

MINUTES
SENATE FINANCE COMMITTEE
March 26, 2001
6:03 PM

TAPES

SFC-01 # 53, Side A
SFC 01 # 53, Side B

CALL TO ORDER

Co-Chair Pete Kelly convened the meeting at approximately 6:03 PM.

PRESENT

Senator Dave Donley, Co-Chair
Senator Pete Kelly, Co-Chair
Senator Loren Leman
Senator Lyda Green
Senator Gary Wilken
Senator Lyman Hoffman
Senator Donald Olson

Also Attending: BRUCE JOHNSON, Deputy Commissioner, Department of Education and Early Development; GEORGE UTERMOHL, Legislative Counsel, Legislative Legal and Research Services; DEL CUMMINS

Attending via Teleconference: From Unalaska: DARREL SANBORN; From Wrangell: JANELL PRIVETT; From Kenai: ED MCCLAIN, Assistant Superintendent, Kenai Schools

SUMMARY INFORMATION

SB 133 - PUBLIC SCHOOL COMPETENCY EXAM

The Committee heard testimony from the Department of Education and Early Development and reported the bill from Committee.

SB 88 - METROPOLITAN PLANNING ORGANIZATIONS

After brief debate and testimony from Legislative Legal and the Attorney General's Office the bill was reported from Committee.

#sb133

CS FOR SENATE BILL NO. 133(HES)

"An Act relating to a two-year transition for implementation of the public high school competency examination and to establishing a secondary student competency examination as a high school graduation requirement; and providing for an effective date."

DARREL SANBORN, testified via teleconference from Unalaska. He indicated that in a couple places in the bill it stated "the governing board" and requested clarification as to whether they meant the state board of education or the local board.

Senator Green clarified that the bill was referring to the State School Board.

Mr. Sanborn stated that his second concern was that ESL (English as a Second Language) was not addressed in the bill at all. He pointed out that English is a second for many students in Unalaska.

Senator Green answered that it might be different if they had an ESL student under an Individual Education Plan (IEP). She deferred the question to the department.

BRUCE JOHNSON, Deputy Commissioner, Department of Education and Early Development, indicated that CS SB 133 (HES) did not address IEP students directly. He explained that if that were to take place it would have to be done through the waiver process.

Senator Green pointed out the three things that she felt were of priority: one, continue to give the exam; two, have the exam address the essential skills of the students; three, address provisions for learning disabled student. She noted that during the process they realized that they needed a safety valve or waiver so that a district would be able to handle any extraordinary circumstance. She explained that in the bill they created a transition period; they would begin giving the test for accountability in 2002 and the students who passed the exam would have it indicated on their transcript and diploma. She noted that there would also be provisions for the learning disabled students who might need some provisions made for their exams. She pointed out that all IEP students had the option of a regular assessment without accommodation or with accommodation or an alternate assessment. She explained that in the year 2004 the exam would be retooled and they would have the same procedures in place. She added that there would be a waiver procedure for the following: the student who might transfer in late; illness; injury or what they would consider extenuating circumstances. She stated that a school district would present to the department the number of

waivers approved and in January of 2003 the department would come back to the legislature. She said that they believed there should be legislation that would place the exit exam in a position where it would be legally defensible. She added that they tried to create something that would avoid legal entanglement.

Mr. Johnson applauded the Senate Health, Education and Social Services (HESS) Committee and Senator Green. He indicated that the department was pleased with the many refinements to the secondary pupil competency testing law as outlined in the committee substitute for SB 133. He noted that the department sincerely believed that they were on the right path to ensure that Alaskan's standard space reform effort would prevail and that students would be treated fairly. He indicated that the fair treatment of students with special needs had been successfully addressed in the bill. He further stated that the potential of waivers for unique situations had also been addressed and could, in their estimation, be crafted by the State Board of Education and Early Development to maintain integrity. He offered two suggestions: first, an effective date of 2006, which would allow for greater defensibility when the law was challenged; second, the endorsements outlined in the bill would be best left on the transcript. In closing, he commended the Senate on the legislation and added that the legislation would ensure that Alaska's public schools would have enough time to prepare all students.

Senator Wilken referred to page 2, line 7, specifically the language, "or receives a waiver from the governing body". He requested clarification that "governing body" was referring to the local school board.

