

**ALASKA STATE LEGISLATURE
HOUSE EDUCATION STANDING COMMITTEE**

February 1, 2012

3:09 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

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."

- MOVED CSHB 145(EDC) OUT OF COMMITTEE

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
01/23/12	(H)	Heard & Held
01/23/12	(H)	MINUTE(EDC)
01/27/12	(H)	EDC AT 8:00 AM CAPITOL 106
01/27/12	(H)	Heard & Held
01/27/12	(H)	MINUTE(EDC)
02/01/12	(H)	EDC AT 8:00 AM CAPITOL 106
02/01/12	(H)	Held over to 2/1/12 3:00 PM meeting
02/01/12	(H)	EDC AT 3:00 PM CAPITOL 106

WITNESS REGISTER

REPRESENTATIVE WES KELLER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Responded to questions regarding the proposed committee substitute (CS), during the hearing on HB 145, as Prime Sponsor.

JEAN MISCHEL, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services

POSITION STATEMENT: Responded to questions, during the hearing on HB 145.

ACTION NARRATIVE

[3:09:10 PM](#)

CHAIR ALAN DICK called the House Education Standing Committee meeting to order at 3:09 p.m. Present at the call to order were Representatives Dick, P. Wilson, Feige, Seaton, Cissna, and Kawasaki. Representative Pruitt arrived while the meeting was in progress.

HB 145-K-12 SCHOLARSHIP PROGRAM

[3:09:34 PM](#)

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." [The proposed committee substitute (CS) for HB 145, labeled 27-LS0223\G, Mischel, 1/24/12, adopted at the January 27, 2012 meeting, was before the committee.]

[3:09:48 PM](#)

REPRESENTATIVE FEIGE moved Amendment G.3, labeled 27-LS0223\G.3, Mischel, 1/27/12, which read as follows [original punctuation provided]:

Page 2, line 7:

Delete "pay to a participating school attended by the student under this section"

Insert "award"

Page 2, line 9:

Delete "and local"

Page 2, line 11, following "resides.":

Insert "of the amount available for a parental choice scholarship under AS 14.31.045, the department shall pay a parental choice scholarship while a student is attending a participating school as follows:

(1) to the school district, in which the participating student resides, except as provided in AS 14.31.030(c), 30 percent of the amount the district would receive as state aid under AS 14.17 for the student; and

(2) to a participating school, except as provided in AS 14.31.030(c), the amount remaining after the district is paid under (1) of this subsection, up to 70 percent of the amount the district in which the student resides would receive as state aid under AS 14.17 for the student."

Page 2, line 13:

Delete "(b)"

Insert "(b)(2)"

Page 3, line 6, following "**districts.**":

Insert "(a)"

Page 3, following line 11:

Insert new subsections to read:

"(b) If requested by a participating school, a school district that receives a payment under AS 14.31.020(b)(1) shall enter into a lease agreement with the participating school for space controlled by the school district if

- (1) the lease is offered with reasonable terms;
- (2) the space that is subject to the lease agreement is available; and
- (3) the agreement is consistent with applicable state law.

(c) If a school district that receives a payment under AS 14.31.020(b)(1) unreasonably refuses to enter into a lease agreement as provided under (b) of this section, the board may, after notice and an opportunity for a hearing before the board, order the department to provide to the participating school that requested the lease agreement the funding the district received under AS 14.31.020(b)(1) for the students attending the participating school."

Page 4, line 7, following "schools":

Insert "and affected districts"

Page 4, line 9, following "schools":

Insert "and affected districts"

CHAIR DICK objected for discussion.

[3:10:13 PM](#)

REPRESENTATIVE FEIGE said there is a possibility that a school district may experience a number of public students departing the system to enroll in a private facility. Amendment G.3 provides a means to maintain the infrastructure of the public school, protecting a state owned building, by allowing district retention of 30 percent of the state allocated funds; the remainder to follow the student to the school of choice. He suggested that a private school may be located within the existing school building; perhaps renting classroom space. Private schools should not be denied the opportunity to rent space, he opined, as such action would hinder the development and advancement of private schools. If a superintendent chose not to rent space to a private venture, 100 percent of the funding would follow the student to the school of choice, as indicated in the amendment. He pointed out that the 30 percent figure is based on the existing amount allowed under the BSA for facility expenditures.

