

ALASKA STATE LEGISLATURE
SENATE HEALTH, EDUCATION & SOCIAL SERVICES COMMITTEE

March 15, 2002

1:36 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

SENATE BILL NO. 256

"An Act relating to the certificate of need program; and providing for an effective date."

MOVED CSSB 256(HES) OUT OF COMMITTEE

SENATE BILL NO. 345

"An Act relating to medical assistance for rehabilitative services for certain children with disabilities; relating to agreements to pay medical assistance for covered services paid for or furnished to eligible children with disabilities by a school district; and providing for an effective date."

MOVED SB 345 OUT OF COMMITTEE

SENATE BILL NO. 264

"An Act relating to a reimbursement program for municipal bonds, notes, or other indebtedness incurred for school construction; and providing for an effective date."

MOVED SB 264 OUT OF COMMITTEE

SENATE BILL NO. 346

"An Act relating to statewide school district correspondence study and state supported home schooling programs."

HEARD AND HELD

PREVIOUS SENATE COMMITTEE ACTION

SB 256 - See HESS minutes dated 2/4/02, 2/13/02, 2/20/02 and 3/4/02.

SB 264 - See Community and Regional Affairs minutes dated 2/27/02.

SB 345 - No previous action to record.

SB 346 - No previous action to record.

WITNESS REGISTER

Mr. Eddie Jeans
School Finance Manager
Department of Education &
Early Development
801 W 10th St.
Juneau, AK 99801-1894
POSITION STATEMENT: Stated opposition to SB 264

Mr. Greg Maloney
Director of Special Education
Department of Education &
Early Development
801 W 10th St.
Juneau, AK 99801-1894
POSITION STATEMENT: Supports SB 345

Mr. Bob Labbe
Director, Division of Medical Assistance
Department of Health &
Social Services
PO Box 110601
Juneau, AK 99801-0601
POSITION STATEMENT: Supports SB 345.

Ms. Joan Franz
1569 Northfield Rd.
Fairbanks, AK 99709
POSITION STATEMENT: Asked questions about SB 345.

Mr. Jon Sherwood
Division of Medical Assistance
Department of Health &
Social Services
PO Box 110601
Juneau, AK 99801-0601
POSITION STATEMENT: Answered questions about SB 345.

Pauline Bennett-Gannon
1076 Willow Grouse Rd.
Fairbanks, AK 99712

POSITION STATEMENT: Asked questions about SB 345

Whitney Highland
Staff to Senator Leman
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Answered questions about SB 346

Dr. Ed McLain
Deputy Commissioner
Department of Education &
Early Development
801 W 10th St.
Juneau, AK 99801-1894

POSITION STATEMENT: Expressed concerns about SB 346

Mr. Tim Scott
Family Partnership
3339 Fairbanks St.
Anchorage, AK 99503

POSITION STATEMENT: Stated support on behalf of Glen Biegel for Amendment 3 to SB 346.

Mr. Russ Bowdre
PO Box 1048
Delta Junction, AK 99737

POSITION STATEMENT: Supports SB 346 but made suggested changes.

ACTION NARRATIVE

TAPE 02-19, SIDE A
Number 001

CHAIRWOMAN LYDA GREEN called the Senate Health, Education & Social Services Committee meeting to order at 1:36 p.m. All members were present. The first order of business to come before the committee was SB 256.

#SB 256

SB 256-CERTIFICATE OF NEED PROGRAM

CHAIRWOMAN GREEN announced that a committee substitute (CS) labeled as Version P was prepared to SB 256, as well as an amendment.

SENATOR WARD moved to adopt Version P as the working document of the committee. There being no objection, the motion carried.

SENATOR WARD moved to adopt Amendment 1, which reads as follows.

AMENDMENT 1

TO: CSSB 256(HES), Draft Version P BY SENATOR GREEN

Page 1, line 1, following "**program;**":

Insert "**establishing a temporary moratorium on the issuance of certificates of need related to certain types of psychiatric beds for children and youths;**"

CHAIRWOMAN GREEN explained that Amendment 1 expands the title and tightens up the purview of the bill.

The committee took a brief at-ease.

Amendment 1 was adopted with no objection.

SENATOR WARD moved CSSB 256(HES) as amended from committee with individual recommendations and its accompanying fiscal note.

SENATOR WILKEN objected for the purpose of clarification.

CHAIRWOMAN GREEN informed Senator Wilken that Version P is an accumulation of the issues discussed over the last several weeks.

SENATOR WILKEN removed his objection, therefore CSSB 256(HES) as amended moved from committee.

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The committee took up SB 264.

