerns. He hoped to work with the sponsor and the next committee on any future revisions of the bill. He brought up discriminatory issues regarding the criminalization of students, but stated that is not the intention of SB 91.

8:16:40 AM

CARL ROSE, Executive Director, Association of the Alaska School Boards (AASB), testified in support of SB 91. He said AASB's mission is to advocate for children and youth, assist local school boards, and provide a quality education focus on student achievement through effective local governance. He noted an AASB belief statement that raises the priority of children and youth, their health, education, safety and welfare as AASB's top priority. He shared that hazing and bullying is "nothing short of terrorism" to a victim and should not be tolerated in schools. He pointed out that many school districts already have a bullying policy; however, including it in statute, policy, and administrative regulations is appropriate. He said he appreciates the changes in the CS. He suggested the conceptual amendment might go further to include all school-sponsored activities.

8:18:57 AM

BRUCE JOHNSON, Executive Director, Alaska Council of School Administrators (ACSA), testified in support of SB 91. He said the bill makes good sense. ACSA's goal is to provide a safe environment that protects the well-being of all young people and any hint of hazing begins to infringe on that. He said ACSA would stand behind quality implementation of the bill.

CHAIR STEVENS closed public hearing.

8:20:08 AM

SENATOR DUNLEAVY moved to report CSSB 91, 28-LS0720\N as amended, from committee with individual recommendations and attached fiscal note.

CHAIR STEVENS announced that without objection, CSSB 91(EDC) was reported from the Senate Education Committee.

8:20:22 AM

At ease

SB 89-TAX CREDITS FOR EDUCATIONAL CONTRIBUTIONS

8:22:00 AM

CHAIR STEVENS announced that the next order of business would be SB 89.

SENATOR DUNLEAVY, sponsor, introduced SB 89. He related that the bill amends current tax credits for educational contributions to allow for elementary and secondary profit, non-profit, and religious schools in Alaska. He referred to a list of current eligible tax credits. The purpose for the tax credit changes is to allow for tax credits for educational contributions from parents whose children attend private and religious schools. The tax credit would go to the agency or organization.

8:24:11 AM

SENATOR GARDNER asked if tuition provides a tax credit for the school.

SENATOR DUNLEAVY said no. He explained that the businesses and corporations that wish to give money to religious or private schools could receive a tax credit.

SENATOR GARDNER asked if current law already provides tax deductions for charitable giving to non-profits.

SENATOR DUNLEAVY replied that charitable giving is currently deductible at the federal level; the proposed tax credit would occur on the state level.

8:26:14 AM

SENATOR GARDNER asked about raising the tax credit limit from \$5 million to \$25 million. She wondered how many tax payers reach the \$25 million limit.

SENATOR DUNLEAVY replied that he did not have those figures.

SENATOR GARDNER inquired if tax payers might want to exceed the \$5 million limit.

SENATOR DUNLEAVY said it is his hope that charitable giving would increase.

CHAIR STEVENS suggested that the Department of Revenue address the question.

8:27:11 AM

JOHANNA BALES, Deputy Director, Tax Division, Department of Revenue (DOR), answered questions related to SB 89. She said she has not seen a single tax payer claim the \$5 million tax credit for charitable giving. In 2012, the first full year of the \$5 million maximum tax credit, 40 tax payers took an education tax credit for a total of \$6.8 million.

SENATOR GARDNER requested clarification about those numbers.

MS. BALES explained that there are six tax programs that qualify for the credit. She reiterated that 40 tax payers, in total, for all six programs, took \$6.8 million worth of credits, all within the education category.

8:28:58 AM

CHAIR STEVENS held SB 89 in committee for further review.

SB 100-CORRESPONDENCE STUDY PROGRAM; ALLOTMENTS

8:29:15 AM

CHAIR STEVENS announced that the next order of business would be SB 100.

SENATOR DUNLEAVY, sponsor of SB 100, pointed out that SB 100 was another bill in a series of bills (including SB 89 and SJR 9) that he had put forward, and their approaches had a relationship that he wanted to explain before talking about SB 100. He said that SB 100 is a companion bill for SJR 9. When SJR 9 was introduced, a lot of assumptions were made that it was "the voucher bill," but the fact is that SB 89 is a voucher bill. This is when children can attend a private or religious, elementary or secondary, school and have costs funded by private business.

SENATOR DUNLEAVY explained that SJR 9 will allow the current practice of everything from the Governor's scholarships to private public partnerships that the department and many school districts have; and SB 100 provides that opportunity for the home school/correspondence study programs that the state has been using for the past 10-15 years. At one point Galena created a statewide home school program that allowed families who did not want to be part of a "neighborhood school" to still be part of public education. So, the folks in Galena, and subsequently a dozen or more correspondence homeschool programs, have students in them that do not attend the neighborhood schools, but are in the public education system.

He said that some people make a delineation between public schools and public education. Public schools are the buildings and everything that happens in them; public education is an expanded concept that includes homes schools, correspondence schools, charter schools and, potentially, cyber schools, and other methods to educate kids to a public purpose and public outcome.

He said that SB 100 would be the companion concept to SJR 9; it is only two pages and addresses a child in a home correspondence school with an Individual Learning Plan (ILP) developed by a public teacher with the parent. The only difference is that the parent with the teacher can determine the "how" and an expansion of it. "In other words, it's public money and the public demands an outcome, a public purpose." Any student enrolled in this program still has to take the public assessments and be taught to public standards. The idea in SB 100 (in conjunction with SJR 9) is the "how."

He said for example, a parent could decide his child would take a Latin course at Monroe Catholic and the teacher could agree to that in the ILP. That cannot be done currently under constitutional language. SB 100, along with SJR 9, allows a parent and a teacher to develop an ILP that includes a public/private partnership concept with a public outcome. The tax credit concept [in SB 89] is totally divorced from the public education concept; those are for folks that want to go to a private school, that gets private money through tax credits, and can have a religious or some other private outcome. All of SB 100 is part of public education. Students who are proficient or better in the public outcomes don't get changed, but students who are not proficient would have their ILP modified to help them become proficient. This is an expansion of the public

education system using a public/private partnership concept, under an ILP developed between a parent and a teacher.

8:34:56 AM

SENATOR GARDNER commented that if there is a tax benefit for donors, there is an impact on the state treasury; therefore, the state has a financial investment, also. She requested clarification about the language regarding the state's not being able to impose additional requirements.

SENATOR DUNLEAVY replied that he was the administrator of a correspondence home school program. Many parents became interested in becoming a part of a public education system, but did not have enough of a say in their child's curriculum.

8:38:24 AM

SENATOR GARDNER asked for an explanation of the purpose of having a credentialed teacher as a part of the team if the teacher is prohibited from using their best judgment.

SENATOR DUNLEAVY called it a "third way" for education in Alaska. He explained that the educational needs of a proficient student are being met. If the public/private partnership is adopted there will be another way to provide education for students and expand choices.

8:41:12 AM

SENATOR GARDNER voiced concern about credentialed teachers having to sign off on coursework that does not meet their standards.

SENATOR DUNLEAVY clarified that they have to sign off on the ILP.

SENATOR GARDNER said she was referring to a new teacher coming in and saying that ILP was not adequate.

SENATOR DUNLEAVY said that was a good question, but if they are proficient by demonstrated assessments, his argument would be why anyone would want to focus on that and not support what was already working.

SENATOR GARDNER suggested that excellence should be the goal.

SENATOR DUNLEAVY replied that he would consider the suggestion.

8:42:36 AM

MIKE HANLEY, Commissioner, Department of Education and Early Development (DEED), testified that the fiscal note and other issues still needed to be clarified.

CHAIR STEVENS held SB 100 in committee.

HB 154-MUSEUM OF THE NORTH

8:44:03 AM

CHAIR STEVENS announced the consideration of HB 154. [CSHB 154(EDC) was before the committee.]

8:44:09 AM

REPRESENTATIVE STEVE THOMPSON, sponsor of HB 154, explained that it is an Act relating to natural history and cultural history repositories. The bill revises statutes governing the University of Alaska by adding a new section that designates the Museum of the North as a repository of state natural and cultural history collections and gives the university the authority to designate other repositories, as needed.

He related that the bill also defines the purpose and functions of a repository. The Museum of the North collection includes more than 1.4 million artifacts and specimens, representing millions of years of biological diversity and thousands of years of cultural traditions, as well as crucial resources for research. Designating the Museum of the North as a repository will help ensure that the historical collections remain available to researchers, students, Alaska citizens and others with an interest in natural and cultural history.

8:45:53 AM

CHAIR STEVENS asked if there were other museums in the state that might be included in the bill.

REPRESENTATIVE THOMPSON responded that it has been considered. He deferred to his staff to explain further.

8:46:17 AM

LYNETTE BERGH, Staff, Representative Steve Thompson, Alaska State Legislature, provided information related to HB 154. She said there are currently no other museums that can be designated as a repository because they do not fit the definition given in HB 154, which is very specific about the requirements.

CHAIR STEVENS asked what the requirements were.

ALASKA STATE LEGISLATURE
SENATE EDUCATION STANDING COMMITTEE

March 21, 2014

7:59 a.m.

MEMBERS PRESENT

Senator Gary Stevens, Chair
Senator Mike Dunleavy, Vice Chair
Senator Bert Stedman
Senator Charlie Huggins
Senator Berta Gardner

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARINGS

State Board of Education & Early Development
Kenneth Galahorn - Kotzebue
Barbara Thompson - Juneau
Kathleen Yarr - Ketchikan

- CONFIRMATIONS ADVANCED

University of Alaska Board of Regents
Courtney Enright

- CONFIRMATION ADVANCED

SENATE BILL NO. 107

"An Act relating to school and school district accountability; relating to the duties of the Department of Education and Early Development; and establishing a reading program for public school students enrolled in grades kindergarten through three."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 107

SHORT TITLE: ESTABLISH K THROUGH 3 READING PROGRAM

SPONSOR(S): SENATOR(S) STEVENS

8:18:01 AM

At ease

University of Alaska Board of Regents

8:19:34 AM

CHAIR STEVENS reconvened the meeting and asked Ms. Enright if she had any opening comments.

COURTNEY ENRIGHT, Appointee, University of Alaska Board of Regents, Ketchikan, Alaska, said she is currently a student at the University of Alaska - Fairbanks. She noted her primary goal as a student representative is to make it easier for students to transfer among the campuses of the university.

CHAIR STEVENS asked how long she has been on the Board of Regents.

MS. ENRIGHT said she was appointed in June 2013.

SENATOR DUNLEAVY asked how she views the different campuses.

MS. ENRIGHT replied she views them as one university or academic unit with three different campuses.

CHAIR STEVENS asked her plans upon graduation.

MS. ENRIGHT answered that she hopes to graduate in the spring of 2015 and get a job in engineering.

CHAIR STEVENS closed public testimony.

8:22:33 AM

SENATOR DUNLEAVY moved to advance the name Courtney Enright for appointment to the University of Alaska Board of Regents to the full membership of the legislature in joint session for consideration and a final vote.

CHAIR STEVENS reminded members that this does not reflect any intent by the members to vote for or against the confirmation of the individuals during any further sessions.

8:22:56 AM

At ease

SB 100-EDUCATION GRANTS; CORRS STUDY; ALLOTMENTS

8:24:31 AM

CHAIR STEVENS reconvened the meeting and noted that Senator Gardner wanted to make a clarification.

SENATOR GARDNER clarified that when the committee passed SB 100, she indicated that her office had a legal opinion that the bill was constitutional. That statement was in error; she has a legal opinion that SB 100 is not constitutional. She said she asked her staff to transmit that opinion to members of the committee and their staff.

SENATOR DUNLEAVY asked if the opinion said SB 100 is not constitutional or questionable.

SENATOR GARDNER said the question was presented "as written today." Part of the opinion hinged around the language in the paragraph that says "notwithstanding."

CHAIR STEVENS thanked Senator Gardner for the clarification.

SENATOR GARDNER said these opinions are only opinions. No one knows for sure unless there is a lawsuit.

SB 107-ESTABLISH K THROUGH 3 READING PROGRAM

CHAIR STEVENS announced the consideration of SB 107. [Version U was before the committee.]

CHAIR STEVENS asked Mr. Lamkin to summarize version U of SB 107.

8:26:48 AM

TIM LAMKIN, Staff, Senator Gary Stevens, Alaska State Legislature, Juneau, Alaska, explained that SB 107, version U, is a function of a nationwide movement to help children read by third grade. This bill seeks to establish a reading plan for every single school in the state for every student that needs one.

He related that schools have a five star performance rating system. It is only the schools that have one or two stars that currently have in regulation the notion of reading plans. He corrected the statement that "all schools are currently doing this." Only the low-performing schools have that type of intervention to introduce a reading program.

He stated that SB 107 proposes that every school have a reading plan in place. He noted several states are already moving in

SENATE JOINT RESOLUTION NO. 9

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY SENATORS DUNLEAVY, Dyson, Kelly, Coghill, Giessel, McGuire, Huggins, Fairclough

Introduced: 2/13/13

Referred: Education, Judiciary

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to state aid for
2 education.

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

4 * Section 1. Article VII, sec. 1, Constitution of the State of Alaska, is amended to read:

5 Section 1. Public Education. The legislature shall by general law establish
6 and maintain a system of public schools open to all children of the State, and may
7 provide for other public educational institutions. Schools and institutions so
8 established shall be free from sectarian control. [NO MONEY SHALL BE PAID
9 FROM PUBLIC FUNDS FOR THE DIRECT BENEFIT OF ANY RELIGIOUS OR
10 OTHER PRIVATE EDUCATIONAL INSTITUTION.]

11 * Sec. 2. Article IX, sec. 6, Constitution of the State of Alaska, is amended to read:

12 Section 6. Public Purpose. No tax shall be levied, or appropriation of public
13 money made, or public property transferred, nor shall the public credit be used, except
14 for a public purpose; however, nothing in this section shall prevent payment from
15 public funds for the direct educational benefit of students as provided by law.

16 * Sec. 3. The amendments proposed by this resolution shall be placed before the voters of

- 1 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
- 2 State of Alaska, and the election laws of the state.

HOUSE JOURNAL

ALASKA STATE LEGISLATURE

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

Juneau, Alaska

Friday

January 24, 2014

Fourth Day

Pursuant to adjournment the House was called to order by Speaker Chenault at 10:32 a.m.

Roll call showed 36 members present. Representatives Hawker and Kerttula had been excused from a call of the House today.

Representative Pruitt moved and asked unanimous consent that Representatives Keller and Millett be excused from a call of the House from today to 8:00 a.m., January 27. There being no objection, it was so ordered.

The invocation was offered by the Chaplain, the Reverend Gordon Blue of Holy Trinity Episcopal Church. Representative P. Wilson moved and asked unanimous consent that the invocation be spread on the journal. There being no objection, it was so ordered.

With the deepest respect for the religious beliefs of all Alaskans, I offer the following prayer.

Creator God, when you speak there is light and life, when you act there is justice and love; give your blessing to this House in session. Grant these men and women wisdom and grace in the exercise of their duties that this may bring light and life to the communities and people whom they serve. Grant them a powerful discernment that they may enact just statutes and levies. Give them courage, wisdom, and foresight to provide for the needs of all our people and to fulfill our obligations in the world. Grant that your love may be present in this session

Furthermore, gas flared, released, or allowed to escape upstream of the point of production, or gas used on a lease or property would not be subject to an in-kind election.

The bill would make changes to provisions in current law to facilitate the new gross tax levy on gas. The name of a producer and the volumes of gas subject to the election to pay tax as gas would be public information. The alternate minimum tax on North Slope oil and gas would apply only to oil after 2021. The bill accounts for how producers make estimated monthly installment payments of tax due after 2021 and clarifies that credits may be taken only against the tax levy in money, not against the levy in-kind.

Development of natural gas projects of this scope is a new chapter in State resource development that will be enhanced by the State's equity participation in either project. Given the momentum on developing North Slope gas, we must act now to assure that our laws provide the appropriate agencies with authorities and tools to allow the State to advance projects on Alaska's terms and in Alaskans interests.

I urge your prompt and favorable action on this measure.

Sincerely,

/s/

Sean Parnell
Governor"

HB 278

HOUSE BILL NO. 278 by the House Rules Committee by request of the Governor, entitled:

"An Act increasing the base student allocation used in the formula for state funding of public education; repealing the secondary student competency examination and related requirements; relating to high school course credit earned through assessment; relating to a college and career readiness assessment for secondary students; relating to charter school application appeals and program budgets; relating to residential school applications; increasing the stipend for boarding school students; extending unemployment contributions for the Alaska technical and

vocational education program; relating to earning high school credit for completion of vocational education courses offered by institutions receiving technical and vocational education program funding; relating to education tax credits; making conforming amendments; and providing for an effective date."

was read the first time and referred to the Education and Finance Committees.

The following fiscal note(s) apply:

1. Zero, Dept. of Education & Early Development
2. Indeterminate, Dept. of Revenue
3. Fiscal, Dept. of Education & Early Development
4. Fiscal, Dept. of Education & Early Development
5. Fiscal, Dept. of Education & Early Development
6. Fiscal, Dept. of Labor & Workforce Development
7. Fiscal, University of Alaska

The Governor's transmittal letter dated January 23, 2014, follows:

"Dear Speaker Chenault:

Alaska's future depends on the educational opportunities we provide to our children, and we must continue to raise the bar for all students so they are well prepared for success. Under the authority of Article III, Section 18 of the Alaska Constitution, I am transmitting a bill that supports family involvement and improves student achievement. No one knows better how to help a student succeed than his or her own family. The measures in this bill will increase opportunity for families to make wise choices regarding their student's education, ensure that the essential needs of Alaska's students are met, provide flexibility in assessment of achievement and the earning of necessary educational credits to suit an individual student's needs, and incentivize broader opportunities for students as they prepare to enter Alaska's workforce.

Charter School: Increased Opportunities

Alaska's current charter school law is one of the most restrictive in the nation. This bill would remove barriers that currently prevent opportunities for charter schools to be expanded. Local school districts

have sole authority to approve or deny charter school creation. Under the measures of the bill, an applicant would have an avenue of appeal through the Commissioner of Education and Early Development if the application is denied by a local school board. The appeal option would provide additional oversight to ensure fairness in the charter school application process, and provide opportunity to replicate schools with proven records of success instead of forcing students to remain on waiting lists.

This bill will also ensure that all funding will follow a charter school student for the purpose of determining a charter school budget. As charter school students are already a part of the public school system, the additional provision regarding the funding is intended to enhance parity between charter and traditional neighborhood schools.

Residential School Application and Stipend

The bill will also remove barriers for providing more residential schools for our rural students and encourage the private sector to support this successful model. The bill would require that the Department of Education and Early Development open an annual application period for new residential schools to expand opportunity for districts to offer this option to students and their families. Current law does not indicate how often an application period will be opened. The bill would also increase the stipend allowed for room and board for residential schools. This stipend was increased in the 2013 legislative session, but still does not cover the actual costs of residential schools, and the bill is an effort to close the gap.

Tax Credit Contributions to Residential School Housing and Scholarships

The bill would provide corporate income tax credit for cash contributions made for the construction, operation, or maintenance of residential school housing facilities. Taxpayers could also receive credit if they provide funding to a nonprofit organization that awards scholarships to dual-credit students – high school students who simultaneously receive college and high school credit for a course. The tax credits offered under this bill are intended to encourage a public-private partnership directed toward improving educational opportunities in Alaska.

Increasing the Base Student Allocation

This bill will provide for a three year plan to increase State funding through the base student allocation (BSA) formula. The allocation has not been raised since 2011; however, during that time, funding for fuel and utility costs has been provided outside the formula as those costs fluctuate – that funding is already included in my FY2015 budget. The proposed BSA increase recognizes that instructional costs have also gone up and that a modest increase will provide relief to school district budgets in support of delivering quality education to Alaska's students. I welcome the Legislature's consideration of these fundamental needs.

Alaska Career and Technical Education Program

In order to provide continued opportunity and choice to students as they prepare for the workforce, this bill would reauthorize through 2024 the Alaska technical and vocational education program, also known as career and technical education, which under existing statute is authorized only through June 30, 2014. The bill aims to encourage institutions receiving financing through the career and technical education program to offer courses that permit high school students to earn dual credit upon course completion.

Competency Exam Repeal

This bill would repeal the requirement of AS 14.03.075 that secondary students pass a competency examination, also known as a High School Graduation Qualifying Examination, as a prerequisite for receiving a high school diploma. Based on the State's experience with the competency examination to date, little is being gained from use of the test, despite its significant cost in terms of funding, and staff and student time lost to instruction. Due to robust accountability measures that have been put in place since the competency exam was originally enacted, it is time to offer our students a more effective option.

Students would instead be required to take a college and career readiness assessment to qualify for a high school diploma. "College and career readiness assessment" would be defined in the statute as the SAT, ACT, or WorkKeys assessment. No minimum score would be designated. Rather than the one-size-fits-all approach of the competency exam, these assessment options provide data that allow schools and districts to more accurately gauge effectiveness of their

training and educational programs relative to student readiness for post-secondary opportunities and also provide valuable information for students and their families to plan successfully for those opportunities. The Department of Education and Early Development would provide funding for a single administration of a readiness assessment for each secondary student, allowing students to choose which assessment best meets their individual goals. Because these assessments are already used as qualifying assessments for the Alaska Performance Scholarship (APS), every high school student will have opportunity for his or her achievement to be evaluated for APS, without additional cost to students and their families.

Course Credit Earned by Assessment

This bill would require that a school district provide a high school student an opportunity to "test out" of a class. The requirement would apply to classes offered in the school in mathematics, language arts, science, social studies, and world languages. The student would prove mastery through a district-approved assessment and receive academic credit for the class toward his or her graduation. This change would encourage students who have the skills to advance more quickly through the high school curriculum and broaden the range of classes available to them, while allowing teachers to invest more fully in students who have not yet mastered the subject at hand.

Ensuring that Alaska's students are adequately prepared for post-secondary education, training, and the workforce is paramount for a bright future, as is increasing the number of options available for each family to make the right educational choices to suit each student. I urge your prompt and favorable consideration of this bill.

Sincerely,
/s/
Sean Parnell
Governor"

UNFINISHED BUSINESS

Representative Pruitt moved that the House confirm the appointment of Representative Josephson and Representative Tuck (Alternate) to the Select Committee on Legislative Ethics.

HB 278 Comparison - House - Senate - FCCS

Statute Reference/Topic		PASSED HOUSE - v. H.A		SENATE CS HB 278 - v. W.A		FC CS HB 278 - v. J	
09.20.030(b)	Jury Duty postponement for teachers at low-performing schools	1	Language change - refers to state regulation instead of federal law	1	SAME	1	
14.03.073	NEW: Allows course credit without "seat time"	2	"Secondary school" courses through mastery - not limited to core topics	2	"High school" course credit through mastery - core topics only	"Secondary school" courses through mastery, but limited to core topics	2
14.03.075	Exit Exam	<i>No change - does not repeal Exit Exam.</i>		3	Replaces Exit Exam requirement with a requirement to take SAT, ACT, or WorkKeys before graduation	SENATE	3
14.03.078	DEED Annual Report	3	DEED Report language clean-up: amends language to refer to schools and <u>school districts</u> that are designated "low performance" in statute.	4	Includes all language in house version. In addition, removes references to the Exit Exam and requires electronic reporting.	SENATE	4
14.03.083	NEW: Reaffirms state autonomy over education standards and assessments	4	State may not cede any measure of autonomy or control over education standards and assessments	**		HOUSE	5
14.03.120 (d)	Public School Performance Reports	5	Substitutes the term "language arts" for "reading, writing" and ADDS a requirement for military student data reporting.	5	Includes all language in house version. In addition, removes references to the Exit Exam.	SENATE	6
14.03.123 (c)	Statewide Student Assessment System	6	Language clean up and adds a statutory reference.	**		**	
14.03.123 (f)	School Report Accountability	7	Substitutes the term "language arts" for "reading, writing."	6	Includes all language in house version. In addition, removes references to the Exit Exam.	SENATE	7
14.03.124	NEW: School Grading System	8	Directs DEED to replace the "star" rating system with an "A-F" system	**		**	

HB 278 Comparison - House - Senate - FCCS

Statute Reference/Topic		PASSED HOUSE - v. H.A		SENATE CS HB 278 – v. W.A		FC CS HB 278 - v. J	
14.03.126	NEW: Funding for Internet services	**		Funding to bring an eligible school's internet speed up to 10 megabits.	7	SENATE	8
14.03.127	NEW: Personalized learning opportunity grant program	**		Funding to provide technical equipment, support and training for students (1:1)		**	
14.03.128	NEW: Innovative approach to learning grant	**		Funding to encourage innovative approaches to learning.		**	
14.03.250	NEW: Charter Schools: Application Process	9	Rewrites the Charter School application process: local school board issues decision in writing within 60 days. If approved, it is forwarded to the state BOE and DEED for approval. If denied, it can be appealed to the commissioner within 30 days. If approved by commissioner, it is forwarded to the state BOE for approval. The local school board will operate the charter school.		8	SAME	9
14.03.253	NEW: Charter Schools: Application Appeal	10	Establishes process for a charter school applicant to appeal to the commissioner. The application may be remanded to the local board for further review, approved and forwarded to the state BOE, or denial may be upheld. Applicant can further appeal to state BOE, which has 90 days for decision.		9	SAME	10
14.03.255 (a)	Charter Schools: Exit Exam	<i>House version does not repeal Exit Exam</i>		Repeals Exit Exam	10	SENATE	11
14.03.255 (d)	Charter Schools: Lease	11	Districts shall offer first right of refusal to charter schools to lease space. Lease agreements shall be true operational costs.		11	SAME	12

HB 278 Comparison - House - Senate - FCCS

Statute Reference/Topic		PASSED HOUSE - v. H.A		SENATE CS HB 278 - v. W.A		FC CS HB 278 - v. J	
14.03.260 (a)	Charter Schools: Budget	12	Districts may charge up to 4% for admin costs. Funds generated by all sources by a student will be distributed to charter schools including special needs and vocational education factors.	12	Includes all language in House version. Additionally, states that certain operational costs may not be included for purposes of calculating the 4% cap and adds the following funding sources generated by a student: grants, appropriations, federal impact aid, and local contribution.	SENATE	13
14.03.263	Charter School Grant	13	Charter school grant program - \$500 one-time grant per student for educational purposes only.	13		SENATE	14
14.03.300-320	NEW: Correspondence study program	**		14	Correspondence study programs: ILPs; Student Allotments	SENATE	15
14.07.020(a)	DEED Duties	14	Substitutes the term "language arts" for "reading, writing"	15		SAME	16
14.07.020(b)	DEED Duties	15	Prohibits DEED from spending \$ on Common Core Standards implementation for K-12; Substitutes the term "language arts" for "reading, writing;" prohibit	16	Removed Common Core Standards language that appeared in House version, but kept "language arts" change.	HOUSE	17
14.07.165	Board of Education: Duties regarding College and Career Readiness Assessment	**		17	Technical changes. Also includes language requiring the board to provide for a child with a disability and a walver process for the college and career readiness assessment.	SENATE	18
14.07.165 (b)		**		18	Defines "child with a disability"	SENATE	19

Exhibit 6
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HB 278 Comparison - House - Senate - FCCS

Statute Reference/Topic		PASSED HOUSE - v. H.A		SENATE CS HB 278 - v. W.A	FC CS HB 278 - v. J		
14.07.168	Board of Education: Report to legislature	16	Adds a requirement to recommend changes to promote efficiency in the administration of public education.	**	**		
14.09.010	NEW: Pupil Transportation	17	Requires a school district that provides pupil transportation to public schools to adopt a policy to provide transportation to charter schools, when reasonable.	19	SAME	20	
14.11.100	School Construction Debt		**	Reduces current state debt reimbursement rate to 60/40 (from 70/30) and to 40/60 (from 60/40)	20	Does not change 70/30 plan; reduces 60/40 plan to 50/50.	21
14.16.050	Residential schools	18	Requires residential schools to allow to course credit by mastery, enacted by this bill in AS 14.03.073	21	Not needed due to inclusion in definition in section 2 of bill.		
14.16.100	Residential Schools: Applications	19	Allows an annual open application period	22	SAME	22	
14.16.200(b)	Residential Schools: Stipend		**	Increases the residential school stipend	23	SENATE	23
14.17.410(b)	Mill Rate		**	Increase the required local contribution to 2.8 mill tax levy	24	**	
14.17.410(c)	Voluntary Local contribution		**	Expressly includes funding distributed outside the BSA in the total amount used to determine the maximum voluntary local contribution.	25	SENATE	24
14.17.430	Correspondence study		**	Increases state funding for correspondence study factor to 90% of BSA (currently 80%)	26	SENATE	25

HB 278 Comparison - House - Senate - FCCS

Statute Reference/Topic		PASSED HOUSE - v. H.A		SENATE CS HB 278 --v. W.A		FC CS HB 278 -v. J	
14.17.450(d)	Increased Funding for New Charter Schools	**		Amends current statute to allow a charter school with at least 75 students to get additional funding for the first three years. Current statute applies to a charter school with more than 120 students for the first year only. Changes the formula by removing language limiting the adjusted student count for a charter school to 95% of the student rate for a school that has 150 or more students.	27	SENATE	26
BSA Increase: 14.17.470		20	2014: \$185	<i>Senate version does not contain a BSA Increase</i>		2014: \$150	27
		21	2015 \$58			2015: \$50	28
		22	2016 \$58			2016: \$50	29
14.20.150(a)	Teacher Tenure	23	Increases the qualifying period for teacher tenure to five years.	<i>Senate version does not contain any changes to teacher tenure</i>		Tenure provisions removed, but DOA to include tenure in the salary and benefits proposal in section	
14.20.150 (f)	Teacher Tenure	24	Tenure requirement for a teacher in a rural district remains three years				
23.15.835(a)	TVEP: Contribution	**		Increases the employee contribution to TVEP from .15% to .16 %	28	SENATE	30
23.15.835(d)	TVEP: Sunset and fund allocation	25	Extends the TVEP sunset date to June 30, 2017 from June 30, 2014.	Includes all language in House version. In addition, corrects names of recipient organizations, removes UAS as a named recipient organization and adds Illsagvik College.	29	SENATE	31
23.15.835(e)	TVEP: Reporting	26	Removes satisfaction survey, adds performance review		30	SAME	32

Exhibit 6
Page 5 of 7

HB 278 Comparison - House - Senate - FCCS

Statute Reference/Topic		PASSED HOUSE - v. H.A		SENATE CS HB 278 - v. W.A		FC CS HB 278 - v. J	
23.15.835 (g) & (h)	NEW: TVEP: Dual credit and penalties	27	Adds language requiring articulation agreements for dual credit and a 20% penalty if an institution is in violation of (e) or (g) of this section.	31		SAME	33
23.15.850	NEW: TVEP: Definitions	28	Establishes definitions for "articulation agreement" and "dual credit."	32		SAME	34
29.45.050	NEW: Charter School Property Tax Exemption	29	Municipality may exempt or partially exempt private property being used for a charter school	33		SAME	35
43.20.014(a), 43.20.014 (f) 43.65.018 (a), 43.75.018(a), 43.77.045(a)	Education Tax Credits	30-41	Expands education tax credits to include contributions to: public or private nonprofit elementary and secondary schools; a nonprofit for dual-credit student costs; construction, operation or maintenance of residential housing facility; programs for childhood early learning by a nonprofit, tribal entity, or school district; and STEM programs. Also adds definitions for "dual-credit student" and "nonprofit organization."	House language was included in its entirety. Also added vocational RTC and apprenticeship programs; and nonprofit agencies providing educational opportunities promoting legacy of public service. Also amended the vocational education language to clarify that eligible expenses for voc-ed include education courses, programs, equipment and facilities.	34-45	SENATE	36-47
STEM	NEW: STEM Program	**		Establishes a Pilot Program to expand High School STEM program to Middle School. Terminates June 30, 2017	53	SENATE	48
Diploma	Retroactive Issuance of HS Diploma	**		Upon request, DEED shall issue a diploma to a student that did not receive one due to failing the Exit Exam	54	SENATE	49
Repeals		42	Repeals BIA School		46	SAME	50
		43	Repeals sunset of supplemental charter school facilities construction, lease and major maintenance grant program.		47	SAME	51

Exhibit 6
Page 6 of 7

HB 278 Comparison - House - Senate - FCCS

Statute Reference/Topic		PASSED HOUSE - v. H.A		SENATE CS HB 278 - v. W.A		FC CS HB 278 - v. J	
Uncodified Law	Salary and Benefits Study	47	DOA salary and benefits proposal due January 1, 2016.	LB&A study - due January 1, 2016.	55	HOUSE, but added evaluation of teacher tenure and changed due date to June 15, 2015.	52
Studies	School Design and Construction Study	**		DEED - due January 31, 2015	52	SENATE, but changed due date to June 15, 2015.	53
	District Cost Factor Study	**		LB&A - due June 15, 2015	50	Replaced by two studies: one more comprehensive look at funding provisions and a combined District Cost Factor and School Size Factor study. Changed due date to June 15, 2015	54
	School Size Factor Study	**		LB&A - due June 15, 2015	51		
Grants - Outside BSA		48	\$30 million one-time grant to districts	Proposal of \$100 million each year for three years		2015: \$42,953,500 2016: \$32,243,700 2017: \$19,904,200	55
Applicability and Transition		44	Applicability for tenure section	<i>No Tenure Change</i>		**	
		45	Transition language for charter school applications		48	SAME	56
		46	Transition language for regulations		49	SAME	57
Effective Dates		Sections 49-53		Sections 56-59		Sections 58-62	

SENATE CS FOR CS FOR HOUSE BILL NO. 278(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/19/14

Referred: Today's Calendar

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the exemption from jury service for certain teachers; relating to the
2 powers of the Department of Education and Early Development; relating to high school
3 course credit earned through assessment; relating to school performance reports;
4 relating to assessments and accountability standards; providing for funding for Internet
5 services; relating to the secondary school competency examination and related
6 requirements; relating to charter schools and student transportation; establishing a
7 grant program to be administered by the Association of Alaska School Boards for the
8 purchase of student equipment and technology services; establishing a public school
9 grant program for innovative approaches to learning; relating to correspondence study
10 programs, funding, and student allotments; relating to residential school applications;
11 increasing the stipend for boarding school students; relating to school construction bond
12 debt reimbursement; relating to the local contribution to public school funding; relating

HB0278E

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SCS CSHB 278(FIN)

New Text Underlined [DELETED TEXT BRACKETED]

1 to funding of and reporting by Alaska technical and vocational education programs;
 2 relating to earning high school credit for completion of vocational education courses
 3 offered by institutions receiving technical and vocational education program funding;
 4 relating to schools operated by a federal agency; relating to education tax credits;
 5 establishing an optional municipal tax exemption for privately owned real property
 6 rented or leased for use as a charter school; requiring the Legislative Budget and Audit
 7 Committee to provide for studies on the school size factor and the school district cost
 8 factor for public education funding and for a study on school staff salary and benefits;
 9 requiring the Department of Education and Early Development to report to the
 10 legislature on school design and construction; establishing a pilot project for public
 11 middle schools; and providing for an effective date."