REPRESENTATIVE WES KELLER, Alaska State Legislature, speaking as the sponsor of HB 145, stated support for the amendment.

[3:14:53 PM](#)

REPRESENTATIVE SEATON explained his understanding that the amendment directs funds based on where a student resides, not on the location of the school being attended. District cost factors, paid to the school of choice may create a situation where students leave a district with a high geographic cost differential, to attend a facility with a much lower cost factor. He asked for clarification on the intent of the amendment regarding school location versus a student's resident address.

REPRESENTATIVE FEIGE responded that the intent is to capture the cost that would be paid to the public school being exited, and protect the asset value of the state owned building.

REPRESENTATIVE SEATON hypothesized a scenario of a student, with a residence in Toksook Bay, attending a school of choice in Wasilla. He pointed out that the geographic/operational cost differential between these two school locations is substantial. The amendment would encumber the state to pay 30 percent to Toksook Bay and 70 percent to Wasilla, based on the student's residence in Toksook Bay.

REPRESENTATIVE FEIGE said that is correct, and thus, the student has an opportunity for choice, and the state's asset remains protected.

REPRESENTATIVE DICK interjected that this scenario is currently playing out in areas of the Bush. He pointed out that the Nikolai School was built for a capacity of 45 and the current enrollment is down to 10. The relocation may be for a different reason than attending a school of choice, but the cost of maintaining the school building remains the same.

[3:19:55 PM](#)

REPRESENTATIVE KAWASAKI asked whether the new section affects properties such as buildings leased from the private sector; a common practice in the Fairbanks area among the charter schools.

REPRESENTATIVE FEIGE said the cost of the lease represents a fixed amount and the 30 percent would be retained to offset those costs.

REPRESENTATIVE KAWASAKI questioned the origination of the 30 percent amount.

REPRESENTATIVE FEIGE explained that under current regulation 70 percent of funding must be spent on classroom instruction, which leaves 30 percent for fixed, facility costs.

REPRESENTATIVE KAWASAKI stated opposition to the amendment, and said it leaves the taxpayers on the hook.

REPRESENTATIVE FEIGE suggested that the taxpayers would not be burdened as the funding for the program originates with the state.

[3:22:24 PM](#)

REPRESENTATIVE P. WILSON offered her understanding of the amendment, that whatever is budgeted for an individual student, 70 percent of that amount is directed to the school of choice, and 30 percent remains with the school of origin in order to preserve and maintain the state facility.

REPRESENTATIVE KAWASAKI suggested that a school may not need the 30 percent, and he asked what would happen under that scenario.

[3:23:57 PM](#)

REPRESENTATIVE CISSNA added concern for how transportation costs would be handled.

REPRESENTATIVE SEATON reminded the committee that a request has been made of the department for an analysis of the transportation aspect.

[3:25:32 PM](#)

REPRESENTATIVE KAWASAKI reported that the municipalities of Anchorage and Fairbanks supplement school heat and electricity costs, via property taxes.

REPRESENTATIVE SEATON returned to the scenario that he previously theorized, and said it creates an inequitable situation. He suggested attaching the percentage factor to the location of the school to reflect applicable maintenance costs.

[3:26:47 PM](#)

REPRESENTATIVE SEATON offered Amendment 1, to Amendment G.3, to read:

Page 1, line 17 following "in which the":

Delete: "student"

Insert: "school"

[3:28:13 PM](#)

CHAIR DICK announced that without objection Amendment 1, to Amendment G.3 was adopted.

CHAIR DICK removed his objection to Amendment G.3

[3:28:36 PM](#)

REPRESENTATIVE KAWASAKI objected and directed attention to page 2, line 12, of the amendment, to inquire how lease agreements would be entered into. He said it appears that if a private school chooses to lease, or rent a portion of, an existing public school building, the request cannot be denied.

REPRESENTATIVE FEIGE said the purpose of the proposed subsection (c) is to encourage public schools to lease out available

classroom space. In a small village, there may not be suitable real estate options for a private school, and the existing public building may be the primary choice. Reasonable terms should be offered to a private venture for consideration.

REPRESENTATIVE KAWASAKI suggested that this action may not be constitutional, as the building may still be held under a bond.

