

SENATE FINANCE COMMITTEE  
March 10, 2008  
1:49 p.m.

CALL TO ORDER

Co-Chair Stedman called the Senate Finance Committee meeting to order at [1:49:30 PM](#).

MEMBERS PRESENT

Senator Lyman Hoffman, Co-Chair  
Senator Bert Stedman, Co-Chair  
Senator Charlie Huggins, Vice-Chair  
Senator Kim Elton  
Senator Donny Olson  
Senator Joe Thomas  
Senator Fred Dyson

MEMBERS ABSENT

None

ALSO PRESENT

Senator Gary Stevens; Tim Lamkin, Staff, Senator Stevens; Eddy Jeans, Director, Education Support Services, Department of Education and Early Development; Neil Slotnick, Senior Assistant Attorney General, Labor and State Affairs, Department of Law

PRESENT VIA TELECONFERENCE

None

SUMMARY

SB 285 "An Act relating to the power and duties of the Department of Education and Early Development for improving instructional practices in school districts; and providing for an effective date."

SB 285 was HEARD and HELD in Committee for further consideration.

HB 260 "An Act relating to a State Officers Compensation Commission and establishing how legislators, the governor, the lieutenant governor, and executive department heads shall be compensated; providing for an effective date by repealing the effective dates of certain sections of ch. 124, SLA 1986; and providing for an effective date."

HB 260 was SCHEDULED but not HEARD.

[1:49:38 PM](#)

#sb285

SENATE BILL NO. 285

"An Act relating to the power and duties of the Department of Education and Early Development for improving instructional practices in school districts; and providing for an effective date."

Co-Chair Stedman discussed the intent to hear from the bill sponsor and adopt the Committee Substitute as a working document.

Co-Chair Hoffman MOVED to ADOPT Committee Substitute Version M as a working document.

Co-Chair Stedman OBJECTED for discussion.

Co-Chair Stedman related that the Committee Substitute removes the intent language in the bill replacing it with a Senate Finance Letter of Intent for the committee to consider adopting. The Committee Substitute added a definition for instructional practices on page 5, Section 3 (copy on file).

Co-Chair Stedman WITHDREW his OBJECTION. There being No further OBJECTION Committee Substitute Version M adopted as a working document.

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SENATOR GARY STEVENS reported that SB 285 has been introduced in response to the court case decision of Moore et. al. vs. State of Alaska (3AN-04-9756 Civil):

"An Act relating to the power and duties of the Department of Education and Early Development for improving instructional practices in school districts." SB 285 has been introduced in response to the court case decision of Moore et. al. vs. State of Alaska (3AN-04-9756 Civil), which pertains to the Legislature fulfilling its constitutional mandate of overseeing school districts and schools in Alaska. The case concludes in part that the Legislature is failing this duty as regards schools with long-standing poor performance.

The education clause of Alaska's Constitution states that the Legislature has the obligation to establish and maintain public schools in Alaska. The Legislature has delegated this responsibility to the Department of

Education and Early Development (DEED). As is common among states, there has been a long-standing policy of maximizing local control of Alaska's schools and education. However, when it is determined that a local school district continually fails to provide a child a meaningful opportunity to learn, local control must give way to Legislative intervention, via DEED. Alaska must make its best effort to remedy the situation by implementing specific, focused strategies and professional development designed to increase student learning and proficiency.

SB 285 requires that regulations be drafted establishing criteria under which DEED may intervene and provide direction to a district to develop school and district-level improvement plans targeted to increase student achievement. The commissioner will use multiple measures and data in making such a determination. Passage of SB 285 will make it clear to Alaska's school districts that they must cooperate with DEED or risk specific directives, delineated in regulation, regarding district personnel decisions and expenditures of district funds necessary to improve instructional practices in the district schools. Passage of SB 285 will also demonstrate to the judicial branch that the Legislature is acting to better ensure total fulfillment of the mandates established in the education clause of Alaska's constitution.

Senator Stevens remarked that the case judge declared that the State of Alaska fulfilled its funding obligations but, failed schools that have performed poorly. Senator Stevens recounted that the Alaska Constitution gives the responsibility of establishing and maintaining education in Alaska to the Legislature but, he acknowledged, there has been a long standing principle of local control. Senate Bill 285 requires that regulations be established for the Department of Education on how and when it intervenes, the direction it takes, and the improvement it provides. Senator Stevens stressed that not responding will have negative consequences for the state. He emphasized that the Department of Education will not "take over" the districts but only intervene when there has been a long standing case of poor performance.