#SB 264

SB 264-MUNICIPAL BOND REIMBURSEMENT

CHAIRWOMAN GREEN explained that SB 264 is an extension of the school debt reimbursement program that began in 1999. It sets aside \$113 million of additional money for which school districts can bond. The state will participate at the 70 percent level while the school districts will participate at the 30 percent level. SB 264 contains \$50 million for projects in Anchorage, \$15 million for projects in Fairbanks, \$13 million for projects in Mat-Su, \$10 million for projects in Kenai and \$20 million for projects in smaller school districts in organized Alaska. She then asked a representative from the Department of Education and Early Development (DOEED) to testify.

MR. EDDIE JEANS, School Finance Manager, DOEED, informed members that this bill requires districts to get DOEED approval for projects prior to getting voter approval. DOEED is opposed to SB 264 as it believes the legislature needs to look at a more comprehensive funding package for school construction and major maintenance that deals with all of the state's needs as identified on DOEED's priority list. He offered to answer questions.

CHAIRWOMAN GREEN said that SB 264 does not preclude the legislature from funding other projects through other mechanisms as well. She noted that it is very difficult to maintain existing facilities in high growth areas; this bill is designed to address that need.

There being no further questions or discussion, SENATOR WARD moved SB 264 from committee with individual recommendations and its accompanying fiscal note. There being no objection, the motion carried.

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The committee took up SB 345.

#SB 345

SB 345-SCHOOL SERVICES FOR DISABLED STUDENTS

MR. GREG MALONEY, Director of Special Education for DOEED, explained that SB 345 allows school districts the opportunity to capture more Medicaid funds for support services provided to students with disabilities that are Medicaid eligible. The services include medical needs, school psychology, counseling, occupational therapy, physical therapy, speech and language pathology and other services for which school districts are now responsible but for which resources are not always adequate.

MR. MALONEY gave the following background of SB 345. Medicaid provides assistance for low-income individuals with medical issues. Medicaid has not always been associated with education but since the passage of the Individuals with Disabilities Education Act as amended in 1997 (IDEA '97), it was incorporated as a payer of first resort. Since IDEA '97 took effect, a number of cases have required schools to provide more medical services. The medical services costs are typically expensive and put quite a burden on school districts. The purpose of SB 345 is not to put a process in place, but to give DOEED and the Department of Health and Social Services (DHSS) the green light to go forward and explore how such a program could work. He noted this bill will help the state to capture significant resources; he expects

almost \$8 million to be captured of which about \$4 million would be directly available to school districts. SB 345 will not require significant general fund contributions - the only cost will be for DHSS staff support to help implement the Medicaid system. Once SB 345 passes, DOEED would continue to work with DHSS, school districts and other stakeholders to design a system that is easily managed, easily audited and provides the necessary resources.

MR. MALONEY said that many states have already implemented similar legislation. Alaska can learn from mistakes other states have made so that this program does not become a burden on the department but captures significant resources for school districts.

1:46 p.m.

MR. BOB LABBE, Director of the Division of Medical Assistance, DHSS, said he shares Mr. Maloney's view that this is an opportunity to provide additional funding to the schools through the federal portion of the Medicaid program at no additional cost to the state. He cautioned, however, such a program will create a significant workload. He implemented a similar program in the State of Oregon in the late 1980s and learned from experience that trying to bring a medical program into an education setting requires that a number of issues be addressed. Clear policies, good audit trails, and a system that is not burdensome on the day-to-day work of the educational staff is necessary. DHSS and DOEED are seeking, in SB 345, the authority to work on a design that will be efficient and effective and allow the state to capture the maximum dollars with the lowest amount of overhead to the districts. He advised that there will a need for ongoing quality assurance because these programs are subject to federal and state review. He held that SB 345 provides a source of revenue when school districts' costs are increasing. He noted the working group has met with the federal agency about putting together a plan.

CHAIRWOMAN GREEN asked what process a school district will use to implement this program that will stress the fact that if the federal portion falls off, the funds will not become a State of Alaska obligation.

MR. LABBE said the working group envisions that each school district would have the option of participating and would sign a provider enrollment agreement. One condition of participation would be that districts would submit actual, individual claims for individual children and provide matching funds to DHSS for

those expenditures. DHSS would pay the bill and receive the state's matching share from the districts. Districts will have additional administrative costs, maintain and submit records, and determine whether a student is Medicaid-eligible.

MR. MALONEY said the cost of special education nationally, right now, is estimated to be about \$50 billion. The federal share of paying for those services is about 16 percent, or \$8 billion. In this time of shrinking resources, SB 345 provides an opportunity to capture additional federal resources that schools can use to provide services without adding more burden to the state. It will not solve the problem but will help. In talking to his counterparts in other states, he learned the Medicaid piece has become a significant portion of budgets in those states. SB 345 will also provide salaries for professionals that are hard to find in Alaska, such as speech pathologists, school psychologists and other related service providers.

