

ALASKA STATE LEGISLATURE  
**SENATE JUDICIARY COMMITTEE**

March 20, 2002

1:44 p.m.

**MEMBERS PRESENT**

Senator Dave Donley, Vice Chair  
Senator John Cowdery  
Senator Gene Therriault  
Senator Johnny Ellis

**MEMBERS ABSENT**

Senator Robin Taylor, Chair

**COMMITTEE CALENDAR**

SENATE JOINT RESOLUTION NO. 25

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

MOVED CS SJR 25(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 362

"An Act extending the termination date of the Board of Governors of the Alaska Bar Association."

MOVED SCS HB 362(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 324(L&C)

"An Act providing that a utility or electric operating entity owned and operated by a political subdivision of the state competing directly with a telecommunications utility is not subject to the Alaska Public Utilities Regulatory Act."

HEARD AND HELD

**PREVIOUS SENATE COMMITTEE ACTION**

SJR 25 - See HESS minutes dated 4/18/01 and 4/20/01.

HB 362 - No previous action to record.

SB 324 - See Labor and Commerce minutes dated 3/5/02.

**WITNESS REGISTER**

Mr. Darroll Hargraves, Executive Director  
Alaska Council of School Administrators

326 4th St., Ste 404  
Juneau AK 99801  
**POSITION STATEMENT:** Supports SJR 25

Ms. Amy Erickson  
Staff to Representative Murkowski  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Testified for the sponsor of HB 362

Ms. Deborah O'Regan  
Alaska Bar Association  
Anchorage, AK  
**POSITION STATEMENT:** Supports HB 362

Mr. Steve Van Goor  
Alaska Bar Association  
Anchorage, AK  
**POSITION STATEMENT:** Supports HB 362

Mr. Van Abbott  
Ketchikan Public Utilities  
Ketchikan, AK 99901  
**POSITION STATEMENT:** Supports SB 324

Mr. Jim Voteberg  
City of Ketchikan  
Ketchikan, AK 99901  
**POSITION STATEMENT:** Supports SB 324

Mr. Jimmy Jackson  
GCI  
Anchorage, AK  
**POSITION STATEMENT:** No position on SB 324

Mr. Mike Treuer  
Regulatory Commission of Alaska  
701 W Eighth Ave Ste 300  
Anchorage, AK 99501  
**POSITION STATEMENT:** No position on SB 324

Mr. Mike Garrett  
AP&T  
4300 B Street  
Anchorage, AK  
**POSITION STATEMENT:** Opposed to SB 324

**ACTION NARRATIVE**

**TAPE 02-10, SIDE A**

Number 001

**VICE-CHAIRMAN DAVE DONLEY** called the Senate Judiciary Committee meeting to order at 1:44 p.m. Senators Cowdery, Therriault and Donley were present. The first order of business to come before the committee was SJR 25.

#SJR 25

**SJR 25-CONST. AM: EDUCATION FUND**

SENATOR JERRY WARD, prime sponsor of SJR 25, encouraged members to adopt a proposed committee substitute (Version J) before the committee. He pointed out that members' packets also contain a proposed committee substitute to SB 188, companion legislation to SJR 25. He explained that the proposed committee substitute to SJR 25 is an attempt to address some of the long term needs of K-12 education in the state of Alaska. The University of Alaska was removed from the proposed committee substitute at his request because he wanted the bill to emphasize K-12. Much of the bill is modeled after similar legislation introduced by Steve Cowper, former Governor. Governor Cowper's education endowment required a mandatory draw from the Permanent Fund; SJR 25 allows the legislature to make such a draw but does not mandate it to do so. Version J allows the legislature to put 5 million acres of state land into an education endowment, allows residents to contribute 100 percent of their permanent fund dividends, and leave the door open to allow other funds to be deposited into the endowment in the future.

[SENATOR ELLIS arrived.]

