

**ALASKA STATE LEGISLATURE**  
**SENATE EDUCATION STANDING COMMITTEE**

February 12, 2010  
8:03 a.m.

**MEMBERS PRESENT**

Senator Kevin Meyer, Co-Chair  
Senator Joe Thomas, Co-Chair  
Senator Bettye Davis, Vice Chair  
Senator Charlie Huggins  
Senator Gary Stevens

**MEMBERS ABSENT**

Senator Donald Olson

**COMMITTEE CALENDAR**

SENATE BILL NO. 236

"An Act relating to tax credits for cash contributions by taxpayers that are accepted for certain educational purposes or for a college facility; and providing for an effective date."

- MOVED CSSB 236(EDC) OUT OF COMMITTEE

SENATE BILL NO. 209

"An Act providing the Alaska State Council on the Arts the authority to adopt regulations relating to its statutory powers and duties; and providing for an effective date."

- MOVED SB 209 OUT OF COMMITTEE

SENATE BILL NO. 235

"An Act relating to charter school approval and funding."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 236

SHORT TITLE: TAX CREDITS FOR EDUCATIONAL CONTRIBUTIONS

SPONSOR(S): EDUCATION

01/22/10	(S)	READ THE FIRST TIME - REFERRALS
01/22/10	(S)	EDC, FIN

02/05/10 (S) EDC AT 8:00 AM BELTZ 105 (TSBldg)  
02/05/10 (S) Heard & Held  
02/05/10 (S) MINUTE(EDC)

BILL: SB 209

SHORT TITLE: STATE COUNCIL ON THE ARTS; REGULATIONS

SPONSOR(s): SENATOR(s) MENARD

01/19/10 (S) PREFILE RELEASED 1/8/10  
01/19/10 (S) READ THE FIRST TIME - REFERRALS  
01/19/10 (S) EDC, JUD  
02/12/10 (S) EDC AT 8:00 AM BELTZ 105 (TSBldg)

BILL: SB 235

SHORT TITLE: CHARTER/ALTERNATIVE SCHOOL FUNDING

SPONSOR(s): EDUCATION

01/22/10 (S) READ THE FIRST TIME - REFERRALS  
01/22/10 (S) EDC, FIN  
02/08/10 (S) EDC RPT 5DP 1NR  
02/08/10 (S) DP: THOMAS, MEYER, DAVIS, STEVENS,  
HUGGINS  
02/08/10 (S) NR: OLSON  
02/08/10 (S) EDC AT 8:00 AM BELTZ 105 (TSBldg)  
02/08/10 (S) Heard & Held  
02/08/10 (S) MINUTE(EDC)  
02/12/10 (S) EDC AT 8:00 AM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

JOMO STEWART, staff to Senator Meyer  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Discussed the changes made in the CS for SB 236.

MURRAY RICHMOND, staff to Senator Thomas  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Answered questions about the CS for SB 236.

DIANE BARRANS, Executive Director  
Alaska Commission on Postsecondary Education  
Juneau, AK

**POSITION STATEMENT:** Answered questions about the CS for SB 236.

GINGER BLAISEDELL, Legislative Liaison  
Department of Revenue  
Juneau, AK

**POSITION STATEMENT:** Answered questions about the CS for SB 236.

REBECCA HATTAN, Attorney  
Department of Law  
Juneau, Alaska,

**POSITION STATEMENT:** Answered questions about the CS for SB 236.

BEN BROWN, Chair  
Alaska State Council on the Arts  
Juneau, Alaska,

**POSITION STATEMENT:** Supported SB 209.

#### **ACTION NARRATIVE**

[8:03:15 AM](#)

**CO-CHAIR KEVIN MEYER** called the Senate Education Standing Committee meeting to order at 8:03 a.m. Present at the call to order were Senators Davis, Stevens, Co-Chair Thomas and Co-Chair Meyer.

#### **SB 236-TAX CREDITS FOR EDUCATIONAL CONTRIBUTIONS**

[8:03:47 AM](#)

**CO-CHAIR MEYER** announced consideration of SB 236.

**SENATOR HUGGINS** joined the committee.

**CO-CHAIR THOMAS** moved to adopt the draft committee substitute (CS) to SB 236, labeled 26-LS1191\W, as the working document of the committee. There being no objection, version W was before the committee.

