

SENATE FINANCE COMMITTEE
February 3, 2014
9:02 a.m.

9:02:50 AM

CALL TO ORDER

Co-Chair Meyer called the Senate Finance Committee meeting to order at 9:02 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

Suzanne Armstrong, Staff, Senator Kevin Meyer; Michael Hanley, Commissioner, Department of Education and Early Development.

PRESENT VIA TELECONFERENCE

Richard Komer, Senior Attorney, Institute for Justice, Arlington, VA; Dr. Deena Paramo, Superintendent, Mat-Su Borough School District; Bethany Marcum, Self, Anchorage.

SUMMARY

SJR 9 CONST. AM: EDUCATION FUNDING

SJR 9 was HEARD and HELD in committee for further consideration.

AMENDMENTS TO CONTRACT BETWEEN HAY GROUP, INC. and THE SENATE FINANCE COMMITTEE

[9:04:43 AM](#)

^AMENDMENTS TO CONTRACT BETWEEN HAY GROUP, INC. and THE SENATE FINANCE COMMITTEE

[9:04:47 AM](#)

SUZANNE ARMSTRONG, STAFF, SENATOR KEVIN MEYER, addressed a professional services contract that had been executed in August 2013 between Hay Group, Inc. and the Senate Finance Committee (copy on file). Additionally, committee members had been provided with a copy of a draft amendment proposing to increase the contract amount by \$150,000 for a total not to exceed \$450,027 (copy on file). The proposed amendment would also extend the contract termination date from May 1, 2014 to June 30, 2014. She explained that committee members had additional questions and had requested further analysis of Hay Group, Inc. following the release of the group's final report on December 6, 2013 and its presentation to the Senate Finance Committee on December 10, 2013. After discussions with Hay Group, Inc. it had been determined that an additional \$150,000 would allow analysis work to continue through the current legislative session.

Vice-Chair Fairclough MOVED to AMEND the contract between the Senate Finance committee and Hay Group, Inc. to extend the termination date of the contract to June 30, 2104 and to add an additional authorization to the contract of \$150,000 for total payments under the contract not to exceed \$450,027.

There being NO OBJECTION, it was so ordered.

#sjr9

SENATE JOINT RESOLUTION NO. 9

Proposing amendments to the Constitution of the State of Alaska relating to state aid for education.

[9:07:28 AM](#)

Senator Dunleavy explained SJR 9. He stated that the resolution was for a constitutional amendment regarding education funding in Alaska. He stated that SJR 9 was introduced the prior year, and had five hearings in the Judiciary Committee. He stated that SJR 9 would change

language in two sections of the constitution. Under Section 1, article 7, "no money shall be paid from public funds for the direct benefit of any religious or other private educational institution"; and Section 6, "however nothing in this section shall prevent payment from public funds for the direct educational benefit of students as provided by law" shall be removed.

9:08:36 AM

AT EASE

9:09:55 AM

RECONVENED

Senator Dunleavy noted that the fiscal note attached to the bill was \$1,500, and the second page of the fiscal note showed that the fiscal note could be raised to \$22,000.

9:10:20 AM

AT EASE

9:10:35 AM

RECONVENED

Senator Dunleavy said that the fiscal note would be \$15,000 for one sheet, and \$22,000 for two sheets. He stated that the purpose of the resolution was to help people who were examining alternative forms of education. He shared that there were many public/private partnerships from the pre-K level to the Department of Education and Early Development (DEED). He remarked that there were some private, for-profit, and/or religious vendors that were associated with the growing homeschool population. He referred to a homeschooling law that became effective in the mid-nineties that allowed Alaskans to detach themselves from the public school system. He stated that shortly after that law was enacted, some school districts formed homeschool programs to meet the needs of those that had left the system. As a result, the homeschool, correspondence, and charter schools were some of the fastest growing segments of education in Alaska. In order to grow the programs further, and involve more public/private partnerships, the language of the constitution must be changed. He used Brigham Young University (BYU) as an example of a religious institution that taught academic courses, and was not used to deliver religious instruction. He explained that the courts in Alaska had ruled consistently that the funds could be

distributed in a direct and indirect manner. He shared that the drafters of the original constitution had intentionally left out the concept of "indirect" on purpose, because they believed that there would be occasions which the state would need to partner with private and/or religious entities to help children. He felt that it was time to amend the constitution in order to meet the very diverse needs of Alaska's student populations, and to outline details of the post-secondary offerings. He felt that amending the constitution would eliminate further question regarding the use of public funds for education. He alleged that lawsuits would be filed in the future in order to stop some practices that would benefit Alaskans. He urged the committee to move the bill from committee, so Alaskans could have an opportunity to weigh in on the education system and constitution.