[3:31:25 PM](#)

JEAN MISCHEL, Attorney, Legislative Legal Counsel, said it is a legitimate question, and the constitutionality could be a concern, but it would depend on the facts contained in the terms of the lease agreement.

REPRESENTATIVE SEATON asked for expansion on the previous response.

MS. MISCHEL said she could research the question and provide additional information on the topic. Further, she reminded the committee that the entire bill raises constitutional questions. If schools are competing for existing space, the negotiations would need to be taken-up on neutral, not religious, grounds.

The committee took an at-ease at 3:35 p.m.

[3:35:26 PM](#)

REPRESENTATIVE PRUITT asked to have legal counsel research the tax implications for the benefit of the committee.

MS. MISCHEL responded that the general rule stipulates that money collected as taxes must be used for the benefit of the area in which the taxpayers reside. Other constitutional questions, on this bill, require analysis, she said.

REPRESENTATIVE PRUITT inquired whether a lease entered into at a cost which would provide revenue to an area could be considered acceptable.

MS. MISCHEL answered that it would be fact specific, and declined to guess how a court would rule. However, if taxpayers are gaining revenue, it might meet the benefit language.

REPRESENTATIVE KAWASAKI questioned whether a long time resident could find cause to bring suit against the state for leasing a

public school building, paid for by local taxes, to a religious school entity.

MS. MISCHEL said, "I believe he would."

REPRESENTATIVE FEIGE said the basic question is whether or not a public school building can be legally leased to an outside entity. He pointed out that Amendment G.3 has 3 qualifying conditions: 1) a lease must be offered; 2) the space must be available; 3) the lease must be consistent with any applicable state laws. He added that the [30 and 70 percent] payments referred to on page 2, lines 6-8, represent the same payments referred to on page 1, lines 12-14.

[3:41:44 PM](#)

REPRESENTATIVE CISSNA expressed interest in having an answer to the question regarding the feasibility of renting a publicly owned school building to a private organization.

MS. MISCHEL responded that provision under the uncodified law makes allowance for private groups to use a school. The law specifies that it must be outside of regular school hours. Also, the group would be required to be neutral in regards to religion and other protected interests.

[3:43:43 PM](#)

REPRESENTATIVE KAWASAKI asked whether the facilities could be leased, or rented, for profit.

MS. MISCHEL offered to provide the requested information, as well as details on taxpayer challengers to school voucher programs, which have recently come to the U.S. Supreme Court. The information applies to the bill, not to the specific amendment under discussion, she stipulated.

[3:44:46 PM](#)

REPRESENTATIVE FEIGE suggested that the objections might be considered thusly: If a restriction prohibits the public school facility from being leased during regular operating hours, the private school would make necessary scheduling adjustments; whether the public school facility can be leased for a profit or not, requires reasonable terms to be determined by the individual district. The intent is that a school district not

be allowed to deny the lease of available classroom space, which would directly stifle competition.

REPRESENTATIVE KAWASAKI maintained his objection.

[3:46:45 PM](#)

A roll call vote was taken. Representatives Seaton, Feige, Pruitt, Cissna, and Dick voted in favor of Amendment G.3. Representatives Kawasaki and P. Wilson voted against it. Therefore, Amendment G.3, to the proposed CS for HB 145, was adopted by the House Education Standing Committee by a vote of 5-2, as amended.

[3:48:26 PM](#)

The committee took an at-ease from 3:48 p.m. to 3:50 p.m.

REPRESENTATIVE FEIGE moved Amendment G.5, labeled 27-LS0223\G.5, Mischel, 1/27/12, which read as follows [original punctuation provided]:

Page 3, lines 6 - 7:

Delete "Notwithstanding the lower limit for a student count of 10 under AS 14.17.450(a) and (b), a"

Insert "A"

Page 3, line 10:

Delete "the school size factor under AS 14.17.450"

Insert "state aid under AS 14.17"

CHAIR DICK objected for discussion.

[3:50:17 PM](#)

REPRESENTATIVE FEIGE stated:

It clarifies that the school that is protected under this provision is funded as if it had 10 students, not just treated as having 10 students for simply the school cost factor.

REPRESENTATIVE KELLER stated support for the amendment.

