

ALASKA STATE LEGISLATURE
SENATE HEALTH, EDUCATION & SOCIAL SERVICES COMMITTEE

April 18, 2001
1:45 p.m.

MEMBERS PRESENT

Senator Lyda Green, Chair
Senator Loren Leman, Vice Chair
Senator Gary Wilken
Senator Jerry Ward
Senator Bettye Davis

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

CONTINUATION OF PRESENTATION ON MEDICAID DIRECTIONS BY THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES - ALZHEIMER'S/DEMENTIA, SCHOOL BASED CLAIMS, MEDICAID REFINANCING

SENATE JOINT RESOLUTION NO. 26

Urging the President and the Congress to provide additional funding for special education services.

MOVED CSSJR 26 OUT OF COMMITTEE

SENATE BILL NO. 188

"An Act establishing an education fund and a land endowment for public education; and providing for an effective date."

HEARD AND HELD

SENATE JOINT RESOLUTION NO. 25

Proposing an amendment to the Constitution of the State of Alaska relating to education.

HEARD AND HELD

PREVIOUS SENATE COMMITTEE ACTION

SJR 26 - No previous action.

SB 188 - No previous action.

SJR 25 - No previous action.

Presentation on Medicaid Directions - See HESS minutes dated 4/9/01 and 4/11/01.

WITNESS REGISTER

CONTINUATION OF MEDICAID PRESENTATION BY:

Mr. Bob Labbe, Director
Division of Medical Assistance
Department of Health &
Social Services
PO Box 110601
Juneau, AK 99801-0601

Mr. John Sherwood
Division of Medical Assistance
Department of Health &
Social Services
PO Box 110601
Juneau, AK 99801-0601

Ms. Alison Elgee
Deputy Commissioner
Department of Administration
PO Box 110200
Juneau, AK 99811-0200

Mr. Greg Maloney
Director of Special Education
Department of Education &
Early Development
801 W 10th St.
Juneau, AK 99801-1894

OTHER WITNESSES:

Mr. Jerry Burnett
Staff to Senator Green
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Explained the provisions of SJR 26.

Ms. Sandy Altland
Staff to Senator Ward
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Explained the provisions of SB 188 and SJR 25.

Dick Mylius
Division of Mining, Land, & Water
Department of Natural Resources
550 W 7th Ave., Suite 1050

Anchorage, AK 99501-3579

POSITION STATEMENT: Opposed to SB 188.

Mr. Jim Hansen

Division of Oil and Gas

Department of Natural Resources

550 W. 7th Ave., Suite 800

Anchorage, AK 99501-3560

POSITION STATEMENT: Opposed to SB 188.

ACTION NARRATIVE

TAPE 01-34, SIDE A

Number 001

CHAIRWOMAN LYDA GREEN called the Senate Health, Education & Social Services Committee meeting to order at 1:45 p.m. She asked Mr. Bob Labbe to continue his presentation on Medicaid.

MEDICAID DIRECTIONS

MR. BOB LABBE, Director of the Division of Medical Assistance, Department of Health and Social Services (DHSS) introduced Mr. John Sherwood of the Division, and made the following statement. The state, as a payer, has the option of changing the criteria it uses to control nursing home admissions. The state has certain policies to manage utilization, one being to decide who can use the service. A Medicaid client is not necessarily eligible for all Medicaid services. Historically, the eligibility rules for nursing home admission have been crafted narrowly. Because the focus has been medically oriented, access to community based care has been limited because the same standard must be used for both. Changes to these rules will be an adjustment to policy regarding which clients can have access to nursing home care based on their condition under Medicaid.

CHAIRWOMAN GREEN asked if people can qualify for Medicaid by service or by the person's circumstances.

MR. LABBE explained that to qualify for Medicaid, a person must meet certain requirements. If a person qualifies, the state has a benefit package that contains different services. However, within the program for each service, DHSS has criteria, such as whether the service is medically necessary. One example of such a service would be cosmetic procedures. He views those policies as a form of utilization control. The Alzheimer's/dementia issue is tied to that. Other states have standards that allow persons with Alzheimer's to access nursing or home or community based care,

while Alaska's standard is very tight. It is tight as a utilization control, not because DHSS feels those people do not need services but because there is a cost implication. States have flexibility within the federal structure to make those policies.