SENATOR WARD informed members that he and Senator Cowdery introduced similar legislation in 1983. They were told at that time it would take 20 years to produce income from a land endowment. He believes the legislature should have committed 8 million acres of land to the endowment at that time. Senator Ward said he is bringing this concept forward again because he has seen the education community do a good job, but believes the "boat is sinking." This year the legislature will have to spend more on education than any other component of government. He wants to align the educational community with the development community so that Alaska can move forward and begin to develop some of its more than 106 million acres of state land. He noted

that a land trust relationship was set up in the Alaska Constitution for the University of Alaska and the mental health community and the legislature set up a land trust for the Alaska Railroad Corporation when it was purchased in 1983. He repeated that he wants to bring advocates for public education and the development community together so that, "we might be able to overrule some of the non-growth environmental extremists from outside that have been locking our country up for the last several decades and not to say in the least for the last seven years." He noted that he spoke with Governor Cowper when he first proposed this concept and urged him to use a land endowment instead of permanent fund monies but his constituency opposed that plan. He stated the purpose of this legislation is to create another revenue source for education.

SENATOR COWDERY moved to adopt the proposed committee substitute to SJR 25 (Version J) for the purpose of discussion.

VICE-CHAIR DONLEY noted that he would leave that motion on the table until Senator Therriault returned and the committee would take public testimony.

MR. DARROLL HARGRAVES, Executive Director of the Alaska Council of School Administrators (ACSA), informed members that this legislation has not been on his "radar screen" so he has no official position from the ACSA. He said he was happy to see this issue surface again because he recalled, in 1982, the ACSA pushed to highlight the possibilities of such a fund. ACSA invited Dr. Norman Hall from Texas to visit: he proposed that Alaska do what Texas did with its oil revenue - restrict that revenue to construct and maintain school facilities. ACSA made such a proposal but Alaska had so much money at that time, he believes no one could foresee future problems. He favors limiting an endowment to K-12 education and he encouraged members to consider restricting its use to construction and major maintenance, as that is what worked best in Texas. He added that he believes the statehood charter puts the 16<sup>th</sup> and 36<sup>th</sup> section of every township into a public school land trust. He was not sure of the status but offered to check for members. He applauded Senator Ward for introducing the legislation and said he would like to see a land endowment for education come to fruition.

SENATOR WARD acknowledged that Senator Taylor has worked with him on this bill and estimated that the sections of land in the statehood charter would add about 1.5 million acres to the endowment. He noted that the Texas university system is making enough from its land grants that it spends excess funds on K-12 programs. He has spoken to members of Alaska's congressional delegation about this issue and they believe the University of Alaska's land grant should stand on its own. The delegation

suggested that if a land grant comes to pass, they would consider trying to donate an equal amount of federal land to it. If 5 million acres of both federal and state land were put into an endowment, it would be the largest land grant in the United States.

SENATOR COWDERY asked how much land would be needed at the start and noted that land sales could encompass one lot or one million acres.

SENATOR WARD replied that he "took it down to nothing less than 40 acres." He suggested staying with 640 acres but pointed out 40-acre parcels would not require surveys so there would be no transfer cost.

SENATOR COWDERY noted that he sees no reference to that in the committee substitute.

SENATOR WARD clarified the details are specified in SB 188. He referred to language on page 4 that reads:

Each list must contain not more than 25 percent of the total acres of land to which the fund is entitled after subtracting previous conveyances under this section, but not less than 25,000 acres or the remaining entitlement under this section, whichever is less,

and said that is a formula the department came up with. He maintained that the bill should not contain a minimum because size should not be a factor; the legislature should have the option to transfer lots if necessary. He said it is not helpful to the education of Alaska's children to leave over 100 million acres in state ownership.

SENATOR WARD said he purposely did not restrict contributions to permanent fund dividends so that future legislators can identify other revenue streams, such as gas line revenue. He said he believes there is a serious misunderstanding about education funding. The legislature has been trying to put quite a bit of money into public education for the last few years but it never seems to be enough. He believes the legislature should fund transportation, public safety and education well, and it is not doing so. He does not believe the legislature can "tax its way out of this," and that if a land endowment is logical for the University, the railroad and the mental health community, it certainly is logical for K-12 education. He then asked Mr. Hargraves about the status of the land grant he referred to.

MR. HARGRAVES replied, "I think that thing is a real ball of worms for you. This state someday may pay the price for that. I don't know what you know - I don't know what's happening, but

aren't there some lawsuits out there that are either taking shape or...?"