Senator Green clarified that it does refer to the local school board.

Senator Wilken indicated that he was uncomfortable with that language. He asked Mr. Johnson to explain how they would put together regulations that would be so tight that they would not be putting a burden on 53 different school boards to have continual waiver hearings.

Mr. Johnson noted that obviously it would be a challenging task. He believed that the intention of the Senate HESS Committee would be to have it narrowly defined. He added that he would preserve regulation that would be narrowly defined and there would be no room for misinterpretation. He said that they would simply look at a student to see if they met the requirement or not and they would either be granted a waiver or denied. He explained that they planned to take it out to the Alaska public and gain their insight.

Depends on the amount of time available. He declared that it was a daunting task, but something that the state board was willing to take on and bring back to the legislature for their consideration. He noted that many of the members had emphasized the narrowness that they desired in the waiver process and he did not anticipate that the state board would ignore that desire.

Senator Hoffman wondered if Mr. Johnson would expand on his desire for a 2006 deadline.

Mr. Johnson pointed out that the key to defensibility was the opportunity to learn concepts. He noted that the key to the Texas case was their capacity to show that there were plenty of intervention opportunities for young people; therefore, they knew what the requirements were early on and they were given an opportunity for intervention. He explained that in Alaska they have the three benchmark exams at grades three, six and eight. He said that the 2006 deadline would give families and students the feedback from the sixth grade and the eighth grade benchmark exams, as well as, the high school qualifying exam. He advised that if they stuck with the 2004 deadline then they would only have one benchmark exam. He concluded that collectively the opportunity to learn both from knowing the results early on and more time for remediation and intervention would all strengthen their capacity to argue successfully in the court that the law makes sense.

Senator Leman said that he would resist changing the deadline to 2006 and believed that the 2004 deadline would be workable. He pointed out that the legislature enacted the law in the first place to get people serious about standards and meeting those standards; therefore, putting it off for another two years would do a disservice to the progress. He noted that he had seen some evidence where some students believed that the legislature would not take this issue seriously and he urged that the message be that they were serious. He indicated that they would require that the results show up on the transcript and he hoped on the diploma as well. He suggested that it be a very simple system of endorsement stickers or stamps. He believed that it would be an incentive for students to receive those endorsements. He commented that he might divert from his colleagues in saying that the math exam needs a little work, but not a whole revision. He encouraged them in the revision process to not back it off too much in keeping it at a high school level when it came to math. He believed that the process had the potential to be productive.

Senator Olson assumed that the children that were being home schooled would need to be tested as well. He wondered how that would occur.

Senator Green responded that she was not sure of the answer, but she believed that they passed legislation two or three years ago that would keep the legislature out of the home school purview. She assumed that it applied in this case.

Co-Chair Kelly pointed out that there were some home school courses that used the state high school curriculum; therefore, some would be through private organizations and not applicable.

Senator Green responded, "That's true."

Senator Olson attempted to clarify that a student home schooled in rural Alaska would not be inhibited in any way from receiving a diploma.

Co-Chair Kelly reiterated that if they were going through a state school district that provided correspondence courses then they would have to take the test, but if they went through a private organization they would not have to take the test rather they would have a diploma through that private organization and not from the state.

Senator Wilken requested clarification that a student could complete a home school program and then if they wanted to receive a diploma they would have the option of taking the exam.

Mr. Johnson explained that they would have to be enrolled in a public school and have met the attendance requirements of that school and all the local requirements and the requirements of the exit exam in order to have the option of taking the exam. He summarized that if a student was truly home schooled and not a participant in any public program then they would not be eligible to take the exit exam.

JANELL PRIVETT, testified via teleconference from Wrangell, stated that she was very impressed with the work that had been done on the bill and supported the bill the way it was currently written.

Senator Lemman thanked Ms. Privett and noted that the Wrangell community had produced some of the best results in the early rounds of testing and affirmed that obviously the Wrangell School District was doing something right.

ED MCCLAIN, Assistant Superintendent, Kenai Schools, testified via teleconference from Kenai, testified in support of the bill. He thanked the Senate HESS Committee for their work on the bill, as well as, the Department of Education and Early Development. He

voiced appreciation for the encouragement to local districts to develop additional endorsements and awards for higher-level achievements. He indicated that they also appreciated the addition of waivers to handle the variety of unexpected and unusual situation. He referred the Committee to page 3, lines 27 through 30, with regards to the waiver. He commented that it would provide a way for accountability and he believed that it was a wise decision.