CHAIRWOMAN GREEN asked if states present a plan to the federal government for approval or whether states must provide certain services before it can choose others.

MR. LABBE explained that in some cases, the federal government is very prescriptive but in other cases the state submits a plan saying what it will cover and how the program will work. The federal agency may ask questions and want to negotiate about certain aspects, but there is quite a bit of variation among the states' programs. He pointed out it is not a "top-down" exercise and that court action can also take place.

CHAIRWOMAN GREEN asked Mr. Labbe whether DHSS could choose to cover services for Alzheimer's Disease and dementia without legislative approval.

MR. LABBE said DHSS's position has been that it could make this change through a regulation but to do so would have cost implications. During discussions about that possibility, DHSS staff thought it would need some other control mechanism, which may need to be legislated. He asked that Mr. Sherwood and Deputy Commissioner Alison Elgee of the Department of Administration join in this discussion.

MR. SHERWOOD, Division of Medical Assistance, DHSS, referred to some handouts he distributed to committee members, one being a summary of the Long Term Care Task Force, another being options under Medicaid for approaching the issue of long term care. He pointed out that people with Alzheimer's and related dementias as their primary diagnosis are not prohibited from receiving Medicaid services available to other Medicaid beneficiaries. People with Alzheimers' disease, if they meet the Medicaid eligibility criteria, can be treated by physicians, receive prescription drugs and get personal care services. The issue of Medicaid coverage arises with regard to coverage of nursing facility services and home and community based waivers because to receive services under a waiver, a client must be eligible to receive nursing home services.

CHAIRWOMAN GREEN asked Mr. Sherwood to further explain the waiver.

MR. SHERWOOD explained that the home and community based services waiver offers a number of services which are community based

alternatives to nursing facility services. Those include respite care, chore services, environmental modifications and care provided in an assisted living setting.

CHAIRWOMAN GREEN asked if the waiver is for something besides the cost of living in a facility.

MR. SHERWOOD explained that it could be for visiting care or for an assisted living setting where someone still has to pay the room and board but Medicaid will pay for the services provided.

MR. SHERWOOD said that under Alaska's nursing facility level of care standard, people must require medical supervision or intensive rehabilitation services to qualify. Very often people with Alzheimer's and related dementia don't need medical supervision. They may be physically healthy or their health needs are such that most people could manage themselves. He noted this same situation applies to other cognitive impairments.

CHAIRWOMAN GREEN asked how that group is categorized.

MR. SHERWOOD said sometimes it is described as functionally limited and cognitively impaired. He noted the vast majority of people with dementias and these types of impairments in advanced stages meet the nursing facility level of care requirements. They tend to be older and have other health needs. If they cannot manage their own medication, they will need medical supervision. They comprise a small subset of Medicaid clients. Many are covered for other reasons and, in addition the Pioneers' Homes provide services for a number of people with dementia.

CHAIRWOMAN GREEN asked if Medicaid pays for room and board for any clients in the Pioneers Homes.

MR. SHERWOOD said it does not. He pointed out the other factor that complicates this issue is that under the Medicaid law, the financial eligibility criteria that Alaska uses for people who need an institutional level of care is higher than for people who live in the community without receiving that care. The income level is about \$1600 per month for an individual; the spouse's income is not included. That category also includes community-spouse impoverishment protections that prevent people from having to spend down all of their assets.

CHAIRWOMAN GREEN noted an individual would have to have an income of less than \$20,000 per year.

MR. SHERWOOD said that is correct. He explained that is a higher

standard because for an individual over 65 to qualify for Medicaid, the income standard is \$984 per month. That is the standard under which aged and disabled are determined to be eligible for Adult Public Assistance.

CHAIRWOMAN GREEN asked how the standard income level of \$1600 was determined.

MR. SHERWOOD said DHSS uses the maximum amount allowed under federal law, which is three times the federal monthly supplemental security income (SSI) payment.