[3:51:58 PM](#)

REPRESENTATIVE SEATON commented that the public school will receive state funding, and the student's school of choice will be funded separately via the scholarship program. He noted that the state would be paying two entities, for two years, for the same student, and asked if that is the intent.

REPRESENTATIVE FEIGE responded that the intent of the amendment is to clarify language regarding how the funding is to be directed. The state could be providing funds to two educational facilities for a two year period. A public school that has fallen below 10 will be given the opportunity to build up the quality of the school, regain parent confidence, and regain local enrollment, during a two year period.

REPRESENTATIVE SEATON noted that empty seats would be funded in the exited school, while funding would also be received by the school of choice where the student actually attends.

REPRESENTATIVE FEIGE maintained that the intent applies to the 10 student clause, and a level of funding needs to be directed to a school to keep it viable for any remaining students. A two year grace period is written into the bill to provide an opportunity to keep a school from closing.

CHAIR DICK added that funds may be expended twice on a given student; however, money may be saved by not having to close a school and possibly re-open it later.

[3:55:01 PM](#)

REPRESENTATIVE CISSNA reported on the small village of Nikolski, which has been unable to meet the 10 student minimum. She said it is expensive to maintain and operate a school in small communities with less than 10 students.

REPRESENTATIVE FEIGE agreed, and said that it is costly to shut down, as well as reopen a school. However, he pointed out that laws already exist pertaining to school size, and those statutes are not being questioned in this bill.

[3:57:22 PM](#)

REPRESENTATIVE KAWASAKI asked to hear from the department regarding the fiscal impact of this type of approach.

CHAIR DICK pointed out that the bill carries an indeterminate fiscal note.

[3:58:11 PM](#)

REPRESENTATIVE SEATON cautioned that a school could suffer the loss of all of its students to a private school. The proposed amendment would place in statute a requirement for continued funding at the 10 student level. He said that this scenario would replicate what has already occurred in the Aleutians, when ADM fell to zero, but the superintendent and other contractual costs had to be honored by the state.

REPRESENTATIVE FEIGE agreed that it creates a difficult situation when the ADM is not viable, but opportunity should be given to allow a small school to rebuild should the numbers fall below 10.

[4:00:06 PM](#)

REPRESENTATIVE PRUITT referred to the bill, page 3, line 8, and said that an amendment could be proposed to include language stipulating an ADM range of less than 10 but more than 5 students.

[4:01:04 PM](#)

REPRESENTATIVE KAWASAKI suggested that the department may have a means to determine how accountability of funds would be tracked in this type of situation, perhaps through regulation.

[4:03:20 PM](#)

The committee took an at-ease from 4:03 p.m. - 4:05 p.m.

REPRESENTATIVE FEIGE withdrew Amendment G.5., then referring to the bill, proposed Conceptual Amendment 1:

Page 3, line 8 following "less than 10":

Insert: "but greater than or equal to 5"

REPRESENTATIVE KAWASAKI objected for discussion.

REPRESENTATIVE KAWASAKI withdrew his objection, and with no further objection Conceptual Amendment 1 was adopted.

4:05:50 PM

REPRESENTATIVE FEIGE re-introduced Amendment G.5, as previously provided.

REPRESENTATIVE KAWASAKI objected for discussion.

4:06:27 PM

REPRESENTATIVE SEATON clarified that given an ADM below 5, proposed Amendment G.5 would not apply, as amended.

REPRESENTATIVE KAWASAKI withdrew his objection, and without further objection, Amendment G.5 was adopted.

4:07:28 PM

REPRESENTATIVE CISSNA offered Amendment G.6, labeled 27-LS0223\G.6, Mischel, 1/30/12, which read as follows [original punctuation provided]:

Page 2, following line 22:

Insert a new paragraph to read:

"(1) is located in a community with a population of not less than 35,000;"

Re-number the following paragraphs accordingly.

Page 4, lines 19 - 27:

Delete all material.

Re-number the following bill sections accordingly.

Page 4, line 30:

Delete "Sections 1 and 2 of this Act take"

Insert "Section 1 of this Act takes"

Page 5, line 3:

Delete "sec. 3 of this Act, secs. 1 and 2 of this Act take effect, they take"

Insert "sec. 2 of this Act, sec. 1 of this Act takes effect, it takes"

Page 5, line 4:

Delete "sec. 3"

Insert "sec. 2"

REPRESENTATIVE KAWASAKI objected for discussion.