[8:04:54 AM](#)

**JOMO STEWART**, aide to Co-Chair Meyer, walked through the differences between the original bill version and the CS.

- The first change is in the title. The original bill spoke of tax credits for cash contributions by taxpayers "for certain educational purposes and college facilities"; the CS deletes the word "college", so it simply reads "educational purposes and facilities", allowing for

facilities both collegiate and non-collegiate, as long as they are for educational purposes.

- A new Section 1 was added, which provides for an annual report by the director of the Division of Insurance. As the committee discussed on Monday, SB 236 impacts a number of different tax brackets and different sections of law being operated by two separate departments: the Department of Commerce, Community and Economic Development (DCCED), Division of Insurance, and the Department of Revenue (DOR).
- Section 2 includes three major changes. Page 2, line 27, adds the authorization for tax credits for secondary school programs "and facilities". Line 28 adds "for vocational education courses, programs and facilities" operated by the state. Lines 30 through 31 insert a new paragraph that reads "(4) for a facility by a nonprofit, public or private, Alaska two-year or four-year college accredited by a regional accreditation association."
- In Section 3 and throughout the bill, the drafter has written the old language into the new statute in order to avoid the risk posed by the sunset date. The addition of a sunset date in this section of the previous version caused some people concern that if they sunset the whole program and it is not reauthorized, they could lose not only the new sections and credits, but the credits that have been in existence for 20 years. It now says that if the new language is not reauthorized, the statute simply reverts to the old language.
- Section 5 speaks to giving tax credits for amounts in excess of \$200,000. In current statute, anything above \$200,000 is essentially ignored; paragraph (2) of this section of the CS provides for a 50 percent credit for contributions above \$200,000.
- A new Section 6 begins on page 4, which addresses the cap on tax credits. The committee initially pondered the addition of a specific dollar limit, but conversations with the Department of Revenue and others made clear that it is virtually impossible to set that kind of hard, fixed cap. Instead, they raised the existing cap from the current \$150,000 to \$25 million. Legislative Affairs Legal Services recommended that the phrase, "the basis for a credit" be included on page 4, line 5, because they believe that

existing statute is not clear as to whether the cap is on contributions or on credits; this phrase attempts to clean up the language to make it clear that credits, not contributions, are being capped at \$25 million.

- Section 7 is a restatement of statute for the reversion.
- Section 8 adds a new subsection (f) in AS 21.89.070, which says that credits under this section may not reduce a person's tax liability below zero in any given tax year, and unused credits or portions of credits may not be sold, traded, transferred or rolled over into subsequent years.

8:09:21 AM

- Section 9 at the bottom of page 4 and continuing at the top of page 5 is a restatement of the basis for credits and the cap of \$25 million.
- Sections 49, 50 and 51 make the reversion operational. These provide that if the new language is not reauthorized it will be repealed on a certain date and will revert back to the old language.

8:10:09 AM

CO-CHAIR MEYER added that another concern about including a firm sunset date in the bill is that some persons or entities may want to spread their contributions over a several years, and a sunset date could discourage them from doing that.

SENATOR STEVENS said he thinks this is a step forward. If a very big corporation wanted to build a new science building on the University of Alaska Fairbanks campus, the limit on tax credits for their contribution might discourage them from doing so.

CO-CHAIR MEYER confirmed that this allows donors up to a \$25 million tax credit, which translates to about a \$50 million donation, for every year that they donate.

8:12:09 AM

SENATOR HUGGINS referred to the requirements for qualifying contributions on page 2, Section 2, which specifies contributions to Alaska two and four-year accredited colleges. He asked if any training programs that are not state operated or are less than 2 years should be eligible for the program.

MURRAY RICHMOND, aide to Senator Thomas, said a number of vocational schools are federally run through different programs;

a lot of them are related to the AGIA program and training people for the workforce. Under the current legislation, these programs are not eligible. It would take a major reworking of these statutes to include them, because they are not locally accredited, and some of them do not offer certificates.

SENATOR HUGGINS said he is willing to bet some of those that are not federal and are less than two years should be included.

[8:14:38 AM](#)

MR. STEWART commented that the two-year or four-year requirement refers to colleges.

SENATOR HUGGINS pointed out that the problem on line 29 is that it says "state-operated", which narrows the category. He said there should be a provision to allow tax credits for donations to a training facility that is not operated by the state.

[8:15:31 AM](#)

MR. MURRAY said an institution would have to be a non-profit to do that. If a private company set up a training center to train people for welding or something like that, it would not be eligible for the tax credit.

SENATOR HUGGINS pointed out that non-profit institutions can be eligible even though they are not state-operated.

