

**ALASKA STATE LEGISLATURE**  
**HOUSE EDUCATION STANDING COMMITTEE**

January 23, 2012

8:07 a.m.

**MEMBERS PRESENT**

Representative Alan Dick, Chair  
Representative Lance Pruitt, Vice Chair  
Representative Eric Feige  
Representative Paul Seaton  
Representative Peggy Wilson  
Representative Sharon Cissna

**MEMBERS ABSENT**

Representative Scott Kawasaki

**COMMITTEE CALENDAR**

HOUSE BILL NO. 145

"An Act establishing the parental choice scholarship program to be administered by school districts for the purpose of paying the cost of attending grades kindergarten through 12 at public and private schools; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 145

SHORT TITLE: K-12 SCHOLARSHIP PROGRAM

SPONSOR(S): REPRESENTATIVE(S) KELLER

|          |     |                                 |
|----------|-----|---------------------------------|
| 02/09/11 | (H) | READ THE FIRST TIME - REFERRALS |
| 02/09/11 | (H) | EDC, FIN                        |
| 03/25/11 | (H) | EDC AT 8:00 AM CAPITOL 106      |
| 03/25/11 | (H) | Heard & Held                    |
| 03/25/11 | (H) | MINUTE(EDC)                     |
| 04/04/11 | (H) | EDC AT 5:00 PM CAPITOL 106      |
| 04/04/11 | (H) | Heard & Held                    |
| 04/04/11 | (H) | MINUTE(EDC)                     |
| 04/06/11 | (H) | EDC AT 8:00 AM CAPITOL 106      |
| 04/06/11 | (H) | Heard & Held                    |
| 04/06/11 | (H) | MINUTE(EDC)                     |
| 04/08/11 | (H) | EDC AT 8:00 AM CAPITOL 106      |
| 04/08/11 | (H) | Heard & Held                    |

04/08/11 (H) MINUTE(EDC)  
04/11/11 (H) EDC AT 8:00 AM CAPITOL 106  
04/11/11 (H) -- MEETING CANCELED --  
04/15/11 (H) EDC AT 8:00 AM CAPITOL 106  
04/15/11 (H) <Bill Hearing Canceled>  
01/23/12 (H) EDC AT 8:00 AM CAPITOL 106

#### **WITNESS REGISTER**

REPRESENTATIVE WES KELLER  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Introduced the committee substitute for HB 145, as the prime sponsor.

CHUCK KOPP, Staff  
Senator Fred Dyson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented the committee substitute (CS) for HB 145, and responded to questions.

JEAN MISCHEL, Attorney  
Legislative Legal Counsel  
Legislative Legal and Research Services  
Legislative Affairs Agency  
Juneau, Alaska

**POSITION STATEMENT:** Responded to questions regarding CSHB 145.

TOM FINK, Member  
Educational Task Force  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 145.

JEFFREY MITMAN, Executive Director  
American Civil Liberties Union (ACLU)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified with concern on HB 145.

STEVE EVENSON, Vice President  
Northwest Religious Liberty Association  
Douglas, Alaska

**POSITION STATEMENT:** Testified with neutrality on HB 145.

#### **ACTION NARRATIVE**

8:07:23 AM

**CHAIR ALAN DICK** called the House Education Standing Committee meeting to order at 8:07 a.m. Present at the call to order were Representatives Dick, Seaton, Feige, P. Wilson, and Pruitt. Representative Cissna arrived as the meeting was in progress.

**HB 145-K-12 SCHOLARSHIP PROGRAM**

8:09:26 AM

CHAIR DICK announced that the only order of business would be HOUSE BILL NO. 145, "An Act establishing the parental choice scholarship program to be administered by school districts for the purpose of paying the cost of attending grades kindergarten through 12 at public and private schools; and providing for an effective date."

8:09:35 AM

REPRESENTATIVE PRUITT moved to adopt committee substitute (CS) for HB 145, labeled 27-LS0223\Y, Mischel, 1/21/12.

REPRESENTATIVE P. WILSON objected for discussion.