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

13 * Section 1. AS 09.20.030(b) is amended to read:

14 (b) A person may claim exemption and shall be excused by the court from
 15 service as a juror during the school term if it is shown that the person is a teacher in a
 16 school that is designated as a low performing school under regulations adopted by
 17 the state Board of Education and Early Development [FAILING TO MAKE
 18 ADEQUATE YEARLY PROGRESS UNDER P.L. 107-110]. In this subsection,
 19 "teacher" means a person who serves a school district in a teaching capacity in a
 20 classroom setting and is required to be certificated in order to hold the position.

21 * Sec. 2. AS 14.03 is amended by adding a new section to read:

22 **Sec. 14.03.073. Course credit earned through mastery of course content.**

23 (a) A school district shall provide a high school student with the opportunity to earn
 24 credit for a course offered in the school in mathematics, language arts, science, social
 25 studies, and world languages, if the student proves mastery of the course content
 26 through a district-approved assessment. Course credit earned under this subsection
 27 must meet district and statewide requirements for graduation and course credit

1 charter school with a report itemizing the administrative costs retained by the
 2 local school board under this section [DEPARTMENT OF EDUCATION AND
 3 EARLY DEVELOPMENT]. The "amount generated by students enrolled in the
 4 charter school" is to be determined in the same manner as it would be for a student
 5 enrolled in another public school in that school district and includes funds generated
 6 by grants, appropriations, federal impact aid, the required local contribution, the
 7 local contribution under AS 14.17.410(c), special needs under AS 14.17.420(a)(1),
 8 and secondary school vocational and technical instruction under
 9 AS 14.17.420(a)(3). A school district shall direct state aid under AS 14.11 for the
 10 construction or major maintenance of a charter school facility to the charter
 11 school that generated the state aid, subject to the same terms and conditions that
 12 apply to state aid under AS 14.11 for construction or major maintenance of a
 13 school facility that is not a charter school.

14 * Sec. 13. AS 14.03 is amended by adding a new section to read:

15 Sec. 14.03.263. Charter school grant program. (a) A charter school that is
 16 established on or after the effective date of this section may receive a one-time grant
 17 from the department equal to the amount of \$500 for each student enrolled in the
 18 school on October 1 of the first year in which the school applies for the grant. The
 19 charter school shall use a grant received under this section to provide educational
 20 services. In this subsection, "educational services" includes curriculum development,
 21 program development, and special education services.

22 (b) The department shall establish by regulation procedures for the application
 23 for and expenditure of grant funds under (a) of this section.

24 (c) If the amount appropriated in a fiscal year for the charter school grant
 25 program is insufficient to meet the amounts authorized under (a) of this section, the
 26 department shall reduce pro rata the per pupil grant amount by the necessary
 27 percentage as determined by the department. If a charter school grant is reduced under
 28 this subsection, the charter school may apply to the department in a subsequent fiscal
 29 year for the balance of the grant amount.

30 * Sec. 14. AS 14.03 is amended by adding new sections to read:

31 **Article 3. Correspondence Study Programs.**

1 **Sec. 14.03.300. Correspondence study programs; individual learning**
2 **plans.** (a) A district or the department that provides a correspondence study program
3 shall annually provide an individual learning plan for each student enrolled in the
4 program developed in collaboration with the student, the parent or guardian of the
5 student, a certificated teacher assigned to the student, and other individuals involved in
6 the student's learning plan. An individual learning plan must

7 (1) be developed with the assistance and approval of the certificated
8 teacher assigned to the student by the district;

9 (2) provide for a course of study for the appropriate grade level
10 consistent with state and district standards;

11 (3) provide for an ongoing assessment plan that includes statewide
12 assessments required for public schools under AS 14.03.123(f);

13 (4) include a provision for modification of the individual learning plan
14 if the student is below proficient on a standardized assessment in a core subject;

15 (5) provide for a signed agreement between the certificated teacher
16 assigned to the student and at least one parent or the guardian of each student that
17 verifies compliance with an individual learning plan;

18 (6) provide for monitoring of each student's work and progress by the
19 certificated teacher assigned to the student.

20 (b) Notwithstanding another provision of law, the department may not impose
21 additional requirements, other than the requirements specified under (a) of this section
22 and under AS 14.03.320, on a student who is proficient or advanced on statewide
23 assessments required under AS 14.03.123(f).

24 **Sec. 14.03.320. Student allotments.** (a) Except as provided in (e) of this
25 section, the department or a district that provides a correspondence study program may
26 provide an annual student allotment to a parent or guardian of a student enrolled in the
27 correspondence study program for the purpose of meeting instructional expenses for
28 the student enrolled in the program as provided in this section.

29 (b) A parent or guardian may purchase nonsectarian services and materials
30 from a public, private, or religious organization with a student allotment provided
31 under (a) of this section if

1 (1) the services and materials are required for the course of study in the
2 individual learning plan developed for the student under AS 14.03.300;

3 (2) textbooks, services, and other curriculum materials and the course
4 of study

5 (A) are approved by the school district;

6 (B) are appropriate for the student;

7 (C) are aligned to state standards; and

8 (D) comply with AS 14.03.090 and AS 14.18.060; and

9 (3) otherwise support a public purpose.

10 (c) Except as provided in (d) of this section, an annual student allotment
11 provided under this section is reserved and excluded from the unreserved portion of a
12 district's year-end fund balance in the school operating fund under AS 14.17.505.

13 (d) The department or a district that provides for an annual student allotment
14 under (a) of this section shall

15 (1) account for the balance of an unexpended annual student allotment
16 during the period in which a student continues to be enrolled in the correspondence
17 program for which the annual allotment was provided;

18 (2) return the unexpended balance of a student allotment to the budget
19 of the department or district for a student who is no longer enrolled in the
20 correspondence program for which the allotment was provided;

21 (3) maintain a record of expenditures and allotments; and

22 (4) implement a routine monitoring of audits and expenditures.

23 (e) A student allotment provided under (a) of this section may not be used to
24 pay for services provided to a student by a family member. In this subsection, "family
25 member" means the student's spouse, guardian, parent, stepparent, sibling, stepsibling,
26 grandparent, stepgrandparent, child, uncle, or aunt.

27 * Sec. 15. AS 14.07.020(a)(16) is amended to read:

28 (16) establish by regulation criteria, based on low student performance,
29 under which the department may intervene in a school district to improve instructional
30 practices, as described in AS 14.07.030(14) or (15); the regulations must include

31 (A) a notice provision that alerts the district to the deficiencies

CS FOR HOUSE BILL NO. 278(FIN) am
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 4/7/14
Offered: 4/3/14

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act increasing the base student allocation used in the formula for state funding of
2 public education; relating to the exemption from jury service for certain teachers;
3 relating to the powers of the Department of Education and Early Development; relating
4 to high school course credit earned through assessment; relating to school performance
5 reports; relating to assessments; establishing a public school and school district grading
6 system; relating to charter schools and student transportation; relating to residential
7 school applications; relating to tenure of public school teachers; relating to
8 unemployment contributions for the Alaska technical and vocational education
9 program; relating to earning high school credit for completion of vocational education
10 courses offered by institutions receiving technical and vocational education program
11 funding; relating to schools operated by a federal agency; relating to a grant for school
12 districts; relating to education tax credits; establishing an optional municipal tax

HB0278d

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CSHB 278(FIN) am

New Text Underlined [DELETED TEXT BRACKETED]

1 exemption for privately owned real property rented or leased for use as a charter
2 school; requiring the Department of Administration to provide a proposal for a salary
3 and benefits schedule for school districts; making conforming amendments; and
4 providing for an effective date."

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

6 * Section 1. AS 09.20.030(b) is amended to read:

7 (b) A person may claim exemption and shall be excused by the court from
8 service as a juror during the school term if it is shown that the person is a teacher in a
9 school that is designated as a low performing school under regulations adopted by
10 the state Board of Education and Early Development [FAILING TO MAKE
11 ADEQUATE YEARLY PROGRESS UNDER P.L. 107-110]. In this subsection,
12 "teacher" means a person who serves a school district in a teaching capacity in a
13 classroom setting and is required to be certificated in order to hold the position.

14 * Sec. 2. AS 14.03 is amended by adding a new section to read:

15 Sec. 14.03.073. Secondary school course credit. (a) A school district shall
16 provide the opportunity for students enrolled in a secondary school in the district to
17 challenge a course provided by the district by demonstrating mastery in the subject at
18 the level of the course challenged. A school district shall give full credit for a course to
19 a student who successfully challenges that course as provided under this section.

20 (b) A school district shall establish, within a reasonable time, an assessment
21 tool and a standard for demonstrating mastery in secondary school courses provided
22 by the district that are likely to be or have been the subject of a challenge requested
23 under this section.

24 (c) The board shall adopt regulations to implement this section.

25 (d) In this section, "school district" has the meaning given in AS 14.30.350.

26 * Sec. 3. AS 14.03.078 is amended to read:

27 Sec. 14.03.078. Report. The department shall provide to the legislature by
28 February 15 of each year an annual report regarding the progress of each school and
29 school district toward high academic performance by all students. The report required

1 under this section must include

- 2 (1) information described under AS 14.03.120(d);
- 3 (2) the number and percentage of students in each school who pass the
4 examination required under AS 14.03.075, and the number who pass each section of
5 the examination;
- 6 (3) progress of the department
- 7 (A) toward implementing the school accountability provisions
8 of AS 14.03.123; and
- 9 (B) in assisting high schools to become accredited;
- 10 (4) a description of the resources provided to each school and school
11 district for coordinated school improvement activities and staff training in each school
12 and school district;
- 13 (5) each school district's and each school's progress in aligning
14 curriculum with state education performance standards;
- 15 (6) a description of the efforts by the department to assist a public
16 school or school district that receives a low performance designation under
17 AS 14.03.123 [OF DEFICIENT OR IN CRISIS];
- 18 (7) a description of intervention efforts by each school district and
19 school for students who are not meeting state performance standards;
- 20 (8) the number and percentage of turnover in certificated personnel and
21 superintendents;
- 22 (9) the number of teachers by district and by school who are teaching
23 outside the teacher's area of endorsement but in areas tested by the high school
24 competency examination.

25 * Sec. 4. AS 14.03.083 is amended by adding a new subsection to read:

26 (d) The department and the state Board of Education and Early Development
27 may not enter into or renew a contract or agreement, or participate, with any
28 organization, entity, group, or consortium after the effective date of this section that
29 requires the state to cede any measure of autonomy or control over education
30 standards and assessments, including the determination of passing scores.

31 * Sec. 5. AS 14.03.120(d) is amended to read:

1 (d) Annually, before the date set by the district under (e) of this section, each
 2 public school shall deliver to the department for posting on the department's Internet
 3 website and provide, in a public meeting of parents, students, and community
 4 members, a report on the school's performance and the performance of the school's
 5 students. The report shall be prepared on a form prescribed by the department and
 6 must include

7 (1) information on accreditation;

8 (2) results of norm-referenced achievement tests;

9 (3) results of state standards-based assessments in language arts
 10 [READING, WRITING,] and mathematics;

11 (4) a description, including quantitative and qualitative measures, of
 12 student, parent, community, and business involvement in student learning;

13 (5) a description of the school's attendance, retention, dropout, and
 14 graduation rates, including the number and percentage of students who received a
 15 diploma under a waiver from the competency examination required under
 16 AS 14.03.075(a), as specified by the state board;

17 (6) the annual percent of enrollment change, regardless of reason, and
 18 the annual percent of enrollment change due to student transfers into and out of the
 19 school district;

20 (7) if Native language education is provided, a summary and
 21 evaluation of the curriculum described in AS 14.30.420;

22 (8) the number and percentage of students in each school who take and
 23 who successfully complete an alternative assessment program in reading, English, or
 24 mathematics; and the number and percentage of pupils in each school who
 25 successfully complete the alternative assessment program but who do not reach the
 26 state performance standards at the competency exam level in reading, English, or
 27 mathematics; a school may not report results under this paragraph unless the school
 28 complies with the family educational rights and privacy requirements of 34 C.F.R. 99;

29 (9) the performance designation assigned the school under
 30 AS 14.03.123 and the methodology used to assign the performance designation,
 31 including the measures used and their relative weights; [AND]

1 (10) other information concerning school performance and the
 2 performance of the school's students as required by the state board in regulation; and
 3 (11) information on the number, attendance, and performance of
 4 students enrolled in the school whose parents or guardians are on active duty in
 5 the armed forces of the United States, the United States Coast Guard, the Alaska
 6 National Guard, the Alaska Naval Militia, or the Alaska State Defense Force.

7 * Sec. 6. AS 14.03.123(c) is amended to read:

8 (c) The state board shall adopt regulations implementing this section,
 9 providing for a statewide student assessment system, and providing for the process of
 10 assigning a designation under (a) of this section, including

11 (1) the method [METHODODOLOGY] used to assign the performance
 12 designation, including the measures used and their relative weights;

13 (2) high performance and low performance designations that are based
 14 on the accountability system under this section and AS 14.03.124;

15 (3) a procedure for appealing a designation that may be used by the
 16 principal of a public school or by the superintendent of a public school district;

17 (4) additional measures that may be progressively implemented by the
 18 commissioner to assist schools or districts to improve performance in accordance with
 19 this section and with federal law; to the extent necessary to conform to federal law, the
 20 additional measures may be unique to a certain school or district if that school or
 21 district receives federal funding that is not available to all schools or districts in the
 22 state.

23 * Sec. 7. AS 14.03.123(f) is amended to read:

24 (f) In the accountability system for schools and districts required by this
 25 section, the department shall

26 (1) implement 20 U.S.C. 6301 - 7941 (Elementary and Secondary
 27 Education Act of 1965), as amended;

28 (2) implement state criteria and priorities for accountability including
 29 the use of

30 (A) measures of student performance on standards-based
 31 assessments in language arts [READING, WRITING,] and mathematics, and

1 including competency tests required under AS 14.03.075;

2 (B) measures of student improvement; and

3 (C) other measures identified that are indicators of student
4 success and achievement; and

5 (3) to the extent practicable, minimize the administrative burden on
6 districts.

7 * Sec. 8. AS 14.03 is amended by adding a new section to read:

8 **Sec. 14.03.124. Public school and school district grading system.** The
9 department shall establish by regulation the criteria that accounts for improvement in
10 student achievement for assigning annual performance designations as follows:

11 (1) "A" for a school making excellent progress;

12 (2) "B" for a school making above average progress;

13 (3) "C" for a school making satisfactory progress;

14 (4) "D" for a school making less than satisfactory progress;

15 (5) "F" for a school failing to make adequate progress.

16 * Sec. 9. AS 14.03.250 is repealed and reenacted to read:

17 **Sec. 14.03.250. Application for charter school.** (a) A local school board shall
18 prescribe an application procedure for the establishment of a charter school in that
19 school district. The application procedure must include provisions for an academic
20 policy committee consisting of parents of students attending the school, teachers, and
21 school employees and a proposed form for a contract between a charter school and the
22 local school board, setting out the contract elements required under AS 14.03.255(c).

23 (b) A decision of a local school board approving or denying an application for
24 a charter school must be in writing, must be issued within 60 days after the
25 application, and must include all relevant findings of fact and conclusions of law.

26 (c) If a local school board approves an application for a charter school, the
27 local school board shall forward the application to the state Board of Education and
28 Early Development for review and approval.

29 (d) If a local school board denies an application for a charter school, the
30 applicant may appeal the denial to the commissioner. The appeal to the commissioner
31 shall be filed not later than 60 days after the local school board issues its written

1 decision of denial. The commissioner shall review the local school board's decision to
 2 determine whether the findings of fact are supported by substantial evidence and
 3 whether the decision is contrary to law. A decision of the commissioner upholding the
 4 denial by the local school board may be appealed within 30 days to the state Board of
 5 Education and Early Development.

6 (e) If the commissioner approves a charter school application, the
 7 commissioner shall forward the application to the state Board of Education and Early
 8 Development for review and approval. The application shall be forwarded not later
 9 than 30 days after the commissioner issues a written decision. The state Board of
 10 Education and Early Development shall exercise independent judgment in evaluating
 11 the application.

12 (f) A local school board that denied an application for a charter school
 13 approved by the state board on appeal shall operate the charter school as provided in
 14 AS 14.03.255 - 14.03.290.

15 * **Sec. 10.** AS 14.03 is amended by adding a new section to read:

16 **Sec. 14.03.253. Charter school application appeal.** (a) In an appeal to the
 17 commissioner under AS 14.03.250, the commissioner shall review the record before
 18 the local school board. The commissioner may request written supplementation of the
 19 record from the applicant or the local school board. The commissioner may

20 (1) remand the appeal to the local school board for further review;

21 (2) approve the charter school application and forward the application
 22 to the state Board of Education and Early Development with or without added
 23 conditions; or

24 (3) uphold the decision denying the charter school application; if the
 25 commissioner upholds a local school board's decision to deny a charter school
 26 application and the applicant appeals to the State Board of Education and Early
 27 Development, the commissioner shall immediately forward the application and record
 28 to the state Board of Education and Early Development.

29 (b) In an appeal to the state Board of Education and Early Development of a
 30 denial of a charter school application under (a)(3) of this section, the state board shall
 31 determine, based on the record, whether the commissioner's findings are supported by

1 substantial evidence and whether the decision is contrary to law. The state board shall
2 issue a written decision within 90 days after an appeal.

3 * Sec. 11. AS 14.03.255(d) is amended to read:

4 (d) A school district shall offer to a charter school the right of first refusal
5 for a lease of space [CHARTER SCHOOL MAY BE OPERATED] in an existing
6 school district facility or in a facility within the school district that is not currently
7 being used as a public school, if the chief school administrator determines the facility
8 meets requirements for health and safety applicable to public buildings or other public
9 schools in the district. If the school district requires lease payments by a charter
10 school, the school district shall negotiate a lease agreement with the charter
11 school for an amount that does not exceed the true operational costs calculated
12 on a square foot basis for space leased under this subsection.

13 * Sec. 12. AS 14.03.260(a) is amended to read:

14 (a) A local school board shall provide an approved charter school with an
15 annual program budget. The budget shall be not less than the amount generated by the
16 students enrolled in the charter school less administrative costs retained by the local
17 school district, determined by applying the indirect cost rate approved by the
18 department up to 4 percent. A local school board shall provide a charter school
19 with a report itemizing the administrative costs retained by the local school
20 board under this section [DEPARTMENT OF EDUCATION AND EARLY
21 DEVELOPMENT]. The "amount generated by students enrolled in the charter school"
22 is to be determined in the same manner as it would be for a student enrolled in another
23 public school in that school district and includes funds generated by special needs
24 under AS 14.17.420(a)(1) and secondary school vocational and technical
25 instruction under AS 14.17.420(a)(3). A school district shall direct state aid under
26 AS 14.11 for the construction or major maintenance of a charter school facility to
27 the charter school that generated the state aid, subject to the same terms and
28 conditions that apply to state aid under AS 14.11 for construction or major
29 maintenance of a school facility that is not a charter school.

30 * Sec. 13. AS 14.03 is amended by adding a new section to read:

31 Sec. 14.03.263. Charter school grant program. (a) A charter school that is

1 established on or after the effective date of this section may receive a one-time grant
 2 from the department equal to the amount of \$500 for each student enrolled in the
 3 school on October 1 of the first year in which the school applies for the grant. The
 4 charter school shall use a grant received under this section to provide educational
 5 services. In this subsection, "educational services" includes curriculum development,
 6 program development, and special education services.

7 (b) The department shall establish by regulation procedures for the application
 8 for and expenditure of grant funds under (a) of this section.

9 (c) If the amount appropriated in a fiscal year for the charter school grant
 10 program is insufficient to meet the amounts authorized under (a) of this section, the
 11 department shall reduce pro rata the per pupil grant amount by the necessary
 12 percentage as determined by the department. If a charter school grant is reduced under
 13 this subsection, the charter school may apply to the department in a subsequent fiscal
 14 year for the balance of the grant amount.

15 * Sec. 14. AS 14.07.020(a)(16) is amended to read:

16 (16) establish by regulation criteria, based on low student performance,
 17 under which the department may intervene in a school district to improve instructional
 18 practices, as described in AS 14.07.030(14) or (15); the regulations must include

19 (A) a notice provision that alerts the district to the deficiencies
 20 and the instructional practice changes proposed by the department;

21 (B) an end date for departmental intervention, as described in
 22 AS 14.07.030(14)(A) and (B) and (15), after the district demonstrates three
 23 consecutive years of improvement consisting of not less than two percent
 24 increases in student proficiency on standards-based assessments in language
 25 arts and mathematics, [READING, AND WRITING] as provided in
 26 AS 14.03.123(f)(2)(A); and

27 (C) a process for districts to petition the department for
 28 continuing or discontinuing the department's intervention;

29 * Sec. 15. AS 14.07.020(b) is amended to read:

30 (b) In implementing its duties under (a)(2) of this section, the department shall
 31 not expend any money to implement the set of educational curriculum standards

1 for grades kindergarten through 12 established by the Common Core Standards
 2 Initiative and shall develop

3 (1) performance standards in language arts [READING, WRITING,]
 4 and mathematics to be met at designated age levels by each student in public schools
 5 in the state; and

6 (2) a comprehensive system of student assessments, composed of
 7 multiple indicators of proficiency in language arts [READING, WRITING,] and
 8 mathematics; this comprehensive system must

9 (A) be made available to all districts and regional educational
 10 attendance areas;

11 (B) include a developmental profile for students entering
 12 kindergarten or first grade; and

13 (C) include performance standards in language arts
 14 [READING, WRITING,] and mathematics for students in age groups five
 15 through seven, eight through 10, and 11 - 14.

16 * Sec. 16. AS 14.07.168 is amended to read:

17 **Sec. 14.07.168. Report to the legislature.** Not later than the 30th legislative
 18 day of each regular session of the legislature, the board shall prepare and present in
 19 person to the legislative committees having jurisdiction over education an annual
 20 report that describes the efforts of the board to develop, maintain, and continuously
 21 improve a comprehensive quality public education system, as provided for under the
 22 bylaws of the board. The report must include

23 (1) a summary of the resolves and rationales provided in support of
 24 policy decisions made under AS 14.03.015;

25 (2) program and curriculum changes made, discussed, or
 26 recommended in meetings held under AS 14.07.125;

27 (3) additional information relevant to efforts made to improve and
 28 maintain the public education system;

29 (4) recommendations for changes in the method of education
 30 spending by the state and school districts that result in improved efficiencies in
 31 and administration of public education in the state.

1 * Sec. 17. AS 14.09.010 is amended by adding new subsections to read:

2 (e) A school district that provides transportation services under this section
3 shall provide transportation services to students attending a charter school operated by
4 the district under a policy adopted by the district. The policy must

5 (1) be developed with input solicited from individuals involved with
6 the charter school, including staff, students, and parents;

7 (2) at a minimum, provide transportation services for students enrolled
8 in the charter school on a space available basis along the regular routes that the
9 students attending schools in an attendance area in the district are transported; and

10 (3) be approved by the department.

11 (f) If a school district fails to adopt a policy under (e) of this section, the
12 school district shall allocate the amount received for each student under (a) of this
13 section to each charter school operated by the district based on the number of students
14 enrolled in the charter school.

15 (g) Nothing in (e) of this section requires a school district to establish
16 dedicated transportation routes for the exclusive use of students enrolled in a charter
17 school or authorizes a charter school to opt out of a policy adopted by a school district
18 for the purpose of acquiring transportation funding.

19 * Sec. 18. AS 14.16.050(a) is amended to read:

20 (a) The following provisions apply with respect to the operation and
21 management of a state boarding school as if it were a school district:

22 (1) requirements relating to school district operations:

23 (A) AS 14.03.030 - 14.03.050 (defining the school term, day in
24 session, and school holidays);

25 (B) AS 14.03.073 and 14.03.083 - 14.03.140 [AS 14.03.083 -
26 14.03.140] (miscellaneous provisions applicable to school district operations);

27 (C) regulations adopted by the board under authority of
28 AS 14.07.020(a) that are applicable to school districts and their schools, unless
29 the board specifically exempts state boarding schools from compliance with a
30 regulation;

31 (D) AS 14.12.150 (authorizing school districts to establish and

1 participate in the services of a regional resource center);

2 (E) AS 14.14.050 (imposing the requirement of an annual
3 audit);

4 (F) AS 14.14.110 (authorizing cooperation with other school
5 districts);

6 (G) AS 14.14.140(b) (establishing a prohibition on
7 employment of a relative of the chief school administrator);

8 (H) AS 14.18 (prohibiting discrimination based on sex in
9 public education);

10 (2) requirements relating to the public school funding program and the
11 receipt and expenditure of that funding:

12 (A) AS 14.17.500 (relating to student count estimates);

13 (B) AS 14.17.505 (relating to school operating fund balances);

14 (C) AS 14.17.500 - 14.17.910 (setting out the procedure for
15 payment of public school funding and imposing general requirements and
16 limits on money paid);

17 (3) requirements relating to teacher employment and retirement:

18 (A) AS 14.14.105 and 14.14.107 (relating to sick leave);

19 (B) AS 14.20.095 - 14.20.215 (relating to the employment and
20 tenure of teachers);

21 (C) AS 14.20.220 (relating to the salaries of teachers
22 employed);

23 (D) AS 14.20.280 - 14.20.350 (relating to sabbatical leave
24 provisions for teachers);

25 (E) AS 23.40.070 - 23.40.260 (authorizing collective
26 bargaining by certificated employees), except with regard to teachers who are
27 administrators and except that the board may delegate some or all of its
28 responsibilities under those statutes;

29 (F) AS 14.25 (provisions regarding the teachers' retirement
30 system);

31 (4) requirements relating to students and educational programs:

1 (A) AS 14.30.180 - 14.30.350 (relating to educational services
2 for children with disabilities);

3 (B) AS 14.30.360 - 14.30.370 (establishing health education
4 program standards);

5 (C) AS 14.30.400 - 14.30.410 (relating to bilingual and
6 bicultural education).

7 * Sec. 19. AS 14.16 is amended by adding a new section to article 2 to read:

8 Sec. 14.16.100. Application for residential school. A school district shall
9 apply to the department for approval to establish and operate a statewide or district-
10 wide residential school. The department shall accept applications during an open
11 application period conducted annually. A period of open application in itself does not
12 indicate that the department will approve the establishment of a new residential
13 school.