MR. MALONEY said if SB 345 passes, DOEED and DHSS would work with a consultant, with the Governor's Council on Disabilities and Special Education, and with other stakeholders in the system to come up with a process that is not overly burdensome but results in a significant capture of funds. He believes the additional services that can be offered will be worth the effort.

CHAIRWOMAN GREEN asked if the process became a matter of routine after the program was in place for several years in Oregon.

MR. LABBE said there was an ongoing need for quality assurance. One concern he has had is that the Office of Inspector General recently did an audit of a district in Oregon that may result in penalties. Because of high staff turnover, people will continually have to be trained. The Oregon department of health converted its policy role of development into a quality assurance role and sent a person out to inspect records and make sure all was working okay. He said that with health care issues, new technologies create questions about what is covered and what is not. He maintained there will be initial costs for staffing and to pay a contractor to change computer systems to process claims.

CHAIRWOMAN GREEN indicated that this program is voluntary so no district will have to participate. She asked if districts with a larger population are likely to participate without too much thought while smaller districts will need more help as a program such as this could have a major impact on personnel and budgets.

MR. LABBE said designing a system that is administratively simple is key because if a full time position is necessary to handle

billing for one or two children, it won't be worthwhile.

MR. MALONEY said currently DOEED collects some Medicaid funds for schools through a time survey, allowable under the administrative portion of Medicaid. That will not change. He said as a new system is developed, the rural school districts will be represented in terms of how they can take advantage of this system. Some states have third party billing systems or a third party non-profit agency do the billing. In some small districts in Alaska, a number of services are farmed out to other agencies for the sake of efficiency.

SENATOR WILKEN noted that, according to the sponsor statement, 42 other states have already done this. He asked what happened in Alaska that suddenly allows us to do that.

MR. MALONEY explained that a few years ago a study called "Educaid" was done by a consultant from Oregon. That study was about the current Medicaid system. The consultant determined that with the available resources, funding available to districts and a number of other factors, the best way to use Medicaid funds was to use the time survey, which was then put in place. Since then, with the advent of IDEA '97, there has been more allowance at the federal level for incorporating Medicaid funds into special education services and budgets.

SENATOR WILKEN asked if this process began with IDEA '97.

MR. LABBE clarified that a Supreme Court case in the mid 1980s directed that state Medicaid agencies could not deny payment for services provided to a child on an IEP solely because that child was in the school setting. He noted that Mr. Sherwood worked on a plan in the early 1990s but there was no interest in pursuing it at that time. DHSS got involved in 1996 at the time when consultants around the country were estimating this would cost "zillions" of dollars. He said that over the last year there has been renewed interest.

SENATOR WILKEN asked if the districts will have to submit lists of eligible students and allowable services to DHSS.

MR. MALONEY said the student will have to be Medicaid eligible and that certain services will be allowable.

SENATOR WILKEN stated:

"It says that [for] each dollar expended for these covered services, the district would receive \$1.50 so

for every dollar spent you get a 50 percent investment so why the premium, why isn't it dollar for dollar - why do you make \$1.50 for every dollar spent?"

MR. LABBE said that basically Medicaid would be paying for services that are already being provided with school funds only. Districts will have to cover the match portion but then get the federal portion. Right now the federal portion amounts to about 60 percent. He noted Mr. Maloney's point that this program will allow districts to provide services that are inadequately funded is a good one.

After some discussion about the amount that districts will be reimbursed from Medicaid, SENATOR WILKEN pointed out that the sponsor statement is incorrect as it appears that the district will be reimbursed 160 percent when it will be reimbursed for the federal portion, which is about 60 percent.

CHAIRWOMAN GREEN asked if transactions are traded or whether checks are actually transferred.

MR. LABBE said the district would be expected to submit a claim that would be processed and DHSS would write the district a check. After that, DHSS would submit a claim to the federal government - that claim rolls up all of Alaska's Medicaid expenditures, it is not an item by item submittal.

CHAIRWOMAN GREEN apologized to those who wished to testify on the school funding bill from the Mat-Su LIO and said she did not realize they had been waiting. She then took public testimony on SB 345.

2:11 p.m.

MS. JOAN FRANZ asked when a child receives occupational therapy within a school district and the district bills for the service, what will happen in terms of services when the school district uses a school function model. She explained that the occupational therapist's role in a school district is limited compared to that of an occupational therapist in private practice, rehabilitation agency or in a hospital setting. She asked if that child could also use the Medicaid funds to cover other services that the district will not offer because it is limited to a school function model.