9:15:08 AM

Senator Olson wondered why "indirect" was not included in the constitution. Senator Dunleavy responded that there had been discussion during the constitutional convention regarding the inclusion of "direct", "indirect", or neither word included. He felt that there had been a compromise to keep the word "direct" in the language. He understood that many of the original drafters felt that there should not be a direct link between the state and/or religious educational entities. He stated that the original drafters did not include "indirect", because they wanted to provide an opportunity for future legislatures to create programs that help children that may be in orphanages, foster care, or long-term hospital residential facilities to possibly receive an education that may stem from a partnership with a religious organization.

Senator Hoffman looked at the second sentence of the bill which states, "public funds for the direct educational benefit of students, as provided by law." He wondered if there was anticipation for defining how the provision would be implemented. Senator Dunleavy responded in the affirmative, and furthered that SB 100 addressed a provision. He explained that SB 100 would be program that would take place as a result of the language change in the constitution. SB 100 was an expanded public home-school correspondence law. He explained that SB 100 would allow individuals to become part of the homeschool process could enroll in funding. SB 100 would also allow for private

and/or religious educational vendors to be recognized as legitimate educational vendors.

Senator Olson queried the current version of the resolution.

9:19:29 AM

AT EASE

9:20:06 AM

RECONVENED

Co-Chair Meyer declared that the version of the resolution being discussed was SJR 9, version U.

Senator Dunleavy stated that the recognized vendors under SB 100 could be any of the various private or public educational product distributors. He remarked that the individual vendors were not held to state standards. The Individual Learning Plan (ILP), which governs the child's education, would be held against the state standard. He explained that when a private educational service was purchased, and that coursework helped support the ILP for each student in Alaska. He remarked that the ILPs were geared to ensure proficiency in the standards.

Co-Chair Kelly asked for a restatement of the explanation. Senator Dunleavy responded that the public school system currently purchased various learning tools from private companies, like pencils and computer systems. He stated that those items were resources to support a child's education. He remarked that the resources did not need to be aligned to state standards, rather they are tools that were used to support the child's educational plan. He remarked that homeschooled children were still required to align with the state standards, and the parents were responsible to ensure that the purchased materials supported that goal.

Co-Chair Meyer wondered how many states had some sort of version of the proposed program. Senator Dunleavy looked at the website, <http://www.edchoice.org/School-Choice/School-Choice-Programs>, and stated that there were approximately 26 states with 42 programs. He explained that the programs were self-contained, and did not spread beyond the border of the program. He stated that the website outlined the specific boundaries of each program.

9:25:35 AM

AT EASE

9:29:20 AM

RECONVENED

9:29:46 AM

Co-Chair Meyer asked for further information regarding other states that had implemented similar programs. Senator Dunleavy responded that approximately 26 states had about 42 programs. He explained that some of the programs in other states had tax credits, scholarships, or a combination of the two. All of the programs were self-contained, and pointed out that every state had a constitution that outlined some form of school choice. He stated that there were many programs that were over 100 years old. Each program was very different, and had different targets and missions. He stressed that without legislative ruling, the constitutional language had no effect. He felt that there was a program in SB 100 which he believed would be effective, but the constitution must be amended first. He felt that SB 100 would extend public education to meet the needs of more Alaskans. He stated that he found no case wherein the program "spun out of control."

9:33:15 AM

Vice-Chair Fairclough asked for a restatement of comments related to the first amendment and the establishment clause. Senator Dunleavy replied that the US constitution did not prevent public moneys from being spent on private and/or religious education. He stated that the first amendment's establishment clause prevented a state from favoring one religion over another. He stated that Senator Rubio from Florida had recently proposed a national educational voucher program, because it was constitutional under the US constitution.

Co-Chair Meyer noted that there were various programs for children for a wide range of types of children within Alaska. Senator Dunleavy stressed that SJR 9 did not create any program. He restated that the language could pass, but it required legislative action in order to create a program.