14 * Sec. 20. AS 14.17.470 is amended to read:

15 Sec. 14.17.470. Base student allocation. The base student allocation is
16 \$5,865 [\$5,680].

17 * Sec. 21. AS 14.17.470, as amended by sec. 20 of this Act, is amended to read:

18 Sec. 14.17.470. Base student allocation. The base student allocation is
19 \$5,923 [\$5,865].

20 * Sec. 22. AS 14.17.470, as amended by secs. 20 and 21 of this Act, is amended to read:

21 Sec. 14.17.470. Base student allocation. The base student allocation is
22 \$5,981 [\$5,923].

23 * Sec. 23. AS 14.20.150(a) is amended to read:

24 (a) Except as provided in (c) or (d) of this section, a teacher acquires tenure
25 rights in a district when the teacher

26 (1) possesses a valid teaching certificate that authorizes the teacher to
27 be employed as a certificated teacher or as an administrator under regulations adopted
28 by the department;

29 (2) has been employed as a teacher in the same district continuously
30 for five [THREE] full school years;

31 (3) receives, in the fifth [THIRD] year of any five-year [THREE-

1 YEAR] period of continuous employment with the district, an evaluation under the
 2 district's evaluation system stating that the teacher's performance meets the district
 3 performance standards; and

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

5 (A) accepts a contract for employment as a teacher in the
 6 district for a sixth [FOURTH] consecutive school year; and

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

9 * Sec. 24. AS 14.20.150 is amended by adding a new subsection to read:

10 (f) For teachers employed by a rural school district, the years of employment
 11 required to acquire tenure rights as provided in (a) of this section shall be reduced by
 12 two years. In this subsection, "rural school district" means a regional educational
 13 attendance area or a school district located in a small borough or first class city with a
 14 population of less than 5,500.

15 * Sec. 25. AS 23.15.835(d) is amended to read:

16 (d) Notwithstanding AS 23.15.840(a), for the fiscal years ending June 30,
 17 2009, through June 30, 2017 [2014], the money collected under this section or
 18 otherwise appropriated to the Alaska Workforce Investment Board, formerly known as
 19 the Alaska Human Resource Investment Council, shall be allocated directly in the
 20 following percentages to the following institutions for programs consistent with
 21 AS 23.15.820 - 23.15.850 and capital improvements:

22	University of Alaska	45 percent
23	University of Alaska Southeast	5 percent
24	Galena Project Education Vocational Training Center	4 percent
25	Kotzebue Technical Center	9 percent
26	Alaska Vocational Technical Center	17 percent
27	Northwestern Alaska Career and Technical Center	3 percent
28	Southwest Alaska Vocational and Education Center	3 percent
29	Yuut Elitnaurviat, Inc. People's Learning Center	9 percent
30	Delta Career Advancement Center	3 percent
31	New Frontier Vocational Technical Center	2 percent.

1 * Sec. 26. AS 23.15.835(e) is amended to read:

2 (e) The institutions receiving funding under (d) of this section shall provide an
3 expenditure and performance report to the department by November 1 of each year
4 that includes [THE]

5 (1) the percentage of former participants in the program who have jobs
6 one year after leaving the program;

7 (2) the median wage of former participants seven to 12 months after
8 leaving the program;

9 (3) the percentage of former participants who were employed after
10 leaving the program who received training under the program that was related or
11 somewhat related to the former participants' jobs seven to 12 months after leaving the
12 program;

13 (4) a description of each vocational education course funded
14 through the allocation set out in (d) of this section that permits high school
15 students to earn dual credit upon course completion, and the number of high
16 school students who earned dual credit in the past year;

17 (5) a copy of any articulation agreement established under (g) of
18 this section that either was in effect for the preceding year or is in process for the
19 next year of funding, and the number of high school students who earned dual
20 credit under each articulation agreement; and

21 (6) the performance and financial information needed to verify the
22 performance of the program as specified by the department by regulation
23 [PERCENTAGE OF FORMER PARTICIPANTS WHO INDICATE SOME LEVEL
24 OF SATISFACTION WITH THE TRAINING RECEIVED UNDER THE
25 PROGRAM; AND

26 (5) PERCENTAGE OF EMPLOYERS WHO INDICATE
27 SATISFACTION WITH THE SERVICES PROVIDED THROUGH THE
28 PROGRAM].

29 * Sec. 27. AS 23.15.835 is amended by adding new subsections to read:

30 (g) The institutions receiving funding under (d) of this section shall establish
31 and maintain at least one articulation agreement under which dual credit may be

1 earned by high school students upon completion of a vocational education course.

2 (h) An institution's failure to comply with (e) or (g) of this section shall result
3 in a withholding penalty of 20 percent of the funding allocated under (d) of this
4 section in the following year.

5 * Sec. 28. AS 23.15.850 is amended by adding new paragraphs to read:

6 (3) "articulation agreement" means a dual-credit partnership between a
7 school district and an institution receiving funding under AS 23.15.835(d) that
8 describes vocational education courses, student eligibility, course location, academic
9 policies, student support services, credit on a student's transcript, funding, and other
10 items required by the partnering institutions;

11 (4) "dual credit" means simultaneous high school credit and credit
12 toward a career or vocational certification.

13 * Sec. 29. AS 29.45.050 is amended by adding a new subsection to read:

14 (v) A municipality may¹ by ordinance classify and exempt or partially exempt
15 from taxation all or a portion of privately owned real property rented or leased for use
16 as a charter school established under AS 14.03.250.

17 * Sec. 30. AS 43.20.014(a) is amended to read:

18 (a) A taxpayer is allowed a credit against the tax due under this chapter for
19 cash contributions accepted for

20 (1) direct instruction, research, and educational support purposes,
21 including library and museum acquisitions, and contributions to endowment, by an
22 Alaska university foundation, [OR] by a nonprofit, public or private, Alaska two-year
23 or four-year college accredited by a regional accreditation association, or by a public
24 or private nonprofit elementary or secondary school in the state;

25 (2) secondary school level vocational education courses, programs, and
26 facilities by a school district in the state;

27 (3) vocational education courses, programs, and facilities by a state-
28 operated vocational technical education and training school;

29 (4) a facility [OR AN ANNUAL INTERCOLLEGIATE SPORTS
30 TOURNAMENT] by a nonprofit, public or private, Alaska two-year or four-year
31 college accredited by a regional accreditation association or by a public or private

1 nonprofit elementary or secondary school in the state;

2 (5) Alaska Native cultural or heritage programs and educational
3 support, including mentoring and tutoring, provided by a nonprofit agency for public
4 school staff and for students who are in grades kindergarten through 12 in the state;

5 (6) education, research, rehabilitation, and facilities by an institution
6 that is located in the state and that qualifies as a coastal ecosystem learning center
7 under the Coastal America Partnership established by the federal government; [AND]

8 (7) the Alaska higher education investment fund under AS 37.14.750;

9 (8) funding a scholarship awarded by a nonprofit organization to a
10 dual-credit student to defray the cost of a dual-credit course, including the cost of

11 (A) tuition and textbooks;

12 (B) registration, course, and programmatic student fees;

13 (C) on-campus room and board at the postsecondary
14 institution in the state that provides the dual-credit course;

15 (D) transportation costs to and from a residential school
16 approved by the Department of Education and Early Development under
17 AS 14.16.200 or the postsecondary school in the state that provides the
18 dual-credit course; and

19 (E) other related educational and programmatic costs;

20 (9) constructing, operating, or maintaining a residential housing
21 facility by a residential school in the state approved by the Department of
22 Education and Early Development under AS 14.16.200;

23 (10) childhood early learning and development programs and
24 educational support to childhood early learning and development programs
25 provided by a nonprofit corporation organized under AS 10.20, a tribal entity, or
26 a school district in the state, by the Department of Education and Early
27 Development, or through a state grant; and

28 (11) science, technology, engineering, and math programs
29 provided by a nonprofit agency or a school district for school staff and for
30 students in grades kindergarten through 12 in the state.

31 * Sec. 31. AS 43.20.014(a), as amended by sec. 14, ch. 92, SLA 2010, sec. 14, ch. 7,

1 FSSLA 2011, and sec. 15, ch. 74, SLA 2012, is amended to read:

2 (a) A taxpayer is allowed a credit against the tax due under this chapter for
3 cash contributions accepted

4 (1) for direct instruction, research, and educational support purposes,
5 including library and museum acquisitions, and contributions to endowment, by an
6 Alaska university foundation, [OR] by a nonprofit, public or private, Alaska two-year
7 or four-year college accredited by a regional accreditation association, or by a public
8 or private nonprofit elementary or secondary school in the state;

9 (2) for secondary school level vocational education courses and
10 programs by a school district in the state;

11 (3) by a state-operated vocational technical education and training
12 school; [AND]

13 (4) for the Alaska higher education investment fund under
14 AS 37.14.750;

15 (5) for funding a scholarship awarded by a nonprofit organization
16 to a dual-credit student to defray the cost of a dual-credit course, including the
17 cost of

18 (A) tuition and textbooks;

19 (B) registration, course, and programmatic student fees;

20 (C) on-campus room and board at the postsecondary
21 institution in the state that provides the dual-credit course;

22 (D) transportation costs to and from a residential school
23 approved by the Department of Education and Early Development under
24 AS 14.16.200 or the postsecondary school in the state that provides the
25 dual-credit course; and

26 (E) other related educational and programmatic costs;

27 (6) for constructing, operating, or maintaining a residential
28 housing facility by a residential school approved by the Department of Education
29 and Early Development under AS 14.16.200; and

30 (7) for childhood early learning and development programs and
31 educational support to childhood early learning and development programs

1 provided by a nonprofit corporation organized under AS 10.20, a tribal entity, or
 2 a school district in the state, by the Department of Education and Early
 3 Development, or through a state grant.

4 * Sec. 32. AS 43.20.014(f) is amended by adding new paragraphs to read:

5 (3) "dual-credit student" means a secondary level student in the state
 6 who simultaneously earns college and high school credit for a course;

7 (4) "nonprofit organization" means a charitable or educational
 8 organization in the state that is exempt from taxation under 26 U.S.C. 501(c)(3)
 9 (Internal Revenue Code).

10 * Sec. 33. AS 43.65.018(a) is amended to read:

11 (a) A person engaged in the business of mining in the state is allowed a credit
 12 against the tax due under this chapter for cash contributions accepted for

13 (1) direct instruction, research, and educational support purposes,
 14 including library and museum acquisitions, and contributions to endowment, by an
 15 Alaska university foundation, [OR] by a nonprofit, public or private, Alaska two-year
 16 or four-year college accredited by a regional accreditation association, or by a public
 17 or private nonprofit elementary or secondary school in the state;

18 (2) secondary school level vocational education courses, programs, and
 19 facilities by a school district in the state;

20 (3) vocational education courses, programs, and facilities by a state-
 21 operated vocational technical education and training school;

22 (4) a facility [OR AN ANNUAL INTERCOLLEGIATE SPORTS
 23 TOURNAMENT] by a nonprofit, public or private, Alaska two-year or four-year
 24 college accredited by a regional accreditation association or by a public or private
 25 nonprofit elementary or secondary school in the state;

26 (5) Alaska Native cultural or heritage programs and educational
 27 support, including mentoring and tutoring, provided by a nonprofit agency for public
 28 school staff and for students who are in grades kindergarten through 12 in the state;

29 (6) education, research, rehabilitation, and facilities by an institution
 30 that is located in the state and that qualifies as a coastal ecosystem learning center
 31 under the Coastal America Partnership established by the federal government; [AND]

1 (7) the Alaska higher education investment fund under AS 37.14.750;

2 (8) funding a scholarship awarded by a nonprofit organization to a
 3 dual-credit student to defray the cost of a dual-credit course, including the cost of

4 (A) tuition and textbooks;

5 (B) registration, course, and programmatic student fees;

6 (C) on-campus room and board at the postsecondary
 7 institution in the state that provides the dual-credit course;

8 (D) transportation costs to and from a residential school
 9 approved by the Department of Education and Early Development under
 10 AS 14.16.200 or the postsecondary school in the state that provides the
 11 dual-credit course; and

12 (E) other related educational and programmatic costs;

13 (9) constructing, operating, or maintaining a residential housing
 14 facility by a residential school approved by the Department of Education and
 15 Early Development under AS 14.16.200;

16 (10) childhood early learning and development programs and
 17 educational support to childhood early learning and development programs
 18 provided by a nonprofit corporation organized under AS 10.20, a tribal entity, or
 19 a school district in the state, by the Department of Education and Early
 20 Development, or through a state grant; and

21 (11) science, technology, engineering, and math programs
 22 provided by a nonprofit agency or a school district for school staff and for
 23 students in grades kindergarten through 12 in the state.

24 * Sec. 34. AS 43.65.018(a), as amended by sec. 35, ch. 92, SLA 2010, sec. 14, ch. 7,
 25 FSSLA 2011, and sec. 21, ch. 74, SLA 2012, is amended to read:

26 (a) A person engaged in the business of mining in the state is allowed a credit
 27 against the tax due under this chapter for cash contributions accepted

28 (1) for direct instruction, research, and educational support purposes,
 29 including library and museum acquisitions, and contributions to endowment, by an
 30 Alaska university foundation, [OR] by a nonprofit, public or private, Alaska two-year
 31 or four-year college accredited by a regional accreditation association, or by a public

1 or private nonprofit elementary or secondary school in the state;

2 (2) for secondary school level vocational education courses and
3 programs by a school district in the state;

4 (3) by a state-operated vocational technical education and training
5 school; [AND]

6 (4) for the Alaska higher education investment fund under
7 AS 37.14.750;

8 (5) for funding a scholarship awarded by a nonprofit organization
9 to a dual-credit student to defray the cost of a dual-credit course, including the
10 cost of

11 (A) tuition and textbooks;

12 (B) registration, course, and programmatic student fees;

13 (C) on-campus room and board at the postsecondary
14 institution in the state that provides the dual-credit course;

15 (D) transportation costs to and from a residential school
16 approved by the Department of Education and Early Development under
17 AS 14.16.200 or the postsecondary school in the state that provides the
18 dual-credit course; and

19 (E) other related educational and programmatic costs;

20 (6) for constructing, operating, or maintaining a residential
21 housing facility by a residential school approved by the Department of Education
22 and Early Development under AS 14.16.200; and

23 (7) for childhood early learning and development programs and
24 educational support to childhood early learning and development programs
25 provided by a nonprofit corporation organized under AS 10.20, a tribal entity, or
26 a school district in the state, by the Department of Education and Early
27 Development, or through a state grant.

28 * Sec. 35. AS 43.65.018(f) is amended by adding new paragraphs to read:

29 (3) "dual-credit student" means a secondary level student in the state
30 who simultaneously earns college and high school credit for a course;

31 (4) "nonprofit organization" means a charitable or educational

1 organization in the state that is exempt from taxation under 26 U.S.C. 501(c)(3)
 2 (Internal Revenue Code).

3 * Sec. 36. AS 43.75.018(a) is amended to read:

4 (a) A person engaged in a fisheries business is allowed a credit against the tax
 5 due under this chapter for cash contributions accepted for

6 (1) direct instruction, research, and educational support purposes,
 7 including library and museum acquisitions, and contributions to endowment, by an
 8 Alaska university foundation, [OR] by a nonprofit, public or private, Alaska two-year
 9 or four-year college accredited by a regional accreditation association, or by a public
 10 or private nonprofit elementary or secondary school in the state;

11 (2) secondary school level vocational education courses, programs, and
 12 facilities by a school district in the state;

13 (3) vocational education courses, programs, and facilities by a state-
 14 operated vocational technical education and training school;

15 (4) a facility [OR AN ANNUAL INTERCOLLEGIATE SPORTS
 16 TOURNAMENT] by a nonprofit, public or private, Alaska two-year or four-year
 17 college accredited by a regional accreditation association or by a public or private
 18 nonprofit elementary or secondary school in the state;

19 (5) Alaska Native cultural or heritage programs and educational
 20 support, including mentoring and tutoring, provided by a nonprofit agency for public
 21 school staff and for students who are in grades kindergarten through 12 in the state;

22 (6) education, research, rehabilitation, and facilities by an institution
 23 that is located in the state and that qualifies as a coastal ecosystem learning center
 24 under the Coastal America Partnership established by the federal government; [AND]

25 (7) the Alaska higher education investment fund under AS 37.14.750;

26 (8) funding a scholarship awarded by a nonprofit organization to a
 27 dual-credit student to defray the cost of a dual-credit course, including the cost of

28 (A) tuition and textbooks;

29 (B) registration, course, and programmatic student fees;

30 (C) on-campus room and board at the postsecondary
 31 institution in the state that provides the dual-credit course;

1 (D) transportation costs to and from a residential school
 2 approved by the Department of Education and Early Development under
 3 AS 14.16.200 or the postsecondary school in the state that provides the
 4 dual-credit course; and

5 (E) other related educational and programmatic costs;

6 (9) constructing, operating, or maintaining a residential housing
 7 facility by a residential school approved by the Department of Education and
 8 Early Development under AS 14.16.200;

9 (10) childhood early learning and development programs and
 10 educational support to childhood early learning and development programs
 11 provided by a nonprofit corporation organized under AS 10.20, a tribal entity, or
 12 a school district in the state, by the Department of Education and Early
 13 Development, or through a state grant; and

14 (11) science, technology, engineering, and math programs
 15 provided by a nonprofit agency or a school district for school staff and for
 16 students in grades kindergarten through 12 in the state.

17 * Sec. 37. AS 43.75.018(a), as amended by sec. 42, ch. 92, SLA 2010, sec. 14, ch. 7,
 18 FSSLA 2011, and sec. 23, ch. 74, SLA 2012, is amended to read:

19 (a) A person engaged in a fisheries business is allowed a credit against the tax
 20 due under this chapter for cash contributions accepted

21 (1) for direct instruction, research, and educational support purposes,
 22 including library and museum acquisitions, and contributions to endowment, by an
 23 Alaska university foundation, [OR] by a nonprofit, public or private, Alaska two-year
 24 or four-year college accredited by a regional accreditation association, or by a public
 25 or private nonprofit elementary or secondary school in the state;

26 (2) for secondary school level vocational education courses and
 27 programs by a school district in the state;

28 (3) by a state-operated vocational technical education and training
 29 school; [AND]

30 (4) for the Alaska higher education investment fund under
 31 AS 37.14.750;

1 (5) for funding a scholarship awarded by a nonprofit organization
 2 to a dual-credit student to defray the cost of a dual-credit course, including the
 3 cost of

4 (A) tuition and textbooks;

5 (B) registration, course, and programmatic student fees;

6 (C) on-campus room and board at the postsecondary
 7 institution in the state that provides the dual-credit course;

8 (D) transportation costs to and from a residential school
 9 approved by the Department of Education and Early Development under
 10 AS 14.16.200 or the postsecondary school in the state that provides the
 11 dual-credit course; and

12 (E) other related educational and programmatic costs;

13 (6) for constructing, operating, or maintaining a residential
 14 housing facility by a residential school approved by the Department of Education
 15 and Early Development under AS 14.16.200; and

16 (7) for childhood early learning and development programs and
 17 educational support to childhood early learning and development programs
 18 provided by a nonprofit corporation organized under AS 10.20, a tribal entity, or
 19 a school district in the state, by the Department of Education and Early
 20 Development, or through a state grant.

21 * Sec. 38. AS 43.75.018(f) is amended by adding new paragraphs to read:

22 (3) "dual-credit student" means a secondary level student in the state
 23 who simultaneously earns college and high school credit for a course;

24 (4) "nonprofit organization" means a charitable or educational
 25 organization in the state that is exempt from taxation under 26 U.S.C. 501(c)(3)
 26 (Internal Revenue Code).

27 * Sec. 39. AS 43.77.045(a) is amended to read:

28 (a) In addition to the credit allowed under AS 43.77.040, a person engaged in
 29 a floating fisheries business is allowed a credit against the tax due under this chapter
 30 for cash contributions accepted for

31 (1) direct instruction, research, and educational support purposes,

1 including library and museum acquisitions, and contributions to endowment, by an
 2 Alaska university foundation, [OR] by a nonprofit, public or private, Alaska two-year
 3 or four-year college accredited by a regional accreditation association, or by a public
 4 or private nonprofit elementary or secondary school in the state;

5 (2) secondary school level vocational education courses, programs, and
 6 facilities by a school district in the state;

7 (3) vocational education courses, programs, and facilities by a state-
 8 operated vocational technical education and training school;

9 (4) a facility [OR AN ANNUAL INTERCOLLEGIATE SPORTS
 10 TOURNAMENT] by a nonprofit, public or private, Alaska two-year or four-year
 11 college accredited by a regional accreditation association or by a public or private
 12 nonprofit elementary or secondary school in the state;

13 (5) Alaska Native cultural or heritage programs and educational
 14 support, including mentoring and tutoring, provided by a nonprofit agency for public
 15 school staff and for students who are in grades kindergarten through 12 in the state;

16 (6) education, research, rehabilitation, and facilities by an institution
 17 that is located in the state and that qualifies as a coastal ecosystem learning center
 18 under the Coastal America Partnership established by the federal government; [AND]

19 (7) the Alaska higher education investment fund under AS 37.14.750;

20 (8) funding a scholarship awarded by a nonprofit organization to a
 21 dual-credit student to defray the cost of a dual-credit course, including the cost of

22 (A) tuition and textbooks;

23 (B) registration, course, and programmatic student fees;

24 (C) on-campus room and board at the postsecondary
 25 institution in the state that provides the dual-credit course;

26 (D) transportation costs to and from a residential school
 27 approved by the Department of Education and Early Development under
 28 AS 14.16.200 or the postsecondary school in the state that provides the
 29 dual-credit course; and

30 (E) other related educational and programmatic costs;

31 (9) constructing, operating, or maintaining a residential housing

1 facility by a residential school approved by the Department of Education and
 2 Early Development under AS 14.16.200;

3 (10) childhood early learning and development programs and
 4 educational support to childhood early learning and development programs
 5 provided by a nonprofit corporation organized under AS 10.20, a tribal entity, or
 6 a school district in the state, by the Department of Education and Early
 7 Development, or through a state grant; and

8 (11) science, technology, engineering, and math programs
 9 provided by a nonprofit agency or a school district for school staff and for
 10 students in grades kindergarten through 12 in the state.

11 * Sec. 40. AS 43.77.045(a), as amended by sec. 49, ch. 92, SLA 2010, sec. 14, ch. 7,
 12 FSSLA 2011, and sec. 25, ch. 74, SLA 2012, is amended to read:

13 (a) In addition to the credit allowed under AS 43.77.040, a person engaged in
 14 a floating fisheries business is allowed a credit against the tax due under this chapter
 15 for cash contributions accepted

16 (1) for direct instruction, research, and educational support purposes,
 17 including library and museum acquisitions, and contributions to endowment, by an
 18 Alaska university foundation, [OR] by a nonprofit, public or private, Alaska two-year
 19 or four-year college accredited by a regional accreditation association, or by a public
 20 or private nonprofit elementary or secondary school in the state;

21 (2) for secondary school level vocational education courses and
 22 programs by a school district in the state;

23 (3) by a state-operated vocational technical education and training
 24 school; [AND]

25 (4) for the Alaska higher education investment fund under
 26 AS 37.14.750;

27 (5) for funding a scholarship awarded by a nonprofit organization
 28 to a dual-credit student to defray the cost of a dual-credit course, including the
 29 cost of

30 (A) tuition and textbooks;

31 (B) registration, course, and programmatic student fees;

1 (C) on-campus room and board at the postsecondary
2 institution in the state that provides the dual-credit course;

3 (D) transportation costs to and from a residential school
4 approved by the Department of Education and Early Development under
5 AS 14.16.200 or the postsecondary school in the state that provides the
6 dual-credit course; and

7 (E) other related educational and programmatic costs;

8 (6) for constructing, operating, or maintaining a residential
9 housing facility by a residential school approved by the Department of Education
10 and Early Development under AS 14.16.200; and

11 (7) for childhood early learning and development programs and
12 educational support to childhood early learning and development programs
13 provided by a nonprofit corporation organized under AS 10.20, a tribal entity, or
14 a school district in the state, by the Department of Education and Early
15 Development.

16 * Sec. 41. AS 43.77.045(f) is amended by adding new paragraphs to read:

17 (3) "dual-credit student" means a secondary level student in the state
18 who simultaneously earns college and high school credit for a course;

19 (4) "nonprofit organization" means a charitable or educational
20 organization in the state that is exempt from taxation under 26 U.S.C. 501(c)(3)
21 (Internal Revenue Code).

22 * Sec. 42. AS 14.20.147(b) is repealed.

23 * Sec. 43. Section 3, ch. 91, SLA 2010, is repealed.

24 * Sec. 44. The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 APPLICABILITY. Sections 23 and 24 of this Act apply to a contract or collective
27 bargaining agreement that becomes legally binding on or after the effective date of secs. 23
28 and 24 of this Act.

29 * Sec. 45. The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 TRANSITION: CHARTER SCHOOL APPLICATIONS. Sections 9 and 10 of this

1 Act apply to charter school applications filed with a local school board on or after July 1,
2 2014.

3 * Sec. 46. The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 TRANSITION: REGULATIONS. The Department of Education and Early
6 Development, the Department of Labor and Workforce Development, and the Department of
7 Revenue may adopt regulations necessary to implement their respective changes made by this
8 Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
9 before the effective date of the relevant provision of this Act implemented by the regulation.

10 * Sec. 47. The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 DEPARTMENT OF ADMINISTRATION SALARY AND BENEFITS PROPOSAL.
13 Not later than January 1, 2016, the Department of Administration shall present to the
14 legislature a written proposal to implement a salary and benefits schedule for school districts
15 as defined under AS 14.30.350.

16 * Sec. 48. The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 GRANTS TO SCHOOL DISTRICTS. The Department of Education and Early
19 Development shall distribute a one-time grant in the amount of \$30,000,000 as state aid to
20 school districts according to the average daily membership for each district adjusted under
21 AS 14.17.410(b)(1)(A) - (D), as those subparagraphs read on June 29, 2014, for the fiscal year
22 ending June 30, 2015.

23 * Sec. 49. Sections 25 and 46 of this Act take effect immediately under AS 01.10.070(c).

24 * Sec. 50. Sections 2, 21 and 26 - 28 of this Act take effect July 1, 2015.

25 * Sec. 51. Section 22 of this Act takes effect July 1, 2016.

26 * Sec. 52. Sections 31, 34, 37, and 40 of this Act take effect January 1, 2021.

27 * Sec. 53. Except as provided in secs. 49 - 52 of this Act, this Act takes effect July 1, 2014.

ALASKA STATE LEGISLATURE
FREE CONFERENCE COMMITTEE ON HB 278
April 22, 2014
10:30 a.m.

MEMBERS PRESENT

Representative Mike Hawker, Chair
Representative Lynn Gattis
Representative Sam Kito III

Senator Kevin Meyer, Chair
Senator Mike Dunleavy
Senator Lyman Hoffman

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Les Gara
Representative Tammie Wilson
Representative Mia Costello
Representative Shelley Hughes
Representative Gabrielle LeDoux
Representative Jonathan Kreiss-Tomkins
Representative Cathy Munoz

Senator Click Bishop
Senator John Coghill
Senator Anna Fairclough
Senator Hollis French

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR SENATE CS FOR CS FOR HOUSE BILL NO. 278(FIN) AM S, "An Act relating to the exemption from jury service for certain teachers; relating to the powers of the Department of Education and Early Development; relating to high school course credit earned through assessment; relating to school performance reports; relating to assessments and accountability standards; providing for funding for Internet services; relating to the secondary school competency examination and related requirements; relating to charter schools and student transportation; establishing a grant program to be administered by the Association of Alaska School Boards

for the purchase of student equipment and technology services; establishing a public school grant program for innovative approaches to learning; relating to correspondence study programs, funding, and student allotments; relating to residential school applications; increasing the stipend for boarding school students; relating to school construction bond debt reimbursement; relating to the local contribution to public school funding; relating to funding of and reporting by Alaska technical and vocational education programs; relating to earning high school credit for completion of vocational education courses offered by institutions receiving technical and vocational education program funding; relating to schools operated by a federal agency; relating to education tax credits; establishing an optional municipal tax exemption for privately owned real property rented or leased for use as a charter school; requiring the Legislative Budget and Audit Committee to provide for studies on the school size factor and the school district cost factor for public education funding and for a study on school staff salary and benefits; requiring the Department of Education and Early Development to report to the legislature on school design and construction; establishing a pilot project for public middle schools; and providing for an effective date."

- HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 278

SHORT TITLE: EDUCATION

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/24/14	(H)	READ THE FIRST TIME - REF
ERRALS		
01/24/14	(H)	EDC, FIN
02/03/14	(H)	EDC AT 8:00 AM CAPITOL 106
02/03/14	(H)	Heard & Held
02/03/14	(H)	MINUTE(EDC)
02/07/14	(H)	EDC AT 8:00 AM CAPITOL 106
02/07/14	(H)	Heard & Held
02/07/14	(H)	MINUTE(EDC)
02/10/14	(H)	EDC AT 8:00 AM CAPITOL 106
02/10/14	(H)	Heard & Held
02/10/14	(H)	MINUTE(EDC)
02/14/14	(H)	EDC AT 8:00 AM CAPITOL 106
02/14/14	(H)	Heard & Held
02/14/14	(H)	MINUTE(EDC)

02/17/14	(H)	EDC AT 8:00 AM CAPITOL 106
02/17/14	(H)	Heard & Held
02/17/14	(H)	MINUTE(EDC)
02/24/14	(H)	EDC AT 8:00 AM CAPITOL 106
02/24/14	(H)	Scheduled But Not Heard
02/26/14	(H)	EDC AT 8:00 AM CAPITOL 106
02/26/14	(H)	Heard & Held
02/26/14	(H)	MINUTE(EDC)
02/28/14	(H)	EDC AT 8:00 AM CAPITOL 106
02/28/14	(H)	Heard & Held
02/28/14	(H)	MINUTE(EDC)
03/05/14	(H)	EDC AT 8:00 AM CAPITOL 106
03/05/14	(H)	Heard & Held
03/05/14	(H)	MINUTE(EDC)
03/07/14	(H)	EDC AT 8:00 AM CAPITOL 106
03/07/14	(H)	Heard & Held
03/07/14	(H)	MINUTE(EDC)
03/10/14	(H)	EDC AT 8:00 AM CAPITOL 106
03/10/14	(H)	Heard & Held
03/10/14	(H)	MINUTE(EDC)
03/10/14	(H)	EDC AT 3:00 PM CAPITOL 106
03/10/14	(H)	Heard & Held
03/10/14	(H)	MINUTE(EDC)
03/11/14	(H)	EDC AT 5:00 PM CAPITOL 106
03/11/14	(H)	Moved CSHB 278(EDC) Out of Committee
03/11/14	(H)	MINUTE(EDC)
03/12/14	(H)	EDC RPT CS 2DP 3NR 2AM (CS FORTHCOMING)
03/12/14	(H)	DP: REINBOLD, GATTIS
03/12/14	(H)	NR: SEATON, P.WILSON, SADDLER
03/12/14	(H)	AM: LEDOUX, KITO III
03/12/14	(H)	EDC AT 8:00 AM CAPITOL 106
03/12/14	(H)	-- MEETING CANCELED --
03/12/14	(H)	EDC AT 3:00 PM CAPITOL 106
03/12/14	(H)	-- MEETING CANCELED --
03/13/14	(H)	CS(EDC) NT RECEIVED
03/13/14	(H)	EDC AT 5:00 PM CAPITOL 106
03/13/14	(H)	-- MEETING CANCELED --
03/14/14	(H)	EDC AT 8:00 AM CAPITOL 106
03/14/14	(H)	--- MEETING CANCELED ---
03/14/14	(H)	EDC AT 3:00 PM CAPITOL 106
03/14/14	(H)	--- MEETING CANCELED ---
03/17/14	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
03/17/14	(H)	Heard & Held
03/17/14	(H)	MINUTE(FIN)
03/18/14	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
03/18/14	(H)	Heard & Held
03/18/14	(H)	MINUTE(FIN)

03/18/14	(H)	FIN AT 5:30 PM HOUSE FINANCE 519
03/18/14	(H)	Heard & Held
03/18/14	(H)	MINUTE(FIN)
03/19/14	(H)	REINBOLD CHANGED FROM DP TO AM UC
03/19/14	(H)	EDC RPT CS 1DP 3NR 3AM (CHANGED)
03/24/14	(H)	FIN AT 8:30 AM HOUSE FINANCE 519
03/24/14	(H)	<Bill Hearing Postponed>
03/24/14	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
03/24/14	(H)	Heard & Held
03/24/14	(H)	MINUTE(FIN)
03/25/14	(H)	FIN AT 8:30 AM HOUSE FINANCE 519
03/25/14	(H)	<Bill Hearing Postponed>
03/26/14	(H)	FIN AT 8:30 AM HOUSE FINANCE 519
03/26/14	(H)	-- MEETING CANCELED --
03/27/14	(H)	FIN AT 8:30 AM HOUSE FINANCE 519
03/27/14	(H)	<Bill Hearing Canceled>
03/28/14	(H)	FIN AT 8:30 AM HOUSE FINANCE 519
03/28/14	(H)	<Bill Hearing Canceled>
03/31/14	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
03/31/14	(H)	Bills Previously Heard/Scheduled
04/01/14	(H)	FIN AT 8:30 AM HOUSE FINANCE 519
04/01/14	(H)	Heard & Held
04/01/14	(H)	MINUTE(FIN)
04/01/14	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
04/01/14	(H)	Heard & Held
04/01/14	(H)	MINUTE(FIN)
04/02/14	(H)	RLS TO CALENDAR PENDING REPORT
04/02/14	(H)	IN FINANCE
04/02/14	(H)	FIN AT 8:30 AM HOUSE FINANCE 519
04/02/14	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
04/02/14	(H)	Moved CSHB 278(FIN) Out of Committee
04/02/14	(H)	MINUTE(FIN)
04/03/14	(H)	FIN RPT CS(FIN) NT 1DP 5NR 4AM
04/03/14	(H)	DP: COSTELLO
04/03/14	(H)	NR: NEUMAN, THOMPSON, EDGMON, T.WILSON, STOLTZE
04/03/14	(H)	AM: GUTTENBERG, GARA, HOLMES, MUNOZ
04/07/14	(H)	TRANSMITTED TO (S)
04/07/14	(H)	VERSION: CSHB 278(FIN) AM
04/08/14	(S)	READ THE FIRST TIME - REFERRALS
04/08/14	(S)	FIN
04/08/14	(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/08/14	(S)	<Pending Referral>
04/09/14	(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/09/14	(S)	Heard & Held
04/09/14	(S)	MINUTE(FIN)
04/10/14	(S)	FIN AT 9:00 AM SENATE FINANCE 532

04/10/14 (S) Heard & Held
 04/10/14 (S) MINUTE(FIN)
 04/10/14 (S) FIN AT 1:30 PM SENATE FINANCE 532
 04/10/14 (S) Heard & Held
 04/10/14 (S) MINUTE(FIN)
 04/11/14 (S) FIN AT 1:30 PM SENATE FINANCE 532
 04/11/14 (S) Heard & Held
 04/11/14 (S) MINUTE(FIN)
 04/14/14 (S) FIN AT 1:30 PM SENATE FINANCE 532
 04/14/14 (S) Heard & Held
 04/14/14 (S) MINUTE(FIN)
 04/16/14 (S) FIN AT 1:30 PM SENATE FINANCE 532
 04/16/14 (S) Scheduled But Not Heard
 04/18/14 (S) FIN AT 1:30 PM SENATE FINANCE 532
 04/18/14 (S) Heard & Held
 04/18/14 (S) MINUTE(FIN)
 04/19/14 (S) FIN RPT SCS 5DP 1DNP 1AM NEW TITLE
 04/19/14 (S) DP: KELLY, MEYER, HOFFMAN, OLSON,
 BISHOP
 04/19/14 (S) DNP: DUNLEAVY
 04/19/14 (S) AM: FAIRCLOUGH
 04/19/14 (S) FIN AT 9:00 AM SENATE FINANCE 532
 04/19/14 (S) Scheduled But Not Heard
 04/19/14 (S) FIN AT 1:30 PM SENATE FINANCE 532
 04/19/14 (S) Moved SCS CSHB 278(FIN) Out of
 Committee
 04/19/14 (S) MINUTE(FIN)
 04/21/14 (S) TAKEN UP IN THIRD READING ON 4/21
 CALENDAR
 04/21/14 (S) VERSION: SCS CSHB 278(FIN) AM S
 04/21/14 (H) CONSIDER CONCUR MESSAGE
 04/21/14 (H) FREE CONFERENCE COMMITTEE APPOINTED
 04/21/14 (H) HAWKER(CHAIR), GATTIS, KITO III
 04/21/14 (S) WAIVE UNIFORM RULE 42(A) & (B)
 04/21/14 (S) FREE CONFERENCE COMMITTEE APPOINTED
 04/21/14 (S) MEYER (CHAIR), DUNLEAVY, HOFFMAN
 04/21/14 (S) HB278 AT 9:00 PM BUTROVICH 205
 04/21/14 (S) -- MEETING CANCELED --
 04/22/14 (H) HB278 AT 10:00 AM HOUSE FINANCE 519

WITNESS REGISTER

EDRA MORLEDGE, Staff
 Senator Kevin Meyer
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Presented a comparative sectional analysis of the House and Senate versions of HB 278.

JULI LUCKY, Staff
Representative Mike Hawker
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Assisted in the presentation of the comparative sectional analysis of the final House and Senate versions of HB 278.

DAVID TEAL, Legislative Fiscal Analyst
Legislative Finance Division
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided information to the free conference committee on HB 278.

MIKE HANLEY, Commissioner
Department of Education and Early Development (EED)
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of the free conference committee for HB 278.

LINDA THIBODEAU, Director
Office of the Director
Libraries, Archives & Museums
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of the free conference committee on HB 278.

ELIZABETH SWEENEY NUDELMAN, Director
School Finance and Facilities Section
Department of Education and Early Development (EED)
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of the free conference committee on HB 278.

SENATOR ANNA FAIRCLOUGH
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of the free conference committee on HB 278.

ACTION NARRATIVE

10:30:30 AM

CHAIR MIKE HAWKER called the meeting of the Free Conference Committee on HB 278 to order at 10:30 a.m. Present at the call to order were Representatives Gattis, Kito III, and Hawker and Senators Dunleavy, Hoffman, and Meyer. Representatives Gara, T. Wilson, Costello, Hughes, LeDoux, Kreiss-Tomkins, and Munoz and Senators Bishop, Coghill, French and Fairclough were also in attendance.

HB 278-EDUCATION

10:30:30 AM

CHAIR HAWKER announced that the only order of business would be HOUSE BILL NO. 278, "An Act increasing the base student allocation used in the formula for state funding of public education; repealing the secondary student competency examination and related requirements; relating to high school course credit earned through assessment; relating to a college and career readiness assessment for secondary students; relating to charter school application appeals and program budgets; relating to residential school applications; increasing the stipend for boarding school students; extending unemployment contributions for the Alaska technical and vocational education program; relating to earning high school credit for completion of vocational education courses offered by institutions receiving technical and vocational education program funding; relating to education tax credits; making conforming amendments; and providing for an effective date."

[Before the committee was CSHB 278(FIN)am and SCS CSHB 278(FIN)amS.]

10:33:40 AM

CHAIR HAWKER noted that the committee would be operating under Uniform Rule 42, Conference and Free Conference Committees, (a) and (b) suspended. Thus, the Uniform rules were waived and the conference committee has been granted the powers of free conference, which gives the conference committee the ability to consider all issues that are germane to the titles of the bill before the committee. He advised his intention to consider the Senate version of HB 278, which was built on the House version. He characterized these bills as creating "book ends" to the dialogue. He indicated that disagreement in policy exists between the two versions and the goal will be to bring the two

bills into accord for adoption as a final bill and brought back to the respective bodies for mutual concurrence.

10:36:34 AM

CHAIR MEYER explained the leadership as it applies to the committee. He pointed out that Representative Hawker will chair the meeting since the bill originated as a House bill. He asked staff to provide a section-by-section comparison between the House and Senate versions of the bill.

10:39:33 AM

EDRA MORLEDGE, Staff, Senator Kevin Meyer, Alaska State Legislature, directed attention to page 1 of the committee handout labeled "HB 278 Comparison," with a footer dated 4/22/2014 9:58 AM.

MS. MORLEDGE referred to Section 1, relating to jury duty postponement to a time not during the school year. Section 1 language for both bills is the same. The language in Senate Section 2 was similar to the House version for secondary school course credit through mastery not limited to core topics. The Senate version would limit high school course credit through mastery and includes core topics only, such as math, language arts, science, social studies, and world languages.

10:40:44 AM

CHAIR HAWKER asked for a definition of "secondary" versus "high school."

MS. MORLEDGE replied that "secondary school" is defined in statute as seventh through twelfth grades and "high school" is only ninth through twelfth grades.

10:41:03 AM

REPRESENTATIVE GATTIS reported that Section 1 of the House version of HB 278 was based on all subjects being tested and opined that the tests should not be limited to core areas.

CHAIR MEYER said the Senate based its decision more on cost since funding is necessary to provide students an opportunity to test out of classes although it could be expanded in the future from core areas.

10:42:06 AM

MS. MORLEDGE directed attention to House Section 3 and Senate Section 4 of HB 278. She explained that Senate Section 4 removes the reference to the High School Graduation Qualifying Exam (HSGQE) [exit exam] and requires electronic reporting by the department to the legislature and House Section 3 makes technical cleanup to the language but does not repeal the HSGQE.

CHAIR HAWKER commented that the House passed separate legislation [HB 220] to repeal the HSGQE but the Senate included the HSGQE concept in HB 278.

10:43:20 AM

MS. MORLEDGE said that House Section 4 provides language that the state may not cede any measure of autonomy or control over education standards and assessments. The Senate version did not have a similar section.

10:43:37 AM

MS. MORLEDGE directed attention to House and Senate language in Section 5, noting the House version contains technical cleanup language and requires reporting on military and associated data, which is also included in the Senate version.

CHAIR HAWKER added that the Senate Section 5 also had conforming language involving the exit examination [HSGQE] removal.

10:44:09 AM

MS. MORLEDGE noted [House version] Section 6 is technical cleanup language and [House version] Section 7 substitutes the term "language arts" for "reading and writing." This was included in the Senate version, which also includes conforming language for the HSGQE repeal.

10:44:36 AM

MS. MORLEDGE turned to Section 8 of the House version, which replaces the "star" rating with an "A-F" grading system. The Senate does not have a similar section.

The committee took a brief at-ease from 10:45 a.m. to 10:46 a.m.

10:46:21 AM

MS. MORLEDGE directed attention to page 2 of the section-by-section comparison. She related that Senate Section 7 contains three new provisions. First, it would include funding to bring every school's Internet speed up to 10 megabits per second (mbps); second, it would provide funding for personalized learning opportunity grants; and third, it would provide funding for innovative approaches to learning grants.

CHAIR MEYER commented that this language would allow schools to expand their broadband service to at least 10 mbps, which is very important in rural Alaska especially pertaining to the use of digital learning. In addition, the personalized learning opportunity grants and the innovative approaches to learning grants were items that were brought to the Senate's attention by the [Senate] Education [Standing] Committee and Senator Dunleavy.

10:47:44 AM

SENATOR DUNLEAVY explained that the personalized learning grant is the one-on-one concept that has been discussed in the past two years with the Association of Alaska School Boards and the Alaska Department of Education [and Early Development] (EED). This would put "tablets" in the hands of students and teachers to address the growing trend in education of working with online vendors to integrate technology into the actual program instead of as an add-on element. The Senate Education Standing Committee developed these changes by proposing the technology expansion and the innovative education grants. The program would allow small start-up educational grants to plan approaches that a district could endorse such as cyber schools. This is in response to an issue that sometimes occurs when people seek funding to implement ideas that are later discovered as not being well thought out. Under the grant program, a "project of promise" could be eventually brought to the legislature for further appropriation. He envisioned that districts would float concepts to the department, and if the department found the concept had merit, a small planning grant would ensue and the district would hire a contractor to fully flesh out the concept. That fleshed-out concept would go back to the department for approval, and, if approved, would be presented to the legislature as a "project of promise" for funding. Ultimately, this process could firm up projects to avoid funding concepts without merit.

CHAIR HAWKER asked for further clarification on the fiscal notes for these three components.

SENATOR DUNLEAVY answered that the one-on-one grant was funded at \$5 million and the innovative learning grant approach was funded at \$750,000 for this fiscal year. In further response, he agreed the Internet services fiscal impact was \$7.3 million.

10:51:05 AM

CHAIR MEYER interjected that he believed the learning grants would start at \$3-\$5 million. In response to a question, he clarified he was speaking about the one-on-one grants.

CHAIR MEYER related his understanding that the proposed broadband Internet services would be eligible for four-to-one matching funds from the federal government. In response to a question, he reiterated his comment related to the broadband Internet services.

10:51:42 AM

REPRESENTATIVE GATTIS offered support for technological advances, which will change how Alaska does business in the next 50 years; however, challenges for providing these grants exist. She offered her preference to consider all contractors, not just the Association of Alaska School Boards, as possible vendors for the grants.

10:52:36 AM

SENATOR HOFFMAN, regarding the Internet speed, reported that the national standard calls for 100 megabits (mbps) by 2016 or 2017.

CHAIR HAWKER acknowledged that the national target is 100 mbps rather than the 10 mbps that the Senate Section 7 proposes.

10:53:18 AM

MS. MORLEDGE directed attention to House Sections 9-10 and Senate Sections 8-9 addressing charter school application and appeal process. The House version doesn't have a similar provision to Senate Section 10, which would repeal the High School Graduation Qualifying Exam (HSGQE) [exit exam] for charter school students.

CHAIR HAWKER pointed out the House accomplished the HSGQE language change in a separate bill.

10:53:52 AM

MS. MORLEDGE turned to Section 11, which requires districts to offer the right of first refusal to charter schools to lease space, noting lease agreements shall be true to operational costs. She said this language is the same in both versions of HB 278.

MS. MORLEDGE directed attention to [House and Senate] Section 12. She explained that the Senate adopted the House language, but also added language that would require funds generated by a charter school student to include grants, appropriations, federal impact aid, and local contributions.

CHAIR HAWKER remarked that the [Senate version] is a more encompassing implementation of the same concept that was brought forward in the House version of the bill.

10:54:36 AM

MS. MORLEDGE referred to Section 13, relating that language in both [House and Senate] versions would provide a \$500 one-time per student grant for charter school start-up funds in the first year.

MS. MORLEDGE directed attention to [House] Section 15 that substitutes the term "language arts" for "reading, writing." In addition, the language would prohibit the department from spending money on "common core" standards implementation for K-12.

10:55:19 AM

MS. MORLEDGE referred back to Senate Section 14, which includes language related to a correspondence study program, individual learning plans, and student allotments.

CHAIR HAWKER asked for further clarification on the student allotment component.

CHAIR MEYER deferred to Senator Dunleavy.

SENATOR DUNLEAVY explained that [Section 14] pertains to correspondence homeschool programs, which are public school

programs that have existed for approximately 15 years educating thousands of students statewide. Some programs are district-centered programs and others are statewide programs. The change was originally proposed under SB 100. He detailed several components. First, under the program, all correspondence students must have an individual learning plan (ILP), although one component that changes is the ILP is considered to be functioning for those students who are proficient according to statewide assessments. For students who are not proficient, the teacher and parent would amend the ILP and dedicate resources to ensure that the child becomes proficient.

SENATOR DUNLEAVY turned to the second component [of Senate Section 14], noting that many homeschool correspondence program students obtain an allotment to purchase materials to support the ILP. In the past, that allotment would lapse at the end of the fiscal year. One unintended consequence has been that families rushed to spend the allotment to purchase materials for the next year before funds lapsed. Under [Senate Section 14], funding wouldn't lapse, but could accumulate for long-term planning for students who remain in the program. This could have the desired effect of keeping a family with the program, but will also have the effect funds being spent more wisely and judiciously instead of end-of-year spending. Third, the final component will change the current foundation formula funding factor for correspondence students from .80 to .90. In response to Representative Kito III, he indicated that the allotment in AS 14.03.320 is not an actual cash payment to the parent or guardian but is held by the school.

10:59:58 AM

MS. MORLEDGE related that Section 14 of the House version and Section 15 of the Senate version substitute the term "language arts" for "reading, writing." House Section 15 would add language prohibiting the EED from spending funds on "common core" standards implementation for K-12. Senate Section 16 contained the cleanup language, but did not contain the "common core" standards language, she said.

CHAIR HAWKER highlighted the committee will need to be briefed by Commissioner Hanley today on the "common core" standards issue and implementation language.

REPRESENTATIVE GATTIS explained that the House intent was that Alaskans be in control of the curriculum being taught in the state and that it would not be based on a national standard.

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Opinions

OPINION: Private school, state reimbursement: Family choice

By Jodi Taylor

Updated: May 19, 2022

Published: May 19, 2022



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Alaska parents have a legitimate right to choose the school that is the best fit for their children, even if that is a private school. There is an opportunity — which has

<https://www.adn.com/opinions/2022/05/19/opinion-private-school-state-reimbursement-family-choice/>

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Page 1 of 6

Exhibit 10
Page 1 of 6

been hiding from public view — for families to use their children’s education allotment funded through the state’s Base Student Allocation (BSA) for classes at private schools, in addition to other educational options.

In 2014, educator and then-Sen. Mike Dunleavy sponsored and carried to passage a statute that allows a parent or guardian of a correspondence study program student to use the student’s education allotment funded from the BSA to pay for classes at private schools, in addition to many other choices for accessing education. Fortunately for every parent and child stricken by COVID-19 school restrictions, Gov. Dunleavy recognizes that families are craving educational options. The guiding principle is that families have the right to determine where and how their children are educated.

Given our state’s low rankings in student outcomes and a steady stream of special interest policies, parents are finding it increasingly obvious that, at some schools, making sure their children learn enough to become successful adults is not the top priority. Now parents have more power to put the focus where it belongs!

Alaska students may sign up for a correspondence study program (which is one of four types of homeschooling in Alaska), allowing parents to oversee their children’s education while receiving reimbursement for courses from approved vendors. Thanks to Dunleavy’s 2014

statute, private schools have been added to the list of allowable vendors for parents. These are the general steps for the Correspondence School Allotment Program:

injured in military helicopter collision near Healy



2 Dunleavy says lawmakers are closer than ever to agreeing on a fiscal plan. Lawmakers aren’t so sure.



3 Anchorage Assembly takes step that could revive Holtan Hills housing project



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Around the Web



Say Goodbye to Foot Neuropathy: This Tiny De

- Parent enrolls student in a public school correspondence (“homeschool”) program.
- Parent is allocated an annual student allotment to pay for education services and products of the families’ choice.
- Parent chooses providers from approved list (including private schools) or can submit others for approval.

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- Parent pays for education, then requests reimbursement for those approved expenses to be paid from the parent’s annual student allotment.

The program reimburses parents for classes that meet the existing vetting process of the correspondence study program. Schools do not lose control of their curricula or values. In this model, BSA funding goes to parents, who may decide whether to choose a private school from a list of vendors. Some courses, those covering explicitly religious subjects, for example, would not be eligible for reimbursement under current law. Math, science, language arts, social studies, physical education, art,



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foreign languages and more can all be covered.

My two youngest school-age children attend St. Elizabeth Ann Seton (SEAS) private school. They attend full time and are also enrolled in the Anchorage School District's Family Partnership Charter School (FPCS). Next year, I will request that FPCS use funds in our correspondence study program annual student allotment to reimburse our family up to \$4,000 for each of our children. Although annual tuition at SEAS is \$6,000 for each of my children, because SEAS is an approved FPCS vendor, I will only personally have to pay the remaining balance of \$2,000 per child, which I can pay in monthly installments of \$222.22 for nine months or \$166.67 per month over the full calendar year or all at once. SEAS is the best fit for my two younger children, my middle school child attends full-time public school while my high school child attends hybrid – both private and public; and there are other options that could be the best fit for any child in Alaska.

Providing educational opportunity that best fits your child is possible.

Alaska's approach to educational choice is flexible enough to meet the diverse needs of children living in all corners of our great state. Children who are drawn toward the trades or certificate programs can avoid struggling and being bored in classes geared toward general studies when their parents build programs of learning to suit

their needs and interests. Students ready for dual enrollment in colleges of their choice while still in high school have that option, too. Families can design a

Latest



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Grace Christian stars among Alaska high



Anchorage Assembly takes step that could

program of classes that will help their children get a head-start on college or graduate high school with skills to earn a living wage!

Kids who want to see their friends in classes or on the sports field can take a hybrid approach and choose classes and athletic programs through their local public schools while taking private classes elsewhere, depending on the program that administers the BSA.

As a bonus, students enrolled in these programs generate significant savings for taxpayers. Alaska has 127,594 public school students attending school in the 2021-22 school year. According to data from The National Education Association, Alaska spent \$20,553 per student in average daily attendance in 2019-2020, yet correspondence homeschool students currently receive only the BSA, or \$5,930 each as a base depending on district (the BSA is only part of the cost per student).

If 10% of Alaska's students moved over to the Correspondence School Allotment Program, traditional public schools would reduce the burden of kids they need to educate by about 13,000 students. That would save the state tens of millions of dollars annually in variable costs of educating kids in traditional schools, while significantly increasing the dollars per student available in those schools. That's a win for all students, parents and taxpayers.

Jodi Taylor is the board chair for Alaska Policy Forum, she and her husband are the parents of six children; she's a business owner and finds joy in serving to create an environment where



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State of Alaska
DEPARTMENT OF LAW

PRESS RELEASE

Attorney General Taylor Recused from Correspondence School Allotment Advice in May

June 6, 2022

(Anchorage, AK) – As the Alaska Department of Law considers the legality of using public funds for private education costs, Alaska Attorney General Treg Taylor recused himself from all matters involving correspondence school allotments on May 21, 2022. Taylor's wife is an advocate for the idea and has recently written a column on it. Attorney General Taylor delegated the allotment review to Deputy Attorney General Cori Mills in May.

"In light of a potential conflict of interest, I recused myself from all matters involving correspondence school allotments. I want to ensure that there is no perception of bias in relation to the objective advice provided by the Department of Law on this issue of correspondence school allotments used to fund courses or tuition at a private school," said Attorney General Taylor.

The online public notice for the delegation is posted here: [Delegation of Authority to Deputy Attorney General Cori Mills - Alaska Online Public Notices \(state.ak.us\)](#)

"At the Department of Law, we have always taken our obligations in representing the State and upholding the ethics laws very seriously," said Deputy Attorney General Cori Mills. "Just as we do in any situation, we will do our best to represent the State and provide good, solid legal advice to our client agencies."

###

Department Media Contacts: Communications Director Patty Sullivan at patty.sullivan@alaska.gov or (907) 269-6368. Information Officer Sam Curtis at sam.curtis@alaska.gov or (907) 269-6379.

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lawyer.

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Delegation of Authority to Deputy Attorney General Cori Mills

This memorandum shall serve as delegation of authority to Deputy Attorney General Cori Mills to make all decisions and take all actions necessary for appropriate representation of the Department of Education and Early Development and the Office of the Governor regarding the subject matter of correspondence school allotments.

DATED: May 21, 2022

/s/Treg R. Taylor
Attorney General

cc: AAG Morgan Griffin

Attachments, History, Details

Attachments

Delegation of Authority re Correspondence School Allotments.pdf

Revision History

Created 6/6/2022 11:46:29 AM by nrdizon

Details

Department: Law
Category: Delegations of Authority
Sub-Category:
Location(s): Statewide
Project/Regulation #:

Publish Date: 6/6/2022
Archive Date: 6/5/2023


Events/Deadlines:

MEMORANDUM

State of Alaska
Department of Law

TO: Cori Mills
Deputy Attorney General

DATE: May 21, 2022

FROM: 
Treg R. Taylor
Attorney General

SUBJECT: Delegation of Authority

This memorandum shall serve as delegation of authority to Deputy Attorney General Cori Mills to make all decisions and take all actions necessary for appropriate representation of the Department of Education & Early Development and the Office of the Governor regarding the subject matter of correspondence school allotments.

cc: Morgan Griffin

State of Alaska
DEPARTMENT OF LAW

PRESS RELEASE

Deputy Attorney General's Opinion Provides Guidance to School Districts on Public Correspondence School Allotments and Private School Uses

July 25, 2022

(Juneau, AK) Today, Alaska Deputy Attorney General Cori Mills released the Department of Law's opinion on whether publicly funded correspondence schools can pay for services from private schools. The 19-page opinion found that public money may be spent for discrete materials and services from a private school when doing so supports a public correspondence education. But the Alaska Constitution does not permit public allotment funds to pay tuition for full-time enrollment.

Deputy Attorney General Mills released the opinion today to Acting Commissioner Heidi Teshner at the Department of Education and Early Development (405KB PDF).

The opinion also clarifies that none of the recent U.S. Supreme Court cases on education funding (2022's *Carson ex rel. O.C. v. Makin* and 2020's *Espinoza v. Montana Department of Revenue*) change the analysis because Alaska's constitution does not distinguish on the basis of religion but rather on the basis of private vs. public. "This conclusion is not changed by the U.S. Supreme Court's recent decisions interpreting the federal Free Exercise Clause; nor are those decisions likely to invalidate Alaska's restriction on using public correspondence allotments only for nonsectarian services and materials," Mills wrote.

The opinion provides guidance on the types of spending that are clearly constitutional, clearly unconstitutional, and those that fall into a gray area.

Mills met with reporters online today to discuss the State's opinion.

"This was a difficult question—more difficult than I originally anticipated. Fortunately, the Law department has some great legal minds that assisted in thinking through these issues. I also had great help from the framers themselves as I read through the Alaska Constitutional Convention minutes," said Deputy Attorney General Mills. "What became clear is that the framers wanted a strong public education system open to all children, and they gave the legislature a lot of flexibility in determining what that

system looked like. That flexibility includes creation of a public correspondence allotment program that reimburses certain educational expenses for public school students enrolled in the program. So, then the balancing act is determining whether you are really supplanting a public education with a private one with the backing of public dollars. Under that balancing, we know what you can't do is pay for a student's tuition to attend full-time private school. That leaves a lot of options open for school districts to allow students to fulfill their public education requirements," said Deputy Attorney General Mills.

In 2014, the legislature enacted a statute authorizing districts to "provide an annual student allotment to a parent or guardian of a student enrolled in the correspondence study program for the purpose of meeting instructional expenses for the student." The Alaska Constitution prohibits spending public funds "for the direct benefit of...a private educational institution." This led to the question of whether allotments can be spent to cover materials and services from private schools.

In the opinion's short answer, Mills writes: "The allotment program supports students enrolled in public correspondence schools by permitting a limited amount of public money to be spent for materials and services from a private vendor to fulfill a student's individual learning plan. Such spending does not, on its face, violate the Alaska Constitution's prohibition against spending public funds for the direct benefit of a private educational institution. The nature of the private educational institution providing the materials or services does not impact this conclusion. Neither the Alaska Constitution nor the statutes make any distinction between religious or non-religious educational institutions and online or in-person education."

However, the opinion continues with a clarification: "For example, the constitution does not permit supplanting public education with private school education by using public allotment funds to pay tuition for full-time enrollment in a private school."

Mills hopes that this opinion provides useful guidance to school districts as they navigate how to implement the correspondence school allotment program and provide a public education to Alaska's children.

Alaska Attorney General Treg Taylor recused himself from the opinion in May to prevent any potential for bias and to uphold the objective advice provided by the Department of Law.

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Department Media Contacts: Communications Director Patty Sullivan at patty.sullivan@alaska.gov or (907) 269-6368. Information Officer Sam Curtis at sam.curtis@alaska.gov or (907) 269-6379.

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THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Law

CIVIL DIVISION

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Juneau, Alaska 99811
Main: 907.465.3600
Fax: 907.465.2520

July 25, 2022

Heidi A. Teshner
Acting Commissioner
State of Alaska, Department of Education and Early Development
P.O. Box 110500
Juneau, AK 99811-0500

Re: Use of Correspondence School Allotments
AGO No. 2021200228

Dear Acting Commissioner Teshner:

You asked for a legal opinion addressing the ability of public correspondence school students to spend public funds in the form of allotment money on services offered by private vendors including classes presented either online or in-person to fulfill the students' public school education. You have also asked whether our analysis is affected by recent U.S. Supreme Court decisions on public funding for private religious education and whether those same decisions might invalidate Alaska's statute limiting the use of correspondence allotments to "nonsectarian services and materials."¹

I. Short Answer.

The legislature acted within its broad constitutional authority to create public correspondence schools and allotments as part of the public school system. Students enrolled in the program receive an education that is overseen by public school correspondence teachers and that meets state educational requirements. The allotment program supports students enrolled in public correspondence schools by permitting public money to be spent for certain materials and services from a private vendor to fulfill a student's individual learning plan. Such spending *does not*, on its face, violate the Alaska Constitution's prohibition against spending public funds for the direct benefit of a private educational institution. The nature of the private educational institution providing the materials or services does not impact this conclusion. Neither the Alaska Constitution

¹ *Carson ex rel. O.C. v. Makin*, ___ U.S. ___, 142 S.Ct. 1987 (2022); *Espinoza v. Montana Dep't of Revenue*, ___ U.S. ___, 140 S.Ct. 2246 (2020); AS 14.03.310(b).

nor the statutes make any distinction between religious or non-religious educational institutions and online or in-person education.