MR. MALONEY said the money captured from Medicaid would go to the district and the district itself would be responsible for providing the services required for any student covered under an

IEP. If the district contracts services for an occupational therapist, those costs, presuming the district and/or occupational therapist was enrolled as a provider, could be captured back or claimed under Medicaid. He advised that the district may also choose to hire an occupational therapist to provide that service. It will be an administrative decision on the part of the district as to how it will provide the occupational therapy.

MS. FRANZ repeated the role of an occupational therapist in a school is limited by the school function model therefore the occupational therapist would not provide a lot of the services that an occupational therapist in another setting would provide. She questioned whether receiving services through the school district will limit that child from receiving comprehensive and rehabilitative services that Medicaid was originally designed to cover.

CHAIRWOMAN GREEN said she does not believe the current system will change, so that if a child can receive services from the district, that will continue, and if the child receives services from a private entity, that will continue. The only thing that will change is that the school district can bill Medicaid instead of using foundation formula money. She asked Mr. Sherwood to address the question.

MR. JON SHERWOOD, Division of Medical Assistance, said if a child currently receives any other medical service outside of the IEP and is authorized to do so, SB 345 will have no effect.

CHAIRWOMAN GREEN said her concern is that children might not receive the full gamut of occupational therapy services they may need because a child could not receive the private services from an occupational therapist within the school district.

CHAIRWOMAN GREEN said she believes her earlier answer holds, that the child will continue to receive whatever he or she is receiving now.

MS. FRANZ said that is her hope because the educational model limits what kinds of services a child can receive in a school setting as compared to the services a child could receive elsewhere.

MR. MALONEY said that nothing in the bill would prohibit that and the definition actually broadens the definition to include students with disabilities. He added that school districts are required to perform complete evaluations under IDEA '97 and

whatever services are required to allow the student to make progress on the general curriculum should be provided. He said he hopes there is not a big difference between what is being provided in each setting and, if there is, that is something DOEED can help the parent learn more about.

MS. FRANZ said there has been a big difference, in her experience, because of the definition of what services are considered to support a child within an educational setting as opposed to the child's medical needs.

CHAIRWOMAN GREEN asked Ms. Franz to contact Mr. Maloney to discuss the matter.

MS. FRANZ said that equipment ordered through Medicaid for a child is usually custom fit for that child and belongs to that child. She asked how that will work through the school district.

MR. MALONEY said that specific regulations speak to ownership. Generally, if the school purchases equipment, it remains the property of the school unless there is a specific need to use the equipment at home.

MS. PAULINE BENNETT GANNON, an occupational therapist speaking on her own behalf, told members that the school function model of occupational therapy focuses on the child's ability to be in the school while therapy services are secondary. She noted that the idea of charging Medicaid for school services has come up before and she believes at one time, DHSS looked at having school districts provide more medical services. She thought the plan was to do a pilot project to see how that would work. She pointed out that typically, when one bills for Medicaid services, for intense, individual therapy that doesn't lend itself to groups. One focus of IDEA '97 is to incorporate students with disabilities into the classroom using special education staff. She said she is not sure the same types of services are being provided and could be charged to Medicaid. [Portions of Ms. Bennett-Gannon's testimony were indiscernible due to transmission problems.]

TAPE 02-19, SIDE B

MS. BENNETT-GANNON questioned whether this bill will expand the role of schools beyond education.

CHAIRWOMAN GREEN repeated that school district participation will be voluntary and that this bill will simply provide another method of funding.

MR. MALONEY emphasized that SB 345 will allow for a process that will include stakeholders throughout.

SENATOR WARD moved SB 345 from committee with individual recommendations and its accompanying fiscal note.

CHAIRWOMAN GREEN announced that with no objection, the motion carried. She then took a brief at-ease.

CHAIRWOMAN GREEN called the committee back to order at 2:28 p.m. and turned the gavel over the Vice-Chair Loren Leman. The committee took up SB 346.

#SB 346

SB 346-SCHOOL DISTRICT CORRESPONDENCE STUDY

VICE-CHAIR LEMAN thanked the committee for sponsoring this legislation. He noted DOEED has proposed regulations for home school programs that are supported by statewide correspondence programs. SB 346 deals with some of the more troubling aspects of those proposed regulations. SB 346 is a companion bill to legislation introduced by Representative James.

VICE-CHAIR LEMAN explained the bill as follows.

- Section 1 holds correspondence schools to the same certification standards as charter schools regarding the one year versus 10 year certification period;
- Section 2 clarifies that correspondence and home school programs have the ability to set their own parameters for monitoring students; and
- Section 3 confirms that school districts have the authority to approve or disapprove correspondence curriculum materials.