Co-Chair Meyer stressed that the only decision before the legislature was to decide whether or not the constitutional amendment should go to the vote of the people.

Senator Olson wondered how many states enacted programs, and then withdrew from the programs. Senator Dunleavy agreed to provide that information.

[9:38:52 AM](#)

AT EASE

[9:44:30 AM](#)

RECONVENED

MICHAEL HANLEY, COMMISSIONER, DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT, understood that this conversation had been held in the legislature for many years. He stated that the governor supported the resolution, with the understanding that parents could make better decisions for their children than the government.

Vice-Chair Fairclough asked for comment regarding the concern over whether or not the allocation for the public school system would be disrupted while the constitutional amendment was voted on. Commissioner Hanley stated that SJR 9 would not adjust the funding; it would only speak to removing part of the constitutional language and allowing the constituent of Alaska to vote on that amendment. He furthered that he could not speak on any fiscal component of SJR 9.

[9:46:36 AM](#)

Senator Olson queried the perspective of SJR 9 from the various school districts across the state. He specifically wondered if the rural areas were more in favor of the resolution than urban areas, and vice versa. Commissioner Hanley responded that the issue was not the main concern in rural Alaska, because opportunities for choice were potentially limited. He remarked that it was difficult for many communities to determine how this issue would make an impact, because they did not have access to a private entity to use the potential voucher.

In response to a question from Senator Olson, Commissioner Hanley replied that he did not see the concern being

related to the impact on children. He stated that the concern was mostly focused on the funding.

[9:51:01 AM](#)

RICHARD KOMER, SENIOR ATTORNEY, INSTITUTE FOR JUSTICE, ARLINGTON, VA (via teleconference), announced that the Institute for Justice had helped to pass and defend most of the legislation that Senator Dunleavy addressed. He explained that most of the time, the legislation was only challenged by teachers unions, school boards associations, and sometimes by various public interest law firms that believe in a restrictive form the separation of church and state. He addressed the legal aspects of modifying the constitution. He stated that the resolution would make possible the school programs that were already available in other states. He stated that the language in Alaska's constitution was more restrictive than the federal constitution. He explained that the programs complied with federal constitutional guarantees, but did not comport with Alaska's education article, because of the way it was interpreted by the Alaska Supreme Court. When a Supreme Court provides a definitive interpretation of constitutional language, there are only two ways that interpretation could be changed: 1) the state Supreme Court must reverse itself. This was highly unlikely, because it was unlikely that the legislature pass a law which raises the issue of constitutionality. The justices would most likely follow their previous precedent, which in this case was the Sheldon Jackson case from 1979; and 2) a constitutional amendment that changes the underlying language that the Supreme Court had interpreted in order to overrule the decision. He felt that the original language of the Alaska constitution, which was interpreted in the Sheldon Jackson case, permits school program. He explained that the language spoke to direct aid to private or religious institutions. He felt that the word "direct" was considered institutional aid or a "grant." He stated that the Alaska Supreme Court interpreted that language to extend to aid to students, which was a very different action. He explained that the Sheldon Jackson ruling prohibited a program that would have assisted college students in Alaska. He felt that the Supreme Court decision that went too far, and had an inhibiting effect on the legislature's ability to do work that other states had routinely followed. He offered that virtually every other state had a higher education scholarship program using

state money to help students attend both public and private colleges within the state.

[9:58:29 AM](#)

Senator Dunleavy wondered if SB 100 would pass a constitutional muster. Mr. Komer replied that the Sheldon Jackson ruling was extremely broad. He stressed that the beneficiary should be considered the student, and then the student can use that money to purchase individual educational services.

Senator Dunleavy stated that Colorado's constitution's language could be considered much more restrictive than Alaska's constitution, but Colorado had recently instituted a school choice program. He asked for information regarding that summation. Mr. Komer explained that Colorado interpreted its constitution the opposite to the Sheldon Jackson case. He stated that, in 1980, the Colorado Supreme Court interpreted a more restrictive constitutional provision to permit aid to students to attend private institutions.

Senator Olson asked Mr. Komer if he thought the Supreme Court would come to a different conclusion, if the Sheldon Jackson case would occur in 2014. Mr. Komer responded that he did not believe that the Supreme Court would come to a different conclusion. He furthered that the court would most likely come to the same conclusion, because the lawyers and judges followed the principle of "it's been decided." Generally speaking, the courts would continue and follow the decisions of their predecessors.

