

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 25, 2013

1:34 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Lesil McGuire, Vice Chair
Senator Fred Dyson
Senator Donald Olson
Senator Bill Wielechowski

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARING

Select Committee on Legislative Ethics

H. Connor Thomas

- CONFIRMATION ADVANCED

SENATE BILL NO. 72

"An Act clarifying that the Alaska Bar Association is an agency for purposes of investigations by the ombudsman; relating to compensation of the ombudsman and to employment of staff by the ombudsman under personal service contracts; providing that certain records of communications between the ombudsman and an agency are not public records; relating to disclosure by an agency to the ombudsman of communications subject to attorney-client and attorney work-product privileges; relating to informal and formal reports of opinions and recommendations issued by the ombudsman; relating to the privilege of the ombudsman not to testify and creating a privilege under which the ombudsman is not required to disclose certain documents; relating to procedures for procurement by the ombudsman; relating to the definition of 'agency' for purposes of the Ombudsman Act and providing jurisdiction of the ombudsman over persons providing certain services to the state by contract; and amending Rules 501 and 503, Alaska Rules of Evidence."

- HEARD AND HELD

SENATE JOINT RESOLUTION NO. 9

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

- HEARD AND HELD

CS FOR HOUSE BILL NO. 69(JUD)

"An Act exempting certain firearms, firearm accessories, and ammunition in this state from federal regulation; declaring certain federal statutes, regulations, rules, and orders unconstitutional under the Constitution of the United States and unenforceable in this state; providing criminal penalties for federal officials who enforce or attempt to enforce a federal statute, regulation, rule, or order regulating certain firearms and firearm accessories in this state; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 72

SHORT TITLE: OMBUDSMAN

SPONSOR(s): SENATOR(s) COGHILL BY REQUEST

03/11/13	(S)	READ THE FIRST TIME - REFERRALS
03/11/13	(S)	JUD, FIN
03/22/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/22/13	(S)	Scheduled But Not Heard
03/25/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SJR 9

SHORT TITLE: CONST. AM: EDUCATION FUNDING

SPONSOR(s): SENATOR(s) DUNLEAVY

02/13/13	(S)	READ THE FIRST TIME - REFERRALS
02/13/13	(S)	EDC, JUD
02/15/13	(S)	EDC REFERRAL REMOVED
02/15/13	(S)	FIN REFERRAL ADDED AFTER JUD
02/15/13	(S)	UPHOLD CHANGE TO REFERRALS Y11 N4 E4 A1
03/13/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/13/13	(S)	Scheduled But Not Heard
03/15/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/15/13	(S)	Heard & Held
03/15/13	(S)	MINUTE(JUD)
03/18/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/18/13	(S)	Heard & Held

03/18/13 (S) MINUTE(JUD)
03/20/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/20/13 (S) -- MEETING CANCELED --
03/22/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/22/13 (S) Heard & Held
03/22/13 (S) MINUTE(JUD)
03/25/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

H.CONNOR THOMAS, Appointee
Select Committee on Legislative Ethics
Nome, Alaska

POSITION STATEMENT: Presented information related to his confirmation hearing.

BETH LEIBOWITZ, Assistant Ombudsman
Office of the Ombudsman
Juneau, Alaska

POSITION STATEMENT: Provided information related to SB 72.

STEVE VAN GOOR, Bar Counsel
Alaska Bar Association (ABA)
Anchorage, Alaska

POSITION STATEMENT: Answered questions related to SB 72.

LINDA LORD-JENKINS, Ombudsman
Alaska State Ombudsman
Anchorage, Alaska

POSITION STATEMENT: Commented on SB 72.

MAUREEN VAN WAGNER, Special Education Teacher
East High School
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SJR 9.

TIM PARKER, Teacher
Lathrop High School
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to SJR 9.

TODD HEINMAN, Principal
Anvil City Science Academy (ACSA)
Nome, Alaska

POSITION STATEMENT: Testified in opposition to SJR 9.