He pointed out that DOEED submitted a fiscal note that he finds inappropriate. SB 346 essentially directs DOEED to not create regulations for certain areas. DOEED has stated in its analysis said that new regulations will not add any costs. He informed members that the bill has a referral to the Finance Committee where the fiscal note can be addressed.

MS. WHITNEY HIGHLAND, staff to Senator Leman, gave the following details about SB 346.

- Section 1 requires correspondence study programs to get

DOEED approval once every 10 years. The current approval requirement applies only to correspondence study programs and is on an annual basis. In-district correspondence study programs are not required to get DOEED approval at all while charter schools are required to get DOEED approval every 10 years.

- The second portion puts in the hands of the local school districts and parents, instead of DOEED, the decision about how often students will be monitored.
- The third section allows the local school districts to set up procedures for approving or disapproving the curriculum and home designed courses.

SENATOR WARD asked if parents will also be involved in setting up the procedures for approving or disapproving the curriculum.

MS. HIGHLAND said they will be.

VICE-CHAIR LEMAN informed members that he has three proposed amendments to deal with issues that have come up in prior discussions. He asked that the committee deal with the amendments prior to taking public testimony as they may resolve a lot of the issues that people might otherwise bring up.

SENATOR WILKEN said the back up material says the school district that is sponsoring the statewide correspondence program decides the interval at which the student will be monitored and decides the content of the curriculum.

MS. HIGHLAND said that is correct.

SENATOR WILKEN said if a student is physically outside of the school district, the school district becomes the school board, yet the school board has no responsibility for a student who resides outside of the district. He questioned how to resolve that issue and asked for clarification of whether a school board has authority only over students within its district.

VICE-CHAIR LEMAN asked DOEED to respond to that question but asked members to deal with the amendments first.

SENATOR WARD moved to adopt Amendments 1, 2, and 3 and asked for unanimous consent.

SENATOR WILKEN objected and asked that the amendments be adopted individually.

SENATOR WARD withdrew his motion and moved to adopt Amendment 1,

which reads as follows.

A M E N D M E N T 1

OFFERED IN THE SENATE
TO: SB 346

BY SENATOR LEMAN

Page 1, lines 1&2, following "study":
Delete [**AND STATE SUPPORTED HOME SCHOOLING**]

VICE CHAIR LEMAN told members Amendment 1 is a title change amendment.

SENATOR WILKEN objected to the adoption of Amendment 1 and asked for an explanation.

MS. HIGHLAND explained that Amendment 1 basically streamlines the bill to include only correspondence study programs. Currently home schools are classified by DOEED as correspondence study programs and home schools are not defined in statute.

SENATOR WILKEN asked a representative from DOEED to address Amendment 1.

DR. ED MCLAIN, Deputy Commissioner of DOEED, told members that "home schooling" is referenced in the statute as one of the allowable reasons for a student to not attend public school under the compulsory education law. Additionally, DOEED regulations state that correspondence study includes state-supported home schooling. He noted that DOEED does not have a problem with changing the title.

SENATOR WILKEN withdrew his objection, therefore Amendment 1 was adopted.

SENATOR WARD moved to adopt Amendment 2, which reads as follows.

A M E N D M E N T 2

OFFERED IN THE SENATE
TO: SB 346

BY SENATOR LEMAN

Page 2, lines 2-4:
Delete all material

Insert "(3) must provide that the school district conducting the correspondence program has the duty and authority to establish procedures for:

- a. the purchase and use of correspondence curriculum materials purchased by the school district, and
- b. approving and disapproving home designed courses.

SENATOR WILKEN objected.

MS. HIGHLAND explained that Amendment 2 changes the bill to include the phrase "to establish procedures," which parallels current statutory language. It goes on to specify that school districts have the ability to establish these procedures only in regard to those materials that are purchased by the school districts, not materials that are privately purchased by parents in the home. It also states there will be a procedure in place to approve or disapprove home designed courses.

SENATOR WILKEN asked a representative of DOEED to respond.

DEPUTY COMMISSIONER MCLAIN said he has two concerns about Amendment 2 that pertain to whether it will conflict with other statutes that speak to the authority of school boards. He cautioned members that a preliminary legal analysis says that it may indeed conflict because school boards have the statutory authority to approve curriculum materials. It is not clear whether that authority can be delegated. He said further analysis is necessary.

MS. HIGHLAND indicated that the statute says that school boards have the authority to establish procedures; Amendment 2 does not change that because school boards will not be delegating the authority to establish procedures to certified teachers.

SENATOR WILKEN said he will maintain his objection until DOEED has clarified its position.

The committee took a brief at-ease.

