

SENATE FINANCE COMMITTEE  
March 27, 2013  
9:05 a.m.

9:05:53 AM

CALL TO ORDER

Co-Chair Meyer called the Senate Finance Committee meeting to order at 9:05 a.m.

MEMBERS PRESENT

Senator Pete Kelly, Co-Chair  
Senator Kevin Meyer, Co-Chair  
Senator Anna Fairclough, Vice-Chair  
Senator Click Bishop  
Senator Mike Dunleavy  
Senator Lyman Hoffman  
Senator Donny Olson

MEMBERS ABSENT

None

ALSO PRESENT

Christine Marasigan, Staff, Senator Kevin Meyer; Patrick Pilai, Executive Director, Special Education Service Agency (SESA), Juneau; Senator Fred Dyson; Chuck Kopp, Chief of Staff, Senator Fred Dyson; Anne Carpeneti, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law; Quinlan Steiner Public Defender, State of Alaska; Nancy Meade, General Counsel, Alaska Court System; David Scott, Staff, Senator Donny Olson; John Davies, Senior Researcher, Cold Climate Housing Research Center; Elizabeth Sweeney Nudelman, Director, School Finances and Facilities, Department of Education and Early Development

PRESENT VIA TELECONFERENCE

Tom Begich, Policy Director, Citizens for the Educational Advancement of Alaska's Children, Anchorage; Dave Herbert, Superintendent, St. Mary's School District

SUMMARY

SB 17 EXTEND SPECIAL EDUCATION SERVICE AGENCY

SB 17 was REPORTED out of committee with a "do pass" recommendation and with a new fiscal impact note from the Department of Education and Early Development.

SB 56 RECLASSIFYING CERTAIN DRUG OFFENSES

SB 56 was REPORTED out of committee with a "do pass" recommendation and with a new indeterminate fiscal note from the Department of Law; and previously zero fiscal notes: FN7 (CRT), FN5 (COR), FN4 (DPS), FN3 (DPS), FN2 (ADM), and FN1 (ADM).

SB 62 SCHOOL CONST. GRANTS/SMALL MUNICIPALITIES

SB 62 was REPORTED out of committee with a "do pass" recommendation and with a new fiscal impact note from the Department of Education and Early Development.

#sb17

SENATE BILL NO. 17

"An Act extending the special education service agency; and providing for an effective date."

9:06:57 AM

Vice-Chair Fairclough MOVED to ADOPT the proposed committee substitute for SB 17, Work Draft 28-LS0289\P (Mischel, 3/20/13). There being NO OBJECTION, it was so ordered.

CHRISTINE MARASIGAN, STAFF, SENATOR KEVIN MEYER, explained the two changes in the proposed committee substitute (CS). She reported that on Section 1, Page 1, line 6, the amount of \$15.75 was changed to \$18.65. In Section 2, Page 2, line 3, the sunset year was changed from June 30, 2021 to June 30, 2017.

Co-Chair Meyer added that the Legislative Budget and Audit recommended an eight year extension. He believed the length of time was too long and cut the extension time in half.

PATRICK PILAI, EXECUTIVE DIRECTOR, SPECIAL EDUCATION SERVICE AGENCY (SESA), JUNEAU, supported the changes in the legislation. The reduction in the reauthorization period coupled with the increased funding was beneficial for the agency. The agency did not receive a funding increase in 15 years and a layoff of four employees was imminent.

Senator Dunleavy wondered how the bill helped SESA. Mr. Pilai responded that the agency was "diluting services" in order to operate with a fund balance. The agency maintained an average fund balance of \$450 thousand. The agency received its funding four times each year and 25 percent of its grant funding up front, which required expenditure after reimbursement. The agency had to maintain a \$400 thousand dollar balance to sustain its cash flow. Without a funding increase the agency was going to lay off four employees. The increase allowed the agency to retain two specialists. The board's desire was to make cuts to SESA's administration in order to maintain services to school districts. The agency will lay off one administrator and one program assistant but retain the two specialists.