8:10:22 AM

REPRESENTATIVE WES KELLER, Alaska State Legislature, updated the committee on action, during the legislative interim, that has occurred regarding HB 145. A statewide survey was conducted, by the [Milton] Friedman [For Educational Choice], to discover the level of interest in school choice. He summarized a particular question from the survey, which queried whether residents would agree to have a voucher program payable for tuition at private/religious schools, utilizing state funds budgeted for the base student allocation (BSA). The survey reported a 64 percent approval rate for the concept. However, he emphasized that the bill, more accurately, proposes to establish a separate appropriation for the school choice program, and does not draw upon the BSA funding. Responding to committee member requests, Representative Keller finished his recap of the original bill, underscoring that the intent of this legislation is to support school choice, inclusive of private schools, and that public money should be utilized for the best benefit of the children. Addressing the CS, he said it does not alter the primary, original, intent of the bill, but three significant changes have been introduced. First, Version Y language repositions program administration, placing it under the purview of the Department

of Education and Early Development (EED), rather than the individual school districts. Secondly, the program it clarifies that the program is to be exclusive for private/religious schools. Finally, a requirement is made to have the actual cost reflected, and to include a funding cap based on what a similarly situated public school student would be eligible to receive.

8:17:01 AM

REPRESENTATIVE SEATON observed that the original bill applied more broadly, to a variety of schools, and Version Y adheres strictly to private religious schools.

CHUCK KOPP, Staff, Senator Fred Dyson, Alaska State Legislature, responded yes, and indicated that Senator Dyson has introduced a companion bill in the other body.

REPRESENTATIVE KELLER reminded the committee that not all private schools are religious.

8:18:08 AM

REPRESENTATIVE SEATON asked whether the bill is directed to private religious or private/religious schools.

REPRESENTATIVE KELLER clarified that the bill would allow state funds to be directed to any private school, without restriction. Further, he said that the passage of CSHB145 is contingent upon the passage of HJR 16, which amends the Alaska Constitution and the Blaine amendments therein.

MR. KOPP added that the Alaska Constitution prohibits state funding from being distributed, as a direct benefit, to a private or religious institution, and this legislation proposes to alter that language. He explained that Version Y is restricted to private/religious schools, because, state funding options already exist for public, charter, and home school opportunities.

8:20:22 AM

REPRESENTATIVE SEATON inquired whether the CS eliminates any schools, such as correspondence programs, that were previously included in HB 145.

REPRESENTATIVE KELLER responded that it does not qualify "any more than it did before; it just takes out the fact that a participating school could be a public school." Further, he said that the term private school is well defined in statute.

[8:21:24 AM](#)

REPRESENTATIVE PRUITT referred to cost formulas, and asked what would prevent a private school from increasing costs with the influx of state funding. Will a mechanism be incorporated to ensure that EED could monitor reasonable growth, in the private sector, and guard against tuition increases based on bias due to the funding source, he asked.

REPRESENTATIVE KELLER responded that the private schools are required to certify the actual cost of educating a student. He opined that full tuition funding will not be immediately available and he would expect private schools to respond appropriately. He said the state will retain the ability to control the throttle, regarding the number and amounts of each scholarship, through the appropriation process.

REPRESENTATIVE PRUITT asked how the appropriation pool would be distributed to each school, and, additionally, will an individual school be directed on how the state funds are to be distributed within the institution.

REPRESENTATIVE KELLER answered that, dependent on the amount appropriated, it is stipulated that the funds will be prorated between participating schools. To a follow up question, he confirmed that EED would make fund distributions based on departmental generated regulations.

[8:26:07 AM](#)

REPRESENTATIVE SEATON stated his understanding that the department would not be directed to regulate the participating schools, and that the intent was to provide funding based on student attendance. He opined that if the department decides on the level of scholarships to be awarded it would border on writing regulations for the private institutions.

REPRESENTATIVE KELLER clarified that EED will have complete power to regulate the program in the context of the law; such as prorated scholarship amount distributions based on standards set by the department.

[8:27:34 AM](#)

REPRESENTATIVE FEIGE stated that the funding should be made available without constraints; let the market decide. He opined that no more or less will be spent on education, and the state should not attempt to over manage where appropriated money is directed.

[8:28:16 AM](#)

REPRESENTATIVE CISSNA cited the law suits that have been brought against the state regarding the level, and quality, of education public school students receive, and asked how this would work to improve the situation.

REPRESENTATIVE KELLER opined that the bill would assist in providing a competitive education to all urban and rural students, which encourages a level of competency that otherwise may be lacking; as indicated through similar state supported voucher/scholarship models adopted in the Lower 48 states.