DEPUTY COMMISSIONER MCLAIN said he could share with committee members the concerns raised by DOEED's legal counsel. He said it is difficult to give the committee a resolution because the exact intent of Amendment 2 is unclear. He said the statute he referenced relates to the authority of school boards, and says

that school boards have the authority to approve curriculum and materials. Amendment 2 appears to allow parents or someone other than the school board to approve curriculum or materials, rather than the school board. He asked for clarification, and said that if authority of approval remains with the school board, he would not feel cautious.

SENATOR WARD asked Vice-chair Leman to describe the intent of Amendment 2.

VICE-CHAIR LEMAN replied,

The intent, as I understood it, was this parallels language that appears elsewhere in statute. That's my understanding. My understanding was that the school board itself would be establishing these procedures - would be playing a very active role in the approval or disapproval. In other words, I wanted to clarify that it was the school boards and not some overarching structure, like the state board of education.

DEPUTY COMMISSIONER MCLAIN said there is nothing in the current or proposed regulations or current statutes to say that either the state board of education or DOEED want to decide on the curricular materials. He noted that pieces of the regulations specifically state that the district board must do that approval. DOEED has received many letters from parents saying they would prefer to make those choices without district involvement. He remarked if people are simply saying they do not want the state to make that choice, that was not the state board of education or DOEED's intention. They believe that is a local school board responsibility. He acknowledged that if the intent of Amendment 2 is to maintain local board approval authority, he misunderstood. He repeated that his concern lies with the possibility that changing who has authority will conflict with the existing statute.

VICE-CHAIR LEMAN said it is his understanding that many parents and some school districts are concerned with what they see as an additional hurdle they may have to jump in the proposed regulations regarding the use of some materials. The intent of Amendment 2 is to clarify that.

2:47 p.m.

SENATOR WILKEN asked Dr. McLain to respond to his earlier question about whether a school board has jurisdiction only over students who reside within the confines of the designated

district.

DEPUTY COMMISSIONER MCLAIN said the statute specifically says the local school boards' responsibility is to the students who reside within their districts. He noted, in response to another question about the differentiation between in-district versus out-of-district programs, on the surface there is the issue of representation, i.e., people outside of a district do not vote for school board members. Some programs, such as Galena, have a very active site council. Site councils are not currently required for statewide correspondence programs. He remarked,

So then, we're still left with the more basic, which is the one that is of interest, the department and the state, and that is that when the bottom analysis is looked at, the statute is very clear that the board of any particular district - their obligation is to provide for the very best education they can for the kids in their district. My concern here would be that these programs where they are serving kids outside of the district causes what I believe is an inherent conflict because as these dollars come to that district, and they're charged with the responsibility by that statute to design the very best programs for the kids in, there could be a tendency to take funds to minimize services to the kids outside in order to do their legislative - what they're required to do, which is provide the best.

DEPUTY COMMISSIONER MCLAIN said that when talking with a variety of the people who are running these programs, one reason they cited is that the program is not profit making but is fund generating. If times got tough, money could be taken from one and placed in the other.

SENATOR WILKEN recalled discussing that issue when working on education reform some years ago. He said if he remembers correctly, Alyeska Correspondence School was started years ago because of the representation problem. He asked if it is the Chair's intent to pass this legislation out of committee today and expressed concern that this legislation "starts at the middle or at the end." He recalled that two years ago, the legislature funded a couple of positions to work with the correspondence schools to get a sense of why enrollment increased from 2,000 to 9,000 students. Out of that came the proposed regulations that have prompted this legislation. He suggested holding a work session to hear about what DOEED found and why it came up with the proposed regulations.

SENATOR GREEN said the cart is already before the horse because the proposed regulations have received such high exposure and response. SB 346 simply responds to that exposure and response, not to the earlier study. She asked how the definitions of a school district and a school board differ. She noted that funds to a school district are controlled by the school board. She asked if the language could be clarified so that it applies to a school district under a school board.

DEPUTY COMMISSIONER MCLAIN said it may be that some of the comments made about the proposed regulations actually apply to the current regulations. One issue DOEED received many comments about was the proposed regulation that requires the school district to approve the curriculum and about the issue of secular materials. He said regarding district approval, some people understood the proposed regulation to say the state would do the approval. He said he has tried to state as clearly as possible that the state does not intend to do the approval; DOEED always refers to the local board to do the approval. He said when he heard Representative James' bill in a House committee, this language was described as a way to allow for parents to make those selections and by-pass the board approval process. He indicated that many of the letters that DOEED received spoke to a desire to have parents be able to choose without the board. That is not an issue that pertains to the proposed or current regulations and would not be allowed under current statute. He said that DOEED has amended some of the proposed regulations, which will be published in April. He feels the public comment process has been a healthy one. He repeated that if indeed Amendment 2 is not meant to say that the board will not be approving, he would like that clarified because aside from a policy issue, that would conflict with existing statutes.