MIKE HANLEY, Commissioner

Department of Education and Early Development (DEED)
Juneau, Alaska
POSITION STATEMENT: Answered questions related to SJR 9.

SENATOR MIKE DUNLEAVY
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SJR 9.

ACTION NARRATIVE

[1:34:05 PM](#)

CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:34 p.m. Present at the call to order were Senators McGuire, Dyson, and Chair Coghill. Senators Olson and Wielechowski arrived soon thereafter. He explained that public testimony on HB 69 would be held at another time.

CONFIRMATION HEARING **Select Committee on Legislative Ethics**

[1:34:59 PM](#)

CHAIR COGHILL announced that the first order of business would be a confirmation hearing for H. Connor Thomas for the Select Committee on Legislative Ethics.

He noted the arrival of Senator Olson.

[1:35:56 PM](#)

CHAIR COGHILL requested that Mr. Thomas explain why he would like to continue to serve on the Select Committee on Legislative Ethics.

H. CONNOR THOMAS, Appointee, Select Committee on Legislative Ethics, presented information related to his confirmation hearing. He related that he has enjoyed serving on this committee since 1998. It was an opportunity to serve the public.

CHAIR COGHILL noted that he served with Mr. Thomas and would recommend him to the full body for confirmation.

[1:38:09 PM](#)

SENATOR MCGUIRE thanked Mr. Thomas for his years of service on the Select Committee on Legislative Ethics.

SENATOR MCGUIRE moved to forward the name H. Connor Thomas to the full legislative body, with individual recommendations, to serve on the Select Committee on Legislative Ethics.

CHAIR COGHILL found no objection and announced that the committee would forward Mr. Thomas's name to the full body for confirmation. He thanked Mr. Thomas for his work.

He noted the arrival of Senator Wielechowski.

SB 72-OMBUDSMAN

[1:39:14 PM](#)

CHAIR COGHILL announced the consideration of SB 72.

BETH LEIBOWITZ, Assistant Ombudsman, Office of the Ombudsman, introduced herself and stated that Ombudsman Linda Lord-Jenkins was available on-line to answer questions. She asked the chair how he would like her to proceed.

CHAIR COGHILL requested an overview of the bill.

MS. LEIBOWITZ explained that it has been about 20 years since the ombudsman's office has had substantive revision to its enabling legislation. She related that changes need to be made to the confidentiality provisions. The first request is to amend the testimonial privilege to express that the ombudsman's office does not testify in court, produce documents, attend depositions, or go to administrative adjudications, except as necessary to enforce provisions of the Ombudsman Act.

The second request is to have confidentiality extended to communications with the executive branch agencies that are investigated so that those communications can be taken out of the public records realm. The current statute requires the ombudsman's office to provide a confidential preliminary report to the agency under investigation. The agency cannot release that report to the public, but there is no similar prohibition for all the correspondence leading up to that confidential report.

CHAIR COGHILL asked if that is found in Sections 4 and 5.

MS. LEIBOWITZ said that would be Section 4. Section 5 deals with attorney/client privilege, and the ombudsman's office does not have access to attorney/client privileged documents.

She restated that the ombudsman's office requests that if an agency offers material to explain its actions, that information be held confidential.

MS. LEIBOWITZ said the ombudsman's office is also requesting a statutory provision that provides for an informal investigative report - something between a complaint that is closed as premature or declined, and a full, formal investigative report signed by the ombudsman. This request is found in Sections 6 through 9.

She discussed the procurement statute, which is outdated and needs to be brought into alignment with the legislative procurement policies.

MS. LEIBOWITZ described two personnel housekeeping provision requests. One is to unfreeze the ombudsman's salary, which is currently set by statute at Step A, Range 26. The ombudsman's office is the only legislative agency where the salary is set at a given range and frozen. The request is that the range is set at 26, with the ability to move through the steps.