REPRESENTATIVE CISSNA indicated that many communities are experiencing declining populations, affecting the local school ADM. She said the proposed amendment limits the scope of the bill to areas with populations of not less than 35,000. The more populated areas of the state are better equipped to support the social, economic issues and receive a benefit from this legislation, she opined.

CHAIR DICK reported that support, for the bill, has been wide spread, including response from smaller communities. A pilot program would not be objectionable; however, the limitation of the amendment would eliminate participation of many areas of the state.

REPRESENTATIVE PRUITT opined that the amendment would limit the program to residents of Anchorage, Fairbanks, and Juneau. He pointed out that the proposed amendment stipulates communities, not districts, and stipulating districts would expand participation significantly.

[4:12:16 PM](#)

REPRESENTATIVE P. WILSON interjected that her office has also received letters of support from smaller communities, and said, based on the response, she would not support the amendment.

CHAIR DICK stated that he would not support limiting the scope of the bill. He said his intent is to activate interest in new educational approaches for the state, and reducing the possibility of participation may serve to create apathy rather than provide a stimulus.

[4:13:24 PM](#)

REPRESENTATIVE KAWASAKI emphasized the affective difference between considering the population of a community versus a district, and asked the sponsor for clarification of intent.

REPRESENTATIVE CISSNA deferred to legal counsel.

MS. MISCHEL responded that the term community is not defined in Title 14. She read the definition of community, as found under AS 06.05.990(8), which states the following [original punctuation provided]:

(8) "community" means a city, town, unincorporated village, or, in the absence of one of the foregoing, a trade area;

MS. MISCHEL said the term, as defined, applies only to the banking industry. However, the dictionary definition and common use of the term could be used for purposes of the amendment.

CHAIR DICK lauded the committee members concern for the small communities, but maintained that the restricted scope, and exclusionary action, would not be helpful to the intent of the bill.

[4:15:25 PM](#)

REPRESENTATIVE CISSNA opined the possibility of an opportunity being negative, and said that many questions have remained unanswered regarding the proposed legislation. Whatever emanates will be an experiment she said, and positive actions such as magnet schools could spring forth. She stressed her support for school choice and the intent of the legislation; however, enough questions remain unanswered to require the committee to proceed with caution.

REPRESENTATIVE KAWASAKI maintained his objection.

[4:18:59 PM](#)

A roll call vote was taken. Representatives Cissna and Kawasaki voted in favor of Amendment G.6. Representatives P. Wilson, Seaton, Feige, Pruitt, and Dick voted against it. Therefore, Amendment G.6, to the proposed CS for HB 145, failed to be adopted by the House Education Standing Committee by a vote of 2-5.

[4:20:17 PM](#)

REPRESENTATIVE P. WILSON moved Amendment G.7, labeled 27-LS0223\G.7, Mischel, 2/1/12, which read as follows [original punctuation provided]:

Page 2, following line 22:

Insert a new paragraph to read:

"(1) without discriminating on the basis of race, religion, color, national origin, sex, or disability, enrolls all eligible students who submit a timely application; if the number of applications exceeds the physical capacity of the program, class, grade level, or building, students shall be accepted by random drawing;"

Renumber the following paragraphs accordingly.

[4:20:26 PM](#)

REPRESENTATIVE KAWASAKI objected for discussion.

REPRESENTATIVE P. WILSON explained that the intent of the proposed amendment is to eliminate discrimination and to include a process of action when a private school's application count exceeds the school/class capacity. She pointed out that state funded public schools must be prepared to accept and incorporate every enrollee, but private schools typically have requirements for enrollment. The amendment seeks to equalize that onus: when accepting state funds, private schools must be prepared to accept every student who submits a timely application. Further, a lottery would be held, if the number of applications to the private facility exceeds the institute's threshold.

CHAIR DICK inquired about special needs students. He said it could be financially difficult if, in a community with a class of twenty-five, one was a special needs student, requiring a specialized instructor.