CHAIRWOMAN GREEN asked if Alaska has a percentage added into that.

MR. SHERWOOD said it does not. Because that payment is the same for all 50 states, there is no Alaska adjustment as there is with the poverty level. He stated that, according to the last research DHSS did, Alaska is one of only two states whose criteria for admission to nursing homes is based strictly on medical needs. Most other states have made some provision to cover people with cognitive or functional limitations.

CHAIRWOMAN GREEN asked why Alaska has not done that.

MR. SHERWOOD said he believes that policy was made with a series of decisions. Part of Alaska's policy was based on the fact that the Pioneers Homes have been available to provide care, other investments have been made in the senior population and there are cost impacts involved in expanding coverage to nursing home services in Alaska. Alaska also provides limited funds for care coordination and caregiver support through the Commission on Aging. Part of those funds come from the Alaska Mental Health Trust Authority (AMHTA).

CHAIRWOMAN GREEN asked if that is a minimal amount of money.

MS. ALISON ELGEE, Deputy Commissioner of the Department of Administration (DOA), said those funds have been available for about seven years. There have been minimal increases in those funds over the last seven years so as the population grows, fewer needs can be met. DOA has care coordination grants in four communities. Western Alaska gets no care coordination grant coverage. DOA has 12 adult day facilities around the state; they have been available since the inception of the program. DOA works in partnership with Medicaid, in terms of providing the services, so that people that are Medicaid eligible, but attend adult day centers or are in need of care coordination, can use that as a financing mechanism as opposed to the grant. DOA is trying to

leverage what is available to communities with the use of both fund sources.

CHAIRWOMAN GREEN asked for an example of a service that would be funded through the home and community based services program.

MS. ELGEE said adult day care programs are included.

CHAIRWOMAN GREEN asked if those are free to people who are Medicaid eligible.

MS. ELGEE explained that the adult day care programs have an established fee based on a sliding fee scale.

CHAIRWOMAN GREEN asked if Medicaid pays if a person is Medicaid eligible.

MS. ELGEE said in actuality a sliding fee scale is used but it is difficult to do the income analysis necessary to force people to pay so it almost ends up to be voluntary on the part of the people who have the ability and willingness to pay. That fee is used for reimbursement for Medicaid-eligible clients. She said the state grants are the foundation for these programs and were used to do the startup. Medicaid came along later. All of the programs struggle with limited funding. One problem is insufficient funding to provide services for the entire day, so the centers may be open from 9:00 a.m. to 3:00 p.m., for example. That provides difficulties for family members who need to work. The problem is not only getting more funding to provide more adult day care centers around the state, but also to expand the services at existing centers. Some of the other programs included in that same component are respite care services and care coordination grants.

CHAIRWOMAN GREEN asked if some of those are run through senior centers.

MS. ELGEE said yes, a number of the senior centers are also service providers for other community based services.

COMMISSIONER KAREN PERDUE, DHSS, informed the committee that the needs of the elderly population are overwhelming, so DHSS and DOA have tried to limit the number of nursing home beds and develop the community care options. DHSS and DOA believe people prefer to stay in their own homes and communities and it is more cost effective. The Long Term Care Task Force asked DHSS and DOA to look at the option of including coverage for nursing home care under Medicaid, an exception to the direction that DHSS and DOA was heading. DHSS and DOA have been trying to get the best return for the dollars

they spend.

MR. SHERWOOD told the committee he would discuss how this issue could be addressed with Medicaid. The first option is to change the nursing facility eligibility criteria and come more in line with the other 48 states. That would require rewriting the regulations to allow people who have cognitive and functional limitations to be served in nursing facilities under a waiver. DHSS believes it would make sense to make that change via regulation if a good assessment process takes place up front so that people are appropriately determined eligible and made aware of their choices. The second option would allow DHSS to cover people who are 65 and older with functional or cognitive impairments. Under the federal option, states can define the services they want to provide.

CHAIRWOMAN GREEN asked if an assisted living home is a small group home.