REPRESENTATIVE CISSNA requested that expert witnesses be called to testify regarding how existing schools would be affected by this bill, as well as appropriate EED personnel regarding how this would fit into the school budget.

REPRESENTATIVE FEIGE opined that allowing competition, within the educational system, will result in better schools.

[8:33:56 AM](#)

REPRESENTATIVE KELLER returned to the bill, page 3, line 4, to indicate the addition of language, requested by this committee, to address school size based on average daily membership (ADM). The bill allows a two year response period to any school which, as a result of this program, falls below the ADM minimum of 10. Lastly, he pointed out that contingency language, related to the constitutional amendment, has been added on page 4, line 17.

[8:35:12 AM](#)

REPRESENTATIVE P. WILSON asked a series of questions: how many private schools exist in Alaska; of those how many are religious; the location of the private schools; and for an opinion from the attorney general's office regarding this bill. She opined that the state generally exerts control over appropriated funds and there appears to be a lack of oversight

in this legislation. Further, she stressed that Alaska should not be compared with other states in this instance as no other state faces the same issues given the distances involved, as well as other situations, unique to Alaska's rural settings. The school policy requiring closure when attendance drops below ten, is also a major concern. She pointed out that a contradiction would exist if a school is given two years to respond to a low ADM, but is also expected to be ramping down for closure.

REPRESENTATIVE KELLER responded that, as reported in the Friedman study, 2.5 percent of Alaskan students are in private schools. Further he said that there is definite control for how the money is spent and directed attention to page 2, line 17, to point out the section titled "Accountability and enrollment standards for a participating school." Continuing to line 32, subparagraph (B), he explained that private schools operate in compliance under the named statute [AS 14.45.030]; requirements such as monthly attendance reports, annual reports, the administration of nationally recognized proficiency tests, and student record retention.

REPRESENTATIVE P. WILSON stressed concern for the possible closure of a public school, should attendance fall below 10, due to some students choosing to attend a private school. In a small community that scenario could force the children, no longer having a public school available, to enroll in the private school; without choice.

CHAIR DICK offered that the committee packet contains an amendment specific to Representative Wilson's concern.

[8:41:45 AM](#)

MR. KOPP began with Sec. 14.31.010, paraphrasing from the bill, which read [original punctuation provided]:

The parental choice scholarship program is established for the purpose of providing public funding of the cost of attending grades kindergarten through 12 at a private school selected by the student's parent or legal guardian. The department shall administer the program under the provisions of this chapter. Participation of a school in the program does not confer authority over a school to the department that is not expressly provided for in this title.

MR. KOPP continued on page 2, line 2, paraphrasing the language which read [original punctuation provided]:

(a) A private school in the state that is accepted for participation in the program may receive a scholarship under the program on behalf of a student who attends the school, regardless of the attendance area in the school district in which the student resides.

[8:43:23 AM](#)

REPRESENTATIVE SEATON asked how the bill addresses a situation where a student resides in a rural community but attends a boarding school.

MR. KOPP opined that for the purposes of the bill, residence would be where the child's home is physically located.

[8:44:21 AM](#)

REPRESENTATIVE SEATON pointed out that the state education funding formula takes into account geographic cost differential based on residence. He said:

As I read the bill, this would require the state to pay the high expense to the private school if it has high expenses, couldn't be over its tuition, even though it's going into an area that would not have that same high expense.

MR. KOPP answered that each year the legislature would decide on the appropriation level for the program; not a standard per district BSA. The program specifically allows EED to appropriate funds to participating schools, based on the number of applicants to the program. He offered a scenario of the department distributing a hypothetical legislative allocation with an end result of applicants receiving \$200 per year; following proration for equal division amongst the applicants. The geographical costs are not a factor, as the funds are coming directly from the department, not through the school district.

[8:46:28 AM](#)

REPRESENTATIVE SEATON read from page 2, line 9, which states, "for a similarly situated student to attend a public school in the district in which the student resides." Thus, the level of funding is based on where the student resides, he pointed out.

Further, because the cost of education is significantly more expensive in rural Alaska than in an urban setting, a proportional funding disparity would exist in this scenario. He reminded the sponsor that geographic cost differential has been the subject of legal challenges, which the state has lost in court; being found negligent when the legislature took the approach of funding the education of every student at the same level without regard to residence location.