REPRESENTATIVE P. WILSON replied that the severity of the student's needs would dictate the requirement. However, intensive needs students are allotted 17 times the amount of the normal ADM; enough to hire appropriate staff.

CHAIR DICK recalled that similar concerns, raised in other states, were determined to be unfounded.

4:22:46 PM

REPRESENTATIVE KELLER stated opposition to the amendment, and said that the purpose of the bill is to stimulate innovation and new opportunities. He said the majority of private schools have formed specifically for special educational purposes, and like most private schools, form under a 501(c)(3) [federal tax structure]. Protections are provided under the 501(c)(3) regarding discrimination, and, he opined, further protection is not necessary.

4:23:46 PM

REPRESENTATIVE KAWASAKI asked if Alaska has had any private schools open to specifically serve special needs students.

REPRESENTATIVE KELLER clarified that he was not speaking of schools in Alaska, but the nation in general. Further, he said the purpose of the bill is not to mandate that every school provide services to every class of students; parental choice is the intent.

REPRESENTATIVE KAWASAKI inquired about special needs private schools and how they are funded elsewhere. He asked whether extra funds are available, outside of the base student allocation, which the committee could review.

REPRESENTATIVE KELLER explained that HB 145 holds the parents responsible for any additional funds necessary to support a special needs student in a regular classroom beyond what the state budgets.

REPRESENTATIVE P. WILSON pointed out that whatever has occurred in other states, the situations would not be comparable to what exists in Alaska, given the road systems and population distribution of the Lower 48. She said this is a fairness issue and the amendment ensures that parents will receive choice and not be turned away.

REPRESENTATIVE KAWASAKI referred to a previous statement, made by the sponsor, and asked for further clarity on the discrimination laws that apply to private schools.

REPRESENTATIVE KELLER answered that the 501(c)(3) federal tax documents defines what is legitimate and what is not.

[4:27:18 PM](#)

REPRESENTATIVE KAWASAKI expressed concern for the federal tax code, under discussion, being intertwined with Alaska Statute. He said an intentionally small section of state law exists for dealing with religious and private schools. The section is small due to the state choosing to remain removed from involvement with private and religious institutions. Specifically, students in private schools are not fully protected by nondiscrimination laws relating to religious affiliation, ethnicity, or ability limitations. He asked legal counsel to confirm his understanding.

MS. MISCHEL said that competing constitutional interests are at stake, and each private school that participates in the program will need to be scrutinized to determine eligibility of federal funding, and whether anti-discrimination laws apply. Equal protection and establishment clause issues also arise, and it would be possible for a parent to bring suit under the equal protection provision. If suit were brought, she opined, the breaching of state and federal law could be implicated. The groups listed in the amendment are construed to be protected classes of citizens, and as such would require a higher level of scrutiny by a court.

REPRESENTATIVE SEATON noted that a recent U.S. Supreme Court decision found private/religious schools exempt from some of the qualifications listed in the proposed amendment. He asked whether she has considered this new ruling in her analysis.

MS. MISCHEL named the case being referred to as Arizona Christian School Tuition Organization v. Winn et al., 09-987, decided 4/4/11. She said the case does not represent an equal protection challenge, but was brought against an establishment clause. The nondiscrimination question, which the proposed amendment speaks to, raises an equal protection clause question. The first question the court would review, in such a case, would be to determine if there is state action involved. She said private entities can and do discriminate at will, unless state function, or action, is involved. The Arizona case revolved around a tax exemption, which is not what is being offered in the proposed amendment or HB 145.

[4:32:43 PM](#)

REPRESENTATIVE SEATON asked whether direct state funding would be considered as relating closer to the law than a tax exemption. Thus, with the federal law in place, then Amendment G.7 would serve to verify, in state statute, that the conditions of nondiscrimination must apply.

MS. MISCHEL said yes, and indicated that the amendment would provide clarity for any challenges that would arise on grounds of equal protection.

[4:33:34 PM](#)

REPRESENTATIVE CISSNA stated support for amendment G.7 and stressed the importance for the addition of the proposed language.