Although the constitutionality of the program as a whole is not in question, the Alaska Constitution does establish boundaries on how public money can be spent under the program. For example, the constitution does not permit supplanting public education with private school education by using public allotment funds to pay tuition for full-time enrollment in a private school. This opinion provides guidance on the types of spending that are clearly constitutional, clearly unconstitutional, and those that fall into a gray area. This opinion also clarifies that none of the recent U.S. Supreme Court cases related to this topic change the analysis.

II. Background: The Alaska Constitution mandates a public education system and tasks the legislature with designing it.

The Alaska Constitution addresses education at article VII, section 1:

The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

The Alaska Supreme Court has observed that in drafting this provision the framers “wished the constitution to support and protect a strong system of public schools.”² They sought to do so without incidentally preventing the state “from providing for the health and welfare of private school students, or from focusing on the special needs of individual residents.”³ Thus the framers designed the constitution “to commit Alaska to the pursuit of public, not private education, without requiring absolute governmental indifference to any student choosing to be educated outside the public school system.”⁴ As stated by one of the framers during deliberations on the education section:

Many methods were sought out to provide and protect for the future of our public schools. We had to recognize that the public schools were our responsibility and that it was our duty to provide for all children of the state in matters of education. The Convention will note that in Section 1 that the Committee has kept a broad concept and has tried to keep our schools unshackled by constitutional road

² *Sheldon Jackson Coll. v. State*, 599 P.2d 127, 129 (Alaska 1979).

³ *Id.* (citations omitted).

⁴ *Id.*

blocks. May I draw to your attention further the fact that we have used the words to ["establish and maintain by general law." This is a clear directive to the legislature to set the machinery in motion in keeping with the constitution and whatever future needs may arise.⁵

In line with the Alaska Constitution's directive, the legislature enacted statutes establishing a public school system.⁶ In the 1990s, school districts began developing public correspondence schools; under statute these were supervised by DEED.⁷ Correspondence schools were also referenced during the constitutional convention, with delegates discussing correspondence programs as being part of the public education system in territorial days.⁸ In today's correspondence schools, students receive a public education oftentimes outside of the traditional neighborhood schools.⁹ Parents or guardians are primarily responsible for teaching material that they select from a list of vendors approved by the school district.¹⁰ Notwithstanding the homeschool environment and the heightened role of parents and guardians, correspondence schools are public schools.¹¹ Correspondence schools are publicly funded, they are subject to state regulatory oversight, and their students are held to state educational standards.¹² DEED or

⁵ 2 Proceedings of Alaska Constitutional Convention 1514 (Jan. 9, 1956).

⁶ AS 14.03.010 ("There is established in the state a system of public schools to be administered and maintained as provided in this title.").

⁷ See 2005 Inf. Op. Att'y Gen. (Sept. 20; 663-05-0233), 2005 WL 2751244, at *1; AS 14.07.020(9).

⁸ 2 Proceedings at 1525 (delegate Jack Coghill said he was "familiar with the Calvert course, that the Territorial Department of Education, that is one of their recognized correspondence courses for outlying areas, and if any family on a CAA remote station or someone on a remote part of the Yukon River, etc., would want to further the education of their children, write to the Commissioner of Education and they are referred to the Calvert course, and in higher institutions it would be the correspondence courses from the University of Nebraska").

⁹ See 2005 Inf. Op. Att'y Gen. (Sept. 20; 663-05-0233), 2005 WL 2751244, at *1.

¹⁰ See *id.*; 4 AAC 33.421(d).

¹¹ See AS 14.60.010(6) (defining "public schools" to "include elementary schools, high schools, citizenship night schools for adults, and *other public educational institutions that may be established*" (emphasis added)); 2005 Inf. Op. Att'y Gen. (Sept. 20; 663-05-0233), 2005 WL 2751244, at *3.

¹² AS 14.07.020(a)(9) (providing that DEED shall "exercise general supervision over elementary and secondary correspondence study programs offered by municipal school districts or regional educational attendance areas; the department may also offer and make available to any Alaskan through a centralized office a correspondence study

the school districts must provide correspondence students with individual learning plans that among other things, set out a course of study, provide for an assessment plan (that includes statewide assessments), and provide for monitoring by a certificated teacher assigned to the student.¹³

In 2014, the legislature enacted a statute authorizing districts to “provide an annual student allotment to a parent or guardian of a student enrolled in the correspondence study program for the purpose of meeting instructional expenses for the student.”¹⁴ These student allotments were created with significant strings attached. The statute provides that a student allotment may be used to “purchase nonsectarian services and materials from a public, private, or religious organization,” provided the purchase meets several criteria.¹⁵ Namely, the services and materials must be required for a course of study in the student’s individual learning plan; be district approved, appropriate, and aligned with state standards; comply with statutory prohibitions on advocating partisan, sectarian, or denominational doctrines; comply with standards on nondiscriminatory and unbiased textbooks and instructional materials; and “otherwise support a public purpose.”¹⁶ Although only “nonsectarian services and materials” are permitted, purchases can be made from a “public, private, or religious organization.”¹⁷ “Textbooks, equipment, and other curriculum materials . . . are property of the district,” and when a child leaves the correspondence program, non-consumable materials and unspent funds are returned.¹⁸

program”); 4 AAC 33.410 (explaining that the purpose of regulations is to ensure that the program standards are consistent with statewide curriculum, instruction, and student assessment standards, ensure that public money is spent in the public interest, and establish reporting requirements for districts enrolling out-of-district or part-time students); 4 AAC 33.420 (requiring department approval for correspondence programs); 4 AAC 33.421(b) (requiring strategies to help students meet statewide standards); 4 AAC 33.426 (requiring enrollment in core courses).

¹³ AS 14.03.300(a). AS 14.03.300(a) states that either a “district or the department that provides a correspondence study program” shall provide an individual learning plan. While DEED previously offered a statewide correspondence study program, that program no longer exists. All current correspondence study programs are district-provided.

¹⁴ AS 14.03.310(a).

¹⁵ AS 14.03.310(b).

¹⁶ *Id.*

¹⁷ AS 14.03.310(a).

¹⁸ 4 AAC 33.422(b); AS 14.03.310(d)(2).

III. Analysis.

- A. **The plain language of the Alaska Constitution grants broad authority to the legislature to establish a public school system—but with an important limitation that public funds are not used for the direct benefit of private educational institutions.**

As set forth above, the Alaska Constitution provides that the legislature shall establish a system of public schools and that no public funds shall be paid “for the direct benefit” of “any religious or other private educational institution.”¹⁹ To construe this, I follow the Alaska Supreme Court’s roadmap for interpreting constitutional provisions:

[W]e first look to the plain meaning and purpose of the provision and the intent of the framers. Legislative history and the historical context assist in our task of defining constitutional terms as understood by the framers. While we have also said that we consider precedent, reason, and policy, policy judgments do not inform our decision-making when the text of the Alaska Constitution and the framers’ intent as evidenced through the proceedings of the Constitutional Convention are sufficiently clear.²⁰

Constitutional provisions are not interpreted “in a vacuum”; instead, “the document is meant to be read as a whole with each section in harmony with the others.”²¹ “Terms and phrases chosen by the framers are given their ordinary meaning as they were understood at the time”²²

The framers wanted to give the legislature broad authority to fulfill its obligation of establishing and maintaining a public school system.²³ In exercising this flexibility, the legislature has allowed public correspondence schools to be established as part of the public school system. As we have experienced during the COVID-19 pandemic, there are many ways to deliver a public education and to satisfy the constitution’s obligation. We have also seen technology and its use in our public education system change dramatically over the last 50 years. In many ways, the public education system today looks very different from the public education system when the framers wrote the constitution. Thankfully, the framers of the Alaska Constitution knew that this flexibility would be

¹⁹ Alaska Const. art. VII, § 1.

²⁰ *Forrer v. State*, 471 P.3d 569, 583 (Alaska 2020) (citations and internal quotation marks omitted).

²¹ *Id.* at 585.

²² *Id.*

²³ *See Sheldon Jackson Coll.*, 599 P.2d at 129.

necessary so that the legislature could keep up with “whatever future needs may arise.”²⁴ Public correspondence school allotments are just one way in which the legislature has determined to meet the public education needs of Alaskans. As enacted in statute, the public correspondence allotments are facially constitutional.

The Alaska Constitution, however, does not only discuss what the legislature can do, but also includes a limiting sentence at the end of the education clause. The legislature cannot spend “public funds” “for the direct benefit” of a “private educational institution.”²⁵ Before going further, it is important to note that the constitution does not distinguish between religious and non-religious or online and in-person institutions. The constitution distinguishes between public and private “educational institutions.” The term “educational institution” should be given the ordinary meaning that the framers would have understood at the time. One common dictionary definition of the term is that it simply means “a school.”²⁶ Accordingly, it is not likely that the term was intended to include all private organizations, companies, or vendors.²⁷ Still, the framers understood the term “educational institution” to mean more than merely the equivalent of a traditional public school, including also, for example, programs meeting vocational, rehabilitative, or special education needs.²⁸ That is not to say that the framers intended “educational institution” to capture any and all entities that provide instruction of some form (such as those only providing tutoring or single-subject extracurriculars). Rather, the framers were focused on providing “all children . . . the opportunity of schools,”

²⁴ 2 Proceedings at 1514.

²⁵ Alaska Const. art. VII, § 1.

²⁶ See *Educational Institution*, BLACK’S LAW DICTIONARY (11th ed. 2019) (defining “educational institution” as “[a] school, seminary, college, university, or other educational facility, though not necessarily a chartered institution”) This dictionary definition is not contemporaneous with the drafting of the constitution, but there is no reason to believe the term’s meaning has changed dramatically over the years. The Alaska Supreme Court has often referenced dictionary definitions when interpreting the constitution. See, e.g., *Dunleavy v. Alaska Legis. Council*, 498 P.3d 608, 614 n.23 (Alaska 2021) (citing Black’s Law Dictionary); *Forrer*, 471 P.3d at 586, 596 (citing dictionaries contemporaneous with constitution).

²⁷ See, e.g., 2 Proceedings at 1514 (“This was not intended and does not prohibit the contracting or giving of services to the individual child, for that child benefits as his part of society.”).

²⁸ See Alaska Const. art. VII, § 1 (requiring the creation of “a system of public schools,” but also allowing the legislature to establish “other public educational institutions”); 2 Proceedings at 1514.

while avoiding government aid to education outside of those public schools.²⁹ Applying this context to public correspondence school allotments, the primary area of potential concern is allotments (which are public funds) paying for classes, whether online or in-person, at private schools that provide educational experiences that could effectively stand in the place of those offered by public schools and educational programs.

This leads to the more difficult question—what does “for the direct benefit” mean? As lawyers often have to say, “it depends.”

The Alaska Supreme Court’s 1979 decision in *Sheldon Jackson College v. State* is the leading precedent interpreting the constitution’s direct benefit clause.³⁰ In *Sheldon Jackson*, the court held that state tuition grants to students at private colleges violated the Alaska Constitution.³¹ There, state statute established a program to provide grants designed to make private college in Alaska more affordable by paying the difference between state and private tuition.³² The court found that the grant program violated the constitution’s “direct benefit” prohibition because the tuition payments were substantial and directly benefitted the private colleges, with the students being “a conduit for the transmission of state funds.”³³

The court reviewed the minutes of the Alaska Constitutional Convention to assess the breadth of the direct benefit prohibition.³⁴ As the court explained, the framers’ rejection of two proposed amendments sheds light on their intent. First, the framers rejected an amendment that would have deleted the direct benefit prohibition entirely.³⁵ The proponent argued that the section was unnecessary because the establishment clause and the prohibition on expenditure of public funds for private purposes accomplished the same objective. In the court’s view, by rejecting that amendment it was “clear that [the

²⁹ See 2 Proceedings at 1514; *Sheldon Jackson Coll.*, 599 P.2d at 130 (identifying the “core of the concern” in the direct benefit prohibition).

³⁰ The court issued one previous case interpreting the constitutional provision in *Matthews v. Quinton*, 362 P.2d 932 (Alaska 1961) where it held that providing free public transportation to students attending private schools violated the constitution as a direct benefit to religious or other private schools. Later, the court in *Sheldon Jackson* called into question the “continuing vitality” of its reasoning in *Matthews*. *Sheldon Jackson Coll.*, 599 P.2d at 130 n.20.

³¹ *Sheldon Jackson Coll.*, 599 P.2d at 132.

³² *Id.* at 128.

³³ *Id.* at 130–31.

³⁴ *Id.* at 129.

³⁵ *Id.*

framers] wished the constitution to support and protect a strong system of public schools.”³⁶ But the framers also rejected a second proposed amendment that would have taken the prohibition further—barring the use of public funds for even an “indirect” benefit to religious or other private schools.³⁷ As the court explained, by rejecting the “indirect” language, “the delegates to Alaska’s Constitutional Convention made it abundantly clear that they did not wish to prevent the state from providing for the health and welfare of private school students, or from focusing on the special needs of individual residents.”³⁸ In fact, the framers also discussed the concept of contracting with private institutions and that eliminating the ability to contract for public services would take the prohibition too far.³⁹ In the end, “Article VII, section 1 was thus designed to commit Alaska to the pursuit of public, not private education, without requiring absolute governmental indifference to any student choosing to be educated outside the public school system.”⁴⁰

The court identified three criteria to weigh in determining whether a state program directly benefits a religious or other private school in violation of the Alaska Constitution. First, there appears to be a requirement of “neutrality rather than hostility from the state” toward private schools, and “thus the breadth of the class to which statutory benefits are directed is a critical area of judicial inquiry.”⁴¹ On this point, providing police and fire protection to all schools regardless of affiliation has been considered constitutional, but “a benefit flowing only to private institutions, or to those served by them, does not reflect the same neutrality and non-selectivity.”⁴² Second, “the nature of the use to which the public funds are to be put” is a major consideration. Here, the court identified “the core of the concern expressed in the direct benefit prohibition

³⁶ *Id.*; see 2 Proceedings at 1513–25 (discussing whether to add “or indirect” after “direct” in art. VII, sec. 1). The option of adding “or indirect” was rejected because it “would reach out to infinity and that such a provision would deprive certain students of some benefits which should be available through State aid.” 1966 Op. Att’y Gen. No. 3 at 2 (Apr. 22).

³⁷ *Sheldon Jackson Coll.*, 599 P.2d at 129.

³⁸ *Id.*

³⁹ 2 Proceedings at 1515 (“Now when you get into the wording ‘or indirect’, then you are getting into an argument as to whether you can even contract with a private institution for the rendering of certain public services because they might say they might make a profit.”); see also *id.* at 1519 (even the proponent of the amendment to add “indirect” recognized the need to potentially contract with private institutions).

⁴⁰ *Sheldon Jackson Coll.*, 599 P.2d at 129.

⁴¹ *Id.* at 130.

⁴² *Id.*

involves government aid to Education conducted outside the public schools.”⁴³ This is distinguished from incidental public support for the health and welfare of private school students.⁴⁴ The court noted that “analogous distinction” was drawn in establishment clause cases at that time, where the question was whether a statute impacts secular educational functions that are separate from religious instruction.⁴⁵ Third, courts must consider “the magnitude of the benefit conferred.”⁴⁶ In this consideration, a “trivial, though direct, benefit may not arise to the level of a constitutional violation, whereas a substantial, though arguably indirect, benefit may.”⁴⁷ Finally, the court emphasized that although a direct transfer of money from the state to a private school would make a program “constitutionally suspect,” simply moving funds through an “intermediary” would not make an “otherwise improper expenditure of public monies” constitutional.⁴⁸

In applying these principles to the private college tuition program, the court in *Sheldon Jackson* found that the program unconstitutionally provided a direct benefit to private schools. First, the beneficiaries of the program were comprised “only of private colleges and their students” with the primary beneficiaries being the private colleges. “Unlike a statute that provides comparable dollar subsidies to all students” the only incentive created by the tuition program was to go to a private college.⁴⁹ Second, the tuition program was essentially a subsidy for education provided by a private college which raised “fully the core concern of the direct benefit provision.”⁵⁰ The “mandate” of article VII is “that Alaska pursue its educational objectives through public educational institutions.”⁵¹ Third, the magnitude of the benefits provided by the tuition program was substantial—without the grants the private colleges experienced a drop in enrollment, faculty, income, and curriculum offerings.⁵² Finally, the court explained that the tuition

43 *Id.*

44 *Id.*

45 *Id.*

46 *Id.*

47 *Id.*

48 *Id.* at 130, 132.

49 *Id.* at 131.

50 *Id.*

51 *Id.*

52 *Id.* at 131–32.

program's direct benefit violation was not avoided merely because the grants were given to students rather than directly to the private colleges.⁵³

B. Since the *Sheldon Jackson* decision, the Department of Law has interpreted the direct benefit clause in several legal opinions.

The Department of Law has considered the Alaska Constitution's direct benefit prohibition on several occasions. Predictably, the department's conclusion on any particular question is driven by facts related to who would benefit from the payments and by how much.

For example, the department has provided advice on a spectrum of issues related to state assistance to private educational institutions. The department advised that grants or loans made directly to named private institutions would violate the constitutional prohibition.⁵⁴ But other forms of assistance required a more nuanced analysis. The department advised that research grants likely could be made to private educational institutions so long as public funds were not used to directly aid educational programs and the research grant programs were neutral in that both public and private schools could competitively bid for them. General scholarship or tuition grant programs likely would be permitted for students attending an Alaska public or private postsecondary institution if they are based on a fixed sum or actual tuition costs, whichever was less, the maximum grant does not have a direct relationship to tuition charged by private schools, and the grant is meaningfully less than tuition. And a tax credit program that applied to contributions to Alaska educational institutions "would undoubtedly be struck down" if it were structured as a full, one-for-one credit; but it may be permissible if the amount were limited to a few thousand dollars and the benefit could be applied to a broad class of organizations.⁵⁵

The department has emphasized the distinction between funds that support a private institution's educational activities compared to supporting other operations. For example, the department concluded that a grant to a private college to operate a television translator station as part of a television training program would likely be unconstitutional

⁵³ *Id.* at 132 (quoting *Wolman v. Essex*, 342 F. Supp. 399, 415 (S.D. Ohio), *aff'd mem.*, 409 U.S. 808 (1972)).

⁵⁴ 2008 Inf. Op. Att'y Gen. (May 13; 883-08-0119), 2008 WL 4277529, at *5-6 (grant of \$300,000 to a private college); 2007 Inf. Op. Att'y Gen. (June 13; 883-07-0071), 2007 WL 2333368, at *1-3 (grant of \$50,000 to a private religious school); 2000 Inf. Op. Att'y Gen. (Jan. 12; 661-97-0624); 2000 WL 34246955, at *8-9 (Alaska Industrial Development and Export Authority loan for expanding private religious school; also noting establishment clause concerns).

⁵⁵ 1981 Inf. Op. Att'y Gen. (Mar. 9; 663-81-0379), 1981 WL 38896, at *1-2.

because the purpose of the grant was to support an educational training program.⁵⁶ But grant funds likely could be provided to a private college for the sole purpose of producing programs for broadcast and distribution and not to support educational activities.⁵⁷

And the department has noted the importance of identifying the class primarily benefited by the public funds, with programs that can benefit both public and private institutions less likely to implicate direct benefit concerns. In 1985, for example, the department noted that the state's student loan program that broadly applied on equal terms to students attending either public or private colleges raised no direct benefit issue.⁵⁸ Still, in 1987 the department recommended vetoing a bill that would have allowed tax credits (in some instances up to \$100,000) for contributions to either public or private colleges because it would have the effect of using public funds to support private schools.⁵⁹

The department has also addressed the direct benefit implications of allowing private school students to take public correspondence classes.⁶⁰ The department advised that the state correspondence school could allow private school students to take public correspondence classes as long as the state did not subsidize the cost of the services provided to private schools.⁶¹ The department explained that private students needed to meet public correspondence admission requirements, including minimum enrollment status.⁶² Moreover, if the state suspected that a private school was encouraging widespread enrollment by its students in the state correspondence program to meet its education responsibilities, the department advised that the enrollment guidelines be reviewed to avoid constitutional issues.⁶³ Ultimately, if a private school began eliminating classes and directing students to enroll in public correspondence schools, the "appearance and substantive effect would be that [the correspondence school], with state

⁵⁶ 1981 Inf. Op. Att'y Gen. (Sept. 9; 883-96-0063), 1981 WL 38755, at *1.

⁵⁷ 1981 Inf. Op. Att'y Gen. (Oct. 20; J-66-114-82), 1981 WL 38821, at *1.

⁵⁸ 1985 Inf. Op. Att'y Gen. (Dec. 12; 366-189-84), 1985 WL 70231, at *3 n.6.

⁵⁹ 1987 Inf. Op. Att'y Gen. (May 29; 883-87-0033), 1987 WL 121123, at *1. Given the fairly light analysis in this 1987 informal opinion, it is difficult to tell whether the department would come to the same conclusion today. The bill at issue appeared to have a neutral application between public and private institutions, but it also would have allowed private school contributions to be used for substantial credits against taxes owed to the state (up to \$10,000 or \$100,000 depending on the form of tax). *Id.* at *1 & n.2.

⁶⁰ 1993 Inf. Op. Att'y Gen. (Mar. 18; 663-93-0179), 1993 WL 595773, at *1.

⁶¹ *Id.* at *5-6.

⁶² *Id.*

⁶³ *Id.*

dollars, was providing the curriculum and teaching for a private school” contrary to the “core of the prohibition against payment of public funds directly benefitting private educational institutions.”⁶⁴

C. Using public correspondence school allotments to purchase discrete services or materials is likely constitutional.

There is a spectrum of expenditures that carry a low risk of violating the Alaska Constitution. For example, there is a reasonable legal basis to conclude that allotments could be used to pay for high school correspondence students to attend college classes at *public or private* postsecondary institutions. That is because both public and private colleges charge for tuition, making public funds operate neutrally between the two forms of institutions. And supplementing a public correspondence education with college classes supports a student’s public education by providing an advanced curriculum not otherwise available at public schools. Moreover, using allotments to fund private tutoring as authorized by existing state regulation,⁶⁵ or extracurricular activities such as swimming lessons, attendance at music or drama performances, or participation in academic or athletic competitions likewise carry a lower risk of violating the direct benefit prohibition. These activities support and supplement rather than supplant a student’s public correspondence education.

There is also a reasonable legal basis to permit the expenditure of a portion of a correspondence student’s allotment on certain materials obtained from a private educational institution subject to the limitations on the nature of the materials set out in the correspondence allotment statute.⁶⁶ The statute restricts the use of allotments to services and materials that are required for a course of study under an individualized learning plan, and it requires that textbooks, services, and other curriculum materials be approved by the district, be appropriate to the student, align with state standards, comply with state law restrictions on discrimination and partisan, sectarian, and denominational advocacy, and otherwise support a public purpose.⁶⁷

While the purchase of these services or materials may incidentally benefit the private institutions, the expenditures are likely to be relatively insubstantial and they

⁶⁴ *Id.* at *5. The department has also advised that part-time enrollment by private school students in public schools probably did not violate article VII, sec. 1, although that conclusion might be different if the private school’s very existence depended on students enrolling part-time in public schools. 1993 Inf. Op. Att’y Gen. (June 24; 663-93-0394), 1993 WL 593219, at *2.

⁶⁵ 4 AAC 33.421(i).

⁶⁶ AS 14.03.310.

⁶⁷ AS 14.03.310(b).

primarily support district-supervised public correspondence instruction and thus do not implicate the core constitutional concern of using public funds to aid private education.

D. Using public correspondence school allotments to pay most or all of a private educational institution's tuition is almost certainly unconstitutional.

In contrast to paying for discrete course materials and services, using the student allotments to pay for the tuition of a student being educated full-time at a private institution would be highly unlikely to survive constitutional scrutiny. Spending public funds in this manner would appear to violate the plain language of the constitutional prohibition against using public funds to pay for a direct benefit to a private school. It would also be contrary to the purpose of the constitutional provision, which was to commit the state to a strong system of public education. Likewise, simply placing the public money in another person's hands—such as a parent or guardian in a correspondence school program—so that the person can deliver the money to a private educational institution to pay tuition is irrelevant to the analysis. As the Alaska Supreme Court noted in *Sheldon Jackson*, “merely channeling the funds through an intermediary will not save an otherwise improper expenditure of public monies.”⁶⁸ This is also why the Department of Law has consistently advised legislators and agencies that school voucher programs allowing parents to pay for public or private schools are not permitted under the Alaska Constitution—the framers were clearly concerned about where the money ultimately ended up, not the means by which it got there.

E. The space in between: there is likely room under the constitution for the correspondence school program to permit expenditure of allotments on individual classes provided by private institutions where the educational experience supports rather than supplants the child's home-based public education.

Public correspondence school allotments may, under certain circumstances, be used consistently with the Alaska Constitution to pay for the costs of the materials and services for a student to attend certain classes at a private school as part of fulfilling their public school correspondence program. The relevant circumstances must be responsive to the constitution's plain language prohibition on using public money for the direct benefit of a private institution as well as the constitution's requirement that public schools “be free from sectarian control” and “open to all children of the State.”⁶⁹

The constitution granted the legislature broad authority and flexibility in establishing a public education system. Categorically rejecting the ability of the

⁶⁸ *Sheldon Jackson Coll.*, 599 P.2d at 130.

⁶⁹ Alaska Const. art. VII, § 1.

legislature to permit, in some circumstances, spending on a class offered by a private school as part of an established public school program would fail to respect the legislature's broad authority. Indeed, the Alaska Supreme Court has noted "[t]he need for flexibility in providing educational services," and it has "approved a legislative enactment designed to ensure that 'Alaska schools might be adapted to meet the varying conditions of different localities.'" ⁷⁰ Additionally, taking an approach that too strictly limits the legislature's authority could have disparate impacts geographically in a state with vast rural areas. If, for example, a community was unable to get qualified teachers to come out to the public school, the framers provided space for the legislature to come up with creative solutions for ensuring all children in Alaska have access to a public education.

In assessing the likely constitutionality of any particular scenario, it is helpful to look carefully at the purpose for spending a portion of an allotment on a class offered by a private educational institution as well as the requirements in the statute that the payment go towards "materials and services." If the purpose is to enhance or support the home-based correspondence school education guided by a parent or guardian with oversight from a public correspondence teacher,⁷¹ there is a strong argument that spending for this purpose is permissible. It supports the legislatively created correspondence program's objectives and it is not intended to supplant the student's public education or to provide a direct benefit to a private educational institution. But if attendance in private school classes is, for example, in response to a private school encouraging parents to enroll in a public correspondence school and then use public allotments to offset the cost of private tuition, there would be a significant likelihood that the use of allotments would be found unconstitutional. Similarly, consideration of the magnitude of the spending is important. Using allotment money for one or two classes to support a public correspondence school program is likely constitutional, whereas using public school allotment money to pay for most or all of a private school's tuition would not be.

F. Developments in the interpretation of the U.S. Constitution's Free Exercise Clause do not alter Alaska's direct benefit prohibition or correspondence allotment statutes.

The U.S. Supreme Court has interpreted the federal Free Exercise Clause as requiring strict scrutiny of state laws that provide public assistance to private secular

⁷⁰ *Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.2d 793, 803 (Alaska 1975) (citing *Macauley v. Hildebrand*, 491 P.2d 120, 122 (Alaska 1971)). In *Hootch*, the Court noted that the Alaska Constitution's education clause "appears to contemplate different types of educational opportunities including boarding, correspondence and other programs." *Id.*

⁷¹ See 4 AAC 33.421(a), (c).

schools but deny assistance to otherwise eligible private religious schools.⁷² In the 2020 decision *Espinoza v. Montana Department of Revenue*, the Court held that a Montana state law that provided tuition assistance for children to attend private secular schools, and not religious schools, failed to survive a strict scrutiny analysis and violated the Free Exercise Clause.⁷³ Likewise, this year the Court held in *Carson ex rel. O.C. v. Makin* that a Maine law violated the Free Exercise Clause because it permitted public funds to be spent for tuition assistance at private nonsectarian schools but not at private religious schools.⁷⁴ Both decisions emphasized, however, that a “State need not subsidize private education.”⁷⁵ Their interpretations of the Free Exercise Clause do not alter the Alaska Constitution’s direct benefit prohibition, which applies equally to religious and non-religious schools. Moreover, because correspondence allotments are used to purchase services and materials for a student’s public, not private, education, it is unlikely that the Free Exercise Clause invalidates the correspondence allotment statutes’ requirement that purchases be “nonsectarian.”⁷⁶

1. The recent cases do not overrule the Alaska Constitution’s direct benefit prohibition.

The federal constitution’s Free Exercise Clause “ ‘protects religious observers against unequal treatment’ and against ‘laws that impose special disabilities on the basis of religious status.’ ”⁷⁷ It does not require that a state use its funds to support private education.

The Alaska Constitution’s direct benefit prohibition applies equally to secular and religious private schools.⁷⁸ It is therefore very likely that the direct benefit prohibition would survive a facial challenge under *Carson* and *Espinoza*. In addition, Alaska’s correspondence allotment statutes and regulations allow purchases from “a public, private, or religious organization,”⁷⁹ guarding against discrimination against otherwise eligible vendors merely because of their religious affiliation.

⁷² See *Espinoza*, 140 S.Ct. at 2254–57; *Carson ex rel. O.C.*, 142 S.Ct. at 1997–98.

⁷³ *Espinoza*, 140 S.Ct. at 2262.

⁷⁴ *Carson ex rel. O.C.*, 142 S.Ct. at 1997–2002.

⁷⁵ *Id.* at 2000 (quoting *Espinoza*, 140 S.Ct. at 2261).

⁷⁶ AS 14.03.310(b).

⁷⁷ *Espinoza*, 140 S.Ct. at 2254 (quoting *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. ___, 137 S.Ct. 2012, 2021 (2017)).

⁷⁸ Alaska Const. art. VII, § 1.

⁷⁹ See, e.g., AS 14.03.310; 4 AAC 33.421, .422.