[1:45:24 PM](#)

The second personnel request is to clarify that the ombudsman's office can hire personal services contract employees just as the rest of the legislative branch can. Current statutory language is not clear regarding that issue.

CHAIR COGHILL responded favorably to the salary issue recommendation. He inquired if the bill would take what is currently in place for the legislature and apply it to contract procedures and the procurement code for the ombudsman's office.

MS. LEIBOWITZ agreed.

[1:46:43 PM](#)

SENATOR OLSON asked why the confidentiality clause needs to be changed. He asked if there had been problems.

MS. LEIBOWITZ replied that there have been very few problems, but a recent request brought to light that the confidentiality statute needed clarification.

[1:47:54 PM](#)

SENATOR OLSON asked if the ombudsman's position has been difficult to fill due to the salary issue.

MS. LEIBOWITZ said she did not think so, but because of term limits a new ombudsman would have to be appointed in a few years.

CHAIR COGHILL asked why the range was exempted from step increases.

MS. LEIBOWITZ said she was not sure. She explained the history of the ombudsman's salary since the Ombudsman Act in 1975. In 2001, the Office of Victim's Rights was created and the victim's advocate received exactly the same compensation as the ombudsman - Range 26, Step A. Last year, the victim's rights statute was amended to remove the "Step A" limiting language, and the ombudsman's office is asking for parity.

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MS. LEIBOWITZ explained that the bill provides for two areas of jurisdictional determination from the legislature. The first is found in Section 1 and requests a determination whether or not the ombudsman's office is supposed to investigate complaints about the Alaska Bar Association (ABA). She explained that the matter has remained unresolved since 1980 when it first came up. She pointed out that the Alaska Ombudsman has jurisdiction over the administrative portions of the judicial branch. She related that she has done the analysis used by the Alaska Supreme Court to determine what is a state agency, and it is not clear if the ABA is or not. She could not predict what a court would rule about the ABA's status relative to the Ombudsman Act. She requested that the legislature make the call.

SENATOR MCGUIRE spoke of concerns about changing statute so the ABA is under the auspices of the ombudsman's office. She asked what would be the nature of an ombudsman complaint where access to ABA records would be sought.

MS. LEIBOWITZ replied that there were only about a dozen complaints against the ABA in the last decade. The majority were from people filing a grievance against their attorney, usually in a criminal defense matter. She explained for those cases, in order to do a full investigation, the ombudsman's office would have to access ABA records. This would appear to create a problem for the ombudsman's office because ABA rules appear to restrict access.

SENATOR MCGUIRE asked what trade associations can be investigated by the ombudsman's office, such as the Alaska

Medical Association, the Alaska Dental Association, and the Alaska Nurses Association.

MS. LEIBOWITZ explained that their office does not have jurisdiction over the aforementioned agencies. She stated that they have jurisdiction over state licensing agencies, such as the Alaska Medical Board, the Alaska Nursing Board, and many occupational licensing boards within the Department of Commerce, Community and Economic Development.

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CHAIR COGHILL gave an example of a person who has trouble with a medical provider, is not satisfied with the medical board's review, and takes their complaint to the Office of the Ombudsman, who will deal with the complaint at the board level.

MS. LEIBOWITZ said often the ombudsman is not able to satisfy the complainant because he/she is not able to talk about confidential material.

CHAIR COGHILL asked what the ombudsman would do if he/she found a board operated improperly.

MS. LEIBOWITZ said the ombudsman would be able to make recommendations to the medical board at the division level and at the professional level.

CHAIR COGHILL said that is similar to the ABA in that they police their own.

MS. LEIBOWITZ agreed that they act as a licensing agency.

CHAIR COGHILL asked what the next recourse was for someone who did not agree with an attorney and appealed to the ABA, but was not satisfied.

MS. LEIBOWITZ explained that there are several layers of review within the ABA. After that the person can request the Alaska Supreme Court to review the matter.