[4:34:58 PM](#)

REPRESENTATIVE KELLER asked the amendment sponsor whether the intent is to prohibit a religious private school to not have a statement of faith in their application. Current law has three provisions which exempt religious schools, he said, and read from AS 14.45.100 [original punctuation provided]:

A religious or other private school that complies with AS 14.45.100 - 14.45.130 is exempt from other provisions of law and regulations relating to education except law and regulations relating to physical health, fire safety, sanitation, immunization, and physical examinations.

REPRESENTATIVE KELLER opined that current statute covers the nondiscrimination issue, and maintained that the proposed amendment "goes farther than what you may think."

[4:36:36 PM](#)

REPRESENTATIVE FEIGE said the bill pertains to choice, and the current system provides for a level of nondiscriminatory service. The amendment would require a denominational school to accept a possible religious agitator into a facility. He suggested that one of the unintended consequences could be the limiting of opportunities for a competitive environment in the overall educational system. Further, the amendment may stifle competition and innovation which the bill seeks to encourage.

REPRESENTATIVE KELLER agreed and said it is why he opposes the amendment.

CHAIR DICK concurred that choice, innovation, and fairness are important. The current charter schools are not allowed to deviate from the expected norm more than a few degrees, creating limits to innovative educational approaches.

REPRESENTATIVE KAWASAKI expressed opposition to the proposed amendment and said it would blur the delineation of religious and public schools, as clearly set forth in the existing, succinct statutes.

REPRESENTATIVE PRUITT echoed the sentiments of the previous committee member, and stated opposition to the proposed amendment.

REPRESENTATIVE SEATON pointed out that the intent is to allow parental choice; however, the bill allows discrimination on every level: race, religion, or creed. Statute is being proposed to require that public funds be paid to a school which could exclude Native students from attending. In the event of a legal challenge, state and federal litigation would ensue, and he stressed the importance of avoiding such an ordeal. He agreed that choice should be allowed, but if a school accepts state funding, it must operate without discrimination, as proposed in the amendment.

[4:46:19 PM](#)

REPRESENTATIVE FEIGE asked how other states that have adopted this type of program have addressed this issue.

REPRESENTATIVE KELLER said that choice is provided to the parents via a voucher system, which is payable to any private/religious school. Admittedly, in every jurisdiction that has allowed this type of choice, litigation has ensued. Last year, 18 states considered adoption, or expansion, of voucher programs. He said that to rewrite how and what type of school can participate in the program, and imposing the same restrictions as the public schools operate under, defeats the purpose of the bill.

REPRESENTATIVE FEIGE summarized that public funds would be provided to every student for educational purposes. The student then has a choice from a multitude of opportunities. He opined

that the opportunities would far outweigh the limitations and the population as a whole will benefit.

[4:49:25 PM](#)

CHAIR DICK interjected that parental ideological choice will either be based on religious grounds or secular humanism, and pointed out that the state funds secular humanism exclusively.

REPRESENTATIVE CISSNA stated her understanding that certain groups may be excluded under this bill, and stressed the importance of the amendment.

REPRESENTATIVE SEATON maintained that the bill allows funding of schools that have discriminatory admission standards, unless the amendment is adopted.

REPRESENTATIVE KELLER underscored that funds will be directed to a school of choice.

REPRESENTATIVE KAWASAKI agreed. However, he added, without the amendment, admission could be denied even though it is the school of choice.

REPRESENTATIVE KAWASAKI maintained his objection.

[4:53:53 PM](#)

A roll call vote was taken. Representatives Cissna, P. Wilson, and Seaton voted in favor of Amendment G.7. Representatives Pruitt, Kawasaki, Feige, and Dick voted against it. Therefore, Amendment G.7, to the proposed CS for HB 145, failed to be adopted by the House Education Standing Committee by a vote of 3-4.

[4:55:01 PM](#)

CHAIR DICK returned to consideration of the proposed CS and reminded the committee that the bill is the first step in an extremely difficult and long process.

[4:55:34 PM](#)

REPRESENTATIVE SEATON reported that in other states where this legislation has occurred, the result has not been an exodus from the public school system, but the allowance of public funds to be paid to private institutions; existing students in existing

alternative private and religious institutions. The bill will primarily affect ongoing private schools, which will not need to expand, or alter enrollment practices in order to receive public funding. The private schools will not be required to alter any discriminatory practices, which may be an aspect of their policy, including the denial of Native students, outside religions, or other imposed criteria. For this reason, he explained, he cannot support the bill, and said:

To me this is not an appropriate vehicle for funding for the state sponsor of schools that are specifically, by state law, allowed to discriminate. ... My feeling is that if people want to change the [Alaskan] constitution ... and then we have bills that are constitutional come before us, then they should be considered. But when we are considering things that are currently unconstitutional, or known to be unconstitutional, I don't think we should advance the bill.