Senator Green thanked Mr. McClain for his testimony and indicated that he had been a key player in making the bill something that the Committee could be proud of.

Senator Hoffman offered a conceptual amendment to delete "2004" and insert "2006."

Senator Green objected.

Senator Hoffman spoke to the amendment.

Senator Lemman indicated that he was opposed to the amendment. He pointed out that in 1997 the previous legislation was passed effectively setting the date for 2002. He believed that it was appropriate to put pressure on the school districts and the department to make the changes. He also noted that they have the momentum now.

Co-Chair Kelly voiced that under the previous provisions the bill was more of a "drop dead" bill, but believed that the Senate HESS Committee had provided a bill that did not present so much at stake if a student did not pass the exam. He concluded that the work of the Senate HESS Committee removed the need to extend the date.

Senator Hoffman agreed with Senator Lemman and Co-Chair Kelly, but again the idea of having the whole exam held up in court was also very important.

Senator Green clarified that they would continually be working on improving the test. She pointed out that the Senate HESS Committee was assured that all would be in order in 2004.

Senator Olson indicated that it would be better for them to have more years behind them and expressed support for the amendment.

A roll call was taken on the motion.

IN FAVOR: Senator Hoffman and Senator Olson

OPPOSED: Senator Green, Senator Leman, Senator Wilken, Senator Donley and Senator Kelly

The motion FAILED (5 - 2)

Co-Chair Donley made a motion to move CS SB 133 (HES), 22-LS0607/P, from Committee with the accompanying fiscal note.

There was no objection and CS SB 133 (HES) was reported from Committee.

Co-Chair Kelly thanked the Senate HESS Committee for the work that they had done on the bill.

#sb88

SENATE BILL NO. 88

"An Act relating to metropolitan planning organizations and to establishment of a metropolitan planning organization for the Anchorage metropolitan area; and providing for an effective date."

Senator Phillips, sponsor of SB 88, explained that basically the bill added two members, one from the House side and one from the Senate side, to the Anchorage Metropolitan Area Transportation Study (AMATS) policy committee.

Co-Chair Kelly wondered how many Metropolitan Planning Organizations (MPOs) would be created under SB 88.

Senator Phillips replied that there would be just one. He explained that under the federal/state agreement there was only one over 200,000; therefore, if a community in the North Star Borough reached 200,000 they would be under the MPO created under SB 88. He stated that the reason he introduced the legislation was the frustration that his community had with the process, specifically, when a constituent requested that a road be improved the policy committee would continue to change their meeting dates and times and their priorities. He pointed out that this had created confusion and distrust of the AMATS process by the public. He said that he was getting blamed for this when he did not even have any say in the process.

Senator Phillips added that the State of Hawaii had a similar AMATS process and they allowed for the legislature to be involved in that process.

Co-Chair Kelly clarified that the Constitution of the State of

Alaska prohibited dual office holdings for profit and noted that this would not be a profit making enterprise. He wondered if they were creating a situation where a few legislators would be crossing the boundary with regards to the issue of separation of powers; therefore, gaining too much power over the process.

Senator Phillips explained that essentially the AMATS policy committee would come up with a five-year plan and the legislature would be unable to change it. He noted that of the five members on the policy committee one would be the commissioner of the Department of Environmental Conservation and one would be the commissioner of the Department of Transportation and Public Facilities. He indicated that they would be appointed and not elected. He pointed out that the mayor would be a representative, as well as, two assembly members.

Co-Chair Kelly requested clarification.

Co-Chair Donley clarified that what the bill proposed to do was set into statute what federal law already required, which would be that new MPOs would have to be done by an act of the legislature. He noted that when those MPOs did come along it would give the legislature the opportunity to address specific membership. He summarized that SB 88 would leave up to the legislature the creation of future MPOs and what their membership would be.

Senator Hoffman referred to the resolution passed by the Anchorage assembly opposing the bill and he wondered what the tally was on the vote.

Co-Chair Donley explained that it was not voted on, rather it was put on the consent calendar and nobody objected.