Moreover, you asked specifically if the Court's recent reaffirmation of its holding in *Zelman v. Simmons-Harris*⁸⁰ undermines the Alaska Supreme Court's interpretation of the Alaska Constitution's direct benefit prohibition in *Sheldon Jackson*. In *Zelman*, the U.S. Supreme Court held that an Ohio school voucher program that provided tuition aid for students to attend participating public or private schools of their parent's choosing did not violate the Establishment Clause.⁸¹ Both religious and nonreligious schools in the district could participate, as well as public schools in adjacent districts.⁸² In holding that the voucher program did not violate the Establishment Clause, the Court reasoned that the program provided benefits to a wide spectrum of individual recipients without regard to religion and permitted "individuals to exercise genuine choice among options public and private, secular and religious."⁸³ The program was one "of true private choice."⁸⁴ Citing *Zelman*, the Court in *Carson* noted that "a neutral benefit program in which public funds flow to religious organizations through the independent choices of private benefit recipients does not offend the Establishment Clause."⁸⁵

Zelman is unlikely to move the needle on the Alaska Supreme Court's interpretation of the state constitution. For one, the Alaska Supreme Court's ruling in *Sheldon Jackson* turned on the interpretation and application of the Alaska Constitution's public education clause; it was not a federal Establishment Clause case.⁸⁶ And while the Alaska Supreme Court discussed then-current Establishment Clause cases, it did so by way of analogy and to draw "generalizations."⁸⁷ Ultimately, the court's analysis centered on Alaska's "apparently unique" constitutional prohibition on using public funds for the direct benefit of any private school, religious or not.⁸⁸

⁸⁰ *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002).

⁸¹ *Id.* at 662–63.

⁸² *Id.* at 654.

⁸³ *See id.* at 662.

⁸⁴ *Id.*

⁸⁵ *Carson ex rel. O.C.*, 142 S.Ct. at 1997; *see also Espinoza*, 140 S.Ct. at 2254 (citing *Zelman* and noting that an Establishment Clause challenge to Montana's scholarship program would be unavailing "because the government support makes its way to religious schools only as a result of Montanans independently choosing to spend their scholarships at such schools").

⁸⁶ *Sheldon Jackson Coll.*, 599 P.2d at 129–32.

⁸⁷ *See id.* at 129–30.

⁸⁸ *See id.*

Moreover, Alaska, like many other states, does not have a school voucher program similar to that in *Zelman*. Nor would it be likely that such a program could be established without violating the Alaska Constitution's direct benefit prohibition. Public correspondence schools with student allotments are not analogous to the vouchers in *Zelman*. And even still, the parent or guardian role in spending public correspondence allotments does not rise to the level of "true private choice" that appeared in *Zelman*'s Establishment Clause analysis. In spending correspondence allotments, parents and guardians purchase services and materials to support a student's public correspondence education. The purchases must align with a student's individual learning plan developed with a certificated public teacher; the services and materials must be approved by districts and comply with state law and curriculum standards; and even after allotments are disbursed, unspent funds and unconsumable materials can be recovered by the districts.⁸⁹ It is not likely that *Zelman* or the U.S. Supreme Court's recent citations to it would alter the Alaska Supreme Court's interpretation of the state constitution in *Sheldon Jackson*.

2. The free exercise ruling in *Carson* does not invalidate the requirement that correspondence allotments be used only for "nonsectarian" services and materials.

Alaska's correspondence allotment statute provides in part that a "parent or guardian may purchase *nonsectarian* services and materials from a public, private, or religious organization with a student allotment."⁹⁰ Textbooks, services, and other curriculum materials, as well as the course of study, must also comply with a separate statutory prohibition against partisan, sectarian, or denominational doctrines advocated in a public school during the hours the school is in session.⁹¹ You asked if the correspondence allotment statute's "nonsectarian" requirement violates the Free Exercise Clause as recently applied in *Carson*.

In *Carson*, the Court held that Maine's "'nonsectarian' requirement for its otherwise generally available tuition assistance payments violates the Free Exercise Clause."⁹² The Court explained that "[r]egardless of how the benefit and restriction are described, the program operates to identify and exclude otherwise eligible schools on the basis of their religious exercise."⁹³ But *Carson* did not address constraints on

⁸⁹ AS 14.03.310(b), (d); 4 AAC 33.422(b).

⁹⁰ AS 14.03.310(b) (emphasis added).

⁹¹ AS 14.03.090 ("Partisan, sectarian, or denominational doctrines may not be advocated in a public school during the hours the school in session. A teacher or school board violating this section may not receive public money.")

⁹² *Carson ex rel. O.C.*, 142 S.Ct. at 2002.

⁹³ *Id.*

expenditures made solely for public education. Indeed, the Court was unpersuaded by the argument that Maine was providing the “rough equivalent of the public school education that Maine may permissibly require to be secular.”⁹⁴ The Court explained that the Maine statute “does not say anything like that”; there was “no suggestion that the ‘private school’ [recipients] must somehow provide a ‘public’ education”; and there were “numerous and important” differences between the private schools eligible to receive tuition assistance and Maine public schools, including open admissions, a “comprehensive, statewide system of learning results,” “parameters for essential instruction,” and “annual state assessments in English, language arts, mathematics, and science.”⁹⁵

In contrast, Alaska’s correspondence program is part of the public school system. This conclusion is supported by the existence of public funding, the state’s regulatory oversight, and the statutory requirements for students to meet state educational standards.⁹⁶ Correspondence allotments are thus public funds used for public education, falling outside of the ruling in *Carson*. And as public school materials and services, purchases made with correspondence allotments must still comply with state law prohibiting advocacy of “[p]artisan, sectarian, or denominational doctrines.”⁹⁷ The Department of Law has advised in the past that state correspondence laws restrict advocacy of religion by public correspondence schools.⁹⁸ Of course, parents and guardians may still “privately supplement” their child’s education through “religious instruction, including the use of privately obtained religious materials, in their home during their child’s correspondence course studies.”⁹⁹

⁹⁴ *Id.* at 1998 (quoting *Carson ex rel. O.C. v. Makin*, 979 F.3d 21, 44 (1st Cir. 2020)).

⁹⁵ *Id.* at 1998–99.

⁹⁶ 2005 Inf. Op. Att’y Gen. (Sept. 20; 663-05-0233); 2005 WL 2751244, at *3.

⁹⁷ AS 14.03.090.

⁹⁸ 2005 Inf. Op. Att’y Gen. (Sept. 20; 663-05-0233); 2005 WL 2751244, at *3–4.

⁹⁹ *Id.* (citing AS 14.07.050 (“Nothing in this section precludes a correspondence study student, or the parent or guardian of a correspondence study student, from privately obtaining or using textbooks or curriculum material not provided by the school district.”)).

IV. Conclusion.

The Alaska Constitution's prohibition on using public funds for the direct benefit of private educational institutions does not wholly constrain the use of public correspondence allotments to acquire services or materials from private vendors or to pay for classes offered by private educational institutions. In this opinion, I have identified some possible examples that lie within a spectrum of low-risk scenarios as well as some examples of high-risk scenarios. There will also be fact-specific situations that fall into a gray area; when those situations arise, DEED and school districts should consult with legal counsel. The way education is delivered and the way the public education system functions continue to change and evolve over time, and this opinion attempts to give guidance that still allows for the necessary flexibility for the legislature and school districts to meet the future needs of Alaska's children. This conclusion is not changed by the U.S. Supreme Court's recent decisions interpreting the federal Free Exercise Clause; nor are those decisions likely to invalidate Alaska's restriction on using public correspondence allotments only for nonsectarian services and materials.

Sincerely,

Cori M. Mills
Deputy Attorney General¹⁰⁰

¹⁰⁰ Acting under the Attorney General's May 21, 2022 Delegation of Authority.



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Education
& Early Development

OFFICE OF THE COMMISSIONER

P.O. Box 110500
Juneau, Alaska 99811-0500
Main: 907.465.2800
TTY/IDD: 907.465.2815
Fax: 907.465.4156

July 25, 2022

Dear Superintendents:

Questions have arisen recently regarding the use of correspondence school program allotments, specifically in regard to expenditures for students attending classes at private schools. I am attaching for your review a legal opinion from the Department of Law addressing the ability of public correspondence school students to spend public funds (in the form of allotment money) on services offered by private vendors, including classes presented either online or in-person. The opinion also addresses questions on whether recent U.S. Supreme Court decisions impact this issue.

In response to questions from Superintendents, the Department of Education and Early Development (DEED) asked the Attorney General's office to address these questions in a publicly available opinion and to provide some guidance on permissible uses of correspondence allotments. Please share the attached legal opinion with your school district's legal counsel. As you will see in the opinion, and as has always been the case, the permissibility of many expenditures under Alaska law is fact-specific and should be reviewed in consultation with legal counsel.

The opinion centers on the Alaska Constitution's education clause, which reads at article VII, section 1:

The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

At the outset, the opinion confirms that using public money to pay private vendors for materials and services to fulfill an individual learning plan under a public correspondence program does not violate the Alaska Constitution's education clause.

The Alaska Constitution supports using allotments to pay for educational services and materials provided by private vendors including paying for courses *when the main purpose of purchasing the services and materials is to further the student's public school correspondence education*. What the constitution does not support is paying for sectarian or religious courses or supplanting the public education with a full private school education by paying the tuition for full-time enrollment in a private school.

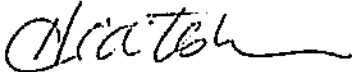
The opinion concludes that recent U.S. Supreme Court decisions do not change this analysis.

Letter, Superintendents
July 25, 2022
Page 2 of 2

Alaska's students, families, and local schools benefit from Alaska's unique and innovative public correspondence school programs. These programs operated by school districts expand opportunities and increase enrollment.

As you review this information with your district's legal counsel, please let me know how DEED can continue to support an excellent education for every student every day.

Sincerely,



Heidi Teshner
Acting Commissioner

Enclosure

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
March 15, 2013
1:36 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Fred Dyson
Senator Donald Olson
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Lesil McGuire, Vice Chair

COMMITTEE CALENDAR

SENATE JOINT RESOLUTION NO. 9

Proposing amendments to the Constitution of the State of Alaska relating to state aid for education.

- HEARD & HELD

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 49

"An Act defining 'medically necessary abortion' for purposes of making payments under the state Medicaid program."

- MOVED SSSB 49 OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 69(JUD)

"An Act exempting certain firearms, firearm accessories, and ammunition in this state from federal regulation; declaring certain federal statutes, regulations, rules, and orders unconstitutional under the Constitution of the United States and unenforceable in this state; providing criminal penalties for federal officials who enforce or attempt to enforce a federal statute, regulation, rule, or order regulating certain firearms and firearm accessories in this state; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 49

SHORT TITLE: MEDICAID PAYMENT FOR ABORTIONS; TERMS

SENATE JUD COMMITTEE

-1-

March 15, 2013

SPONSOR(s): SENATOR(s) COGHILL

02/11/13 (S) READ THE FIRST TIME - REFERRALS
02/11/13 (S) JUD, FIN
02/15/13 (S) SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
02/15/13 (S) JUD, FIN
02/27/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/27/13 (S) Heard & Held
02/27/13 (S) MINUTE(JUD)
03/04/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/04/13 (S) Heard & Held
03/04/13 (S) MINUTE(JUD)
03/05/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/05/13 (S) Heard & Held
03/05/13 (S) MINUTE(JUD)
03/11/13 (S) JUD AT 5:00 PM BELTZ 105 (TSBldg)
03/11/13 (S) Heard & Held
03/11/13 (S) MINUTE(JUD)
03/13/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/13/13 (S) Heard & Held
03/13/13 (S) MINUTE(JUD)
03/15/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SJR 9

SHORT TITLE: CONST. AM: EDUCATION FUNDING

SPONSOR(s): SENATOR(s) DUNLEAVY

02/13/13 (S) READ THE FIRST TIME - REFERRALS
02/13/13 (S) EDC, JUD
02/15/13 (S) EDC REFERRAL REMOVED
02/15/13 (S) FIN REFERRAL ADDED AFTER JUD
02/15/13 (S) UPHOLD CHANGE TO REFERRALS Y11 N4 E4 A1
03/13/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/13/13 (S) Scheduled But Not Heard
03/15/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 69

SHORT TITLE: EXEMPT FIREARMS FROM FEDERAL REGULATION

SPONSOR(s): REPRESENTATIVE(s) CHENAULT

01/16/13 (H) READ THE FIRST TIME - REFERRALS
01/16/13 (H) JUD
01/18/13 (H) BILL REPRINTED 1/17/13
02/08/13 (H) JUD AT 1:00 PM CAPITOL 120
02/08/13 (H) Heard & Held
02/08/13 (H) MINUTE(JUD)
02/18/13 (H) JUD AT 1:00 PM CAPITOL 120

02/18/13 (H) Moved CSHB 69(JUD) Out of Committee
 02/18/13 (H) MINUTE(JUD)
 02/20/13 (H) JUD RPT CS(JUD) NT 6DP 1NR
 02/20/13 (H) DP: MILLETT, PRUITT, LYNN, FOSTER,
 LEDOUX, KELLER
 02/20/13 (H) NR: GRUENBERG
 02/27/13 (H) TRANSMITTED TO (S)
 02/27/13 (H) VERSION: CSHB 69(JUD)
 02/28/13 (S) READ THE FIRST TIME - REFERRALS
 02/28/13 (S) JUD
 03/15/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

SENATOR MIKE DUNLEAVY
 Alaska State Legislature
 Juneau, Alaska
POSITION STATEMENT: Sponsor of SJR 9.

DEENA PARAMO Ph.D., Superintendent
 Matanuska-Susitna Borough School District
 Palmer, Alaska
POSITION STATEMENT:

MICHAEL JOHNSON Ph.D., Superintendent
 Copper River School District
 Glennallen, Alaska
POSITION STATEMENT: Testified in support of SJR 9.

ELLEN VAROSI, representing herself
 Wasilla, Alaska
POSITION STATEMENT: Testified in support of SJR 9.

JOHN O'DAY, representing himself
 Anchorage, Alaska
POSITION STATEMENT: Testified in support of SJR 9.

PATRICK SHIER, representing himself
 Juneau, Alaska
POSITION STATEMENT: Testified in support of SJR 9.

MARK ROSEBERRY, President
 North Slope Borough Education Association (NSBEA) and
 Barrow, Alaska
POSITION STATEMENT: Expressed concern with SJR 9.

JOSEPH SEBASTIAN, representing himself

Kupreanof, Alaska

POSITION STATEMENT: Testified in opposition to SJR 9.

MARY GRAHM, representing herself

Juneau, Alaska

POSITION STATEMENT: Testified in opposition to SJR 9.

TINA BERNOSIA, representing herself

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SJR 9.

CONNIE WINGREN, representing herself

Ketchikan, Alaska

POSITION STATEMENT: Testified in support of SJR 9.

REPRESENTATIVE MIKE CHENAULT

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 69.

JORDAN SHILLING, Staff

Senator John Coghill

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Reviewed the changes between the Senate CS and HB 69.

TOM WRIGHT, Staff

Representative Mike Chenault

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Provided supporting information for HB 69 on behalf of the sponsor.

ACTION NARRATIVE

1:36:48 PM

CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:36 p.m. Present at the call to order were Senators Dyson, Wielechowski, and Chair Coghill. Senator Olson arrived during the course of the meeting.

SJR 9-CONST. AM: EDUCATION FUNDING

1:37:45 PM

CHAIR COGHILL announced the consideration of SJR 9, noting that this was the first hearing.

1:38:37 PM

SENATOR MIKE DUNLEAVY, sponsor of SJR 9, introduced SJR 9, reading the sponsor statement into the record as follows: [Original punctuation provided.]

Senate Joint Resolution 9, if passed by both bodies of the legislature, places a constitutional amendment before the voters in the general election in the fall of 2014. This ballot proposal provides voters a change to amend the Alaska Constitution to allow the use of public money for the benefit of all Alaskans seeking educational/training aid, regardless of whether individuals enroll in public or private institutions.

Currently the Alaska Constitution prohibits the use of public funds for the direct benefit of any private educational institution. The courts have determined that this ban extends to state funds being allotted to individual Alaskans who choose to attend a private school. Meanwhile an increasing number of Alaskans are questioning the constitutionality of the long-standing practice of giving educational scholarships/grants to adults for educational and training purposes while denying children the same funding opportunities.

Passage of SJR 9 clarifies the question on the constitutionality of current educational practices. More than that, the ballot question allows the voters to decide whether to maintain or abolish the restrictions on the use of public dollars for the education of children. SJR 9 gives the voters the power to decide what is right for them, their families and the State of Alaska.

It is important to note that even with the adoption of this constitutional amendment by a majority of voters, the legislature still needs to have a robust discussion on how to go forward. These deliberations will occur before any Alaskan child receives state funds to attend a private educational institution. The passage of SJR 9 allows these discussions to begin.

1:41:39 PM

SENATOR DUNLEAVY reviewed the contents of the packet and delivered a PowerPoint to further explain SJR 9. He relayed that

the issue is that the state constitution prohibits public funds going to private or religious educational service providers, yet public/private partnerships have expanded tremendously since 1965 to meet the needs of a diverse population. However, these partnerships and associated practices could be construed to be unconstitutional. This can be settled by the courts or the people can vote to change their constitution to align it with Alaska practices.

If SJR 9 passes, Alaskans will be given the opportunity to vote on whether or not to revise the Alaska Constitution. The language, "No money shall be paid from public funds for the direct benefit of any religious or other private educational institution." would be removed from art. VII, sec. 1. The language "however, nothing in this section shall prevent payment from public funds for the direct educational benefit of students as provided by law." would be added to art. IX, sec. 6.

SENATOR DUNLEAVY explained that if SJR 9 is passed by a 2/3 majority of each body, the proposition will appear on the 2014 general election ballot.

A review of the history of Alaska education from 1867 to 1905 shows a dual federal/territorial system of education starting in 1900, more or less until 1965. The territorial system included local school districts in incorporated towns; the federal system of schools was outside incorporated towns, primarily for Natives. An historical listing of Alaska school models includes: borough/city schools, family homeschools, correspondence schools, faith-based schools, mission schools, private schools and state-operated BIA boarding schools.

The Alaska Department of Education and Early Development (DEED) currently oversees a variety of educational delivery systems, including correspondence and charter schools. Many of these children are educated to public standards but don't necessarily go to neighborhood schools. Correspondence/homeschool students have an Individual Learning Plan (ILP) and their education is often supplemented by both for-profit and private educational service providers (ESP). The question is how far these partnerships can go before someone files a lawsuit claiming that public monies are being expended for private education.

He questioned whether the following were constitutional:

- Can a 15-year old student use public education funds to purchase courses through an allotment, voucher,

scholarship, or tuition process from a public university to support his/her educational plan?

- Can a 15-year old student use public education funds to purchase courses through an allotment, voucher, scholarship, or tuition process from a private religious university?
- Can a 19-year old purchase course work from a university system?
- Can a 12-year old student purchase a distance-delivered course in math from a national online educational service provider to support his/her public education learning plan?
- Can the same 12-year old student purchase a Latin course from a private religious school to support his/her public education learning plan?

SENATOR DUNLEAVY stated that the answer in each of the cases is yes, no, and maybe, depending on the individual's philosophy and view of what the constitutional language means.

SENATOR DUNLEAVY displayed a list of private, for-profit, and faith-based educational service providers in the state that partner with public education. [The list included A+ In-Home Tutoring, Alaska Center for the Martial Arts, Alaska Engineering Academies, Alaska Learning Labs, Alaska Pacific University, Brain Hurricane, LLC, Challenger Learning Center of Alaska, Math Savvy Institute, Northern Industrial Training, Sylvan Learning Center, Southeast Alaska guide Association, and Turning Leaf Literacy Center.]

1:46:13 PM

SENATOR OLSON joined the committee.

SENATOR DUNLEAVY relayed that the Charter School Act that passed in 1995 initially allowed for 30 schools. It brought thousands of students back into the public educational system, just not into the public schools. The first statewide homeschool program, Interior Distance Education of Alaska (IDEA), started in 1997 and helped people to look at education differently. The kids weren't chits to serve the schools, the schools were supposed to serve the kids. Since the advent of that program, many other schools have sprung up to meet the needs of Alaskans.

SENATOR DUNLEAVY said his goal in introducing SJR 9 is to enshrine what is currently being done in public education. Homeschool parents and others will testify that they want the latitude to pursue the goals in the stated public school outcomes.

He acknowledged that for some the focus has been on vouchers, but SJR 9 doesn't necessarily have to end in a voucher system. Others have focused on the potential loss of public funding to the educational system, but that's a separate issue. Some have focused on private or religious schools, but he would caution against giving private or religious schools money. However, he sees nothing wrong with a child taking a Latin course from a Catholic school as part of his/her ILP. The concept is to give the student the ability to purchase educational services from a provider.

SENATOR DUNLEAVY admitted that he favors vouchers through a tax credit concept. He also favors expanding the public educational system to include as many Alaskans as possible. He said he believes that the people of Alaska should be given the opportunity to vote on whether they want to change the language in their constitution regarding education funding.

2:00:23 PM

SENATOR DYSON recalled that other states have language in their constitutions that is similar to the failed federal Blaine Amendment, and the courts have found it did permit public funds to flow through the students to private institutions.

SENATOR DUNLEAVY said the difference is that the language in other state constitutions refers to public monies being used for direct and indirect benefit of private or religious education, and the Alaska Constitution does not use the term "indirect."

SENATOR DYSON offered his understanding that Alaska's constitutional delegates chose not to put the term "indirect" in the constitution.

SENATOR DUNLEAVY said that was his understanding, too.

SENATOR DYSON said he also understood that it was a court decision that precluded Alaska from using the interpretation that money could flow ultimately to a private institution.

SENATOR DUNLEAVY responded that there have been several court decisions and he believes the interpretation is open to too much question.

SENATOR DYSON summarized that the language in the Alaska Constitution needs clarification because private institutions

that are using public money to accomplish a public education objective are in jeopardy of being sued.

SENATOR DYSON said that was his belief.

2:05:07 PM

CHAIR COGHILL promised that he would not shortchange public testimony, although everyone would not be heard today.

SENATOR OLSON asked how this legislation would address the current high dropout rates.

SENATOR DUNLEAVY replied that the discussion of how to use private/public partnerships to address education problems will come after SJR 9 passes and the people of Alaska have voted on the language in their constitution.

SENATOR COGHILL observed that the proposed language in art. IX is intended to follow the student.

SENATOR DUNLEAVY agreed and noted his intention to file a companion bill that clarifies that concept.

2:08:34 PM

DEENA PARAMO Ph.D., Superintendent, Matanuska-Susitna (Mat-Su) Borough School District, said she has been an educator in Alaska for 22 years. The district serves 17,500 students in 45 unique and diverse schools that have unique and diverse programs to serve the Mat-Su Valley community. She said she was not speaking to the political aspect of SJR 9 or as a historian on the constitution. She was testifying to share that Mat-Su is a successful school district that meets the needs of the community through innovation, public school choice, and customer service. Mat-Su is diverse with small, one-room school houses that serve children K-12 in one community and five large comprehensive high schools that serve as neighborhood schools in another community. Mat-Su has special mission schools that focus on science and engineering, six charter schools, a renowned career and technical high school, and 16 large elementary schools that serve over 400 students each. In addition, Mat-Su has a central school serving over 1,400 homeschool students throughout the borough.

Equally important to the diverse school buildings and settings, are the school programs. She related that she has standardized the rigor of the educational programs, and has challenged schools to customize their individual programs to meet their

students' needs. Mat-Su offers a wide variety of choices for students and families to prepare the youths for their multifaceted future, she said.

DR. PARAMO said the educational choices offered by the Mat-Su Borough School District provide evidence of the strong community commitment to education that ties private and public goals in the state. Children today are born into a world of ubiquitous choice and opportunity, and Mat-Su has chosen to focus on what is necessary to prepare students for their world. The success of the district is defined by the students' subsequent success finding jobs, earning livable wages, and caring for their families. Outcomes are measures through a post high school survey that is commissioned by a third party.

To ensure it remains competitive and provides the best education possible, the Mat-Su district partners with other public and private entities in the Valley, state, and nation. Mat-Su students are offered Cisco technology training, flux core welding, and high quality online learning for core curriculum, because this is what the students will face in college. Curriculum training for teachers is through the National Math and Science Initiative, and other professionals provide music and sports training. Private industry directs the program at the career and technical high school. Private partnerships allow students to engage in authentic learning and national best practices and curriculum help students prepare for what they will encounter after high school.

DR. PARAMO said the empirical evidence hasn't shown vouchers to be the downfall of public education or the panacea but she did know that the Mat-Su Borough School District meets more students' needs, desires, and dreams than ever before by embracing innovation, choice, and customer service.

CHAIR COGHILL asked Dr. Paramo to submit her written testimony.

2:15:36 PM

At ease

2:16:11 PM

MICHAEL JOHNSON, Superintendent, Copper River School District, asked the committee to allow Alaskans the opportunity to debate and vote on the constitutional amendment proposed by SJR 9. This important education issue is worthy of a vigorous public debate and will lead to conversations about other topics important for the future of the state's education performance.

2:17:34 PM

ELLEN VAROSI, representing herself, said she favors choice and hopes SJR 9 leads to school vouchers, because vouchers yield choice, choice yields competition, and competition yields success. She said that vouchers will have minimal impact on public school funding. Rather, they will relieve school districts of students that don't fit the public school model and fail to thrive. She cited the December 2010 McKinsey report that shows that the more the U.S. has spent on education the worse the outcome has been, and the Program for International Student Assessment (PISA) studies that show that U.S. 15-year-olds rank poorly internationally in reading, math, and science. Don't be afraid of change or choice or competition, and, above all, don't be afraid of vouchers, she said.

2:19:12 PM

JOHN O'DAY, representing himself, testified in support of SJR 9, the proposal to amend art. VII, sec. 1, and art. IX, sec 6. The time has come for this discussion because 60 percent of incoming University of Alaska students desperately need remedial classes. He stated support for vouchers and what they can accomplish.

2:21:11 PM

PATRICK SHIER, representing himself, testified that SJR 9 will give voters an opportunity at self-determination and will clarify existing practice. He related that throughout his children's varied schooling careers, administrators raised significant questions about issues that SJR 9 will solve. Alaskans will also be better equipped to continue the conversations already underway regarding their expectations under art VII.

CHAIR COGHILL stated that the committee would accept written testimony.

2:22:24 PM

MARK ROSEBERRY, President, North Slope Borough Education Association (NSBEA) and teacher at Barrow High School, said he supports choice but he looks at it from a rural perspective. He questioned how rural school districts can maintain an education system, hiring teachers and support staff and securing housing without knowing if they have the student population to support the system. He asked how it helps the education system in Alaska if a group separates from the public school to form a separate school that shuts down a few years later.

2:24:26 PM

JOSEPH SEBASTIAN, representing himself, said that Alaska's public education system is the backbone of its efforts to create worthy citizens capable of leading the state into the future, and SJR 9 will deplete the system of funds when it is already in need of more funding, not less. He related that his two children were homeschooled in grades 1-6 in the excellent, state-sponsored correspondence school program that was inexplicably discontinued by former Governor Frank Murkowski, and replaced with little or nothing. His children subsequently attended high school in Petersburg, which he believes it may be a leading example of school systems in the state. He opined that Alaska's public school system needs to be reinforced, not dismantled piecemeal through efforts such as this resolution.

2:26:17 PM

MARY GRAHM, representing herself, said she doesn't believe it is time to put this issue to a popular vote. She trusts the work of the constitutional delegates and wants to see the public school system succeed. She predicted that if this issue comes to a vote, the voices that will be heard the loudest are the ones that support vouchers. In this time of *Citizens United* and unlimited spending on issues, this discussion will not be held by Alaskans, because this legislation is part of a national agenda to allow the diversion of public funds to private and religious schools. She said she finds it hard to believe that education for profit will lead to Alaska's education goals. She recalled other attempts to amend the Alaska Constitution that were wasteful of both time and money. Alaska has the ability to provide lots of choices in its educational system, without SJR 9.

2:28:37 PM

TINA BERNOSIA, representing herself, said she is testifying against SJR 9 as a school counselor and mother of twins who attend public school in Anchorage. She believes in the public school system and would suggest spending a day in the system to see what great things are happening. She offered her belief that Alaska would be among the best if its public education system were fully funded. Concentrate on all of Alaska's children, and do not create a system of have and have not, she said.

2:29:36 PM

CONNIE WINGREN, Principal, Holy Name Catholic School, Ketchikan, Alaska, stated that parents should have the right to decide how they would like their children to be taught, and SJR 9 gives

them that choice. Furthermore, it will provide educational diversity in the state.

2:31:06 PM

CHAIR COGHILL said public testimony would continue in subsequent meetings. He held SJR 9 in committee.

SB 49-MEDICAID PAYMENT FOR ABORTIONS; TERMS

2:32:37 PM

CHAIR COGHILL announced the consideration of SB 49, relating to Medicaid funding for abortions. [SSSB 49 was before the committee.] He noted that there had been extensive discussion and debate on the legislation. Finding no further discussion, he solicited a motion.

2:33:05 PM

SENATOR DYSON moved to report [SSSB] 49 from committee with individual recommendations and attached fiscal note(s).

CHAIR COGHILL asked if there was objection.

2:33:21 PM

SENATOR WIELECHOWSKI said he was not going to support the bill, but wouldn't object to it moving because he could count the votes. However, he wanted to state a few important things for the record.

He said he commends the intent to decrease the number of abortions, but he didn't believe the bill was necessary at this time. During the last hearing, the commissioner of the Department of Health and Social Services (DHSS) testified that the department spent considerable time and heard from nearly 500 people to come to resolution on how to deal with medically necessary on the issue of abortions. To that end, DHSS put a new regulation in place that requires doctors to certify that an abortion is medically necessary in order to get funding from the state.

SENATOR WIELECHOWSKI pointed out that the Parnell Administration had the ability to define the term but instead chose to use certification from the doctor. He said he believes that DHSS chose to do it that way to avoid constitutional problems. Providing a definition the way the bill does is unconstitutional. Over the years the court has repeatedly said that women who seek an abortion cannot be treated differently

SENATE FINANCE COMMITTEE
February 3, 2014
9:02 a.m.

9:02:50 AM

CALL TO ORDER

Co-Chair Meyer called the Senate Finance Committee meeting to order at 9:02 a.m.

MEMBERS PRESENT

Senator Pete Kelly, Co-Chair
Senator Kevin Meyer, Co-Chair
Senator Anna Fairclough, Vice-Chair
Senator Click Bishop
Senator Mike Dunleavy
Senator Lyman Hoffman
Senator Donny Olson

MEMBERS ABSENT

None

ALSO PRESENT

Suzanne Armstrong, Staff, Senator Kevin Meyer; Michael Hanley, Commissioner, Department of Education and Early Development.