[1:57:18 PM](#)

CHAIR COGHILL said he understood that dues-paying entities have oversight by the Alaska Supreme Court. He inquired how the ABA could be considered a state agency when it does not receive state funding.

MS. LEIBOWITZ said it was a call the legislature would have to make. She agreed that the ABA does not receive state funding, but it does conduct state licensing. The lack of public funding is one of the factors in favor of the ABA not being considered a state agency.

CHAIR COGHILL said it creates an interesting conundrum because lawyers who become judges are members of the ABA.

MS. LEIBOWITZ highlighted that the ABA is not a voluntary association.

CHAIR COGHILL compared it to legislators sitting on the Select Committee on Legislative Ethics.

MS. LEIBOWITZ offered her understanding that three members of the Board of Governors of the Alaska Bar Association are public members appointed by the governor.

CHAIR COGHILL asked if there is an avenue other than the ombudsman to deal with ABA issues; if the ABA is not serving with integrity, there should be another authority.

MS. LEIBOWITZ emphasized that it is a matter of clarifying that the Office of the Ombudsman has the authority to investigate the ABA. She offered to provide the committee with the analysis of the history of the issue and the potential pitfalls regarding ABA rules versus the Ombudsman Act.

CHAIR COGHILL said he would like the information. He requested Mr. Van Goor's opinion.

STEVE VAN GOOR, Bar Counsel, Alaska Bar Association (ABA), agreed with Ms. Leibowitz's analysis of the ABA's oversight abilities. For example, if someone makes a complaint against a lawyer, that person can have the ABA's decision reviewed by a member of the Board of Governors. If a complainant still disagrees, he/she can appeal to the Alaska Supreme Court. He added that the bar rules outline a specific path for the investigation of complaints and the prosecution of unethical conduct.

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MR. VAN GOOR spoke of legislative performance audits of the ABA since 1980, all of which have resulted in a recommendation of continuation of the ABA as the agency responsible for the

admission and discipline of lawyers. He stated that the ABA is responsible to all three branches of state government.

He said of the 3,079 complaints that have come before the ABA, only a dozen or so made it to the ombudsman's office. He spoke of the adverse public policy effect if confidential investigations are made public. Lawyers would be less candid if they knew their clients' complaints could be made public. He explained a concern of the Public Defender Agency.

He emphasized that due to privacy concerns, the ABA would have to take this issue to the Alaska Supreme Court if the provision were to be adopted. He concluded that the ABA should not be subject to the Office of the Ombudsman.

[2:07:20 PM](#)

CHAIR COGHILL stressed the importance of the individual's ability to make a complaint and the difficulty for a person to have to go to the Alaska Supreme Court. He asked for an example of how an individual could have a complaint resolved by means of due process.

MR. VAN GOOR explained the steps to address complaints. He said the two most common complaints are neglect and failure to communicate, or "poor customer service." The first step is to ensure that the complaint meets the minimum requirements. Then the complaint is sent to the lawyer for a response. The lawyer may respond and typically does. The ABA must prove that there is clear and convincing evidence that there are grounds for the complaint. He noted that lawyers often don't realize that neglect and failure to communicate cause most of the problems.

He related that the next step is that the response from the lawyer is given to the complainant. Then, the ABA must decide if an investigation is warranted. He pointed out that the ABA does more than most jurisdictions and will provide an explanation to the client. Some clients will not be satisfied and will then have their files reviewed by the board liaison who will decide whether an investigation is warranted. Those who are not satisfied can appeal to the Alaska Supreme Court.

He confirmed that appealing to the Alaska Supreme Court is not easy for the client to do.

[2:12:26 PM](#)

MR. VAN GOOR related that since the Anderson decision, which gave people the authority to appeal to the Alaska Supreme Court,

only about a dozen have done so. After the court accepts the matter for an original review, the ABA sends the entire file to the court and responds to the allegations.