Co-Chair Stedman remarked that the state risks court intervention if it does not comply. He requested a rough idea of how many schools are considered in the lower performance rating.

TIM LAMKIN, STAFF, SENATOR STEVENS, sited a spreadsheet from the Department of Education that addresses the state's oversight and accountability system (The Education Clause, p. 4, copy on file). He listed sixteen districts that were

watched and six districts where the department intervened. He referred to the "four-color" charts indicating the results of state intervention and noted the results were positive (Reading Tests Scores after State Intervention, Math Tests Scores after State Intervention, copy on file). Co-Chair Stedman observed that the charts showed the schools were improving. Senator Stevens agreed and reported that the Yupiit School District proficiency in 2005 was 8.2 percent, increasing to 23.1 percent in 2007 (green). At the same time, the lower areas have moved from 70 percent in 2005 to 42.1 percent in 2007 (red).

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Mr. Lamkin clarified that the charts were at the district levels but, SB 285 would allow the department to intervene at the individual school level. He elaborated that a district might have five poorly performing schools but the remaining schools may be doing well, so the department would be able to focus only on the poorly performing schools.

Co-Chair Stedman requested further explanation on how this would work.

Senator Stevens wanted to make sure that everyone understood the intervention would not be a hostile takeover, only an opportunity to offer help and support to the school.

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Senator Elton questioned the last sentence in the fiscal note from Department of Education:

This law will make it clear to Alaska school district that they must cooperate with the Department of Education & Early Development or risk specific directives, delineated in regulation, regarding district personnel decisions and expenditures of district funds necessary to improve instructional practices in the district schools.

Senator Elton remarked that the language in the bill sounded like a "take-over." He contended that the schools have no choice but to allow the intervention and school decisions to be made by central administrators in the Department of Education & Early Development.

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Senator Stevens admitted it would be an extraordinary situation for the department to intervene. The department does not have extra staff that could "take-over" a district but, they need a provision to make it clear to the districts that there is some authority beyond the local school

district and school board. Senator Stevens observed that in the past, when the department has tried to intervene, some districts have fought back and refused to work with the department. Senator Stevens defined the bill as giving the power to the department to use the funds that normally would go to the school district in order to help the individual schools improve.

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Senator Elton maintained that there has only been one district that has not complied with the Department of Education recommendations.

Co-Chair Hoffman commented that he also reads in the fiscal note that the Department of Education would make budget decisions on the expenditure of funds. He believed this would be removing the fundamental responsibilities of the school boards and the school administration. He questioned how the department would determine when it was time to intervene.

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Senator Stevens remarked that the department would be looking for definite signs that the school situation was not going to improve. He acknowledged that this was a serious step but, the court indicated that the state needs to have a system in place to deal with the problem of failing schools. He informed the committee that there is a list of procedural steps that must occur before an intervention.

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Senator Dyson cautioned against expecting the school system to solve all of society's social ills. He stressed that many educational difficulties are related to dysfunctional homes and that the standards are different for each community throughout Alaska.

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Senator Stevens reiterated that this plan is not a mandate for state-operated schools or a punishment for schools who have not achieved the required scores. He stressed this is a plan for improvement to help the failing districts or schools succeed.

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Senator Thomas pointed out the concern of not just separating particular schools but intervening in the entire district. He remarked that the bill seems persuasive about what the department can do; especially withholding money,

but, questioned if there was something different in this bill to address individual schools, rather than punishing the entire school district.

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Senator Stevens remarked that he believed the problems were district wide.

Co-Chair Hoffman questioned the school board's role after the department took over a school and its funds.

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Senator Stevens cautioned against using the word "take-over." He indicated that the school district and the school board would remain as constituted. The department, once entering into the process, would be able to hire additional help to assist the local administration toward improvement. Co-Chair Hoffman referenced the fiscal note that allowed the department to make personnel decisions that are clearly school board functions. Senator Stevens emphasized that the intention of the bill is to return management back to the district administration and the school board as soon as possible. He agreed that during the time that the department has control, the school board would be less empowered than before, but only because they had not achieved what they were supposed to accomplish.