REPRESENTATIVE KELLER said it is safe to assume that a school choice program would not initially receive full funding. Whatever amount is appropriated, the intent is to prorate the funds to the participating schools, not the individual students. Proration will be based on either the private school tuition, or the maximum amount available; the lesser amount of the two, which then becomes a cap.

REPRESENTATIVE SEATON asked whether the proration, based on the tuition of the school, would direct more money to a school with higher tuition than to one with a lower tuition.

REPRESENTATIVE KELLER said it is not desirable to put into statute the level of detail being questioned, as the department will regulate how the money is distributed following negotiations with the schools.

REPRESENTATIVE SEATON agreed that the legislature is not a regulatory body; however, he maintained, it is important for policy to be written in statute for how the proration of an appropriation will be handled.

REPRESENTATIVE KELLER argued that the legislature is notified when regulations are initiated, and has an opportunity to be involved in the process.

[8:52:42 AM](#)

REPRESENTATIVE FEIGE asked:

When you're talking about whether the legislature will fund this program or not ... it's not so much that it gets funded every year it's that ... you're taking the total aid package, and determining how it gets dispersed. So that the origination of the money is in what the total aid package is overall. So ... I don't know that this program would necessarily be financially threatened every year so much as that what

we'll be deciding is what the overall level of funding is for all the schools in the state. Is that correct?

REPRESENTATIVE KELLER responded yes.

REPRESENTATIVE FEIGE directed attention to page 2, line 4, and read: "regardless of the attendance area in the school district in which the student resides." He suggested that, the first "in" should read "or".

REPRESENTATIVE KELLER agreed that the clarification would be important, and deferred to legal counsel.

[8:54:58 AM](#)

JEAN MISCHEL, Attorney, Legislative Legal Counsel, stated agreement.

REPRESENTATIVE FEIGE offered to propose a motion to amend this language.

[8:56:25 AM](#)

REPRESENTATIVE P. WILSON turned to page 4, lines 3-8 and read [original punctuation provided]:

The legislature may appropriate parental choice scholarship program funds to the department for distribution to the participating schools. If the appropriation for the program is insufficient in a given fiscal year, the department shall distribute the available funds to the participating schools prorated by the total number of students participating in the program.

REPRESENTATIVE P. WILSON stated that the department will make regulations based on this language. She opined that the "shall" requires the department to prorate by the number of students.

REPRESENTATIVE KELLER maintained that a participating school will have a large number of applicants but each applicant will be representative of a different amount of cap money. The proration is to the schools, based on the number of students who apply. However, it does not specify what type of student it may be, and not all applicants will be high cost students. He reiterated that the intent of the law is not to specify how the department will regulate the funding. He said:

Keep in mind that, if you have a student who is quote 'expensive' because of where he or she resides, ultimately we're talking about less money going for the education of that child. ... That is a fair statement, because it's based on the cost of educating the student by the participating school, it's not based on the cap, it's not based on what this child is quote 'worth,' crassly, to the school.

REPRESENTATIVE P. WILSON asked where a cap is mentioned in the bill.

REPRESENTATIVE KELLER turned to page 2, line 7, and paraphrased from the language which read [original punctuation provided]:

"... equal to the lesser of the cost of tuition at the participating school or the amount the district would receive as state and local aid under AS 14.17 for a similarly situated student to attend a public school in the district in which the student resides.

REPRESENTATIVE KELLER said the "or" creates a cap, as the funding is based on the lesser of the two, unless the program is fully funded; an unlikely scenario.

[9:01:14 AM](#)

REPRESENTATIVE CISSNA cited the serious difficulty that Alaska has experienced in maintaining compliance with the No Child Left Behind Act (NCLB) [of 2001]. She said that HB 145 provides an opportunity to have the "cost of the school lowered not the product. The product isn't a part of this, that's something you might think about."

REPRESENTATIVE KELLER stated appreciation for the insight and said the bill is about the education of children, not about protection of administrators. He reiterated that it is about choice, and should parents have the choice or not, to send their child to a private school.

[9:02:29 AM](#)

REPRESENTATIVE FEIGE cautioned that in a competitive market, given the influx of state funding, private school tuition levels may be increased.