CHAIR COGHILL asked for a definition of "original review" and an explanation of what type of issue ends up under an original review.

MR. VAN GOOR explained that it is an original application found under the appellate rules that is a request for review by the court that does not conveniently fall into other categories in the appellate rules. It is not a direct appeal, a petition for review, or a petition for a hearing. It is an original matter subject to the court's authority, in which a person asks the court to review the actions.

CHAIR COGHILL asked what types of issues would end up under that type of review.

MR. VAN GOOR said issues such as when a lawyer fails to communicate with a client or neglects a client matter.

CHAIR COGHILL observed that these would not involve ethical questions, rules of procedure, or criminal behavior.

MR. VAN GOOR clarified that most complaints come from domestic relations cases or from prisoners who complain about ineffective representation. Under the rules of court, these individuals have the ability to ask for post-conviction relief, a process in which representation is reviewed and action can be taken to address attorney shortcomings. The individuals often fail to realize that filing a complaint usually ends in no relief. The ABA can take licensing action against a defense lawyer, but cannot affect the outcome of a judgment.

He explained two things lawyers do that are unique to the profession. He discussed ethics issues and rule violations. He referred to cases in the newspapers that involve conduct that is clearly wrong. He stressed that if a liaison indicates that an investigation should be opened, it is opened. He noted that the court has never reversed a decision made by the ABA.

[2:19:13 PM](#)

CHAIR COGHILL observed that the ABA is the single place for credentialing to practice law and yet the state seems to have a hand in it without having full authority.

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SENATOR WIELECHOWSKI disclosed that he is a member of the Alaska Bar Association.

CHAIR COGHILL commented that he has served on the Senate Judiciary Committee with many members of the ABA. He noted the importance of ABA membership to Alaskans.

LINDA LORD-JENKINS, State Ombudsman, Office of the Ombudsman, commented that her office is looking for legislative guidance on SB 72.

[CHAIR COGHILL held SB 72 in committee.]

SJR 9-CONST. AM: EDUCATION FUNDING

[2:22:19 PM](#)

CHAIR COGHILL announced that the next order of business would be SJR 9. He noted the committee heard the bill previously. He said he invited Commissioner Hanley from the Department of Education and Early Development (DEED) back to answer questions.

SENATOR WIELECHOWSKI stated that he has questions for Commissioner Hanley.

[CHAIR COGHILL opened public testimony.]

MAUREEN VAN WAGNER, Special Education Teacher, East High School, testified in opposition to SJR 9. She gave reasons why the bill is not good. The base student allocation (BSA) hasn't been increased since 2010 and teachers are already expected to do more with less. Bills like this will continue that trend and make her job even more difficult. She didn't support using public tax dollars to fund private schools, and she disputed the notion that voucher programs actually increase choice.

TIM PARKER, Teacher, Lathrop High School, testified in opposition to SJR 9. He talked about how challenging voucher programs would be for the state's education system. He maintained that research on vouchers does not show that they increase student performance. He dispelled the idea that vouchers provide more school choice. He said Alaska public schools already provide a tremendous amount of choice, and they accept all students.

MR. PARKER discussed the six principles idea for improved student learning: professional learning communities, peer

review, extra time for students, the evaluation system, family/school partnerships, and a rich and varied curriculum. He said that SJR 9 in its current form and opening the constitution to include private and religious schools does not meet the threshold of improved student learning.

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SENATOR DYSON asked how Monroe, a private school, compares to Lathrup in academic achievement and spending.

MR. PARKER said he didn't have that information.

[2:29:40 PM](#)

TODD HEINMAN, Principal, Anvil City Science Academy (ACSA), testified in opposition to SJR 9. He said that ACSA is a charter school that has operated for 15 years and continues to provide parental choice within the public school system. He maintained that using public funds for religious and private educational institutions will dilute public dollars and public school students will be negatively affected.