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Senator Olson referenced a letter from his district, suggesting a neutral third party approval before the department intervened in a school district. The letter also suggested a definite procedure for the department to develop specific entry and exit criteria (Northwest Arctic Borough School District, Norman Eck, Superintendent, March 7, 2008, addressed to Senator Stevens, copy on file).

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Senator Stevens reminded the committee that the department does not want to intervene and the decision to intervene would only happen in extraordinary circumstances. The goal of the department is to improve the failing school. Senator Olson commented that three of the schools identified in the Northwest Arctic Borough district were intervened yet the District Superintendent felt the entire district had been targeted.

Mr. Lamkin commented that the department intervened in the Northwest Arctic Borough and there was impressive improvement in the schools. Mr. Lamkin reminded the committee that the court clearly stated the Legislature's

fundamental responsibility for establishing and maintaining schools in the state and the court found the Legislature failing in its oversight. He read an excerpt from the court:

The evidence at trail clearly established that considerably greater oversight by the State over the education of Alaska's children, at least at the state's most seriously underperforming schools, is critically needed.

Mr. Lamkin added that the court continued:

In order to achieve compliance with the Education Clause's requirement to maintain a system of public schools, the State must do, at minimum, two things. First, it must establish clear standards for school districts that are necessary for the district to retain full local control. Second, the State must exercise considerably more oversight and provide considerably more assistance and direction to those schools that are identified as failing to meet the State's constitutional obligation in a concerted effort to remedy the situation. (The Education Clause in Alaska, Legal Analysis, p. 147 and 189, copy on file).

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Senator Stevens stressed again that there is no intention of taking over the schools, only to intervene when necessary. He reminded the committee that if the Legislature does not act then the judge in the case will act.

Co-Chair Hoffman reasoned that, along with the plan written in SB 285, there could be other methods, such as, adding extra money along with extensive teacher and school board training to provide the necessary skills. He was curious why this avenue of training had not been addressed.

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Senator Stevens remarked that the present fiscal note is substantial and, although it is always possible to add more money to cover such things as teacher and school board training, it would end up being a much more expensive program.

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Senator Elton read that the fiscal note adding \$500,000 in new state money to education but, remarked that it is going to the state bureaucracy not to the districts. He listed that about half of the money was going to personnel in the Department of Education with additional money for travel and district coaches. Senator Stevens agreed but concluded that

if more people were hired within the district to address the problem, it would become a more expensive program than the Department of Education's proposal.

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EDDY JEANS, DIRECTOR, EDUCATION SUPPORT SERVICES, DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT provided a packet for the committee with the intent to provide an overview of the bill for the committee, starting with Neil Slotnick (The Education Clause, copy on file).

NEIL SLOTNICK, SENIOR ASSISTANT ATTORNEY GENERAL, LABOR AND STATE AFFAIRS, DEPARTMENT OF LAW, stated that he represented the State of Alaska in the Moore vs. State of Alaska case. He began with a background on the case by reading a section of the Education Clause in the Alaska Constitution:

The legislature shall by general law establish and maintain a system of public schools open to all children of the state, and may provide for other public educational institutions.

Mr. Slotnick signified that every state constitution has an Education Clause and that a majority of the states have had lawsuits in the last several years under their Education Clauses. These lawsuits called "adequacy lawsuits" are based on the theory that schools must be adequate, and when seen as inadequate, there is the opportunity to sue the state. In most cases, the plaintiffs are usually seeking more money. Mr. Slotnick referred to the Moore vs. State of Alaska lawsuit, filed in August 2004, where several different plaintiffs asked the court to double the size of the education budget. Mr. Slotnick referred to the Court's Decision, page 2, in which the Superior Court established a four part test for constitutionality of the Education Clause. The courts found the Legislature in compliance with the first three parts: funding, standards, and an assessment system. In the fourth part, state oversight of school districts and schools, the court determined that the legislature delegated much of its authority to local school districts. The judge found that in almost all districts of the state, local control worked. Mr. Slotnick voiced that the judge made an evidentiary finding that there were districts in Alaska where the local control was not working. He empathized that the years of poor performance could not be traced to just the communities themselves and the court judge declared that more state involvement was required. Mr. Slotnick indicated the judge also made a requirement of the due process clause. Mr. Slotnick indicated that he believed what the Department of Education intends to do in the SB 285 for state oversight would also assist the due process clause.