9:03:18 AM

REPRESENTATIVE SEATON stressed the importance of specifying a cap, of say 40 or 50 percent of the BSA, versus making an assumption of what funding level the legislature may appropriate. Also, he read again from page 2, line 7, he stressed the language, which states, "... scholarship that is equal to the lesser of the cost of tuition at the participating school or the amount the district would receive as state and local aid ...". Communities contribute local aid at a tax rate of 4 mils and the state contributes for the education formula, thus, he opined more will be paid to a private school, if it is funded without a cap embedded in the language.

REPRESENTATIVE KELLER acknowledged that the bill allows government money to be distributed into an area that has never before been eligible. He suggested that the finance committee could best address how the local contribution fits into the picture.

REPRESENTATIVE P. WILSON added that the 4 mil rate increases every year, in most areas of the state, except the rural areas which are not assessed a mil rate.

REPRESENTATIVE KELLER agreed that the educational funding system is complex. However, he requested that any change, to the CS, be forestalled to allow further consideration and testimony on the topic. He requested that it be left as is to act as a place holder for the time being.

9:10:01 AM

MR. KOPP continued with the sectional, paraphrasing from page 2, line 11, which read [original punctuation provided]:

(c) The parent or legal guardian shall be responsible for costs and fees assessed by a participating school that exceed the amount paid under (b) of this section.

(d) The department shall provide transportation to a participating school to the extent required under AS 14.09.020.

(e) A scholarship received for the benefit of a student under this section must be used for

educational purposes. A scholarship is transferable among participating schools.

9:10:55 AM

REPRESENTATIVE SEATON asked for further information regarding funding transferability.

MR. KOPP responded that the scholarship is not based on the cost of education at a particular school, but rather on the number of applicants for scholarships received from a school. If a student receives a scholarship, in a participating school, and changes schools during the year, it will be allowed if they attend another participating school.

REPRESENTATIVE SEATON clarified that the scholarship is based on the number of applicants, not on attendance.

MR. KOPP pointed out the requirement for each participating school to report student attendance to EED.

REPRESENTATIVE SEATON expressed his understanding that the funding is allocated based on the number of applications.

MR. KOPP responded that the applicant would need to be accepted by the school and the attendance records will reflect a student's standing, to be reported to the department.

REPRESENTATIVE SEATON expressed concern that the schools would be forward funded based on an application, and pointed out that a student might then transfer between schools, which may receive different levels of funding.

9:14:27 AM

REPRESENTATIVE FEIGE suggested that using the term applicant may cause some confusion. He offered that a student would need to be an accepted applicant. A student might apply to six schools, and the current language indicates that each of those schools could receive benefit. However, at some point the student will be enrolled and that is when, and where, the money would be directed. Further, regarding transferability, he said that under the current system student counts are established on October 1, in order for a school to receive funding for the year. The bill requires funds to be allocated once a year, and the prorated share is for a particular individual; to be

transferred with the student to another school should the situation arise.

9:16:25 AM

MR. KOPP said there is also a stop gap to allow for adjustments, based on the department receiving reports and making quarterly payments to a school. He directed attention to page 3, line 14, to paraphrase from the section titled Department duties, which read [original punctuation provided]:

(2) make scholarship payments directly to the school quarterly after receiving proof satisfactory to the department that the student claimed under a scholarship attends the school on a full-time basis;

REPRESENTATIVE SEATON stated his understanding that, should a student transfer to a public school, after October 1, the state count date, program funding would not follow. Thus, the public school could receive a student to educate without financial support.

MR. KOPP agreed that the money would not transfer to a public school. However, he explained, public schools have a mechanism to account for student transfers during the school year. The state BSA assumes that students will come and go with frequency outside of the count period and does not inhibit principals from accepting new students. Regarding the private sector, he reiterated, the bill allows funds to follow student transfers between participating schools.

REPRESENTATIVE KELLER further clarified by directing attention to page 3, line 17, which specifies that the department shall make available to students and parents, a list of participating schools.

CHAIR DICK concurred that the count date is a crucial point, which will be further discussed.

9:19:29 AM

REPRESENTATIVE CISSNA indicated her understanding that the public schools assume the educational costs for students arriving after the October 1 count date. She then expressed concern for how the private/religious school acceptance process might occur, and the basis for the criteria; might there be restrictions on the enrollment of disadvantaged students.

9:22:30 AM

REPRESENTATIVE KELLER said he anticipates that the private sector will step up to provide specific support for intensive needs students.