SENATOR WARD stated the lawsuits have dropped to the wayside because agreements were negotiated.

MR. HARGRAVES said it is his impression, "...that if you got a decision similar to that mental health lands trust in connection with this one, I think it would practically destroy the state."

SENATOR WARD commented that Senator Taylor believes giving the full 5 million acres to the land endowment would solve the problem.

MR. HARGRAVES said the statehood charter issue is very complicated and would have tremendous and devastating implications for the state.

SENATOR WARD clarified that he brought the proposed committee substitute for SB 188 to members' attention because he wanted to inform them of the board make-up. He said he would like to pit the development community and the education community against the extreme environmentalists.

VICE-CHAIR DONLEY announced the committee would take up HB 362. He asked Ms. O'Regan to testify.

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#HB 362

**HB 362-EXTEND BOARD OF GOVERNORS OF AK BAR ASSN**

MS. DEBORAH O'REGAN, Alaska Bar Association, informed members that an audit of the Alaska Bar Association (ABA) by the Legislative Budget and Audit (LBA) division last year found the ABA meets the public need in an effective and economical manner. The ABA deals with licensing of attorneys. HB 362 reflects the recommendation of the LBA to extend the Board of Governors for another four years.

MR. STEVE VAN GOOR, Alaska Bar Association, said he was available to answer any questions about the audit.

MS. AMY ERICKSON, staff to Representative Murkowski, sponsor of HB 362, agreed the legislation extends the sunset date of the Board of Governors to June 30, 2006. The Board of Governors was established in 1955 to ensure that only qualified members of the legal profession of good moral character are allowed to practice law in the state. She urged members to support the legislation.

VICE-CHAIR DONLEY noted a conflict of interest as he is a member

of the Alaska Bar Association. He then noted the ABA is running a deficit this year and expressed concern about the cost of ABA dues as that cost is one of the highest in the nation. He questioned what plan the ABA has to bring down the cost of membership.

MS. O'REGAN said, unfortunately, one of the things that affected the ABA's budget last year was an Alaska Supreme Court mandate that the ABA provide a voluntary CLE program. It encouraged attorneys to report a minimum of 12 hours of CLE credits each year. ABA's budget deficit was due to the increased cost of temporary staff, data processing, computer programming, and discounts taken by lawyers. Another large expenditure in 2001 was for an ABA convention held in Ketchikan, the first in 22 years. She noted the convention will be held in Anchorage this year so it will not be quite as expensive. She said that membership in only half of the bar associations across the country is mandatory; membership in Alaska's is mandatory. She pointed out the ABA last increased its dues in 1992; the prior increase occurred in 1981.

VICE-CHAIR DONLEY remarked that there was a virtual revolution within the California Bar Association over dues. He strongly encouraged Ms. O'Regan to do everything possible to keep the costs down. He then noted with no further testimony, he would set HB 362 aside.

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#SB 324

**SB 324-MUNICIPAL PUB.UTIL.COMPETING W/TELECOM**

MR. JIM VOTEBERG, assistant city manager of the City of Ketchikan and the assistant general manager of Ketchikan Public Utilities (KPU), stated support for SB 324. He provided the following highlights of the written testimony he submitted to committee members.

The City of Ketchikan, and the City of Ketchikan doing business as Ketchikan Public Utilities, owns and operates several utilities including telecommunications, electric, water, wastewater collection and treatment, and solid waste collection and disposal. This legislation is a local issue and important to the city because it allows the city to operate its utilities in a cost-effective manner, as it has for over 50 years and it provides local leaders with an important tool for the economic development of our community. Should the city become regulated under

the RCA, the cost to the ratepayers in Ketchikan is estimated at around \$700,000 annually, which does not include the cost of a rate study that, for each utility, could be in the range of \$250,000. These costs include annual fees, [indisc.], additional staff time to perform the increased workload of a fully regulated utility, and costs associated with changes in the city's existing accounting system. These costs would be directly passed on to our consumers resulting in a higher utilities bill. Given the economic situation in Ketchikan, this is not the time to increase costs to its residents and businesses.