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Mr. Slotnick stressed that the judge ruled the state had one year (June 2008) to prove it is providing more oversight and involvement in those districts with long standing poor performance. Mr. Slotnick remarked a hearing is scheduled in June 2008 for the judge to hear the specifics about state oversight and compliance. Mr. Slotnick revealed that Commissioner Sampson remarked, after the first trial date, that the judge did not hear all the evidence about what was already being accomplished in the way of oversight to the districts. Mr. Slotnick remarked that there has been an accountability system since 1998, passed by the Legislature, telling the Department of Education to become more involved. He said that the Commissioner believed that the department should go back to court and show the judge what was already being done in the districts. Mr. Slotnick stated that there was another hearing in September 2007, and when Mr. Slotnick asked the judge for a new trial date in November 2007, to present this evidence and the judge responded:

**COURT:** And so that puts the ball back into the camp of the State Government the Legislature and the Department of Education to address the concerns that I articulated and that's where I see the cases at this stage. If I'm hearing that the Department of Education has done everything that it's supposed to, well that's a determination that they have every right to make but ultimately the constitutional responsibility is the Legislatures and if they chose to say "we think we're in compliance," great I'll look at this case in June and I'll go forward from there. If they choose to say, we better further address our obligation under the education clause, then that's what I'll take up when we meet again later next year. Does that help clarify my thoughts on this?

**Mr. Slotnick:** I think so, yes, and so that we're clear, what we are saying is that there is evidence out there that you haven't heard yet.

**Court:** And I understand that completely.

**Mr. Slotnick:** And you're saying back to me that when the Legislature hears that evidence, and if it decides that's enough you'll consider that if they hear that evidence and decide they want to do more, then you'll have that record.

**Court:** Exactly.

Mr. Slotnick specified that earlier evidence was presented to the Senate Education committee regarding standards already occurring in the districts. Mr. Slotnick recounted that it was after this presentation that Senator Stevens introduced legislation, SB 285, giving the Legislature more

authority making the intervention plan clearer. Mr. Slotnick observed that the legislative body can decide how it wants to proceed then he will take that information back to the court in June 2008.

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Mr. Slotnick suggested that for the purpose of this case, the Legislature needs to have a discussion on what is best for the state's children and the Legislature's obligation under the constitution then he will have a record when he returns to court.

Mr. Jeans revealed on the spreadsheet, page 4, the districts that have been looked at and the districts that have been intervened. He remarked that there are six districts currently being intervened under the No Child Left Behind Statutes. Mr. Jeans wanted the Legislature to understand that they are not recommending the development of a whole new process to decide if the districts are performing well because that state assessment process is already in place. He proposed that the Legislature look at the school performance level based on the judge's decision and to utilize that same data.

Mr. Slotnick reiterated that when the department finds increased student achievement at the school level then the department will determine that the local level is working and not intervene. Mr. Slotnick concluded that the sign of any growth in the school will be enough; this legislation is not intended to be a take-over.

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Mr. Jeans reiterated that the judge clearly stated that where there is low performance and no measureable growth, the state is required to improve student achievement. He referred to the "four-color" charts that demonstrated improvements after an intervention (copy on file). He pointed out that more children are at the proficient level and fewer children are below the proficient level. Mr. Jeans reported that he asked Interim Commissioner Thompson when the Department of Education would leave after an intervention and she answered that she would stop monitoring the school after two to three years of continued growth. Mr. Jeans warned that if the school starts to slip again, the department will return to that district. Mr. Jeans revealed that schools have asked about the process the department will follow before an intervention. Mr. Jeans referred to a PowerPoint presentation by Les Morse, Director of Assessments, Accountability and Information, which defines the Desk Audit as the "review of data to determine the reasons a district has not demonstrated adequate yearly progress" (Reading District Data, The Desk and Instructional

Audit Revealed, January 17, 2008). Mr. Jeans referenced the Instructional Audit as an "on-site review of the instructional policies, practices, and methodologies of the district or one or more schools within the district (p.18)." He explained that department staff is sent into the field to look at the school curriculum to see if it is aligned with the state standards and the GLE and determine the school's assessment policies and practices. The department will also look at their instructional program, learning environment, professional development, practices, and leadership. When the Commissioner makes the decision to intervene in a district, the department works with the district administration, school board, and superintendent in developing a district school improvement plan. Mr. Jeans divulged that within the five schools districts that have been intervened, the department has met with resistance from those districts.