MR. SHERWOOD said that is correct. He explained the significant difference in the second option is that it is limited to people who are age 65 and older. If the nursing home criteria is expanded, higher income standards could be used. If DHSS puts someone on a waiver, that person must be offered the choice between nursing home care or home and community based services. Under the second option, the person is not offered a choice. He noted the two problems with the second option are that in limiting it to people who are 65 and older, the issue of providing services to people with early onset dementia or other cognitive impairments will not be addressed. Those people are typically unable to meet the nursing home criteria so they would fall out of any safety net. The second problem is eligibility so you face the prospect of impoverishing a spouse.

CHAIRWOMAN GREEN asked if the assumption is that these people, if they chose to liquidate, could afford their own services. She asked why there is a financial ceiling.

MR. SHERWOOD explained that the second option grew out of a set of circumstances in the Medicaid program that do not apply today. Ten years ago, DHSS was severely restricted by the federal government in the number of people it could put on home and community based waivers. This was an option that could be done in addition to the waiver to get around that limit. That is what made it attractive to states. It is still on the books.

CHAIRWOMAN GREEN asked if Congress may phase that out. She was under the impression that these programs were no longer requiring

people to spend down and lose everything.

COMMISSIONER PERDUE said Alaska does not cover the medically needy, so that a retired teacher, for example, could not spend down assets. That teacher is automatically disqualified each and every month. That is one thing other states have done to protect people who have some assets.

CHAIRWOMAN GREEN asked how that is done.

COMMISSIONER PERDUE said another asset test would be submitted to the federal agency for approval. She added that nursing home care in Alaska costs about \$80,000 to \$100,000 per person per year. If Alaska did not have the spousal impoverishment protections, a person could lose all assets very quickly.

CHAIRWOMAN GREEN asked if that is what Mr. Sherwood was referring to when he mentioned the income level of \$1600 per month.

MR. SHERWOOD said that is the higher income standard but there are also provisions that allow the client to set aside assets for his or her spouse (about \$87,000). The home is exempt, but if a person doesn't have assets, he or she cannot maintain a house. For people in nursing homes, their income, other than about a \$75 personal needs allowance, goes to pay for their cost of care in a nursing home. If they have a spouse, they can use their spouse's income up to \$2200 per month. Very often that is important because one household member has most of the pension income.

Number 1825

SENATOR DAVIS asked if the cost of \$80,000 per year for a nursing home stay is a special Medicaid rate.

COMMISSIONER PERDUE said it is.

SENATOR DAVIS asked if the public rate is more.

COMMISSIONER PERDUE said she didn't know.

MR. LABBE said that he believes, for the most part, that Alaska's Medicaid rate is comparable to the private rate. DHSS sets a rate for each facility in the state.

COMMISSIONER PERDUE said that very few people can afford it, which is why about 80 percent of the people in nursing homes are on Medicaid.

CHAIRWOMAN GREEN asked how that compares to other states.

COMMISSIONER PERDUE said it is probably double. However, Alaska's nursing homes in rural areas are very small compared to other states. The fixed costs are spread over 10 beds as opposed to 150 beds.

MR. SHERWOOD said, regarding the number of people and the costs, DHSS does not know how many people are falling through the cracks right now. His best guess is that number is around 100 and the number would grow by about 50 people per year. He noted that anytime something new is offered, people who are just managing on their own without services would seek services if they were available. DHSS usually hears about people when they are at a crisis stage. The program would eventually spend, after five years, about \$12 million of which \$5 million would come from the general fund.

SENATOR WILKEN noted that Mr. Sherwood was giving the description of the first option.

MR. SHERWOOD said the projected costs for the second option will not cost as much because it does not reach as many people. That option also does not pay for nursing home care and, while most people prefer to stay at home for as long as possible, there are some people who are better off in a facility.

CHAIRWOMAN GREEN asked, if one of these options were adopted, whether a corresponding reduction in costs would occur in other programs funded by the state, such as at Pioneers' Homes.