[10:04:37 AM](#)

Senator Olson restated his question. He specifically wondered if the Supreme Court would reach the same decision in the present day, if that precedent had not already been set. Mr. Komer replied that it was highly unlikely that a state supreme court would interpret the word "direct" to preclude students. He felt that the court would allow children to use state funds for a private educational service. He felt that the Sheldon Jackson case ruling was wrong.

Vice-Chair Fairclough wondered if school choice decisions had been overturned in other states. Mr. Komer responded

that there were two programs that had been discontinued because of adverse court decisions.

[10:09:48 AM](#)

Vice-Chair Fairclough queried the negative effects of the funding available for parents. Mr. Komer replied that a scholarship program was substantially less provided to the student than it costs the state and local governments. Therefore, there was very little shrinkage in the public education budget. He furthered that, because only a fraction of the state aid followed the child to fund the scholarship, the per capita expenditures for public school students were often increased.

Vice-Chair Fairclough wondered if Mr. Komer had any experience in looking at the migration for areas that have small populations. Mr. Komer responded that he did not know about that issue, but he stated that for extremely isolated areas distance learning were originally pioneered for remote rural areas.

[10:15:07 AM](#)

DR. DEENA PARAMO, SUPERINTENDENT, MAT-SU BOROUGH SCHOOL DISTRICT (via teleconference), stated that the Mat-Su School District served over 17,800 students in 45 schools that had unique and diverse programs to serve the youth of the Mat-Su Valley community. She shared that the Mat-Su was a successful school district that met the needs of its community through innovation, a sense of renewal, public school choice, and customer service. She stressed that the Mat-Su community was supportive of its public school system. She explained that the Mat-Su had various school sites with small, one-room school houses that serve children K-12 in one community; and five large comprehensive high schools that serve as neighborhood schools in other borough communities. The Mat-Su had special mission schools that focused on science and engineering; six charter schools; a renowned career and technical high school; and sixteen large elementary schools that serve over 400 students each. In addition, the Mat-Su had a central school serving over 1500 homeschool students throughout the borough. Most recently, Mat-Su School District opened the first middle college in the state located on a UAA campus that offered an onsite college experience for high school juniors and seniors.

[10:21:47 AM](#)

Senator Dunleavy wondered if the school district feared a constitutional amendment on the ballot. Dr. Paramo responded that the school board had not weighed in on the issue, but the administration and leadership in the schools looked forward to being the best in the state.

Senator Dunleavy wondered if private vendors were used to support the ILPs. Dr. Paramo replied that most of the companies were private vendors.

Senator Bishop felt that Dr. Paramo's remarks indicated that there was no problem regarding school choice for children in the Mat-Su. Dr. Paramo replied that the district looked to find what people were seeking. She stated that the Mat-Su School District did not pass judgment; she just wanted good education for children.

Senator Bishop wondered if the Mat-Su School District had experienced any layoffs of teachers, or if she was anticipating any future layoffs of teachers. Dr. Paramo responded that every year the district faces layoffs.

Senator Bishop commented that he was glad to hear that the flux chord welding program was still ongoing, because those welders may be needed in the near future.

[10:25:35 AM](#)

Co-Chair Meyer felt that the environment of competition created new programs, and was one of the advantages of school choice. He wondered if the inclusion of a private school system would have a negative effect in the Mat-Su region. Dr. Paramo replied that it would not have a negative effect. She remarked that people were making choices for many different reasons regarding education.

BETHANY MARCUM, SELF, ANCHORAGE (via teleconference), testified in support of SJR 9. She hoped that the committee would allow Alaskans to vote on the constitutional amendment. There were many polls that showed that Alaskans wanted the opportunity to vote on the issue. She felt that the worst thing that would happen with the passage of the amendment would be that Alaskans get more opportunities. She stressed that there were many issues facing education

in Alaska, and felt that it was time to discuss the many possibilities for children. If SJR 9 would pass, the possibilities for the legislature would be available to address the education issues.

SJR 9 was HEARD and HELD in committee for further consideration.

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ADJOURNMENT

10:32:36 AM

The meeting was adjourned at 10:32 a.m.