REPRESENTATIVE CISSNA queried whether the bill allows districts or boroughs to opt out of this legislation. Perhaps a test case could be opened prior to making it uniform across the state, or include language for the possibility to opt in/out.

9:24:25 AM

MR. KOPP continued the sectional report, paraphrasing from page 2, line 20, which read [original punctuation provided]:

(a) The department shall accept a school for participation in the parental choice scholarship program if the school

(1) submits to the department, on a form approved by the department, notice that the school intends to participate in the program;

(2) meets the following financial accountability standards:

(A) demonstrates the school's financial ability to repay to the department any overpaid scholarship funds; and

(B) certifies the actual annual costs to the school of educating a student, including a prorated amount for facility and operating costs; and

(3) is a school that is a

(A) private correspondence study program located and operated entirely in the state; or

(B) private school operated in compliance with AS 14.45.030 or AS 14.45.100 - 14.45.130.

(b) Nothing in this chapter authorizes the department to regulate a participating school except as necessary to carry out the program.

MR. KOPP added that some of the state requirements for private schools include: mandatory testing, immunization record retention, and enrollment reporting to the district superintendent. He then continued paraphrasing from page 3, line 4, which read [original punctuation provided]:

Notwithstanding the lower limit for a student count of 10 under AS 14.17.450(a) and (b), a school that, as a result of the program, has an ADM of less than 10 shall be treated as if the school had 10 students for a two-year period following the date on which the ADM is reported to be less than 10 for the purposes of calculating the school size factor under AS 14.17.450. In this subsection, "ADM" has the meaning given in AS 14.17.990.

Sec. 14.31.035. Departmental duties. (a) In implementing the parental choice scholarship program, the department shall

(1) obtain from the participating school a count of the number of participating students in the program;

(2) make scholarship payments directly to the school quarterly after receiving proof satisfactory to the department that the student claimed under a scholarship attends the school on a full-time basis;

(3) make available to students and students' parents or guardians a list of schools that have been accepted to participate in the program; and

(4) provide a standard application for use by a participating school to enroll a student under the program; a school may, however, supplement the application.

(b) If the department determines that a school is ineligible under this chapter to participate in the program, the department shall, after administrative and judicial appeal periods have lapsed, immediately notify the affected students and the students' parents or guardians.

Sec. 14.13.040. Regulations. The department shall adopt regulations necessary to carry out the program

in a manner that ensures the highest number of student and school participation, including

- (1) procedures for calculating and distributing scholarships;
- (2) timelines and procedures for application, renewal, and appeal for participating schools and students; and
- (3) standards for acceptance, revocation, and denial for participating school.

Sec. 14.31.045. Appropriations for scholarships. The legislature may appropriate parental choice scholarship program funds to the department for distribution to the participating schools. If the appropriation for the program is insufficient in a given fiscal year, the department shall distribute the available funds to the participating schools prorated by the total number of students participating in the program.

MR. KOPP summarized Sec. 14.31.090, which provides the definitions for district, private school, program, and student, with statute references provided.

[9:29:11 AM](#)

REPRESENTATIVE FEIGE returned to page 3, line [14], and asked about the quarterly payment requirement. He suggested the inclusion of language to specify a quarterly count which would coincide with the payment schedule.

MR. KOPP agreed that it would be an important inclusion.

[9:30:38 AM](#)

CHAIR DICK asked if the language refers specifically to a school calendar year.

MR. KOPP responded yes.

[9:30:55 AM](#)

REPRESENTATIVE FEIGE directed attention to page 4, lines 3-8, and opined that, because the appropriation may fluctuate for every student, and given that the bill language establishes a

formula to distribute the funding, this section may not be necessary. He opined that the section may cause confusion, and suggested its removal.

REPRESENTATIVE KELLER recommended striking the sentence, not the entire section.

REPRESENTATIVE FEIGE pointed out that the money will already have been appropriated for educational use as a whole. He stated his understanding that a separate appropriation specific to a parental choice program is not being requested, as the scholarship program would be embedded in the educational appropriation.

REPRESENTATIVE SEATON interjected his understanding that the bill does not propose to embed the scholarship program in the current educational budget, but rather requires a unique appropriation. The bill does use the cost established by EED, the amount per student, as a basis for the allocation request.