The city is aware that AP&T opposes this legislation and has questioned its need by pointing out that the RCA currently has regulations in place to grant a waiver to Ketchikan. Although a procedure may exist, the procedure can be time consuming and expensive, particularly when a company opposes the waiver and there's no guarantee that a request will be granted. Given that AP&T testified before the Senate Labor & Commerce Committee that it would oppose any request by KPU for a waiver from the RCA. The cost to file a waiver will be high, it will take a long time and, again, there's no guarantee of the outcome.

Through correspondence dated March 5, 2002, RCA Chairperson Nan Thompson addresses SB 324 by stating, 'The RCA has not taken a position in support or in opposition to this legislation. We believe it presents policy issues that are within the legislators' province.' The city agrees that this legislation is a policy issue within the legislative jurisdiction and is seeking resolution through the legislative process.

Given the advancement of telecommunication technology and varying levels of regulations placed on telecommunications companies, the proposed legislation creates a level playing field. Without this legislation, for example, should a cable company such as GCI use its cable plants to provide telephone service in Ketchikan, GCI would be non-regulated while Ketchikan would be fully regulated. If a wireless company, such as AP&T, were to compete in Ketchikan, AP&T would be lightly regulated while Ketchikan would be fully regulated. In any case, an uneven playing field is created by Ketchikan becoming fully rate-regulated and trying to compete against a non-regulated

or a lightly regulated entity. Maintaining its non-regulated status allows Ketchikan to compete on a level surface.

In closing, I'd like to stress the importance of this relatively small change to AS 42.05.711(b)(2) in the community of Ketchikan. This is a local issue. SB 324 has been narrowly crafted to simply address the uneven playing field facing the City of Ketchikan and point out that it does not affect other municipalities throughout the state. The city looks to the state to preserve local control over its utility as it has had for over 50 years and ensure that local government retains the tool it needs to better serve our community and assist in turning Ketchikan's economy around. Thank you and that's all I have.

VICE-CHAIR DONLEY asked Mr. Voteberg to explain why SB 324 will not apply to other communities with a municipally owned utility in competition with a privately owned utility.

MR. VOTEBERG said that Ketchikan has the only municipally-owned telephone company in the state therefore it is the only municipally-owned company that would be in competition with another telephone company.

VICE-CHAIR DONLEY noted SB 324 applies to both electric operating entities and telephone companies.

MR. VOTEBERG deferred to Heather Graham, counsel for the City of Ketchikan.

MR. VAN ABBOTT, Ketchikan Public Utilities, said one answer he would pose to Senator Donley's question is that, hypothetically, if an electric company wanted to get into the telephone business and compete with a telephone company, it would have to get a certificate of public convenience, which involves a lengthy process. Whether it would be regulated or not would be in the bounds of the due diligence the RCA would take before issuing the certificate.

VICE-CHAIR DONLEY asked Ms. Graham if the answer to his question is that although language on page 2 covers a utility or an electric operating entity, it only applies if that entity is competing with a telecommunications utility and not with another electric operating entity.

MS. HEATHER GRAHAM, counsel to the City of Ketchikan, said that is exactly right. She noted she would be available to answer any future questions should they arise.

MR. JIMMY JACKSON, attorney for GCI, clarified the earlier statement by a representative from Ketchikan that GCI would be unregulated if it was to compete with KPU in the local phone business is incorrect, and that GCI takes no position on the bill.

MR. PHILLIP TREUER, RCA staff, stated the RCA neither opposes nor supports SB 324.

MR. MIKE GARRETT, President of AP&T Wireless, a subsidiary of Alaska Power and Telephone, said that AP&T Wireless opposes SB 324 and is uncertain why it is before the committee. He believes it is special interest legislation for KPU that provides relief for that one entity and addresses an issue for which an administrative solution exists. KPU could file a waiver with the RCA and, in doing so, have to prove that the facts behind its estimates are true and correct and in the public's interest. If so, the waiver would be approved. He said it is strange to AP&T that KPU would take legislative action rather than administrative action.