MS. ELGEE said she would not anticipate a decrease in the costs of the Pioneers Homes because of the projected increase in the population. There may be people who are entering the Pioneers' Homes today who could live in a community setting longer with some assistance that is not currently available, but the people seeking admission to Pioneers' Homes now have exhausted the community resource capacity. Either the assisted living home can no longer handle the behaviors or the family has exhausted its energy. She pointed out that DOA did look at whether it could design admission criteria for the Pioneers' Homes that would allow individuals under the age of 65 that suffer from early onset Alzheimer's admittance. The Department of Law told DOA that it can discriminate based on condition or age, but not both.

MR. SHERWOOD said the issue is about keeping up with the growth. This population presents itself to other places in our system when their care situations fail: Adult Protective Services or the public

guardians' office.

CHAIRWOMAN GREEN asked if the projected impact of adding this program to the general fund reflects the bigger picture in that less money might be spent elsewhere.

MR. SHERWOOD said there may be a dollar you don't have to spend somewhere else in the future.

SENATOR WILKEN commented that whenever the topic of covering Alzheimer's patients under Medicaid was raised during the Long Term Care Task Force meetings, no one knew what that would cost. Someone suggested \$20 to \$40 million. He expressed appreciation to Mr. Labbe and Mr. Sherwood for getting some numbers together so that perhaps, this program can be funded in the future. The Legislature now knows the cost will be closer to \$5 to \$10 million.

CHAIRWOMAN GREEN thanked Mr. Labbe and Mr. Sherwood and asked Greg Maloney to discuss school based claims.

Number 2311

MR. GREG MALONEY, Special Education Section, Department of Education and Early Development (DOEED), informed the committee that under the Individuals with Disabilities Act (IDEA) as amended in 1997, Medicaid and other federal services that are available to student are not superceded by the funding provided to states for special education services.

CHAIRWOMAN GREEN asked if they are in addition to.

MR. MALONEY said they are. He explained that services that are reimbursable at the federal level can be claimed for reimbursement. There are two kinds of services that can be billed for under Medicaid: direct services or administrative costs related to Medicaid services in the district. DOEED sends a survey to each district, which is reviewed by DOEED and DHSS. Both departments determine what costs are reimbursable under Medicaid. For the current year, the total reimbursement for Medicaid costs was \$5,489,146.

TAPE 01-34, SIDE B

MR. MALONEY continued. The result of that determination is that a total of \$2,442,670 was sent out to districts on a prorated basis to cover Medicaid administrative costs. Those funds do not cover direct services such as speech pathology, or other related medical services. He explained that the administrative services fund pays

for salaries and other expenses related to students who are Medicaid eligible.

CHAIRWOMAN GREEN asked for an example of something the Anchorage School District would do to qualify for these funds.

MR. MALONEY said case planning would be an example. He explained that the federal law allows reimbursement for Medicaid but it is based on state plans. Alaska's current state plan reflects this arrangement. However, districts have said this funding is insufficient because more students have increased medical needs and, as a result of the Cedar Rapids case, medical services that can be provided in the school need to be provided during school hours. Alaska's current arrangement was designed to get some needs met while avoiding some of the pitfalls associated with Medicaid. He felt this issue warrants more discussion among education agencies and Medicaid because these costs continue to increase.

Some of the issues that need to be addressed in the next state plan include sources of matching funds and what mechanism to use to bill for Medicaid expenses. Three billing options exist, two being direct billing or bundled billing for each category of service or for each type of disability.

CHAIRWOMAN GREEN asked if a block grant approach has ever been used.

MR. MALONEY said to his understanding, it has not. He noted another topic for discussion is Alaska's Medicaid policy regarding out-of-state placement costs. When students are sent out-of-state, education costs are incurred but Medicaid does not currently cover those costs.

CHAIRWOMAN GREEN asked if an Alaskan student went out-of-state, the cost would be borne by DOEED with state funds.

MR. MALONEY said each district is required to provide those funds through foundation formula funds, federal funds, or under a category called intensive funds. The intensive funds are usually insufficient to meet out-of-state costs, which range from \$40 to \$70 per day.

MR. MALONEY pointed out that limitations would have to be addressed on both the state and federal level regarding what allowable costs are. DOEED wants to look at what has worked in other states. DOEED's goal is to work with DHSS to discuss whether or not Alaska's Medicaid plan should be revised because districts are coming under heavier financial obligations. DOEED wants to see if

the plan could be revised to support districts to provide better services.