MIKE HANLEY, Commissioner, Department of Education and Early Development (DEED), offered to answer questions related to SJR 9.

[2:31:35 PM](#)

SENATOR WIELECHOWSKI asked if the state was currently expending funds unconstitutionally to educational institutions.

COMMISSIONER HANLEY said the areas that seemed unconstitutional were corrected.

SENATOR WIELECHOWSKI asked if it was his opinion that SJR 9 isn't needed because of unconstitutional state monies being expended.

COMMISSIONER HANLEY said he would need clarification about specific expenditures.

SENATOR WIELECHOWSKI referred to the list of programs in the sponsor's packet.

CHAIR COGHILL noted that several programs such as the Advantage Scholarship were possibly outside the commissioner's purview.

COMMISSIONER HANLEY deferred to legal counsel regarding the Alaska Performance Scholarship and the Alaska Advantage [Education Grant].

SENATOR WIELECHOWSKI asked if he had received legal advice that those expenditures are either constitutional or unconstitutional.

COMMISSIONER HANLEY said they have been deemed constitutional.

SENATOR WIELECHOWSKI asked if he was aware of any of the expenditures being made by the state for educational purposes that are unconstitutional.

COMMISSIONER HANLEY said not that he was aware of.

[2:33:45 PM](#)

SENATOR MCGUIRE asked if the requirements for charter schools to comply with things like school size and OSHA standards were put in through the regulatory process or statute.

COMMISSIONER HANLEY said primarily statute. In Alaska, charter schools are under the umbrella of local school districts and their organization and governance is the same as a traditional neighborhood school.

SENATOR MCGUIRE asked if voucher programs receiving public monies would be required to comply with OSHA and Individuals with Disabilities Education Act (IDEA).

COMMISSIONER HANLEY said he wasn't familiar with OSHA, but they would have to comply with IDEA requirements. The courts have defined in four ways DEED's responsibilities with regard to establishing and maintaining a system of public education. Those are oversight and support, creating standards, assessment for those standards, and funding. It would be difficult to meet the constitutional obligations if the private institutions didn't meet those accountability measures. It becomes a discussion for the legislature if this bill moves forward.

[2:36:55 PM](#)

SENATOR MCGUIRE emphasized that if public funds go into an educational system of any sort there will be strings attached to comply with the requirements of federal law and standards.

She asked if he could envision letting public schools erode to the point of being nonfunctional.

COMMISSIONER HANLEY responded that it's a constitutional responsibility to adequately fund and maintain the educational system. There's a responsibility to meet the needs of all students.

[2:40:06 PM](#)

SENATOR MCGUIRE asked about the notion of setting aside a base amount to meet the constitutional requirement for public institutions.

COMMISSIONER HANLEY said it was a possibility, and the responsibility for funding resides with the legislature.

[2:41:24 PM](#)

SENATOR WIELECHOWSKI asked if a private school that accepted vouchers would be required to accept students with disabilities or special needs.

COMMISSIONER HANLEY said it was a legal conversation, but students are owed a free and appropriate public education. If public funds go to a private school his expectation was that it would be required to comply with the same requirements as public schools.

CHAIR COGHILL clarified that this wasn't about funding the schools; the policy question is whether students can take funding with them. Then it's a question of how far the requirements can reach, given that funding.

COMMISSIONER HANLEY said that was his understanding and the reason why things like the performance scholarship could go to a faith-based school. The funding is a function of the students.

[2:43:38 PM](#)

CHAIR COGHILL said he wanted to make sure that all the "what if" questions were put on the table and debated.

SENATOR WIELECHOWSKI asked if there was any recourse for taxpayers who don't want their funding to go to religious schools.

COMMISSIONER HANLEY said he did not know.

CHAIR COGHILL commented that there are taxpayers currently who don't agree with a number of things including sex education in public schools.