[9:13:20 AM](#)

AT EASE

[9:13:48 AM](#)

RECONVENED

[9:13:57 AM](#)

AT EASE

[9:14:32 AM](#)

RECONVENED

Ms. Marasigan explained that a new fiscal note was forthcoming. The original version of the bill simply extended the sunset date. The CS added half of the amount of the increment (36 percent) recommended by the LBA for a total of \$375 thousand (\$18.75 multiplied by the ADM (average daily membership)) added to the existing fiscal note total of \$2,035.5 million.

Vice-Chair Fairclough MOVED to REPORT CSSB 17 (FIN) out of committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

SB 17 was REPORTED out of committee with a "do pass" recommendation and with a new fiscal impact note from the Department of Education and Early Development.

9:15:37 AM

AT EASE

9:21:10 AM

RECONVENED

#sb56

SENATE BILL NO. 56

"An Act relating to certain crimes involving controlled substances; and providing for an effective date."

SENATOR FRED DYSON, stated that the legislation was taking a "smart approach" to crime. The approach had established a track record of reducing recidivism and lowering the cost of incarceration. He cited a memo (copy on file) he distributed which addressed some issues raised by the Department of Law (DOL).

CHUCK KOPP, CHIEF OF STAFF, SENATOR FRED DYSON, summarized the issues. He noted that DOL raised six areas of concern. He identified the issues: (1) quantity limits for felony threshold, (2) look back period for prior conviction leading to a three strikes felony charge, (3) potential negative impact on therapeutic courts, (4) treatment of misdemeanants, (5) impacts on federal grant funding, (6) questioning seriousness of Class A misdemeanor charge.

Mr. Kopp detailed that SB 56 proposed felony quantity limits mirroring the average of limits adopted by 14 other jurisdictions in other states. The limits in SB 56 were "parallel" to limits Wyoming adopted. The fiscal, geographical, and political characteristics of Wyoming were similar to Alaska. As a result, Wyoming experienced a reduction in violent crime and "person" crime.

Mr. Kopp pointed to the look back period. He relayed that the sponsors determined the five year look back period was adequate. The ten year period was too punitive for someone taking recovery seriously.

Mr. Kopp reported that the sponsors worked closely with the therapeutic courts and no one raised concerns. On the contrary, the therapeutic courts were supportive of the legislation.

Mr. Kopp explained that currently the courts can assign convicted misdemeanants convicted of substance abuse and other drug offenses to the alcohol safety action program along with a probation officer from the Department of Health and Social Services. He continued that there were no reductions in federal grant funding due to the legislation. No other state that adopted similar measures experienced fiscal impacts. He stressed that SB 56 did not legalize any drug.

Mr. Kopp emphasized that the law condemned possession of dangerous drugs. He listed other serious crimes classified as Class A misdemeanors. He pointed out that Fourth Degree assault was currently a Class A misdemeanor. A second charge of driving under the influence (DUI) was a Class A misdemeanor. Endangering the welfare of a child in the first degree or vulnerable adult in the second degree, and sexual abuse of a minor in the fourth degree were all Class A misdemeanors. He emphasized the serious nature of Class A misdemeanor crimes. The sentence carried up to one year in prison and a \$10 thousand fine. The sentence was not merely a "slap on the wrist." The sponsors believed that the charge was appropriate for a small quantity, non-violent drug offender.

Senator Bishop wanted reassurance that the legislation would not threaten the existence of therapeutic courts. Mr. Kopp reassured the Senator that SB 56 did not impact the therapeutic courts.

[9:29:42 AM](#)

ANNE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION-JUNEAU, CRIMINAL DIVISION, DEPARTMENT OF LAW, conveyed that the Department of Law (DOL) would continue discussions with the sponsor over the interim to "consider more information about the bill." The department shared some of the concerns expressed by law enforcement. The department wanted a safe reduction in the prison population and supported the premise of the legislation. The department believed resolution was possible with further scrutiny and working closely with the sponsor.

Co-Chair Meyer commented that he supported the concept of "smart justice" and thought it was a "good approach." He appreciated DOL's attempt to work with the sponsor to address concerns.