CHAIRWOMAN GREEN asked if any legislation would be required.

MR. LABBE said he does not think so; he believes the revisions could be done through regulation changes.

Number 2083

CHAIRWOMAN GREEN noted the Senate HESS Committee might want to discuss this issue during the interim. She asked Mr. Maloney if it is profitable for school districts to provide direct services.

MR. MALONEY said he worked for a co-op that provided direct services to school districts in Illinois. It was able to capture \$200,000, which was a significant portion of its budget. In that arrangement, several districts banded together to support a co-op made up of school psychologists, speech pathologists, and other related service providers.

CHAIRWOMAN GREEN said she believes such a discussion has merit because, for once, the Medicaid money would flow back to school districts, rather than used to fund vendor services.

SENATOR DAVIS asked what the third type of billing method is.

MR. MALONEY said the third way is billing method is for administrative costs, which is what DOEED current does.

SENATOR WILKEN asked if the state receives \$22,500 per year for each student who is categorized as needing intensive funding.

MR. MALONEY said under IDEA 97 and state regulations, there is no category for significance of impairment. A category, for example mental retardation, contains a continuum of severity. The IEP team develops an appropriate program and what level of service will be required. The intensive funding category in the general fund is in addition to the foundation formula. There is no individual reimbursement anymore based on disability under the state formula. However, for certain students who meet seven criteria, one being the need for ongoing assistance, there is an additional amount that is five times the ADM, which equals about \$20,000 per student.

SENATOR WILKEN asked who determined the criteria.

MR. MALONEY said the criteria was set by the state.

SENATOR WILKEN asked if the additional funds are used for named participants.

MR. MALONEY said that is correct.

SENATOR WILKEN noted that Mr. Maloney said the intensive funds do not cover the entire costs but, according to his calculation of \$70 times 270 school days, the cost would be about \$19,000.

MR. MALONEY explained that he was referring to the out-of-state placement cost. He pointed out that those students typically need year-round services but he noted that not every student that needs services out-of-state has been identified as a special education student.

CHAIRWOMAN GREEN pointed out that a student might be sent out-of-state for treatment for behavioral or emotional problems.

MR. MALONEY said that is one of the areas in which DHSS and DOEED do not have similar criteria so that a student might be considered severely emotionally disturbed by DHSS but not by DOEED. That criteria is one of the issues that both departments need to discuss.

CHAIRWOMAN GREEN thanked Mr. Maloney and announced that the committee would take up SJR 26, which is sponsored by the Senate HESS Committee.

#SJR 26

SJR 26-FEDERAL AID FOR SPECIAL EDUCATION

MR. JERRY BURNETT, staff to Senator Green, read the following sponsor statement.

In 1976, the United States Congress passed PL 94-142, a portion of the Individuals with Disabilities Education Act, providing a national framework for providing free, appropriate public education to all students regardless of the level or severity of disability. Along with the guarantee of appropriate education, Congress promised states that it would provide funding for 40 percent of these special education services.

Since the passage of the Individuals with Disabilities Education Act, Alaska has provided the special education services required by federal law. However, Congress has failed to live up to its promise of providing the necessary funding to cover the costs of this mandate,

instead providing between 12 and 15 percent annually of Alaska's special education costs.

SJR 26 petitions the U.S. Congress to provide the promised level of funding for special services.

MR. BURNETT explained that for the current fiscal year, the federal appropriation is about 15 percent of special education costs nationwide. The budget proposed by President Bush for FY 02 is at 17 percent.

SENATOR LEMAN asked if the resolution asks Congress to fill the gap between 15 and 40 percent.

MR. BURNETT said it does. He pointed out the state currently funds that amount.

SENATOR LEMAN asked for clarification of the phrase, "significant, genuine assistance" on page 2, line 12.

MR. BURNETT said genuine assistance means up to the level promised, and that SJR 26 was patterned after a resolution passed in another state.