MR. STEWART said this discussion really surrounds accreditation, which is a way to ensure that the donations are going to reputable organizations that will provide a certain level of training expertise. He opined that the potential for a sizable tax credit may incentivize some training programs to seek a certification or accreditation.

[8:17:36 AM](#)

SENATOR HUGGINS asked if VA accreditation qualifies.

MR. STEWART noted that the committee has the power to strike the words "state-operated" and insert "certified by the state", but then the state would have to set up some kind of a certification program.

SENATOR HUGGINS asked how the legislature came up with the breakdown for tax credits, which puts the "sweet spot" of 100 percent in the middle. If the idea is to encourage contributors to give more, he said, that does not seem to be a good idea.

[8:19:12 AM](#)

CO-CHAIR MEYER conceded that is a difficult point.

SENATOR HUGGINS suggested that raising the 100-percent credit level to greater than \$200,000 might encourage larger contributions.

CO-CHAIR MEYER said they believed the larger credit at that level might bring in a greater number of contributions in that range.

MR. STEWART added that what was previously the high end has become the sweet spot. In the original statute, the 100 percent credit kicked in from \$100,000 to \$200,000 and was simply capped at \$200,000. The CS does encourage donations in the \$100,000 to \$200,000 range, which are more likely to come from private donors or family trusts.

SENATOR HUGGINS suggested they think about raising the cap to \$250,000 or \$300,000. That wouldn't push people out of the circle; it would just encourage them to give more.

[8:20:54 AM](#)

SENATOR STEVENS observed that obtaining accreditation is not easy to do; it is a very high standard. He stressed that he wants to be sure they are talking about a major regional accreditation society that has real meaning behind it and are not creating some kind of diploma mill.

[8:22:10 AM](#)

DIANE BARRANS, Executive Director, Alaska Commission on Postsecondary Education, Juneau, Alaska, agreed with Senator Stevens, but pointed out that regional accreditation is typically available only to public or non-profit colleges. A number of national accreditation associations are approved by the U.S. Secretary of Education for the purposes of recognizing a school to participate in the Title IV federal student financial aid, and that standard is generally seen as acceptable. She explained that national accreditation usually allows a school to issue diplomas and terminal degrees, meaning that the credits earned there won't transfer to a public or private four-year institution for the purposes of transcribing. Short of accreditation, she said, the Alaska Commission on Postsecondary Education has statutory authority to authorize institutions to operate in Alaska and to exempt certain institutions from authorization. Exempt institutions are basically those offering short courses that don't necessarily

offer a vocational certificate of any kind and some religious institutions that offer only religious awards leading to service within a particular church.

[8:24:23 AM](#)

SENATOR STEVENS asked Ms. Barrans if she thinks this bill opens up the possibility of diploma mills.

MS. BARRANS answered no. To Senator Huggins question, she remarked that even an institution that seeks accreditation through one of the national organizations recognized by the U.S. Secretary of Education would not qualify under this standard.

[8:25:01 AM](#)

SENATOR HUGGINS said, as Ms. Barrens just pointed out, a number of training sites are accredited by some mechanism and should be considered, not just excluded by overly narrow language. He asked for Ms. Barrans' recommendation.

[8:25:31 AM](#)

MS. BARRANS said she does not have an opinion on what types of institutions the legislature might want to grant tax credits to, but conceded that some institutions have other than a regional accreditation and offer a quality education that leads to placement in a field or career.

[8:26:11 AM](#)

CO-CHAIR MEYER said as he remembers it, their discussion on this issue was that they want a standard in place to ensure the quality of those institutions eligible to receive tax credits, so whether this is the right standard is up to the committee.

[8:26:42 AM](#)

SENATOR STEVENS ventured that if a trucking association wanted to establish a training program for some type of certification for truckers, it could work with Seward Skill Center, the University, or Alaska Pacific University.

[8:27:14 AM](#)

CO-CHAIR MEYER agreed that accreditation would give the legislature some assurance of quality.

SENATOR HUGGINS recommended that they consult with some donors on the benefits of adjusting the numbers.

CO-CHAIR MEYER asked Senator Huggins if he would like to have some more time to work with donors to find that magic number.

[8:27:53 AM](#)

SENATOR HUGGINS proposed conceptual Amendment 1 to strike "\$200,000" on page 3, line 21, and insert "\$300,000".

[8:28:47 AM](#)

CO-CHAIR MEYER objected for purposes of discussion.

SENATOR DAVIS asked that Co-Chair Meyer's staff speak to the change.