Co-Chair Kelly asked for a detailed discussion on the department's concerns regarding the legislation's impact on the therapeutic courts. Mr. Kopp explained that DOL cautioned that reclassifying small quantity offenses to a misdemeanor prevented sending an offender who was a felon to therapeutic court. He countered that "there was no shortage of addicts who were eligible for therapeutic court." Many addicts become felons and were eligible even with a lesser charge. He felt that the concern was "simply not an issue."

QUINLAN STEINER, PUBLIC DEFENDER, STATE OF ALASKA, introduced himself for the record.

Senator Bishop asked whether the legislation affected eligibility for the therapeutic courts.

NANCY MEADE, GENERAL COUNSEL, ALASKA COURT SYSTEM, answered that certain individuals who were eligible for felony drug court would not be eligible if the crimes were declassified to misdemeanors; the offenders would no longer be felons. She detailed that out of twelve therapeutic courts only one was a felony drug court with twelve participants. The court did not anticipate either a shortage of participants for the felony drug court or an impact on the therapeutic courts if SB 56 became law.

Vice-Chair Fairclough reviewed the fiscal notes. She noted FN1 (ADM), allocated to the Office of Public Advocacy with no fiscal impact and a possible reduction in costs for constitutionally mandated defense services. She turned to FN2 (ADM) allocated to the Public Defender Agency with no fiscal impact and a reduction in the cost of processing individual cases and reduced overall agency budget growth. She cited FN3 (COR) allocated to the Alaska State Trooper Detachments with no fiscal impact due to no impacts to the investigative process regarding the offenses. She noted FN4 (DPS) allocated for Laboratory Services with no fiscal impact. She moved to FN5 (COR) allocated to the Office of the Commissioner with no fiscal impact but the actual impact of the legislation was unknown. The department would monitor the potential impacts of the legislation. She

highlighted the new indeterminate fiscal note from the Department of Law allocated for Criminal Justice Litigation. The department noted that reducing an offense from a felony to a misdemeanor created a savings, but sometimes there were unforeseen consequences. She reviewed FN7 (CRT) appropriated to Trial courts with no fiscal impact.

[9:39:47 AM](#)

Vice-Chair Fairclough MOVED to REPORT SB 56 out of committee with individual recommendations and the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

SB 56 was REPORTED out of committee with a "do pass" recommendation and with a new indeterminate fiscal note from the Department of Law; and previously zero fiscal notes: FN7 (CRT), FN5 (COR), FN4 (DPS), FN3 (DPS), FN2 (ADM), and FN1 (ADM).

[9:43:53 AM](#)

AT EASE

[9:47:38 AM](#)

RECONVENED

#sb62

SENATE BILL NO. 62

"An Act relating to grants for school construction."

Ms. Marasigan explained the new fiscal note. The new fiscal note facilitated Fund Transfers from Designated Savings (UGF) to the Regional Education Attendance Area School Fund (REAA). She consulted with the Department of Education and Early Development (DEED) finance director as well as the Legislative Finance Division, which resulted in restructuring the fiscal note to include the estimated capital costs of \$618.3 thousand instead of incorrectly allocating operating funds to REAA since the fund was already established. The legislation added five additional schools to the REAA funds.

Vice-Chair Fairclough asked whether the \$618.3 thousand was appropriated from the REAA fund. Ms. Marasigan answered in the affirmative and responded that the fiscal note analysis

reported that the \$35.2 million REAA fund was already included in the FY14 Governor's capital budget: therefore, the allocation was removed from the fiscal note.

Vice-Chair Fairclough related that the \$618.3 thousand was allocated from the capitalization of the REAA fund versus the general fund. Ms. Marasigan affirmed.

Co-Chair Kelly asked for a discussion on the ramifications of the Kasayulie case. Senator Olson detailed that SB 62 allowed small municipal school districts to participate in school aid for construction under REAA. School districts with 300 or less students qualified under the guidelines. Only five schools were eligible. Not all of the five schools were requesting funding at this time.