SENATOR LEMAN moved to amend SJR 26 (Amendment 1) so that copies are also sent to U.S. Representative John Boehner, Chairman of the House Committee on Education and the Workforce, and U.S. Senator James Jeffords, Chairman of the Senate Committee on Health, Education, Labor and Pensions. There being no objection, Amendment 1 was adopted.

SENATOR LEMAN moved CSSJR 26(HES) from committee with individual recommendations and its accompanying zero fiscal note. There being no objection, the motion carried.

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#SB 188

SB 188-EDUCATION FUND/ LAND ENDOWMENT

CHAIRWOMAN GREEN announced SB 188 to be up for consideration.

MS. SANDY ALTLAND, staff to Senator Ward, sponsor of SB 188, explained that SB 188 establishes an education fund from a land endowment of 5 million acres for public education and provides for an effective date. The education fund would be separate from the general fund: the principal of the fund would be funded from legislative appropriations, gifts, bequests, and contributions from individuals. The principal would be invested and the investment income would be appropriated for public schools and the University of Alaska. SB 188 sets up an education fund board and describes the board's make-up, its powers and duties. SB 188 also defines a

timeline for appropriating 5 million acres to the education fund. The board would oversee the management and disposition of the land.

SENATOR WARD moved Amendment 1, which reads as follows.

On page 2, following line 31 insert:

2) a member of the Board of Regents of the University of Alaska appointed by the Governor.

SENATOR WARD noted its omission was on oversight on his part when he drafted the bill.

CHAIRWOMAN GREEN announced that with no objection, Amendment 1 was adopted. She then took public testimony.

Number 1440

MR. DICK MYLIUS, Division of Mining, Land and Water of the Department of Natural Resources (DNR), said that under SB 188, DNR will have 11 years to transfer 5 million acres, which amounts to 455,000 acres of land per year, assuming that the constitutional amendment as put forth in SJR 25 is approved. The education fund cannot select existing oil, gas and mineral properties, but can select most of the general grant state land, except for land within state parks. DNR believes this bill will be very expensive to implement and will not generate additional revenue to fund education. The bill will first result in a transfer of land from one state agency to another and it will require DOEED to become a land management agency. DNR has identified several significant concerns with SB 188:

- The endowment of lands is not likely to ever generate sufficient revenue to fund education needs in Alaska. The state's education budget is about 100 times the amount of money that this fund will be able to generate.
- The transfer process will be very expensive. DNR estimates the cost to be over \$12 million per year, primarily to pay for the survey of the 5 million acres. The bill establishes a land management program within DOEED which will duplicate the existing functions of DNR. A land management program in DOEED could cost as much as \$2 million per year. SB 188 reduces the legislature's ability to direct state spending as revenues from state public domain lands currently go into the general fund for appropriations.
- Identifying the 5 million acres will be time consuming and contentious. DNR and the University of Alaska recently spent 6 months attempting to negotiate a settlement of the 250,000 acres granted to the University as a substitute for last year's SB 7.
- SB 188 allows the education fund to acquire lands that are

important for public use, including lands that have been legislatively designated as state game refuges, state critical habitat areas, public use areas and the Susitna River recreational corridor. The existing school trust is currently in litigation. SB 188 could impair the prospects for resolving that litigation.

- The state already has existing obligations to transfer over 600,000 acres of land to municipalities and, depending on how litigation over the University land trust is resolved, DNR may need to identify 250,000 acres to convey to the University. The state should fulfill its current land entitlement obligations before it creates a new one. In addition, the education fund is likely to select in the unorganized borough that would otherwise be selected by future municipalities, thereby limiting their selection options and reducing the incentive of local residents to form local governments.
- SB 188 will impede resource development. Developers will be reluctant to start projects when they are not sure whether land will be owned by DNR or the education fund, and a new set of rules will need to be generated for managing the fund's lands. Uncertain land tenure complicates resource development. Alaska has experienced this with the prolonged litigation over Alaska Mental Health Trust Lands.
- SB 188 requires the education fund to allow mineral leasing procedures similar to AS 38.05.185 and AS 38.05.275. This overly broad statement implies that leaseable minerals, such as oil, gas and coal, could be acquired through the staking of mining claims. DNR presumes this is not the sponsor's intent.