PRESENT VIA TELECONFERENCE

Richard Komer, Senior Attorney, Institute for Justice, Arlington, VA; Dr. Deena Paramo, Superintendent, Mat-Su Borough School District; Bethany Marcum, Self, Anchorage.

SUMMARY

SJR 9 CONST. AM: EDUCATION FUNDING

SJR 9 was HEARD and HELD in committee for further consideration.

AMENDMENTS TO CONTRACT BETWEEN HAY GROUP, INC. and THE SENATE FINANCE COMMITTEE

9:04:43 AM

^AMENDMENTS TO CONTRACT BETWEEN HAY GROUP, INC. and THE SENATE FINANCE COMMITTEE

9:04:47 AM

SUZANNE ARMSTRONG, STAFF, SENATOR KEVIN MEYER, addressed a professional services contract that had been executed in August 2013 between Hay Group, Inc. and the Senate Finance Committee (copy on file). Additionally, committee members had been provided with a copy of a draft amendment proposing to increase the contract amount by \$150,000 for a total not to exceed \$450,027 (copy on file). The proposed amendment would also extend the contract termination date from May 1, 2014 to June 30, 2014. She explained that committee members had additional questions and had requested further analysis of Hay Group, Inc. following the release of the group's final report on December 6, 2013 and its presentation to the Senate Finance Committee on December 10, 2013. After discussions with Hay Group, Inc. it had been determined that an additional \$150,000 would allow analysis work to continue through the current legislative session.

Vice-Chair Fairclough MOVED to AMEND the contract between the Senate Finance committee and Hay Group, Inc. to extend the termination date of the contract to June 30, 2104 and to add an additional authorization to the contract of \$150,000 for total payments under the contract not to exceed \$450,027.

There being NO OBJECTION, it was so ordered.

#sjr9

SENATE JOINT RESOLUTION NO. 9

Proposing amendments to the Constitution of the State of Alaska relating to state aid for education.

9:07:28 AM

Senator Dunleavy explained SJR 9. He stated that the resolution was for a constitutional amendment regarding education funding in Alaska. He stated that SJR 9 was introduced the prior year, and had five hearings in the Judiciary Committee. He stated that SJR 9 would change

language in two sections of the constitution. Under Section 1, article 7, "no money shall be paid from public funds for the direct benefit of any religious or other private educational institution"; and Section 6, "however nothing in this section shall prevent payment from public funds for the direct educational benefit of students as provided by law" shall be removed.

9:08:36 AM
AT EASE

9:09:55 AM
RECONVENED

Senator Dunleavy noted that the fiscal note attached to the bill was \$1,500, and the second page of the fiscal note showed that the fiscal note could be raised to \$22,000.

9:10:20 AM
AT EASE

9:10:35 AM
RECONVENED

Senator Dunleavy said that the fiscal note would be \$15,000 for one sheet, and \$22,000 for two sheets. He stated that the purpose of the resolution was to help people who were examining alternative forms of education. He shared that there were many public/private partnerships from the pre-K level to the Department of Education and Early Development (DEED). He remarked that there were some private, for-profit, and/or religious vendors that were associated with the growing homeschool population. He referred to a homeschooling law that became effective in the mid-nineties that allowed Alaskans to detach themselves from the public school system. He stated that shortly after that law was enacted, some school districts formed homeschool programs to meet the needs of those that had left the system. As a result, the homeschool, correspondence, and charter schools were some of the fastest growing segments of education in Alaska. In order to grow the programs further, and involve more public/private partnerships, the language of the constitution must be changed. He used Brigham Young University (BYU) as an example of a religious institution that taught academic courses, and was not used to deliver religious instruction. He explained that the courts in Alaska had ruled consistently that the funds could be

distributed in a direct and indirect manner. He shared that the drafters of the original constitution had intentionally left out the concept of "indirect" on purpose, because they believed that there would be occasions which the state would need to partner with private and/or religious entities to help children. He felt that it was time to amend the constitution in order to meet the very diverse needs of Alaska's student populations, and to outline details of the post-secondary offerings. He felt that amending the constitution would eliminate further question regarding the use of public funds for education. He alleged that lawsuits would be filed in the future in order to stop some practices that would benefit Alaskans. He urged the committee to move the bill from committee, so Alaskans could have an opportunity to weigh in on the education system and constitution.

9:15:08 AM

Senator Olson wondered why "indirect" was not included in the constitution. Senator Dunleavy responded that there had been discussion during the constitutional convention regarding the inclusion of "direct", "indirect", or neither word included. He felt that there had been a compromise to keep the word "direct" in the language. He understood that many of the original drafters felt that there should not be a direct link between the state and/or religious educational entities. He stated that the original drafters did not include "indirect", because they wanted to provide an opportunity for future legislatures to create programs that help children that may be in orphanages, foster care, or long-term hospital residential facilities to possibly receive an education that may stem from a partnership with a religious organization.

Senator Hoffman looked at the second sentence of the bill which states, "public funds for the direct educational benefit of students, as provided by law." He wondered if there was anticipation for defining how the provision would be implemented. Senator Dunleavy responded in the affirmative, and furthered that SB 100 addressed a provision. He explained that SB 100 would be program that would take place as a result of the language change in the constitution. SB 100 was an expanded public home-school correspondence law. He explained that SB 100 would allow individuals to become part of the homeschool process could enroll in funding. SB 100 would also allow for private

and/or religious educational vendors to be recognized as legitimate educational vendors.

Senator Olson queried the current version of the resolution.

9:19:29 AM

AT EASE

9:20:06 AM

RECONVENED

Co-Chair Meyer declared that the version of the resolution being discussed was SJR 9, version U.

Senator Dunleavy stated that the recognized vendors under SB 100 could be any of the various private or public educational product distributors. He remarked that the individual vendors were not held to state standards. The Individual Learning Plan (ILP), which governs the child's education, would be held against the state standard. He explained that when a private educational service was purchased, and that coursework helped support the ILP for each student in Alaska. He remarked that the ILPs were geared to ensure proficiency in the standards.

Co-Chair Kelly asked for a restatement of the explanation. Senator Dunleavy responded that the public school system currently purchased various learning tools from private companies, like pencils and computer systems. He stated that those items were resources to support a child's education. He remarked that the resources did not need to be aligned to state standards, rather they are tools that were used to support the child's educational plan. He remarked that homeschooled children were still required to align with the state standards, and the parents were responsible to ensure that the purchased materials supported that goal.

Co-Chair Meyer wondered how many states had some sort of version of the proposed program. Senator Dunleavy looked at the website, <http://www.edchoice.org/School-Choice/School-Choice-Programs>, and stated that there were approximately 26 states with 42 programs. He explained that the programs were self-contained, and did not spread beyond the border of the program. He stated that the website outlined the specific boundaries of each program.

9:25:35 AM
AT EASE

9:29:20 AM
RECONVENED

9:29:46 AM

Co-Chair Meyer asked for further information regarding other states that had implemented similar programs. Senator Dunleavy responded that approximately 26 states had about 42 programs. He explained that some of the programs in other states had tax credits, scholarships, or a combination of the two. All of the programs were self-contained, and pointed out that every state had a constitution that outlined some form of school choice. He stated that there were many programs that were over 100 years old. Each program was very different, and had different targets and missions. He stressed that without legislative ruling, the constitutional language had no effect. He felt that there was a program in SB 100 which he believed would be effective, but the constitution must be amended first. He felt that SB 100 would extend public education to meet the needs of more Alaskans. He stated that he found no case wherein the program "spun out of control."

9:33:15 AM

Vice-Chair Fairclough asked for a restatement of comments related to the first amendment and the establishment clause. Senator Dunleavy replied that the US constitution did not prevent public moneys from being spent on private and/or religious education. He stated that the first amendment's establishment clause prevented a state from favoring one religion over another. He stated that Senator Rubio from Florida had recently proposed a national educational voucher program, because it was constitutional under the US constitution.

Co-Chair Meyer noted that there were various programs for children for a wide range of types of children within Alaska. Senator Dunleavy stressed that SJR 9 did not create any program. He restated that the language could pass, but it required legislative action in order to create a program.

Co-Chair Meyer stressed that the only decision before the legislature was to decide whether or not the constitutional amendment should go to the vote of the people.

Senator Olson wondered how many states enacted programs, and then withdrew from the programs. Senator Dunleavy agreed to provide that information.

9:38:52 AM
AT EASE

9:44:30 AM
RECONVENED

MICHAEL HANLEY, COMMISSIONER, DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT, understood that this conversation had been held in the legislature for many years. He stated that the governor supported the resolution, with the understanding that parents could make better decisions for their children than the government.

Vice-Chair Fairclough asked for comment regarding the concern over whether or not the allocation for the public school system would be disrupted while the constitutional amendment was voted on. Commissioner Hanley stated that SJR 9 would not adjust the funding; it would only speak to removing part of the constitutional language and allowing the constituent of Alaska to vote on that amendment. He furthered that he could not speak on any fiscal component of SJR 9.

9:46:36 AM

Senator Olson queried the perspective of SJR 9 from the various school districts across the state. He specifically wondered if the rural areas were more in favor of the resolution than urban areas, and vice versa. Commissioner Hanley responded that the issue was not the main concern in rural Alaska, because opportunities for choice were potentially limited. He remarked that it was difficult for many communities to determine how this issue would make an impact, because they did not have access to a private entity to use the potential voucher.

In response to a question from Senator Olson, Commissioner Hanley replied that he did not see the concern being

related to the impact on children. He stated that the concern was mostly focused on the funding.

9:51:01 AM

RICHARD KOMER, SENIOR ATTORNEY, INSTITUTE FOR JUSTICE, ARLINGTON, VA (via teleconference), announced that the Institute for Justice had helped to pass and defend most of the legislation that Senator Dunleavy addressed. He explained that most of the time, the legislation was only challenged by teachers unions, school boards associations, and sometimes by various public interest law firms that believe in a restrictive form the separation of church and state. He addressed the legal aspects of modifying the constitution. He stated that the resolution would make possible the school programs that were already available in other states. He stated that the language in Alaska's constitution was more restrictive than the federal constitution. He explained that the programs complied with federal constitutional guarantees, but did not comport with Alaska's education article, because of the way it was interpreted by the Alaska Supreme Court. When a Supreme Court provides a definitive interpretation of constitutional language, there are only two ways that interpretation could be changed: 1) the state Supreme Court must reverse itself. This was highly unlikely, because it was unlikely that the legislature pass a law which raises the issue of constitutionality. The justices would most likely follow their previous precedent, which in this case was the Sheldon Jackson case from 1979; and 2) a constitutional amendment that changes the underlying language that the Supreme Court had interpreted in order to overrule the decision. He felt that the original language of the Alaska constitution, which was interpreted in the Sheldon Jackson case, permits school program. He explained that the language spoke to direct aid to private or religious institutions. He felt that the word "direct" was considered institutional aid or a "grant." He stated that the Alaska Supreme Court interpreted that language to extend to aid to students, which was a very different action. He explained that the Sheldon Jackson ruling prohibited a program that would have assisted college students in Alaska. He felt that the Supreme Court decision that went too far, and had an inhibiting effect on the legislature's ability to do work that other states had routinely followed. He offered that virtually every other state had a higher education scholarship program using

state money to help students attend both public and private colleges within the state.

9:58:29 AM

Senator Dunleavy wondered if SB 100 would pass a constitutional muster. Mr. Komer replied that the Sheldon Jackson ruling was extremely broad. He stressed that the beneficiary should be considered the student, and then the student can use that money to purchase individual educational services.

Senator Dunleavy stated that Colorado's constitution's language could be considered much more restrictive than Alaska's constitution, but Colorado had recently instituted a school choice program. He asked for information regarding that summation. Mr. Komer explained that Colorado interpreted its constitution the opposite to the Sheldon Jackson case. He stated that, in 1980, the Colorado Supreme Court interpreted a more restrictive constitutional provision to permit aid to students to attend private institutions.

Senator Olson asked Mr. Komer if he thought the Supreme Court would come to a different conclusion, if the Sheldon Jackson case would occur in 2014. Mr. Komer responded that he did not believe that the Supreme Court would come to a different conclusion. He furthered that the court would most likely come to the same conclusion, because the lawyers and judges followed the principle of "it's been decided." Generally speaking, the courts would continue and follow the decisions of their predecessors.

10:04:37 AM

Senator Olson restated his question. He specifically wondered if the Supreme Court would reach the same decision in the present day, if that precedent had not already been set. Mr. Komer replied that it was highly unlikely that a state supreme court would interpret the word "direct" to preclude students. He felt that the court would allow children to use state funds for a private educational service. He felt that the Sheldon Jackson case ruling was wrong.

Vice-Chair Fairclough wondered if school choice decisions had been overturned in other states. Mr. Komer responded

that there were two programs that had been discontinued because of adverse court decisions.

10:09:48 AM

Vice-Chair Fairclough queried the negative effects of the funding available for parents. Mr. Komer replied that a scholarship program was substantially less provided to the student than it costs the state and local governments. Therefore, there was very little shrinkage in the public education budget. He furthered that, because only a fraction of the state aid followed the child to fund the scholarship, the per capita expenditures for public school students were often increased.

Vice-Chair Fairclough wondered if Mr. Komer had any experience in looking at the migration for areas that have small populations. Mr. Komer responded that he did not know about that issue, but he stated that for extremely isolated areas distance learning were originally pioneered for remote rural areas.

10:15:07 AM

DR. DEENA PARAMO, SUPERINTENDENT, MAT-SU BOROUGH SCHOOL DISTRICT (via teleconference), stated that the Mat-Su School District served over 17,800 students in 45 schools that had unique and diverse programs to serve the youth of the Mat-Su Valley community. She shared that the Mat-Su was a successful school district that met the needs of its community through innovation, a sense of renewal, public school choice, and customer service. She stressed that the Mat-Su community was supportive of its public school system. She explained that the Mat-Su had various school sites with small, one-room school houses that serve children K-12 in one community; and five large comprehensive high schools that serve as neighborhood schools in other borough communities. The Mat-Su had special mission schools that focused on science and engineering; six charter schools; a renowned career and technical high school; and sixteen large elementary schools that serve over 400 students each. In addition, the Mat-Su had a central school serving over 1500 homeschool students throughout the borough. Most recently, Mat-Su School District opened the first middle college in the state located on a UAA campus that offered an onsite college experience for high school juniors and seniors.

10:21:47 AM

Senator Dunleavy wondered if the school district feared a constitutional amendment on the ballot. Dr. Paramo responded that the school board had not weighed in on the issue, but the administration and leadership in the schools looked forward to being the best in the state.

Senator Dunleavy wondered if private vendors were used to support the ILPs. Dr. Paramo replied that most of the companies were private vendors.

Senator Bishop felt that Dr. Paramo's remarks indicated that there was no problem regarding school choice for children in the Mat-Su. Dr. Paramo replied that the district looked to find what people were seeking. She stated that the Mat-Su School District did not pass judgment; she just wanted good education for children.

Senator Bishop wondered if the Mat-Su School District had experienced any layoffs of teachers, or if she was anticipating any future layoffs of teachers. Dr. Paramo responded that every year the district faces layoffs.

Senator Bishop commented that he was glad to hear that the flux chord welding program was still ongoing, because those welders may be needed in the near future.

10:25:35 AM

Co-Chair Meyer felt that the environment of competition created new programs, and was one of the advantages of school choice. He wondered if the inclusion of a private school system would have a negative effect in the Mat-Su region. Dr. Paramo replied that it would not have a negative effect. She remarked that people were making choices for many different reasons regarding education.

BETHANY MARCUM, SELF, ANCHORAGE (via teleconference), testified in support of SJR 9. She hoped that the committee would allow Alaskans to vote on the constitutional amendment. There were many polls that showed that Alaskans wanted the opportunity to vote on the issue. She felt that the worst thing that would happen with the passage of the amendment would be that Alaskans get more opportunities. She stressed that there were many issues facing education

in Alaska, and felt that it was time to discuss the many possibilities for children. If SJR 9 would pass, the possibilities for the legislature would be available to address the education issues.

SJR 9 was HEARD and HELD in committee for further consideration.

#

ADJOURNMENT
10:32:36 AM

The meeting was adjourned at 10:32 a.m.

ALASKA CONSTITUTIONAL CONVENTION

January 9, 1956

FORTY-EIGHTH DAY

PRESIDENT EGAN: The Convention will come to order. We have with us Father Boileau of the Immaculate Conception Church. Father Boileau will give our daily invocation.

FATHER BOILEAU: Grant us, Almighty God, the gift of wisdom and understanding; give us Your help this day that we may continue to work with sincerity, with true charity and harmony, for the good of our country and for Your glory, through Christ our Lord. Amen.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll.)

CHIEF CLERK: All present.

PRESIDENT EGAN: A quorum is present. We will proceed with the regular order of business. The Chair heard someone wonder whether we had a gavel or not. The Chair would like to state that the gavel is locked up in the President's desk and the keys are not here. We will proceed without the gavel today. Does the special Committee to read the journal have a report to make at this time?

KNIGHT: The journal for the 43rd day has been checked for errors and omissions. We do not find anything. We ask unanimous consent that it be adopted.

PRESIDENT EGAN: Mr. Knight asks unanimous consent that the journal of the 43rd Convention day be approved. Mr. Boswell.

BOSWELL: I note on page 9 it shows one person voting both "yea" and "nay".

PRESIDENT EGAN: Would you ask that that correction be made?

BOSWELL: I will.

PRESIDENT EGAN: The correction will be ordered made as the Chief Clerk might find it to be. If there are no other corrections, the journal of the 43rd day is ordered approved. The Convention will come to order. Are there any petitions, memorials or communications from outside the Convention? Are there reports of standing committees? Mr. Sundborg.

SUNDBORG: Mr. President, as Chairman of the Style and Drafting Committee, it gives me great pleasure this morning to introduce

work utilizing the subcommittee method on the articles which had been referred to us. The subcommittees consist of three members each, and they are going over the proposals word by word. We have adopted within our Committee a procedure whereby after the subcommittee has agreed upon its recommendations to the full Committee, but before the full Committee has acted, the subcommittee will contact the substantive committee involved with the view to having one member who would be a spokesman for that committee sit with our subcommittee to go over in detail the suggested changes so that we may be certain that we are following the intent of the committee which originally drafted the article or the intent of the body as expressed here on the floor in amendments. Then after our subcommittees have so conferred with the representative of the substantive committee, the full Style and Drafting Committee will consider their report and report something back here to the Convention floor. My purpose in announcing this to the Convention at this time is to alert each of the major committees to the fact that we will want to have you designate a spokesman or representative of your committee to meet with our subcommittees as we work on your proposals.

PRESIDENT EGAN: That is a matter you will undoubtedly take up with each committee as you come to that.

SUNDBORG: We will notify the committee when we would desire a meeting but we would like to have them be ready to nominate someone to represent them so we will not be delayed.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment to Section 1.

CHIEF CLERK: "Section 1, article health, education and welfare, add the word 'educational' before the word 'institution' on the last line."

PRESIDENT EGAN: What is the pleasure of the Committee?

AWES: The Committee met and unanimously adopted this proposed amendment. The word is put in purely for clarification purposes, and I ask the adoption and ask unanimous consent.

PRESIDENT EGAN: Miss Awes asks unanimous consent for the adoption of the proposed amendment. Is there objection? Mr. Taylor.

TAYLOR: Point of information. Is that the only amendment, to put the word "educational" in front of the word "institution"? I am not objecting.

PRESIDENT EGAN: If there is no objection -- Mr. Victor Rivers.

V. RIVERS: I will have to object a little further because that does not in my opinion cover the context of certain communications that we had read here. I will object for this time.

BUCKALEW: I second it.

PRESIDENT EGAN: The subject is open for discussion. Mr. Hellenenthal.

HELLENTHAL: I rise to a point of order. I don't think that it is necessary to vote on the proposed amendment. The Committee met and unanimously decided that the word should be included, and rather than have their report remimeographed they merely want to present it with the word in it, and then in the proper course of time the matter will be considered.

PRESIDENT EGAN: No, Mr. Hellenenthal, it will have to be amended. Your report is before us and the only manner it can be amended in now is by the action of the body. I understand what your feeling was here, but that is out of that jurisdiction at this time. Miss Awes.

AWES: I will give a little explanation of this. This word, as I said before, was merely for clarification purposes. It was the opinion of the Committee that is what this meant originally, but it was implied by virtue of the fact it was in the education section, but there have been so many comments and so many questions, both from the members of the body and from the communications which have come into the Committee and the Convention, we thought it would be better if this were amended to conform with the intent, at least so it is clear what the intent of the Committee is, and that is the only purpose in submitting this at this time.

HERMANN: Point of information, if we adopt this amendment now and insert the word "educational" before "institution ", it will not be possible to remove it later, will it, by amendment from the floor?

PRESIDENT EGAN: It would not be possible to remove the word "educational", Mrs. Hermann, that is true. The Chair just wondered, Mrs. Hermann, if the word "educational" being there, if there are any other institutions in the Territory other than educational institutions that would be affected by this.

COGHILL: I rise to a point of information on that. It is in the educational article, Section 1 of the health, welfare, and education, and it should be germane to that section, and that is just clarifying the intent of the Committee.

PRESIDENT EGAN: Is there further discussion of the proposed amendment?

ROBERTSON: Point of inquiry, does the word "private" mean parochial?

PRESIDENT EGAN: Do you mean is it all-inclusive? Is that right, Mr. Robertson?

ROBERTSON: Yes, that's right. I don't understand the word "private".

AWES: Well, I think undoubtedly it does. You will notice before the word "private" comes the word "religious". "Religious or other private educational institutions", so I think that would undoubtedly be any educational institution that is not supported and run by the state.

V. RIVERS: The basis to my objection to that is this, we had some statements here for matching funds for hospitals under the Hill-Burton Act under legislative acts and of the Territorial legislature. Now it seems to me if we are going to put in other educational institutions, it might refer back to religious institutions or other private institutions, but I think that under this section they also want to include perhaps that no public funds shall be paid for the direct benefit of any religious institution, so if "education" qualifies "religious", then also you have not taken care of the fact that they will be authorized or allowed to prescribe for religious institutions. Also, I believe if that does not apply, then we have eliminated certain groups that operate hospitals from benefiting under Hill-Burton funds and similar appropriations. It seems to me the word "education" is not adequate to cover it unless we all feel it is adequately covered in some other part of the constitution.

PRESIDENT EGAN: Mr. Armstrong.

ARMSTRONG: Mr. President, I would suggest that before we have a discussion at this point, that if this could be accepted as Miss Awes has suggested, we could go ahead with the suggestions of the article and the intent. We are starting at the end of the article instead of the beginning, and I think we are warping Miss Awes' intent out of shape by getting into a lengthy discussion of what was asked as an addition for clarification and I believe we would find that we would have a much more intelligent approach to this thing if we could start at the beginning of the article and read it through, think it through, discuss it and then make any of these amendments. I would say, too, that if we are going to have a lengthy discussion at this point it might be well to just withdraw the motion, because I think we would be defeating our intent.

PRESIDENT EGAN: The article has been read for the second time in its entirety. Mr. White.

WHITE: I don't wish to complicate the situation, but we may run into this again. If I understand the article that is before us

on the floor, the Committee did not ask to withdraw it, but I think Mrs. Hermann raised a very valid point. If this word is inserted now, we can't move later during the course of the debate to strike it. I would move that the rules be suspended and that the Committee be allowed to substitute its unanimous amendment with the thought in mind that we can then later remove it if during the course of the debate it appears to be the wish of the body to do so.

PRESIDENT EGAN: The Chair stated it could not be removed and the Chair would stand corrected to a certain point on that statement, that is by a suspension of the rules or rescinding of the action of course you could do it.

WHITE: I so move, Mr. President, and ask unanimous consent.

PRESIDENT EGAN: Mr. White, please state the motion.

WHITE: That the rules be suspended and that the Committee be allowed to submit its proposed amendment as though a part of the Committee report.

KILCHER: Point of information. Could it possibly be handled in such a manner as to have the report reconsidered and recommitted and come out again a second time?

PRESIDENT EGAN: The effect of Mr. White's motion under suspension of the rules would accomplish that. Mr. Riley

RILEY: Mr. President. I think this is in line with Mr. White's suggestion that this article of this proposal now before us be considered under a suspension of the rules, simply as a committee substitute for the same article. I think that would put the thing in motion.

PRESIDENT EGAN: Right, and have the word "educational" placed before the word "institution".

RILEY: That would enable us to work either way from that word afterwards.

V. RIVERS: That would cover my objection. I have no objection to that.

PRESIDENT EGAN: If there is no objection then, then it is so ordered, and the word "educational" has been inserted before the word "institution" as if this were a substitute committee report. Now, Section 1 is open for amendment. Mr. Hurley.

HURLEY: Mr. President, I would like to ask a question of the Chairman of the Bill of Rights Committee. Would your Committee consider in using the terminology "direct benefit whether or not that would be a directive or a license to the legislature to appropriate money for the indirect benefits? If so, what was their conclusion?

AWES: I don't think it is a direct order to the legislature to do anything. I think we prohibited what we wanted to prohibit. I don't think that tells the legislature they are supposed to do anything else.

METCALF: I have an amendment.

COGHILL: I rise to a point of order. I submitted an amendment to this section before the noon recess, and it has never been recognized, and I was recognized by the Chair.

PRESIDENT EGAN: Were you recognized for that purpose before the noon recess? If you were, then the Chief Clerk may read the proposed amendment as offered by Mr. Coghill. The Chair feels sorry about that, Mr. Coghill.

CHIEF CLERK: "Section 1, line 7, after the word 'direct' insert the words 'or indirect'."

COGHILL: I move and ask unanimous consent.

R. RIVERS: I object.

METCALF: I second the motion.

PRESIDENT EGAN: It has been moved and seconded that the words "or indirect" be inserted after the word "direct" in line 7, Section 1.

WHITE: Point of order. I believe there was a letter presented to the Convention the other day that the Convention agreed to defer the reading of until we reached this section. It seems to me proper we hear it before we consider any business.

PRESIDENT EGAN: Is there such a communication? The Chief Clerk might read the communication that was referred to before we act upon this amendment.

CHIEF CLERK: (A letter from Mr. Don M. Dafoe, Commissioner of Education, enclosing a statement on Section 1 of the article on health, education and welfare to the effect that he believed the statement somewhat oversimplified and setting forth seven points which he believed should be included in the constitution, was read.)

PRESIDENT EGAN: Mr. Armstrong.

ARMSTRONG: Mr. President, the Committee has asked me to speak to this section, and seeing it has been amended I hope you will liberally construe that I am talking to the amendment, but the Enabling Act that we have before us says on page 3, "The provision shall be made for the establishment and maintenance of a

system of public schools which shall be open to all children of said state and free from sectarian control." Mr. President, your Committee on Health, Education and Welfare approached this whole subject of education with great care and consideration. Many methods were sought out to provide and protect for the future of our public schools. We had to recognize that the public schools were our responsibility and that it was our duty to provide for all children of the state in matters of education. The Convention will note that in Section 1 that the Committee has kept a broad concept and has tried to keep our schools unshackled by constitutional road blocks. May I draw to your attention further the fact that we have used the words to establish and maintain by general law". This is a clear directive to the legislature to set the machinery in motion in keeping with the constitution and whatever future needs may arise. Your Committee has also spelled out the fact that all children shall have the opportunity of schools, and that if the need arises for vocational schools, rehabilitation centers, schools for the retarded and other forms of education, that it is completely possible under this proposal. It is not only wise but mandatory under the Enabling Act to spell out that schools are operated in the public interest by the state and kept from sectarian control. In the third sentence of this section it deals with the public funds. This term was used because we felt that state funds may at times go through many hands before reaching the point of their work for the public, and so the term "public funds" was then used as a guide to every portion of our state financing, borough, city or other entity for the disbursement of these monies. In this third sentence we have used the word "direct". It was spelled out that the maintenance and operation or other features of direct help would be prohibited. This was not intended and does not prohibit the contracting or giving of services to the individual child, for that child benefits as his part of society. This section gives the education department, or other departments, the right to seek out the child, independent of his religious affiliation, to help him to become a strong and useful part of society wherein it touches health and matters of welfare. We would also point out in the light of letters that have come to this floor relevant to the disbursement of funds to denominational or other private institutions, that this does not prohibit the use of funds in other educational matters, and I am sure that no one on the Committee would object to the inclusion of this word as we have given the amendment here to clarify this one statement. Now it reads as it has been amended by the Committee, "No money shall be paid from public funds for the direct benefit of any religious or other private educational institution." We did this to take any doubt away on the part of this Convention of our motives, and we state that where there are welfare cases for children in homes and when there are indigents in hospitals that we do not wish to interfere with that practice of helping to serve people

through those institutions. It is the feeling of the Committee, after long work and thorough study, that these basic recommendations that we have given here on this section on education should be accepted by the Convention.

V. FISCHER: May I ask the delegate a question?

PRESIDENT EGAN: You may, Mr. Fischer, if there is no objection.

V. FISCHER: The article on finance, the proposal on finance, has the following Section 7: "No tax shall be levied or appropriation of public money made or public property transferred, nor shall the public credit be used, except for a public purpose." Now, that is the article and proposal on finance which would govern not only education but all expenditures of the state, and unless there is a very special reason for having separate and different language here, we probably should treat financial matters only in the finance article, so my question to you is, is there a special reason why we should have the third sentence of Section 1 in the health, education and welfare article?

ARMSTRONG: Your Committee on Health, Education, and Welfare discussed this prior to coming to the floor this afternoon. I believe it was our unanimous feeling that this should be taken as a part of education so that it could always be clarified in relationship to this subject. We realize there are two other matters in proposals that deal directly with finance, but we felt that when we came to those things they would have to be correlated with our action at this point. I feel that this matter needs to be clarified here and that was the action of the Committee and their reason for retaining it here instead of postponing it to the finance section.

R. RIVERS: I speak directly to the proposed amendment to the section. As I understand it, or remember it after all this general discussion --

PRESIDENT EGAN: Before you proceed, it seems that some of the delegates don't realize what the proposed amendment is. After the word "direct" insert the words "or indirect". You may proceed.

R. RIVERS: The standard approach is that no public funds shall be disbursed for the direct benefit of any religious institution or parochial schools. The word "direct" is the standard treatment of that subject. Now when you get into the wording "or indirect", then you are getting into an argument as to whether you can even contract with a private institution for the rendering of certain public services because they might say they might make a profit. Now I agree that it might not be interpreted that way, but you are only stirring up an argument when

you talk about prohibiting the disbursement of money for an indirect benefit to a parochial or private institution. You are reaching clear out to ad infinitum in the realms of logic and association. You don't treat it that way, you don't stir up that kind of an argument. If there is a public purpose for which money is to be extended it does not matter if some of it does result in an indirect benefit to some private concern, which may be a contractor, so I definitely don't want to see the words "or indirect" inserted in this section.