DAVID SCOTT, STAFF, SENATOR DONNY OLSON, explained that school construction occurred in two different ways in Alaska. One way was through bonding and state reimbursement split; 70 percent state and 30 percent municipality. Small school districts without the economic capacity to bond were able to obtain school construction funding through the REAA fund. The fund was formula driven. Some small school districts did not qualify for the REAA fund but lacked the ability to bond. The legislation closed the gap by allowing the five schools to obtain REAA funding.

Co-Chair Kelly questioned whether the five schools were part of the Kasayulie Case. Mr. Scott answered that only one school was a part of the Kasayulie case.

[9:56:18 AM](#)

Senator Hoffman confirmed that St. Mary's was part of the Kasayulie case. He explained that St. Mary's was a first class city and not an REAA. As a first class city, St. Mary's was responsible for school replacement, but did not have the capacity to bond. The city was left out of the lawsuit, which only addressed REAA schools. He expounded that two options existed to correct the situation. One way changed how first class cities addressed school construction funding by rescinding responsibility for school construction but still required participation in its school funding. The second option was the provision in the legislation.

Co-Chair Kelly surmised that the construction money came from the REAA fund.

Vice-Chair Fairclough clarified that the Kasayulie Case was a claim against the state that rural schools were treated unfairly and not adequately funded. The attorney general negotiated an agreement that required the state to contribute approximately \$36 million each year, capped at \$70 million. The legislation mandated an additional \$35 million deposit into the fund. She stated her support for the legislation and wanted to clarify for the record that SB 62 expanded the statute to allow more schools to qualify.

Senator Hoffman interjected and cited the fiscal note analysis, which defined that the current formula included an increase of \$35,818,300 and the additional funding of \$618,300 was added to address the non-REAA schools.

Vice-Chair Fairclough detailed that the Kasayulie Case agreement generated a list of schools to receive top priority funding from the state. The legislation was a remedy to address the list.

Senator Olson commented that St. Mary's was an original plaintiff in the case, but was removed during settlement negotiations. The legislation added St. Mary's school back as a priority. The \$70 million cap to the REAA fund remained.

Co-Chair Meyer added that whenever the 70 percent to 30 percent split was utilized for urban school construction a specified amount from formula was appropriated to REAA schools up to the \$70 million cap.

Senator Olson asked whether the legislation was a "reputable" solution to close the case. He requested an explanation of why the first class cities, without the capacity to bond, were removed from the case.

TOM BEGICH, POLICY DIRECTOR, CITIZENS FOR THE EDUCATIONAL ADVANCEMENT OF ALASKA'S CHILDREN, ANCHORAGE (via teleconference), responded that the legislation [SB 237] to address the Kasayulie case in 2010, prior to the actual settlement, authorized funding through the REAA fund for simplicity's sake. The legislation in 2010 helped drive the settlement. When the settlement occurred in 2012, it did

not include the single site school districts. St. Mary's was originally third on the list, but not one of the five included in the negotiated settlement. However, the settlement did not specifically address REAA's; it spoke to rural versus urban inequities in rural education funding. The legislation legitimately rectified the oversight and allowed access to the REAA funds. The small school districts, even though they were first class cities, did not possess the economic capability to finance school construction. He noted the REAA school districts support of the legislation. He added that SB 62 provided a "fair and equitable" mechanism to fund rural schools consistent with the Kasayulie decision.

[10:06:33 AM](#)

Senator Olson asked what the advantage was to receive funding now through the legislation rather than waiting several more years.

DAVE HERBERT, SUPERINTENDENT, ST. MARY'S SCHOOL DISTRICT (via teleconference), commented that the five municipalities listed in the bill did not have the capacity to bond for school construction and were not REAA schools. The legislation provided a funding source through the REAA funds to the five schools. He urged for support of the legislation.

Co-Chair Kelly communicated that he would offer a conceptual amendment to the title of the bill.

JOHN DAVIES, SENIOR RESEARCHER, COLD CLIMATE HOUSING RESEARCH CENTER, explained the amendment. He stated that Ryan Junior High School in Fairbanks was in disrepair and renovation due to structural issues cost \$46 million; \$9 million more than new construction. The problem lied in the bonding used to finance school renovation construction, which called for a 60 percent/40 percent split between the state and municipality. He believed the split made passage of the bond problematic. The school was deemed unsafe and a delay in construction was unadvisable; the bonding measure needed to pass as soon as possible. He delineated that the proposed amendment specified that only in circumstances when new construction was less expensive than renovation the project became eligible for 70 percent/30 percent bonding instead of 60 percent/40 percent.