DEPUTY COMMISSIONER MCLAIN commented that the Northwest accreditation agency has said if this legislation means the board will not be involved in approval, school accreditation could be put at risk.

SENATOR GREEN asked what words in Amendment 2 are cause for concern.

DEPUTY COMMISSIONER MCLAIN said, during the presentation of this language before a House committee yesterday, staff explained that this language would replace the local board's duty and authority to approve or disapprove curricular materials for correspondence programs. So, rather than the board approving or disapproving correspondence materials, it would establish procedures for the

purchase and use of those materials.

SENATOR GREEN asked how Amendment 2 will eliminate the board's authority.

DEPUTY COMMISSIONER MCLAIN replied in SB 346, the language of subsection (3) on page 2, lines 2-4, says the school district has the duty and authority to approve or disapprove correspondence materials. He said he is assuming the school district is synonymous with the school board. That would not be a problem. His concern is that many people who commented on the proposed regulations do not want the school board or school district to approve curriculum materials. They, as parents, want that authority.

DEPUTY COMMISSIONER MCLAIN said the language in subsection (3) indicates that school districts would maintain the authority to approve or disapprove. Amendment 2 removes approval authority and simply requires the school district to establish a process for purchase. It seems to imply that no one would be responsible for approval of curriculum and materials.

VICE-CHAIR LEMAN said he believes Amendment 2 offer three possibilities for purchasing procedures in 3(a): 1) the local school board will approve the purchase of and use of these materials; 2) the local school board may approve the use but not the purchase of materials; or 3) the local school board will not approve the materials as part of the curriculum but parents use them anyway. He then said:

The (b) part - approving and disapproving home designed courses, if they established procedures, they clearly have the authority to approve or disapprove those home designed courses. So, I don't know - my reading of it is it shouldn't raise the red flags you have. I believe the authority is still there at the local board level to do those things but that is my interpretation of it and I believe it's consistent with what you want to do and where you want to go. And if I'm misinterpreting the intent, I hope that somebody who is either on-line and helped with drafting this can communicate otherwise.

DEPUTY COMMISSIONER MCLAIN responded if (a) and (b) were additions to the current bill, he would have understood it as Vice-Chair Leman stated - that the boards are approving or disapproving the correspondence materials and that they are establishing procedures for the purchase and use of those

materials and home design courses. However, Amendment 2 removes lines 2-4, which removes the authority to approve or disapprove.

MS. HIGHLAND pointed out that AS 14.14.090 lists the duties of school boards and cited, "In addition to other duties, a school board shall establish procedures for the review and selection of all textbooks and instructional materials." She said she does not understand Dr. McLain's argument because Amendment 2 merely restates what is already in statute.

DEPUTY COMMISSIONER MCLAIN asked Vice-Chair Leman if it is his understanding that the school district or school board would still be approving or disapproving the curriculum and materials.

VICE-CHAIR LEMAN said yes, for materials purchased by the school district. He reminded Dr. McLain that Amendment 2 would offer three possibilities so that parents could use materials in the third category, but those materials would not be approved or supported by the district.

MS. HIGHLAND said her interpretation of the school board's authority to establish procedures does not give the board the explicit right to make the actual selection of the materials.

DEPUTY COMMISSIONER MCLAIN said from his conversations with DOEED's legal counsel and the accreditation agency, he believes a conflict would arise if the board does not approve the curriculum and materials. If that is not an issue, he asked that it be clarified and suggested placing Amendment 2 in AS 14.14.090. He expressed concern that if this legislation passes, it might be misunderstood by DOEED or the public because he does not believe the current or proposed regulations require additional oversight by the board in terms of curricular materials. That has always been a board function and is stated in the original bill.

DEPUTY COMMISSIONER MCLAIN added that in the Galena School District's application, the district spoke specifically to the fact that its materials are approved by the board and its teachers are involved in the instructional process. Those were key aspects of accreditation.

3:05 p.m.

SENATOR WILKEN asked Dr. McLain to speak to the procedure used now in regard to purchasing secular and religious materials with state money.

DEPUTY COMMISSIONER MCLAIN said DOEED attempted, in the regulations, to find a way to allow parents the flexibility to use and share with their students to the fullest degree possible

without letting DOEED fall into the trap or allegation of establishment. DOEED tried to say the only piece the department wants to be involved in through regulations are those parts associated with public funding, which would be four courses, the required amount to be a full time student. Parents whose children have a full array of educational experiences would identify those four courses that are not in question. He then said:

I appreciate that Senator Leman's laying out the three different - and so I would simply, as a pragmatist, say then for those that are questionable, first off you may not even - you may have four that aren't questionable so go with those for the full funding and then you're out of the woods. I use the example of students in brick and mortar who have a variety of experiences that they take outside of the brick and mortar school and then for some of those they apply for transfer credit or they apply to have those reviewed for credit or they don't bother with them for credits. They are just intrinsically worthy of learning and they are worthwhile in themselves. So that's the second way that those things can be done. Every district, whether it's a Galena or a Nenana or an Anchorage or a Kenai, has ways for students who have taken a course, even of a religious nature, and be able to get credit for it. That can occur. We wanted to facilitate that.