[4:57:56 PM](#)

REPRESENTATIVE FEIGE acknowledged that the bill is a benefit to students currently going to private schools; children of tax paying residents. A counter argument would be that the state is discriminating against the current private school students by not providing educational funding. A popular dissatisfaction exists with parents of the state, who do not feel that they are getting what they are paying for in the public system. Parents are asking for the opportunity to have educational choice. The effect of the bill will be to offer choice, break the monopoly of the existing public education system, and incite healthy competition. He acknowledged that a bill requesting an amendment to the Constitution of Alaska will need to be passed, prior to the enactment of HB 145, but passage of the bill represents a step in the right direction.

[5:00:24 PM](#)

REPRESENTATIVE KAWASAKI said that we live in a great nation because of the national and state public system that ensures every child a free, nondiscriminatory education. The bill allows discrimination to occur, which is a dangerous policy, he cautioned. Additionally, there remain many unanswered questions regarding financial implications, as well as policy issues to be addressed.

[5:01:56 PM](#)

REPRESENTATIVE CISSNA said she could not support this bill, although there is merit to what has been heard. Many constituents have weighed-in, however, the concerns voiced are broad in nature and are not limited to dissatisfaction with the educational system. There needs to be more time and energy put forward to solve the spectrum of issues, she finished.

[5:03:32 PM](#)

REPRESENTATIVE P. WILSON opined that she supports parents having choice, but the bill does not provide choice. Urban families would have the possibility for educational alternatives, but in small, rural areas where schools are failing, options are not available. She said:

 Their choice is, well, if we move maybe we can give our child that choice - if we apply at the right school, if there's an opening, if they will take my child. ... What we're doing is it's a way for the state to fund private schools. It's not a way to give parental choice. ... The state is going to be paying for private schools and not everyone's going to have the choice to go there, and I think that's a very sad thing. Because I want parents to have a choice, I'm not going to stop this bill, ... but it's a sad situation when we're going to set up something so part of the state can have some advantages that the rest of the state just isn't going to have ... that's not fair.

[5:05:46 PM](#)

REPRESENTATIVE PRUITT said assumptions are being made, such as whether private school initiatives will not start-up in rural areas. However, with the funding offered in the bill, he said it may occur. Assumptions should not be made, he suggested, as it limits the potential that exists.

[5:07:43 PM](#)

CHAIR DICK said the Alaska Federation of Natives has submitted support for the bill. The Native people have been crying out for 40 years and stating what they want in education, and for 40 years the educational system of Alaska has failed to meet the Native needs. "Again we've got SEE SPOT RUN 2012; it's still

going on right now," he said. Despite the controversy that exists around the bill, he stressed that the Native people will be excited to see it pass out of committee and possibly affect some change in the system; perhaps what should have occurred some time ago. He then asked for a motion to move the bill from committee.

[5:08:43 PM](#)

REPRESENTATIVE PRUITT moved to report the proposed CS for HB 145, Version 27-LS0223\G, Mischel, 1/24/12, as amended, from committee with individual recommendations, and the accompanying indeterminate fiscal note.

REPRESENTATIVE KAWASAKI objected

A roll call vote was taken. Representatives Feige, Pruitt, P. Wilson, and Dick voted in favor of reporting CS for HB 145, Version 27-LS0223\G, Mischel, 1/24/12, as amended, out of committee. Representatives Cissna, Kawasaki, and Seaton voted against it. Therefore, CSHB 145(EDC) was reported out of the House Education Standing Committee by a vote of 4-3.

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REPRESENTATIVE KELLER thanked the committee and said it represents a new educational concept for the State of Alaska.

[5:11:09 PM](#)

CHAIR DICK announced the agenda for the next committee meeting.

ADJOURNMENT

There being no further business before the committee, the House Education Standing Committee meeting was adjourned at 5:12 p.m.