Senator Phillips affirmed that Co-Chair Donley was correct.

Senator Lemman stated that the Department of Law's opinion was consistent with what they said in their ruling about local emergency planning committees. He disagreed with the assessment about ten years ago when former Representative Eileen MacClean and former Representative Gail Phillips and himself were appointed to local emergency planning committees. He pointed out that federal law specifically stated that elected officials would be apart of the membership; therefore, the municipalities rightfully put some state elected officials on those committees. He noted that the attorney general then came out and said that it would be considered dual office holding, which he believed was ridiculous.

Co-Chair Kelly asked George Utermohl to comment on the constitution

and also address the separation of powers issue.

GEORGE UTERMOHL, Legislative Counsel, Legislative Legal and Research Services, indicated that the Department of Law was consistent in addressing this legislation in previous years before the legislature that the service of legislators on MPOs would constitute dual office, which was consistent with the statute and the constitution. He added that there was also a good argument that a legislator could not hold an office or position "of profit." He believed that they were construing the term "of profit" to modify not only position, but also office. He pointed out that this legislation attempted to avoid that particular concern that the Department of Law had raised, but nonetheless that issue was still out there.

Co-Chair Donley said that the "of profit" seemed to modify both office and position. He wondered why they would have that there otherwise.

Mr. Utermohl answered that it was a matter of interpretation.

SFC 01 # 53, Side B 06:52 PM

Mr. Utermohl continued that there were other possible constructions of that language.

Co-Chair Donley wondered why, if they were going to construct it so that they were standalones, would they even need to say "position of profit." He said that it seemed like unnecessary language as a standalone. He pointed out that they could just say "any other office." He could not think of an example where it would include "profit" where it did not already include "office."

Mr. Utermohl replied that he could see where there could be an office without compensation.

Co-Chair Donley wondered why they would have to go on and say "position of profit" if they were going to ban all office with or without compensation. He pointed out that they would have covered everything under the first clause, which was a ban on dual offices. He said that it would just be extra wordage not needed in the constitution.

DEL CUMMINS, Office of the Attorney General, said that it was his second time testifying on this concept and the facts were very similar that people wanted to put legislators on the AMATS board.

He noted that this bill was a radical departure from what presently existed on the AMATS board. Currently, the AMATS board was a creature of municipal government. He pointed out that there were three voting members and two non-voting members.

Co-Chair Donley replied, "I don't think that's true." He argued that the two commissioners did vote.

Mr. Cummins stood corrected. He continued, explaining that the municipal representatives currently controlled the board. He pointed out that they would be changing it so the governor and the legislature would be appointing people. He further noted that the difficulty in appointing legislators would be that they would not be concurring with the constitution where it states that they cannot hold a dual office.

Co-Chair Donley wondered why they would add the words "of profit" after "position."

Mr. Cummins explained that "position of profit" in combination with the word "office" just broadened the coverage of what it applied to.

Co-Chair Donley wondered what function the term "of profit" served if they had already covered all positions.

Mr. Cummins explained that legal language was not always economical. He opined that it was merely a broader definition of what they were regulating.

Co-Chair Donley said that the essential issue was in the interpretation of the first sentence; there was no function of the words "of profit."

Co-Chair Kelly said that they could probably get into an esoteric debate on this subject, but he believed that it would be challenged.

Senator Phillips commented that Hawaii allowed for dual office holding and pointed out that their constitution was very similar to Alaska's constitution on dual office holding.

Senator Hoffman referred to the resolution and wondered if the assembly actually voted on it.

Senator Phillips indicated that they did.

Senator Leman stated that the interpretation borders on the

ridiculous. He urged that the law and the constitution needed to be interpreted with some common sense.

Co-Chair Donley made a motion to move SB 88, 22-LS0132\F, from Committee with the accompanying zero fiscal note.

Senator Hoffman objected. He commented that the assembly voted in opposition to this legislation and pointed out that the community of Anchorage elected all the assembly members. He believed that it was a local issue and the assembly should be responsible for what happens in that community. He withdrew his objection, but noted that his recommendation would be "do not pass."

Co-Chair Kelly asked if there were any further objections.

There was no further objection and the bill was reported from the Committee.

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ADJOURNMENT

Co-Chair Pete Kelly adjourned the meeting at 7:07 PM.