[9:35:16 AM](#)

REPRESENTATIVE KELLER clarified that whatever amount of money the legislation appropriates, to the program, will represent the base funding. The actual tuition costs cannot be known, but whatever is budgeted will be dispersed, and he predicted the allocation would increase, as the program grows. He stressed that not every detail can be considered at the legislative committee level, and will be more appropriately addressed through departmental regulation.

[9:36:24 AM](#)

REPRESENTATIVE FEIGE asked for clarity regarding his understanding that once the October count is complete in the public school, and, should a student opt to attend a private facility, the amount originally appropriated for the education of that student would be debited from the public school and credited to the private school of choice.

REPRESENTATIVE KELLER deferred.

MR. KOPP said that the program would be open to any student, thus funds, in effect would exist. He offered a scenario where, during whatever application period is established, EED would know that there were a certain number of applicants, say 319 of the returning public school students, planning to exit the

system and attend private schools. In that case, he explained, no new money would be necessary; the department would transfer funds from the public school appropriation to the scholarship program, thus following the student to the school of choice. However, there will be students who are not in the public system, making application to the program, and these would represent money not previously allocated.

REPRESENTATIVE FEIGE surmised:

So for the first year, you're going to see a bump in the overall level of funding, but then once you get all the students in the State of Alaska into the pool, are we going to be then appropriating money for all the students in the state ... or are we going to be appropriating two separate pots. ... If I'm the entrepreneur, that's going to set up a private school, there is a huge risk that I'll make an investment that the legislature will ... delete ... and not fund the program. That's a huge risk that will be a major impediment to having this whole program go forward.

REPRESENTATIVE FEIGE stressed the need to have one educational appropriation, and allow the department to figure out the allocation. Otherwise, he said, it's a hindrance to anyone making investment decisions that would improve our school system.

[9:39:54 AM](#)

REPRESENTATIVE PRUITT clarified that the bill language creates a separate, unique, funding appropriation, which is why page 4, lines 5-8 are required; however, the point is well taken, that it creates a volatile investment situation. He underscored the need for the legislature to commit to a level of continued appropriation, to create a stable investment environment.

REPRESENTATIVE KELLER said he prefers the appropriation scenario presented by Representative Feige. The reason for creating a separate appropriation is to create something more tangible and define a need. It is important for the public to believe that appropriation protections exist, which is why, he predicted, tuitions will not be substantially increased.

[9:42:00 AM](#)

REPRESENTATIVE P. WILSON outlined how public school support staff is hired on a contractual basis. If a special education student, who requires an aide, transfers from a public to a private school, the state would be required to fulfill the financial contract for the aide. A private school may not be under similar obligations. She asked how this type of situation might be handled.

REPRESENTATIVE KELLER agreed that a number of what ifs exist in the proposed legislation. He offered that the state does not have private intensive needs facilities, and all students are currently being served in the public school setting.

REPRESENTATIVE P. WILSON opined that the legislation may discriminate against intensive needs students, who would not have an option beyond public school.

REPRESENTATIVE KELLER disagreed, and pointed out that this is only because a private school does not currently exist to fill the niche.

REPRESENTATIVE FEIGE interjected that this legislation would open-up the possibility for special education schools to be established. It allows money to support this type of venture.

REPRESENTATIVE P. WILSON said every public school must deal with whatever special needs child enrolls, and asked why private schools should not be under the same requirement.

[9:45:06 AM](#)

REPRESENTATIVE SEATON offered that the bill is specifically designed to allow the schools to choose who will attend, whether it's on religious grounds and students are enrolled on basis of faith, or rejected for specific criteria, such as special need requirements; private schools can establish standards for who attends. The bill will only pass, he reminded, following the passage of a constitutional amendment.

REPRESENTATIVE PRUITT clarified that, to accept a student, a school would need to have appropriate programs to meet the individual's needs, and the bill does not stipulate that policy. Not every private school would be able to serve special needs students.

[9:47:58 AM](#)

REPRESENTATIVE FEIGE, referring to Representative Wilson's observation, said that a private school may or may not be able to meet the needs of special needs students, but programs have already been mandated and exist in public schools. The contract funding for a special needs aide would continue, even if the student transferred. He conjectured that the special needs students will be served.

[9:50:08 AM](#)

CHAIR DICK opened public testimony

[9:50:20 AM](#)

TOM FINK, Member, Educational Task Force, testified in support of HB 145, and said that the concept of the legislation is to allow state educational funding to be attached to a student's attendance regardless of whether his/her scholastic participation is at a public or a private school. He agreed with Representative Feige's opinion that the appropriation for these scholarships should be an aspect of the overall education appropriation. He urged that the bill be finalized and moved out of committee.