[8:29:23 AM](#)

MR. STEWART said he thinks it still meets the intent. He had some concern about changing too many of the percentages however, because of the Department of Revenue's concern that more credits at higher values present greater risk to the treasury.

[8:30:48 AM](#)

MR. RICHMOND reminded the members that this is a new program and studying past behavior won't necessarily predict what donors will do with the new tax credits. The annual reporting requirement in this bill will allow them to review the program in three years and adjust the numbers if they haven't hit the sweet spot by the time the bill is up for revision.

[8:31:17 AM](#)

SENATOR HUGGINS asserted that they are here because they are trying to raise the limits and this is one area where they can do that.

[8:31:35 AM](#)

CO-CHAIR MEYER said he thinks \$300,000 is fine; as Mr. Richmond mentioned, they will get annual reviews and can adjust it if they need to. He agreed that this should encourage even the smaller donors to give a little more.

CO-CHAIR MEYER removed his objection to Amendment 1.

[8:32:35 AM](#)

CO-CHAIR MEYER asked if there are other objections to the amendment.

[8:32:50 AM](#)

GINGER BLAISEDELL, Legislative Liaison, Department of Revenue, Juneau, Alaska, clarified that "100 percent of the next \$100,000 of contributions" on page 3, line 20, needs to be changed to

read "the next \$200,000", so there isn't any confusion with the \$300,000 on line 21.

SENATOR HUGGINS confirmed that she is correct.

CO-CHAIR MEYER announced that, without objection, Amendment 1 is adopted.

SENATOR STEVENS asked for a review of the sunset, particularly the 20-year span of time for investment.

MR. RICHMOND explained that the tax credits will reduce revenues to the state, and the sunset gives the legislature the opportunity to review what effect that has had on the budget. If it has had a negative effect, they can revert to what was in place before SB 236.

SENATOR STEVENS reiterated that someone referred to a 20-year period and asked where that comes in.

MR. STEWART said that was his comment; the existing statute has been in place for 20 years. He added that the last line on page 17 states that if everyone is comfortable that the program is working well at the higher values, they will simply push the 2014 date back.

CO-CHAIR THOMAS stated his concern about allowing the program to sunset. Worst case, he said, he wants the statute to go back to the way it is now.

[8:35:54 AM](#)

SENATOR HUGGINS said they don't have a philosophical umbrella under which to operate with regard to tax credits. He recommended that they have a consulting review to shape what tax credits will be provided by the state of Alaska in various areas.

CO-CHAIR MEYER said Senator Huggins has a very good point; they don't know what the impact of all of these tax credits will be until they see what legislation gets passed.

[8:37:04 AM](#)

SENATOR STEVENS asked if anyone from the University has spoken to this.

CO-CHAIR MEYER said he does not recall who spoke for them, but they are very supportive.

MR. STEWART advised that Mary Rutherford, President of the University of Alaska Foundation, spoke for the University.

CO-CHAIR THOMAS asked if the amendment that was just made affects all of the areas in the bill that now refer to \$150,000.

MR. STEWART said it does.

SENATOR HUGGINS thought they should align this opportunity with the governor's scholarship bill.

[8:38:42 AM](#)

MR. STEWART responded that existing statute allows corporations to donate to or create endowments, so any one of them could set up an endowment to give out scholarships in conjunction with or parallel to the governor's scholarship program.

SENATOR HUGGINS asked if they would be precluded from getting tax credits.

MR. STEWART said no, they would receive tax credits and are actually eligible to do so under existing statutes.

[8:39:10 AM](#)

CO-CHAIR THOMAS moved to report the CS for SB 236, labeled 26-LS1191\W, as amended, from committee with individual recommendations and attached fiscal note(s). There being no objection, CSSB 236(EDC) moved from the committee.

### **SB 209-STATE COUNCIL ON THE ARTS; REGULATIONS**

[8:39:51 AM](#)

CO-CHAIR MEYER announced consideration of SB 209.

SENATOR MENARD, sponsor of SB 209, said this bill will provide the Alaska State Council on the Arts (ASCA) the authority to adopt regulations relating to its statutory powers and duties. The bill was introduced at the request of ASCA, which is the Last Frontier's state art agency, created over 40 years ago.

Several of the council's programs, she said, are governed by regulations which the council has updated over the years. Recently the arts council has sought to streamline its grant-making policies, procedures, and regulations; in the course of this effort, the council was informed by the Department of Law

(DOL) that it does not have the statutory authority to adopt regulations under the Administrative Procedures Act. While this legal opinion is at odds with their long-standing practice, the council considered and took seriously the advice from the Attorney General's office and determined that the best way to rectify the current situation is to amend its enabling statute to allow it explicit statutory authority to adopt regulations.