In response to Mr. Voteberg's statement that AP&T would oppose a waiver application by KPU, MR. GARRETT said AP&T would not oppose an application that is in the public interest. AP&T would reserve the right to comment if KPU filed a waiver. He noted that the law, as written now, adheres to the Telecom Act of 1996, particularly Section 254(k). AP&T's interpretation of that section is that unregulated services cannot be subsidized with regulated services. AP&T has regulated utility operations. As a wireless carrier providing services in Ketchikan, it would not necessarily be rate regulated, but it would have to provide [indisc.] to the Commission just like any other competitive local telephone company. Its regulated services, power, telephone and hydroelectric, are regulated: AP&T provides the information requested by the RCA and does not find it to be burdensome.

MR. GARRETT said the existing law has worked well in the past. The law was put in place when Anchorage and Fairbanks had city-owned utilities. They were able to get waivers from this rule as they were able to prove that waivers were appropriate. He noted that AP&T is uncertain how SB 324 will affect other city-owned electric utilities that may want to compete in telecommunication services.

2:30 p.m.

There being no further testimony, VICE-CHAIR DONLEY noted the committee did not have a quorum at this time. He then announced a short recess.

TAPE 02-10, SIDE B

VICE-CHAIR DONLEY called the meeting back to order and announced the committee would take up HB 362. Senator Therriault had arrived.

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#HB362

HB 362-EXTEND BOARD OF GOVERNORS OF AK BAR ASSN

SENATOR THERRIAULT expressed concern about the fact that the Board of Governors of the Alaska Bar Association (ABA) has amassed a sizeable fund, about \$1 million, from attorney fees. He said he questions its operations as it is completely off budget. He noted there are dueling legal opinions as to whether "that is being done right or wrong." He noted that other licensing boards have state oversight to make sure that members are not being over-assessed. He questioned whether the Board of Governors cannot cover its annual costs and is living off of that fund, and whether that fund prevents the state and members from knowing what the legitimate annual expenses are.

MR. STEVE VAN GOOR, ABA counsel, said he has been employed by the ABA since 1983 and, while his responsibilities are primarily on the disciplinary side, he is aware that since 1983 the Board of Governors has been very concerned about the expenses it has incurred and that it fulfill its statutory requirements for the addition and character examination of attorneys, discipline of attorneys, and continuing legal education. During the 1970s and early 1980s, the ABA's dues were \$165. The early 1980s were a time of high inflation and economic instability so the Board, with the input of the membership, decided that in order to continue to provide services mandated by the court and statutorily, it must raise fees to \$310. The Board expected the dues increase to last three or four years during the high inflationary period. He said Board members are very concerned about the cost and expenses; the annual budget is the topic of the October board meeting. Regarding accountability, the board's budget is available for member review and the Legislative Budget and Audit division has the opportunity to look over the ABA's shoulder every four years. LBA has determined the ABA's fiscal management is appropriate.

VICE-CHAIR DONLEY commented that, typically, LBA does not go into the nuts and bolts of how the ABA spends its money. It does an overview of the ABA' public policies. The fact that LBA recommended extending the board does not necessarily mean it agreed with how the board operates.

SENATOR THERRIAULT stated, having dealt with the budgets of other licensed professions, there is a connection between the level of

expenditures by the boards that is felt immediately in membership fee increases because other boards are not allowed to amass funds over a couple of years. He maintained the ABA says its large fund balance will enable the board to cover increased operational costs. He questioned whether those increased costs are inflationary or whether they are for activities the members might not approve of or know of until fees increase again. He commented that there is no immediate connection between the fees members pay and what the board spends the money on that year and that concerns him.

VICE-CHAIR DONLEY said that if some of the fee increases resulted from mandates by the judicial branch, the ABA could develop a bifurcated rate with a higher rate for judges' licensing fees.

SENATOR COWDERY moved to amend HB 362 to change the board's extension to June 30, 2004 rather than 2006.

VICE-CHAIR DONLEY noted that, without objection, the amendment was adopted.

SENATOR COWDERY moved SCS HB 362(JUD) from committee with individual recommendations.

VICE-CHAIR DONLEY announced that without objection, the motion carried. He then announced the committee would take a short recess.

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#SJR25

Upon reconvening the meeting, SENATOR COWDERY moved CS SJR 25(JUD) from committee with individual recommendations.

VICE-CHAIR DONLEY noted that without objection, the motion carried.

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There being no further business to come before the committee, he adjourned the meeting at 2:44 p.m.