Co-Chair Kelly explained that the reason he chose to amend the title as the mechanism to address the issue was timing for the bond. He did not want to slow passage of the bill and would change the title in the Senate and work with the house to add the specific language.

Co-Chair Meyer thought that if new construction was more cost effective than renovation, more flexibility should already exist in statute.

ELIZABETH SWEENEY NUDELMAN, DIRECTOR, SCHOOL FINANCES AND FACILITIES, DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT, explained that the statute addressed the amount of space that the State of Alaska wanted to devote to school construction, based on a calculation using membership and square footage. The two methods accessible for new school construction were grant lists and the debt program. The grant list allowed for repair and remodel under the major maintenance list. Eligibility for the construction list was based on space criteria. The Ryan School project was submitted under the major maintenance list because it did not meet the space requirements for new construction. The grant program did not provide options for replacement. The second option available to Fairbanks was the debt program. The 70 percent reimbursement was based on the space criteria; if not met the 60 percent reimbursement applied. She concluded that the 70 percent option was not available to Fairbanks for the Ryan project.

[10:16:21 AM](#)

Vice-Chair Fairclough wondered if the proposed square footage of the Ryan project added capacity. Mr. Davies responded that the replacement structure was approximately 100 square feet larger, but the intent of the project was replacement of the existing building and not to add capacity. He reiterated that the cost to rebuild was \$9 million cheaper than to renovate.

Ms. Nudelman restated that the current program prohibited new school construction in this instance. The existing school's space was counted towards total space in the calculation.

Vice-Chair Fairclough questioned whether the existing structure could be condemned or not counted. Ms. Nudelman replied that space could be removed from the calculation,

and the school could be removed from the Fairbanks School District's space allocation under certain conditions.

Vice-Chair Fairclough wondered who determined what schools were removed from the list. Ms. Nudelman answered that the school would have to provide evidence to the department as to why the school was no longer in use.

Vice-Chair Fairclough wondered whether the issue was a regulation rather than a state statute. Ms. Nudelman did not know, but agreed to provide further information.

Senator Hoffman guessed that eliminating the space would not solve the problem. He thought that once eliminated it cannot be replaced. Ms. Nudelman agreed and wanted to review the space allocation for Fairbanks.

Co-Chair Kelly surmised that the building would have to be made available for another purpose to qualify for the 70 percent reimbursement. Ms. Nudelman replied that the space would have to be removed but was unsure if removal would solve the problem.

Mr. Davies reported that the other criterion for new construction besides space was increased enrollment and the school did not qualify under that criterion.

Vice-Chair Fairclough wondered if the existing school would be demolished. Mr. Davies responded that demolition was included in the cost.

Co-Chair Kelly described the seismic issue. The school had seismic "issues" and the roof was constructed of concrete. An earthquake would cause serious harm. Mr. Davies responded in the affirmative. He added that the city building official notified that the district "not use the building."

Senator Hoffman asked if condemning the school and requiring new construction built with additional space solved the problem. Ms. Nudelman intended to examine the issue and discuss it further. She could not answer the question without additional review.

[10:26:13 AM](#)

Senator Dunleavy commented that the legislation might not be the best way to solve the problem, especially if the issue was regulatory and not statute driven. The Fairbanks issue was very different than what SB 62 addressed.

[10:27:04 AM](#)

AT EASE

[10:28:43 AM](#)

RECONVENED

Co-Chair Meyer felt that the situation was unique to Fairbanks and did not feel SB 62 was the correct vehicle to address the situation.

Vice-Chair Fairclough MOVED to REPORT SB 62 out of committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

SB 62 was REPORTED out of committee with a "do pass" recommendation and with a new fiscal impact note from the Department of Education and Early Development.

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ADJOURNMENT

[10:30:58 AM](#)

The meeting was adjourned at 10:30 a.m.