COGHILL: Speaking in defense of my proposed amendment, I would first like to say I am very prone to the problem of putting any religious persecution into the Constitutional Convention or among the delegates. It would be the same thing as me trying to convince Mr. Ralph Rivers of the principles of the Republican party, and he in turn of the party he belongs to. I don't believe that is the problem at all. I think that they certainly have a right, a private right or a religious right, or a parochial right under our constitution to have schools. However, I believe that the way our government was set up 175 years ago, that the founders felt that public education was necessary to bring about a form of educating the whole child for civic benefit through a division of point of the home taking a certain part of the child, the church taking a certain part of this education, and the government or state through public schools taking the other part. I adhere to that principle, and I might say that I am the president of the Association of Alaska School Boards and one of the formers of that twelve-point program we developed in Anchorage last October. I think that the problem could probably be well misconstrued here as to the motive and intent. However, I feel that the intent of public education is primarily a state function and does not belong to any private or any one particular group, whether they are in the minority or the majority. I believe we should take direct steps to maintain a free public education not encroached upon by any quarter. I think it might be well to bring out in the argument for the direct or indirect benefit of public funds for education is the matter that is now being faced in Europe and in particular in the Netherlands where they have what is called the form of educational pacification, where the government is splitting the tax dollar among some 500 different church groups providing for a parochial school benefit on an indirect basis, and in a community where there is maybe 500 school children there will be as high as seven or eight small schools scattered out throughout the community, not providing for the fullest benefit in the educational field as far as having a good complete centralized program. I think that sectarianism segregation in our educational system is bad for the children. I do not deny the right of people to have their own schools. However, I think that we should always look to the interest of the founders of our nation when they brought about the separation of church and state. The

problem was brought, and it was brought about by Thomas Jefferson quite well when he said, "If a nation expects to be ignorant and free in the state of civilization, it expects something that never shall be". Therefore out of his deliberations with John Madison they brought about a form of free public education starting in Virginia, and it has come forward ever since under the intent of having the tax dollar only brought to the public educational system. I know there have been many law cases on it, Supreme Court rulings and what not, and I think that the matter still is divided as far as the general public is concerned, as between the sects of religion and not on the principle of preserving the free public education as an instrument of the state.

RILEY: Mr. President, I should like to address a question, if I may, to the Committee Chairman, but meanwhile I wish to commend Mr. Coghill on quoting with favor, Thomas Jefferson. Miss Awes, it runs in mind and I have not the delegate proposal before me, that there was a delegate proposal submitted in language substantially the same as this would read if Mr. Coghill's amendment were adopted. Could you tell me what your experience was in Committee, what the Committee thinking was in rejecting that language?

AWES: That I believe, if I recall rightly, was Proposal No. 2 and submitted by Mr. Johnson. It was carefully considered by the Committee, and Mr. Johnson was requested to come in and speak with us on it. We considered both the words "direct" and "indirect" and we felt that the words "or indirect" would, as Mr. Rivers said, reach out into infinity practically, and probably it is not even known what the results of that might be. We did feel it would shut out certain things that should not be prohibited. For instance, the welfare department was giving certain free care to the children of the community, and it might be administered through the schools. Well, we feared that "indirect" would make it impossible to give any of these welfare benefits, for instance, to children who were in private schools, and we did not feel that any prohibition should go that far, and so the Committee did carefully consider that word and unanimously agreed we should not use it.

RILEY: It has been said the Committee gave it correct attention and rejected it permanently?

AWES: That is right.

RILEY: Thank you.

METCALF: Mr. Chairman and delegates, I very much favor the inclusion in this section of the words "or indirect". As I read the section it refers to our school system and in this book, "Constitutions of the States", there are 16 states that have sections in their constitutions preventing public tax dollars

from being spent for private schools in any way, shape or form. Here is the section from the State of Missouri. The constitution was drawn in 1945, which some of you may have read. It says that, "No money shall ever be taken from the public treasury directly or indirectly in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister, or teacher thereof as such, and that no preference shall be given to or any discrimination be made against any church, or any form of religious faith or worship." I am a firm believer in freedom of religion, and we have been aware in the progress of history, medieval times down to colonial times, that at times there have been persecutions practiced. Those are unpleasant things and they have gone past into history. I am for the free public school system, being a licensed teacher and having taught in public school systems in the Territory. I am also a firm believer in the complete separation of church and state, especially with the use of state money and state property. As I said again, I don't believe that the state property or taxes should be used and transferred to a religious group to be used directly or indirectly to the economic or political religious detriment of some other group or individual, and all activity should be on a free and competitive basis, and if I may just have a few minutes, I have a situation in Seward where a religious group have been given the use of the building and land by the Territory, and they are in competition, economic competition to my economic detriment. It is an actual fact, and I not only speak for myself but I speak for four or five people who happen to be affected similarly, and that is why I am trying to point out that I do not like to see state property or money transferred over to religious groups because persecution often times can come about. In this instance here, they have a Territory land, building valued around 60,000 dollars, and they are in active competition with private enterprise, and they have other advantages -- free snow removal, cheap help, no taxes, and I just point out these little things here that make me very much opposed to the use of state money or property in any way, shape or form by religious groups. I therefore favor the inclusion of this phrase "or indirect".

PRESIDENT EGAN: Mr. Smith.

SMITH: Mr. President, I had the opportunity to talk rather at great length with the superintendent of schools in Ketchikan during the Christmas recess on this very subject. He had suggested that the word "indirect" be inserted here, but during the course of the conversation he also said that the public school people were desirous of providing that the standards in the parochial schools be in some manner made equal to those in the public schools. Of course, the only way that could be provided would be through supervision by the State Board of Education. I pointed out to him that the insertion of the word "indirect" here would defeat that purpose and he immediately

said that he agreed and he did not want the word "indirect" inserted.

McCUTCHEON: Mr. President, will the Chair permit a question through the Chair to Mr. Coghill?

PRESIDENT EGAN: The Chair will permit a question through the Chair to Mr. Coghill.

McCUTCHEON: Mr. Coghill, could you cite me at least a few instances how indirect benefit might accrue. Are there specific types of instances within your knowledge of how this would apply? Because of your delivery here a few moments ago I assumed that there must be various types of specific indirect benefits which you would wish to prohibit. I would like to know what they are.

COGHILL: Through the Chair to Mr. McCutcheon, I believe by putting the indirect benefit clause in there that any social welfare, health arrangements that might be made with the state with any private or parochial institution would be on a contractual basis and would be providing a service to the public and not to the institution, and that is the purpose of the indirect clause in there. It would allow them to have a contract to produce or to show full value for the value of money received from the tax coffer, from the funds. In other words, to provide a hot lunch program with Territorial money or to provide a health program in a school, I do not deny that to the private schools because I feel that that is an instrument of public benefit because the child is benefiting from it from a public standpoint, and a contractual agreement between the organization and our organized state would therefore be in effect. Does that answer your question?

McCUTCHEON: In part. Your intent would be then that if some private institution of one nature or another were to supply this particular service under contract to the state that there could be no profit in that as it extended to that institution? That is, they would have to supply that service at the actual cost? That there could be no profit derived from that particular transaction. Is that the point you are making, that it would not prohibit supplying these various types of welfare programs, hot lunches, etc., but there could not be a profit factor involved?

COGHILL: That is correct, because we in the public school system, we are not allowed to make profit on such things.

KILCHER: I think that the position is not clear at all. What Mr. McCutcheon brought up is not clear at all, a benefit is not the same as a profit, so if they don't want any profit, why don't they mention it. I can see where a private school is benefited by getting nonprofit assistance. If, for instance, it is possible

for a private school to get lunch money assistance on nonprofit basis for its children, it may make the difference for them to be able to operate or not. If they are not getting lunch money or such things, they might not be able to operate, so by getting these nonprofit assistances for the children, they are getting benefited greatly. As a matter of fact, the benefit is so great it means survival or not, so I think the issue is not clear. On the principle I think I should be against the amendment because it does not clear the issue at all in that respect.

COGHILL: Maybe to clarify a point for Mr. Kilcher, one thing we want to keep in mind is the fact that the state has set up a public educational system for all children. The people that are sending their children to private, parochial, or any other type of institution are segregating themselves from the public and therefore they should not derive the benefit from the tax dollar. We are providing it. We have spent thousands, hundreds of thousands to provide a good educational system, and if we go to the pacification plan, we are destroying that principle and that in turn answers your interpretation of profit or benefit.

PRESIDENT EGAN: Mr. Gray.

GRAY: If I may ask Mr. Coghill, in reference to your remarks, does your state guarantee to offer a complete educational system?

COGHILL: It certainly will, Mr. Gray, after we write the articles on the legislation.

GRAY: You feel you have a complete educational system today?

COGHILL: I certainly think so.

GRAY: I think there are a lot of areas where a lot of children have no opportunity for public education.

COGHILL: I feel that it is quite a privilege to be a part of a public educational system and be able to criticize it, to be able to criticize our methods and our procedures and to work on those. I will agree with you wholeheartedly, Mr. Gray, that there are lots of things we have to do. However, in my recent trip to Washington, D. C., and being a conferee on the White House Conference on Education, we found with the exception of one disgruntled person, we found that our educational system in Alaska was far above the educational systems of the states. We have a progressive educational system in the sense that we are moving forward. I think one of our biggest thorns is the Alaska Native Service, if that's what you are referring to.

TAYLOR: There has been a lot of sparring around here on this subject. Everybody seems to duck the issue, and I am going to

ask Mr. Coghill a question if I may, through the Chair.

PRESIDENT EGAN: You may, Mr. Taylor.

TAYLOR: Mr. Coghill, what -- in the event that the word "indirect" was inserted into this measure, what effect would that have on the school bus law that is now in effect?

COGHILL: What effect would that have on the school bus law? I know I am up against a pretty good attorney, but I think that will in turn not affect too much of the school bus system in Alaska because it can be on a public work contractual basis, take it completely out of the educational picture, put it on the welfare picture.

AWES: I would like to make one statement. Mr. Coghill suggested that we insert the words "or indirect". The Committee very carefully considered that word "indirect". We were not sure of the far-reaching effects it would have. Mr. Coghill now proposes that he explains what it means. I can't agree with his interpretation in any respect, and he would have us believe from the explanation he has given so far that it means precisely nothing. I don't believe that any court would so interpret it, and I think he should either give us some reason for having it in there or else if it doesn't mean anything, then I think we should take it out, but I am not satisfied with any explanation he's given yet.

PRESIDENT EGAN: Mr. McCutcheon.

McCUTCHEON: Since the Committee considered this at considerable length about this matter of "direct" or "indirect" wording in this particular section, you must have in mind several specific instances where "indirect" might apply in some fashion in a derogatory manner. If you do have such an idea or some particular questions how this word "indirect" might affect adversely to thinking upon your particular section here, I would like to hear some of them. If your Committee has gone into this so thoroughly, there must have been one or two problems that have arisen where there would be some question about including the word "indirect".

AWES: I have already given one very good example, and that is this question of welfare services which are often administered to children through the schools. Mr. Coghill says that the word "indirect" would not prevent these. I very definitely think that the word "indirect" would prevent them. I think that is one very good example.

POULSEN: May I ask Mr. Coghill a question?

PRESIDENT EGAN: You may, Mr. Poulsen.

POULSEN: If the word "indirect" is put in, would that mean there is such a thing as subsidy to hospitals would be eliminated?

COGHILL: Mr. Poulsen, this is an educational article with the educational institution.

POULSEN: It still comes under public welfare, matching funds for instance.

COGHILL: Mr. Poulsen, if you will note that the Committee amended their proposal to have "educational" inserted before institutions, and so this is strictly an educational article, sir.

WHITE: May I direct a question to Mr. Coghill?

PRESIDENT EGAN: You may, Mr. White.

WHITE: Mr. Coghill, are there children's homes, foster homes in the Territory which provide any education at all to the children who are entitled to admission to those homes?

COGHILL: The children's homes that have schools with them, is that what you mean?

WHITE: Are there any such institutions in the Territory of Alaska that provide any education at all to the children admitted to them?

COGHILL: Yes, there is.

WHITE: What would happen to them under your proposed amendment?

COGHILL: What would happen to these institutions now operating?

WHITE: Do any of these receive any public funds either from the Federal government or the Territorial government?

COGHILL: I don't believe they do because the contract schools went out before 1900. They had a form of contract for schools and that went out. I think that all your foster homes would be deriving an indirect benefit or some sort or another, and there are plenty of them.

WHITE: I think your statement could be corrected, but I'm not the one to do it. I'll defer to someone else, but in the event it is corrected, I would like to hear your answer to the question as to what would happen to them under your amendment.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: I have here a copy of a memorandum from Henry A. Harmon, Director of the Department of Public Welfare of the Territory to the Attorney General on this very subject, listing

a number of schools operated by private and religious organizations to which the Territory now pays funds through the Department of Public Welfare. They show that such institutions not only include a few Catholic institutions, but also Seventh Day Adventists, Moravian, and Presbyterian. It is very brief. I wonder if I might ask to have it read.

PRESIDENT EGAN: If there is no objection the communication can be read. Mr. Fischer.

V. FISCHER: I think it should be read only if it covers educational institutions.

SUNDBORG: It does only that.

PRESIDENT EGAN: The Chief Clerk may read the communication.

(This letter giving information as to payments made by the Territory to various children's institutions in the Territory was read by the Chief Clerk.)

ARMSTRONG: Mr. President, there are several sources of income in the private institution. First of all; an institution can apply for a surplus of food, and upon the signature of the administrator, that food is made available in a limited quantity. I might give an example of butter, beans, and staples of that type. I think that is given on the basis that no Territorial agency is able to give a large enough sum to a private institution to support that child. I might give you an example of one institution that probably is receiving 900 dollars a year from the Territory, but the actual cost breakdown without new buildings and capital expenditures run in excess of 1300 dollars a year to adequately take care of that child. In that institution there was no educational facilities, that is just housing. Another source of income would be then this Territorial grant of 50 dollars which is in lieu of home care. The child as a ward of the Territory and as such must be put into a foster home or into a private institution. They choose, wherever possible, to put the child in a foster home and let that child go to the private school. If a family situation is so complicated, they want to keep that family structure together and hold that family, the child is placed in a private home. There are a few, very few of the schools that have boarding facilities and educational facilities, but there are some that exist, Mr. White, in the Territory, and most of the grants by the Territorial Department of Welfare are given for the boarding home facilities and not for the education, and I think that could be borne out by the fact that they are looking for a holding situation for the child. The educational facilities are incidental at that particular point, but there are a number of places that are together. I hope that will help.

BUCKALEW: Mr. President, I don't think the question has been answered yet by any of the persons who have spoken on this subject.

If the word "indirect" is in there, it is going to eliminate almost any kind of aid. It will, for example, eliminate the free lunch, eliminate bus transportation, eliminate, for example, if we had a school or an institution where they had a school, it would eliminate the state giving any support to the child because that would be indirect support to the institution. I think when the members vote on it, I think they ought to understand the word "indirect" cuts out everything, just eliminates all kinds of support, and I don't think there is any question about it.

PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: Mr. Chairman, I would like to say that I cannot agree with Mr. Coghill that contracts would not be indirect help. I believe you could construe them to be indirect help. I believe that we should leave these words out of the section, and I believe the Committee has done a very good job. They have considered all angles of it, and I would like to say that I support the Committee resolution.

COGHILL: In closing the argument, I might just leave the thought with the delegates that on this particular subject of the direct or indirect benefit to the private or religious educational institution, would guarantee every citizen of the new State of Alaska that any money diverted from the public funds to any such organization in complete competition with your public institutions, if you will, that there will be a sound contractual agreement between your government and this private institution to provide public service and not to the benefit of the individual institution.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment.

CHIEF CLERK: "Section 1 line 7, after the word 'direct' insert the words 'or indirect'."

JOHNSON: I request a roll call.

KILCHER: I am sorry to take another minute. There is one problem that has not come up in this discussion. I am a father of seven children, five of which have had the Calvert course for several years with good results. I understand that the Calvert course could possibly be construed not to be available anymore either if indirect help were not available to a private school. The Territory pays it. My children go to a private school, or most of them. The biggest ones though hike over the road, and the Territory pays an indirect system. It could possibly be construed to include the Calvert course, which is a great problem in Alaska.

COGHILL: I might answer that, being familiar with the Calvert course, that the Territorial Department of Education, that is one of their recognized correspondence courses for the outlying areas, and if any family on a CAA remote station or someone on a remote part of the Yukon River, etc., would want to further the education of their children, write to the Commissioner of Education and they are referred to the Calvert course, and in higher institutions it would be the correspondence courses from the University of Nebraska.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Coghill be adopted by the Convention?" The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 19 - Barr, Boswell, Coghill, Collins, Cooper, Cross, Harris, Hilscher, Hinckel, Johnson, King, Knight, Laws, McCutcheon, Metcalf, Nerland, Poulsen, Robertson, Sweeney.

Nays: 34 - Armstrong, Awes, Buckalew, Davis, Doogan, Emberg, H. Fischer, V. Fischer, Gray, Hellenthal, Hermann, Hurley, Kilcher, Lee, Londborg, McLaughlin, McNealy, McNees, Marston, Nordale, Peratrovich, Reader, Riley, R. Rivers, V. Rivers, Rosswog, Smith, Stewart, Sundborg, Taylor, Walsh, White, Wien, Mr. President.

Absent: 2 - Nolan, VanderLeest.)

CHIEF CLERK: 19 yeas, 34 nays, and 2 absent.

PRESIDENT EGAN: So the "nays" have it and the proposed amendment has failed of adoption.

WHITE: I have an amendment to Section 1.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment as offered by Mr. White and Mr. Fischer.

CHIEF CLERK: "Section 1, strike the last sentence."

WHITE: I move the adoption of the amendment.

V. FISCHER: I second it.

ARMSTRONG: I object. Mr. President, I feel that we will complicate our finance situation by trying to write this into a later report for clarification. I think here in one sentence you pinpoint it; you clarify it once and for all, but when you start to define this thing again in a larger amendment, you

have a hopeless task. I don't think it can be done, and I believe you want it here where they read it, they understand it and they know the precepts we are following. I think we would be wasting time to now delete this after we have had this vote of confidence for the Committee's report and then try to take it up again later. So I shall vote to kill the amendment and would ask the delegates to do likewise.

WHITE: I feel again that we are getting into a legislative matter here, and I feel that the broad policies that have been laid down in the Federal Constitution are good enough for our purposes here. Those policies that are contained in our Section 5 of our bill of rights which says, "No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof". In a section, I forget the number of it, in a finance article saying that no funds shall be spent for other than a public purpose. I think those two sections are good enough to spell out the broad outline. In addition, I feel that while I am not a lawyer that almost every argument that has been applied against the use of the word "indirect" could just as logically be applied against the use of the word "direct", and I think it will lead us into trouble.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. White and Mr. Fischer be adopted"? Mr. Fischer.

V. FISCHER: I would just like to add, Mr. President, that while this Commissioner Dafoe points out education is an important field, I do not feel that when it comes to an appropriation of public funds it should receive any special, either more restrictive or more favored treatment. As Mr. White pointed out, the general stipulation is that funds be appropriated only for public purpose. Now it seems to me that the definition of public purpose must be made during every age in view of the conditions prevailing at that time. I think that has been one of the strong points of the Federal Constitution. The fact that it has left itself open to that kind of interpretation and, therefore, it seems that if we give favored treatment or discriminatory treatment to this education section, what are we going to do when it comes to health, welfare and just anything else that may come out. I think the public purpose provision should be the only guidance when it comes to appropriating public funds.

PRESIDENT EGAN: Mr. Gray.

GRAY: I would like to ask the Chairman of Style and Drafting if they would have the authority to move this section, if it directly belonged to taxation, would Style and Drafting have that authority?

PRESIDENT EGAN: Would the Rules Committee have the answer to that question?

SUNDBORG: Our rules, I believe, outline the authority of the Style and Drafting Committee and they do provide that after the various proposals have been adopted in third reading that the Style and Drafting Committee has an opportunity to arrange any material, section, subsections and I believe even sentences where it properly belongs in the constitution. It might be that Style and Drafting would have that authority, but, of course, that authority would be subject to approval here on the floor because we can't do anything in our Committee, of course, unless it is approved in a subsequent report that we make to the plenary session.

PRESIDENT EGAN: Mr. Smith.

SMITH: Mr. President, I merely wanted to point out that this problem has arisen in a good many of the States. It has arisen in connection with the education, and therefore I feel that this provision should remain in the section under education.

COGHILL: Mr. White brought up the thought that the Federal Constitution was all-inclusive. However, it might be well to remember that during the years that they were writing the Federal Constitution they left all educational matters to the individual states, and the purpose of leaving these educational matters to them was because of the trouble they were having at that time between different groups and different communities and different states being quite well controlled by different churches of one sort and another, such as the Quakers in Penn State and down in Virginia and over in Rhode Island and through that area. I feel that this should stay in the article, although my amendment did not ride, I am going to vote for it because I feel at least we have a certain provision for the direct benefit of tax dollars. I might, if I may, Mr. President, read the Supreme Court's decision of 1947 of the Emerson case, and I will not read the whole section but just in one part. It says, "No tax in any amount, large or small, can be levied to support any religious activities or institution whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither state nor federal government can openly or secretly participate in the affairs of any religious organizations or groups and vice versa."

WHITE: If I may close briefly. I am not for or against bus transportation to certain institutions. I am not for or against hot lunches to certain institutions. I again think we would be much better advised to stick to the broad outlines. In partial reply to Mr. Coghill, I might mention that 100 years from now the state might wish to get involved in some sort of G.I. Bill of its own, following another war. I would not be in favor of it now, but 100 years from now I might. Why not leave ourselves open?

BARR: Point of information. I seem to remember when we first started out there was a sheet of paper on our desk to outline certain things that was mandatory to place in our constitution to conform with the Federal Constitution and with our accepted principles of American government. I will ask Mr. Armstrong, I believe, wasn't this practically the same wording in one of those paragraphs and did it not specifically mention schools? Mr. White has put in his amendment because he said the other phrasing in the Finance Committee report would take care of it. That mentioned public funds should be used for public purposes, but aren't we required to state in our constitution that public funds should not be used for private schools?

ARMSTRONG: No sir, not according to the House Enabling Act that we have used as a guide. On page 3, line 14, it just makes the general provision that for the establishment and the maintenance of a system of public schools which shall be open to all children of the state and free from sectarian control. That is the only thing, but I might add that I believe that there are 39 states that have added some type of safeguard in their constitutions directly in connection with education, and I believe every new constitution that has come out has held to some provision of this type, practically in every case they have been written in at this point, so I don't know why we should be afraid to follow that pattern. I don't think it is unusual to keep it here. I think it is healthy to keep it here, and I believe this is where it belongs.

McNEES: I call for the question.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. White and Mr. Fischer be adopted by the Convention?"

JOHNSON: I request a roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 13 - V. Fischer, Hurley, Kilcher. Laws, Lee, McCutcheon, Nolan, Poulsen. Reader, Riley. Sundborg, Walsh, White.

Nays: 41 - Armstrong, Awes, Barr, Boswell, Buckalew, Coghill, Collins, Cooper, Cross, Davis, Doogan, Emberg, H. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Johnson, King, Knight, Londborg, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Nordale, Peratovich, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Sweeney, Taylor, Wien, Mr. President.

Absent: 1 - VanderLeest.)

CHIEF CLERK: 13 yeas, 41 nays and 1 absent.

PRESIDENT EGAN: The "nays" have it and the proposed amendment has failed of adoption. Are there other amendments to Section 1? Mr. Victor Rivers.

V. RIVERS: May I ask a question? I notice that the Committee has come in with the words "direct benefit". I notice that some of the other states' constitutions, including that of Hawaii, say "support or benefit". What was the intent of limiting them to the word "direct"? I would like to know a little about the intent of the Committee rather than in dealing with both "support" or "benefit".

PRESIDENT EGAN: Miss Awes.

AWES: I don't recall that the Committee considered the words "support" or "benefit". I think the purpose we wanted to achieve was brought out in the arguments on an earlier amendment and we felt these words did it, and I don't recall the words "support" or "benefit" came before the Committee.

V. RIVERS: In other words, the Committee did not consider the words "support" or "benefit"?

AWES: That is right.

PRESIDENT EGAN: That seems to be the understanding of the Chair. Mr. Armstrong.

ARMSTRONG: As I recall, Mr. President, we probably discussed the question of the support of private schools, but we did not feel it needed to be in this particular section, and I don't recall, Mr. Rivers, that we considered that as a part of the text. I certainly would agree with what Miss Awes has said, although we discussed in Committee such things as direct legislation for the building of a school or the maintenance of a private school, which would be support, but it was our understanding that that would be covered under this word "direct benefit". This would prohibit the direct appropriation for building or maintenance of private institutions.

V. RIVERS: Mr. President, I am going to make a motion. I think that the word "direct" limits the interpretation of this. I am going to make a motion that the word "direct" be stricken and insert in lieu thereof the words "support of", line 7.

BARR: I second it.

PRESIDENT EGAN: The matter is open for discussion. Mr. Rosswog.

1530

ROSSWOG: I would just question the striking of the words "direct benefit". The "support" I can see that, but "direct benefit", it might leave the question wide open again as far as I'm concerned.

PRESIDENT EGAN: Is there further discussion of the proposed amendment? Mr. Coghill.

COGHILL: I move and ask unanimous consent for a five-minute recess.

PRESIDENT EGAN: If there is no objection the Convention will stand at recess for five minutes.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Robertson.

ROBERTSON: May I ask Mr. Rivers, what in your opinion would be the implication or result of the proposed change?

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: There is some question in my mind as to what interpretation the words "direct benefit" would receive from the courts and just how narrow they would consider a "direct benefit" to be. I notice in other state constitutions, I don't have all the constitutions available, but the wording I provided was identical with the State of Hawaii. In Nevada they say, "No money shall be expended, either city, county or state, for benefit of sectarian purposes.". In the case of Puerto Rico they also have the same broad general language. I hesitate to use the Puerto Rican constitution as a model for I don't care too much for it, but in that highly religious little Commonwealth they have adopted the same principle, but there again I feel that the word "direct" may be interpreted very narrowly by the courts and may lead to a great many funds that would go for support that I personally do not feel should be going to support of sectarian institutions.

TAYLOR: Mr. Rivers, do you not believe that if you leave that word out it will create more confusion than it will, leaving it in?

V. RIVERS: I don't think so. It will leave a little broader field for interpretation. However, Mr. Chairman, I believe that after considering the matter I will withdraw my amendment and ask unanimous consent to do so for the moment.

PRESIDENT EGAN: Mr. Victor Rivers asks unanimous consent that his proposed amendment be withdrawn. Hearing no objection, it is so ordered. Mr. Barr.

BARR: I ask that we now revert to the introduction of proposals.

1531

PRESIDENT EGAN: If there is no objection, the Convention will now revert to the order of business of introduction of proposals. The Chief Clerk may read the proposals as introduced by Mr. Barr.

COOPER: Is this a delegate proposal or committee proposal? Was not the date set January 8?

CHIEF CLERK: That is today.

PRESIDENT EGAN: The Chief Clerk may read the proposal.

CHIEF CLERK: "Delegate Proposal No. 45, introduced by Mr. Barr, DEPARTMENT OF LABOR."

PRESIDENT EGAN: What committee would you like that to be referred to, Mr. Barr? I believe it should go to the Executive, both of those should. Would the Committee on the Executive be the proper committee? If there is no objection the Committee Proposal will be referred to the Committee on the Executive. The Chief Clerk will please read the second proposal.

CHIEF CLERK: "Delegate Proposal No. 45 introduced by Mr. Barr, OFFICE OF THE ATTORNEY GENERAL."

PRESIDENT EGAN: Committee on the Executive.

BARR: Would it be possible afterwards to have that referred also to the Judiciary?

PRESIDENT EGAN: If there is no objection, it will be referred from the Committee on the Executive to the Committee on the Judiciary. If there is no objection it is so ordered. Are there other amendments to Section 1? Mr. Johnson?

JOHNSON: I have no amendment. I would like to direct a question to the Chairman of the Bill of Rights Committee concerning this section.

PRESIDENT EGAN: If there is no objection, Mr. Johnson, you may direct a question.

JOHNSON: Miss Awes, in the second line, the wording "system of public schools" appears. Now in a number of state constitutions I have noticed that they use the word "system of free public schools". It is assumed I imagine that you intended that we should have a system of free public schools here, but you did not specifically use the word, and I wondered if the Committee had considered that matter and if so, why it was left out?

AMES: We did consider the matter. The first two sentences in this section are taken almost word for word from the Enabling

Act. The word "free" was mentioned. We did not feel it was necessary since we say that a "system of public schools shall be open to all children" and since there is already a well set up system of schools which are free, we were afraid that the word, while not necessary, might cause some confusion if it were used. For instance, this section is intended to refer not only to grade schools and high schools, but also other educational institutions. For instance, a state university, and there may be vocational schools, etc., established, which is customary throughout the country to charge tuition for, sometimes less to residents of the state than to other persons. Also, a city running its own school system, I think, customarily charges a small tuition fee to children who come in from other places, and we were afraid if we used the word "free" that it might raise questions whether or not certain practices like this should be continued or considered. We did not think that was a matter for the constitution.

JOHNSON: Thank you.

HURLEY: I would like to speak on the matter of personal privilege and ask unanimous consent.

PRESIDENT EGAN: You may, Mr. Hurley.

(Mr. Hurley spoke under a question of personal privilege regarding the article on health, education and welfare.)

PRESIDENT EGAN: Are there other amendments to Section 1, article on health, education and welfare? Mrs. Hermann.

HERMANN: Mr. President, I have an amendment to follow Section 1. I want to change Section 2. I have this amendment, it is neither an amendment to Section 2 nor Section 1. I just want to get a new Section 2 and renumber it.

PRESIDENT EGAN: You are asking that Section 2 be deleted?

HERMANN: No, not deleted, just moved down. This actually belongs under the education section, that is the reason I put it in. It has nothing to do with what is already written, however.

PRESIDENT EGAN: Would the Chief Clerk please read the amendment as offered. Mr. Ralph Rivers.

R. RIVERS: Mrs. Hermann wants to inject some new material between the sections. What she has so happens to come in logical order between Sections 1 and 2. We are taking these up section by section, but are we not at liberty to interject new sections in between sections?

PRESIDENT EGAN: She wants to inject a new Section 2 and renumber 2, 3, 4, and 5. The Chair is just hard at getting it through his head. The Chief Clerk may read the proposed amendment.