What Galena does, in the current piece that really makes it work for them, is they have approved curriculum that are up there on the web that anybody can go and look at and so the example that was used was if a student or a parent was taking Algebra 1, then what's being taught is Algebra 1. It is not my concern what that book is back at the home that the student may be using as long as we haven't paid for it. But what is being taught to, what's being addressed - and what I think is very clean, is this district approved standards based curriculum that anybody can go and look at that says Algebra 1. So when the kid is asked the question what is $2X + y = 7$, they can talk through all of that. It is of nobody's concern what else is on their page that that piece is printed because we are only talking then about the secular course, the secular curriculum that is up there.

What I worry about, and they're protected because that is a district-approved curriculum, that is the same curriculum that is out there for anybody else in that district. It is a nice clean way of everybody being

able to get what they need and not run afoul and not have to be out there on thin ice. What I worry about when it appears that we're removing the district approval of the curriculum out of here is that we're getting back into thin ice and I would just caution - I do want to see these innovations continue. I do want to see these options for our students and I think that I understand Senator Leman's concerns, I'm just trying to figure out how to be able to address those without getting us into those challengeable areas.

VICE-CHAIR LEMAN commented that he offered these amendments up front thinking it would make things easier, however they are bogging down the committee.

SENATOR WILKEN asked if Amendment 2 creates any problems regarding a school district approving or disapproving home design courses or correspondence and curriculum materials that run afoul of AS 14.03.090 - the prohibition of partisan, sectarian, and denominational doctrines, or our standards based education system.

DEPUTY COMMISSIONER MCLAIN said he would be listening for the intent because he assumes that should this legislation pass, correspondence schools will still adhere to the other statutes. He repeated that if the intent is that boards approve curriculum and materials, he would not be uneasy but he would still prefer that it be placed in AS 14.14.090.

SENATOR WILKEN said it seems like everyone is in agreement and that the problems lie with the wording. He asked that Amendment 2 be reworked and brought before the committee again.

SENATOR WARD moved to withdraw his motion to adopt Amendment 2 and asked for unanimous consent. There being no objection, the motion carried.

SENATOR WARD moved to adopt Amendment 3, which reads as follows.

A M E N D M E N T 3

OFFERED IN THE SENATE
TO: SB 346

BY SENATOR LEMAN

Page 2, line 5&6:
Delete all material

Insert "(b) In this section, "statewide school district correspondence study program" applies to Alyeska Central School

and charter schools and school district correspondence programs that enroll students statewide."

DEPUTY COMMISSIONER MCLAIN informed members that DOEED has no objection to Amendment 3.

VICE-CHAIR LEMAN announced that with no objection, Amendment 3 was adopted. He then took public testimony.

TAPE 02-20, SIDE A

MR. JIM FOSTER, Assistant Superintendent of Galena City Schools, clarified that a school district must do all of its business through the local school board. The problem with DOEED's proposed regulation is that it drops two words off of the current law, those being "establish procedures" in regard to the school board's authority. Therefore, instead of establishing procedures for the review and collection of materials, one could read this to say the school board individually must review all of the curricular materials, instructional aides, and anything else used in the teaching process rather than ensure that the district follows procedures established by the board. Other than that, Galena City Schools stands in support of SB 346.

VICE-CHAIR LEMAN asked Mr. Foster to take a look at Amendment 2 and send his comments.

MR. TIM SCOTT, Family Partnership, informed members that Glen Biegel, legal counsel to Family Partnership, was going to state support for Amendment 3 but had to leave.

MR. RUSS BOWDRE, testifying via teleconference from Delta Junction, said he is in support of SB 346 with a few changes. He said he has no problem with the amendments. He referred to page 2, subsection (3), and said he would prefer the board to have that duty, rather than the district, and to insert the words "state funded" before "correspondence" on line 3.

There being no further testimony, VICE-CHAIR LEMAN announced that SB 346 would be brought up again on Monday.

SENATOR WILKEN asked that DOEED look at the book, Rainbow Resource Center, and asked what will change if the new regulations go into effect. He said he would like to know what the old law versus the new law will do to students in the state.

CHAIRWOMAN GREEN announced the committee would meet on Monday to take up SB 346. She then adjourned the meeting at 3:19 p.m.

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