[9:51:48 AM](#)

JEFFREY MITMAN, Executive Director, American Civil Liberties Union (ACLU), testified with concern for HB 145, and opined that, should HB 145 and the related HJR 16, pass, constitutional based legal issues would ensue. He referred to a seven page document, included in the committee packet, addressed to the Honorable Alan Dick, Chair, and the House Education Committee, dated 1/22/12, titled "Re: HB 145: Public Funding of Religious Schools ACLU Review of Constitutional Issues". He said the bill raises questions regarding the First Amendment Establishment Clause of the Alaska Constitution. As drafted, even should the Blaine Amendment be deleted, he stressed that there are further problems with the bill, with respect to the Establishment Clause. Research indicates that approximately three quarters of the private schools in Alaska are religiously oriented, and he opined that HB 145 will entangle the state in religious questions. Issues arise when public funding is involved. He said the ACLU urges the committee to take out any language that would involve the State of Alaska funding a private religious school in violation of the Federal and Alaska Constitutions.

[9:54:41 AM](#)

REPRESENTATIVE FEIGE agreed with the need to maintain a separation of church and state, and conjectured that religious proselytizing would equally impinge on a student's right in a public school, should it occur, and may infringe on a student's rights to religious freedom. However, he said, if a student makes a conscious choice to attend a religious school, it represents an independent decision, and alters the situation, as the student could choose to return to the public school.

MR. MITMAN provided an example of a district where a student chooses a private school, which perhaps requires students to follow a specific religious tenant. As long as state funding is not involved there is no problem. However, for the state to open up public funding then the question arises: does it only support those students who agree to abide by the religious tenants. In that case the state is essentially funding proselytizing or those discriminatory policies. He stressed that by providing funds to a private school, the state is then in a position, in some respects, of converting the private school into a public school.

[9:56:52 AM](#)

REPRESENTATIVE CISSNA asked to have the locations of private schools, serving special need students, identified.

MR. MITMAN referred to page 2 of the submitted testimony, and said the geographic locations have not been a focus; however, data could be analyzed and reported. He said questions need to be asked regarding protections for services that would be afforded students with disabilities. Current federal regulations have recently ruled that private religious schools are exempt from the Americans With Disabilities Act. It could be that HB 145 would allow state funding for a school that is legally entitled to discriminate on the basis of disabilities.

[9:59:54 AM](#)

STEVE EVENSON, Vice President, Northwest Religious Liberty Association, testified with neutrality on HB 145, referring to a prepared statement which read as follows [original punctuation provided]:

While our concern is more a warning to religious and parochial schools that receive the money, it is good to remind everyone that increasing dependence on such

monies can and often does result in the increasing vulnerability of the religious mission of these schools through state programming regulations, such as, determining what can and cannot be taught, and during a major financial crunch cause the crippling and shut down of said schools due to the sweeping withdrawal of such voucher based financial support.

That being said we are neither for [nor] against this proposal. We are simply offering principles for church institutions to consider when evaluating the acceptability of State Financial aid.

In dealing with the practical question of when is it appropriate for church schools or institutions in the faith community to accept support or funding from the government, the following principles should be considered:

1. Would accepting the aid establish a precedent that would undercut the religious freedom protections guaranteed by the First Amendment, and the broad principle it embraces - separation of church and state?
2. Does the aid come attached with conditions or requirements that would inhibit or interfere with the religious mission or goals of the institution, such as the restriction of its religious activities or standards?
3. Is there a reasonable likelihood that the aid would create a dependency by the religious institution on the government benefit program - so much so that it would inhibit its future ability to act independently?

In conclusion, the Northwest Religious Liberty Association, and its board of directors offer these principles in the form of questions so that meaningful dialogue can occur at all levels of the faith community. In the spirit of helpfulness, we believe that these three questions can substantially safeguard the faith community and its institutions from undue compromise and hardship in the future, and thus protect the vitality of its prophetic mission in America.

10:03:01 AM

CHAIR DICK announced that the bill would be held for further discussion.

**ADJOURNMENT**

There being no further business before the committee, the House Education Standing Committee meeting was adjourned at 10:04 a.m.