MR. MYLIUS noted that Mr. Jim Hansen would also like to comment on the bill.

Number 1120

MR. JIM HANSEN, Chief Geophysicist with the Division of Oil and Gas, DNR, stated SB 188 does not allow selection of lands within the 5 year program for lands permitted or leased. SB 188 contains a three year provision in that the selected lands must not include exploration but exploration could be included at some point after that. Currently, DNR has a license over the Copper River Basin. Should the education fund board select land in the vicinity of that license, DNR would have to convey that land after three years even though that land still may have oil and gas potential. DNR's concern is with the transfer over of management of oil and gas lands that could be producing, especially in light of the possibility of a gas pipeline coming to the North Slope. If that plan is finalized, DNR expects exploration to become much more involved in Alaska. DNR currently has one license, two pending, and has received two others this month for other parts of the state. This program is picking up steam fast and DNR is expected

to see much more activity over the next two years. Another problem he sees with SB 188 is that it does not address the fact that lands could potentially have natural gas leases on them. DOEED does not have the expertise to deal with natural gas leasing.

SENATOR WARD commented that he does not share the same concerns as the two previous speakers but SB 188 has been referred to the Senate Resources Committee. He explained that he introduced SB 188 because the state is currently spending \$830 million per year of general funds for education from kindergarten through the university level. He tried to put forth a similar plan in 1982 but was told it would take seven to 10 years to get this kind of a project off of the ground. He wants to bring the education community an endowment comprised of 5 million of Alaska's 103 million acres. That would make Alaska's endowment the largest in the world. If this bill is successful, Senator Murkowski would consider trying to add 5 million acres of federal land to the endowment. SB 188 is not an immediate fix, but had it been enacted in 1982, Alaska may not be in the position it is in today. His constituents tell him the Legislature is not putting enough money into education. SB 188 does take education funding out of the legislative appropriation process, which is troubling, but in exchange, Alaska will develop some of its 103 million acres. He said he does not favor using the Permanent Fund and he disagrees wholeheartedly that the approach in SB 188 will not make money. He knows the people in his district would develop some land to fund education, and it would be developed in an environmentally sound way. He believes SB 188 is a mixture of two philosophies: one being to develop 5 million acres to supply jobs and a tax base; and second it will slowly relieve the education commitments the state has under its Constitution. He believes this is a good step forward. He pointed out the difference between SB 188 and a bill introduced last year is that SB 188 does not contain a voucher proposal and it covers funding for the University.

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CHAIRWOMAN GREEN commented that throughout the conflict with the university lands bill, a lot of work was done to minimize the conflict over land claims. She asked if that was incorporated into SB 188.

SENATOR WARD said, "This sets up a mechanism to let it happen." He does not believe Alaska has had any significant land development and some have been frustrated about an inability to get some of the state's lands out of the state coffers. He feels a disservice is being done to the education community because it is not being funded adequately.

CHAIRWOMAN GREEN said she will hold SB 188 until Friday and that the committee will take up SJR 25.

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#SJR 25

SJR 25-CONST. AM: EDUCATION FUND

MS. SANDY ALTLAND, staff to Senator Ward, sponsor of SJR 25, explained that SJR 25 proposes an amendment to the Alaska Constitution relating to education. It is the companion resolution to SB 188. The constitutional amendment would allow the legislature to create an education fund as a separate fund in the state treasury. It addresses the source of funds and what the income from the fund may be used for.

CHAIRWOMAN GREEN announced that there were no questions or testimony on SJR 25 and that she would hold it in committee until Friday. She announced that on Friday, the committee would hear SB 178, SB 11, HB 99, HB 203, SB 41, and a continuation of the presentation on Medicaid.

SENATOR LEMAN noted that in response to a comment made earlier by Senator Ward, the state spends quite a bit more than \$830 million per year on education because that amount does not include pupil transportation services and others.

SENATOR WARD said he does not disagree and that it makes no sense to him to not develop the state's resources.

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There being no further business to come before the committee, VICE-CHAIRMAN LEMAN adjourned the meeting at 3:15 p.m.