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Mr. Jeans explained that the department needs the legislative authority to enter a school district and establish the foundation to move forward and grow. In the Moore case, it states that:

Alaska's Constitution makes the Legislature not local school districts ultimately responsible for maintaining Alaska's schools. Clearly the Legislature has authority to delegate that responsibility and this court has found the Legislature's provided school districts with constitutionally sufficient amounts of funds to undertake that responsibility. But the state's responsibility does not end with adequate funding. If a school, despite adequate funding, is failing to accord a child with the constitutionally adequate education, such as failing to provide the child with meaningful opportunity to acquire proficiency in the state's own performance standards, then the concept of local control must give way because that school is not being maintained as is required by the Education Clause.

Mr. Jeans emphasized that this legislation puts districts on notice that if they are unable to educate the children and show improvement, then the Department of Education must intervene to provide them with direction.

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Senator Dyson remarked that under No Child Left Behind, the federal law provides parents with some educational choice.

Mr. Eddy agreed that if districts are failing there is a provision within the No Child Left Behind giving parents the opportunity to send their children to another school. He

concluded but, he reminded the committee that many Alaska communities did not have this available option.

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Senator Dyson questioned what, at present, is being done to train and empower school boards. Mr. Eddy believed that most training for school boards was through the School Board Association not through the Department of Education.

Senator Dyson remarked there are some school facilities where charter schools are operating within the same space. He remarked that, under Alaska law, charter schools are more closely controlled by the parents. He questioned the process, in an area where a school was not making progress, for parents to propose that the school be under the control of a charter school.

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Mr. Eddy commented that in intervening at the school level, the department looks at the Adequate Yearly Progress (AYP) and whether or not fifty percent of the students in that school were proficient or not. The department would also measure if the school was showing growth and if so, then determine the school is heading in the right direction. Mr. Eddy explained that the charter school works through the administration and a parent advisory group. Senator Dyson questioned that if there was a school with a pattern of not making progress and a group of parents wanted to take over the management and direction of that school, instead of the existing school board or superintendent, how could the parents proceed.

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Mr. Eddy remarked that the parents could create a charter school under the Charter School Legislation. Senator Dyson wondered how and who would start this process. Mr. Eddy replied that the parent group or whoever establishes the application.

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Senator Elton questioned that if the judge stated the Legislature had the responsibility to delegate to the department and the department has delegated the power to the local school board, how can the department now take away those powers. Mr. Eddy remarked that the Legislature has delegated local control to local school districts and these districts have established local school boards. The judge said, in her decision, that local control is not working in some areas and the Legislature has the obligation to remedy the problem.

Senator Elton wondered how the trial judge determined that local control was the problem instead of things outside the control of local school boards.

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Senator Elton requested that the department return to the committee with proof that it is a local school problem and not some other community problem. He remarked that when districts have multiple schools with most performing at standards and only a few in troubles, where, structurally, in this bill it allows the local school boards to continue having authority over the successful ones. Senator Elton signified that this bill gives the department authority to intervene in the district and make personnel decisions on how the funding is channeled to all the schools, successful or not, in the district.

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Mr. Eddy responded that structurally the intent is to work with the district administration. Mr. Eddy explained that even if it is only one or two schools within a district that require department intervention, under No Child Left Behind, it becomes a district wide issue.

Senator Elton agreed, but believed the Legislature is being asked to give very broad authority while the department is saying that the "intent" is something else.

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Mr. Slotnick reminded the committee that all the decisions, made by the Department of Education are data driven through the assessment system mentioned and that is why the proposal in this bill works.

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Co-Chair Hoffman believed that the problem is deeper than just the instructional delivery, but problems could be related to teacher turnover or the lack of parent-teacher involvement in some of these districts. Co-Chair Hoffman doubted if school board training was mandatory and this might need to be addressed. He emphasized that many things need to be dealt with prior to making fundamental structure changes.

SB 285 was HEARD and HELD in Committee for further consideration.

#hb260

HOUSE BILL NO. 260

"An Act relating to a State Officers Compensation Commission and establishing how legislators, the governor, the lieutenant governor, and executive department heads shall be compensated; providing for an effective date by repealing the effective dates of certain sections of ch. 124, SLA 1986; and providing for an effective date."

HB 260 was SCHEDULED but not HEARD.

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ADJOURNMENT

The meeting was adjourned at 2:57 PM.