She stated that this legislation will, in essence, codify existing practice and enable the Alaska State Council on the Arts to continue to administer and oversee its existing programs. Any and all regulations adopted in the future will have to comply with the review and public-notice provisions of the Administrative Procedures Act. This bill has a zero fiscal note and will help the Alaska State Council on the Arts to continue performing its long-standing mission of helping more Alaskans appreciate, create, and enjoy the arts.

SENATOR MENARD said the best example of the regulations they are discussing is 20 AAC 30.010 through 30.061, which governs all of ASCA's grant programs. Each of the grant programs in the agency has regulations specific to those grants, which outline the purpose of the grants, the application process, deadlines, eligibility, and limitations.

[8:43:28 AM](#)

CO-CHAIR THOMAS said it makes sense to bring the statute in line with current practice.

SENATOR HUGGINS agreed, but asked what other councils have the authority to make regulations.

SENATOR MENARD deferred to Rebecca Hattan from the Department of Law.

[8:44:16 AM](#)

REBECCA HATTAN, Attorney, Department of Law, Juneau, Alaska, said the line of cases that the Department of Law is concerned about centers on commissions as opposed to councils. She could not name another council that promulgates regulations.

[8:44:53 AM](#)

SENATOR HUGGINS said he is not sure they want to open the door to having councils passing regulations and wondered if ASCA should be made a commission rather than a council, as there is a precedent for commissions in this regard.

[8:45:32 AM](#)

CO-CHAIR THOMAS questioned whether a change in the verbiage on page 2 might take care of it.

[8:46:32 AM](#)

MS. HATTAN said the authority to adopt regulations flows directly from statute, so the fact that AS 44.27 is specifically limited to the Alaska State Council on the Arts precludes that problem.

SENATOR STEVENS said, if he understands this correctly, Ben Brown has been doing this for years and they are finally going to OK what he has been doing all along. He asked Ms. Hattan if Mr. Brown has done anything wrong.

MS. HATTAN said no. She suggested that the best way to move forward is for the council to re-adopt all of their existing regulations in order to eliminate any question of their validity.

[8:47:30 AM](#)

BENJAMIN BROWN, Chair, Alaska State Council on the Arts, Juneau, Alaska, said the council does not have a great number of programs that require regulations, but those programs it does have definitely do require them. The re-grant program gives out a couple of hundred thousand dollars per year to small arts organizations across the state such as Valley Performing Arts, the Kodiak Arts Council, and Fairbanks Drama Association; the biggest grant is \$21,000. These organizations have to apply for the grants in a manner prescribed by regulations that pre-date his appointment to the council seven years ago by Governor Murkowski. The council tried to change the grant regulations about a year ago to streamline the process, and that is when they realized they don't have the technical authority to adopt regulations. They decided the best thing to do is to ask the legislature for the specific authority to adopt regulations that implement their statutes. He reminded the committee members that the legislature had a bill several years ago that dealt with the "Silver Hand" program; it also has regulations that implement the statutes, and those need to have the force of law to combat fraud and protect the integrity of the Alaska Native Art Market.

MR. BROWN concluded by saying that the council doesn't have a lot of power, but the specific activities they engage in to improve the lives of Alaskans by making more arts available, require that their regulations have the force of law. With regard to Senator Huggins' concern about councils, he said all

fifty states have arts agencies that were created in response to the National Endowment of the Arts creation back in 1967. In Hawaii it is called a foundation; in California it is a commission; in Alaska it's a council; they are all state arts agencies. He said ASCA has been a council for 40 years and he is not sure what affect changing the name might have. As Ms. Hattan pointed out, since this only applies to ASCA, there will not be any seepage of authority to other councils.

[8:51:44 AM](#)

CO-CHAIR MEYER closed public testimony.

[8:51:53 AM](#)

SENATOR STEVENS noted that Judiciary is the next committee of referral, so any legal issues can be ironed out there.

[8:52:11 AM](#)

CO-CHAIR THOMAS moved to report SB 209, labeled 26-LS1236\A out of committee with individual recommendations and zero fiscal note(s). There being no objection, SB 209 was moved from the committee.

[8:53:11 AM](#)

There being no further business to come before the committee, Co-Chair Meyer adjourned the meeting at 8:53 pm.