SENATOR WIELECHOWSKI argued that the state doesn't fund churches.

CHAIR COGHILL mentioned secular humanism as a church issue and a philosophy.

SENATOR WIELECHOWSKI pointed out that the state doesn't fund organized churches.

CHAIR COGHILL said he brought it up as part of the broader conversation.

SENATOR WIELECHOWSKI asked the commissioner if he envisioned placing any parameters on schools that teach particular religious beliefs.

COMMISSIONER HANLEY said he has not considered that yet, but it would be problematic for the state to make such determinations.

[2:46:51 PM](#)

CHAIR COGHILL requested the sponsor to comment on the "what ifs."

SENATOR MIKE DUNLEAVY, sponsor SJR 9, said he was happy to talk about the what ifs for long periods, but that isn't what the bill is about. He referred to the ruling in *Zelman v. Simmons-Harris*, which said it was constitutional for money to go to the children and the families could decide where the child would receive educational services. He described SJR 9 as not being afraid of hearing what the people of Alaska want. He emphasized that the constitution and the educational system belongs to the people and these children belong to their families. He said his intent is not to directly fund religious schools. If people want a voucher it is better done through a tax credit.

SENATOR DUNLEAVY referred to a letter from legislative council and an attorney general report from 2005 about crossing the line between giving public money to private and sectarian educational entities. Many people believe this is currently happening. He cited a correspondence school that allows children to purchase a course from Brigham Young University and tutorial services at Sylvan as examples of potentially crossing the line. He referenced Mr. Nussbaum's testimony during the last hearing about three U.S. Supreme Court cases and opined that the state has a choice. He said his intent is to have a broader education system with public accountability. He said it is the people's

constitution and parents are aware of their choices. They do not need the legislature to protect them.

He referred to a poll that shows that the people of Alaska would like the opportunity to vote on their constitution regarding this issue.

[2:53:12 PM](#)

SENATOR WIELECHOWSKI commented that numerous times the legislature has overturned the will of the people. The most recent instance was the cruise ship initiative.

SENATOR DUNLEAVY asked if that was a constitutional amendment or a voter initiative.

SENATOR WIELECHOWSKI replied that was a voter initiative. The people voted on the issue, and just a few weeks ago the legislature voted to overturn the will of the people.

He asked if municipalities and local communities would be required to participate if the state decides to have a voucher program.

SENATOR DUNLEAVY said that is a discussion that would have to take place. Vouchers come in a variety of types and he did not know if they follow municipal codes.

[2:56:07 PM](#)

SENATOR WIELECHOWSKI asked if there is recourse if someone felt strongly against using their public dollars for a religious institution.

SENATOR DUNLEAVY replied he did not know, but he had not heard it was a problem in other areas. He cited examples of a municipality running water and sewer lines to a church property and clearing a sidewalk in front of a church.

CHAIR COGHILL said that if the state gave public funds to the direct educational benefit of the student, the real question is if the state could direct the student or family choices.

SENATOR DUNLEAVY said that is possible. He reiterated that he is advocating for an expansion of the public education system where students and their families get to use their education dollars as they see fit as long as the students pass proficiency tests.

[2:58:24 PM](#)

CHAIR COGHILL noted the bill is written to say, "the direct educational benefit" then "as provided by law," meaning that the sponsor's expectation is that a set of rules would follow this direct educational benefit.

SENATOR DUNLEAVY said absolutely. He talked about a tax credit bill he was working on which would include private and/or faith-based educational entities along with a dozen other entities that are currently receiving tax credits. He maintained that the bill would show what a "voucher" would look like. He explained that he was trying to make sure that the millions of dollars currently being spent are for things that are constitutional. He predicted that the future is voucher/tax credit.

CHAIR COGHILL said he wanted to have a record of debate by the committee therefore, he would hold SJR 9 in committee until the next meeting. He closed public testimony.

3:02:12 PM

There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee at 3:02 p.m.