

**ALASKA STATE LEGISLATURE
HOUSE EDUCATION STANDING COMMITTEE**

April 8, 2015

8:02 a.m.

MEMBERS PRESENT

Representative Wes Keller, Chair
Representative Liz Vazquez, Vice Chair
Representative Jim Colver
Representative Paul Seaton
Representative David Talerico
Representative Harriet Drummond
Representative Jonathan Kreiss-Tomkins

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 156

"An Act relating to compliance with federal education laws; relating to public school accountability; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 85

"An Act relating to college and career readiness assessments for secondary students; and relating to restrictions on the collection, storage, and handling of student data."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 156

SHORT TITLE: SCHOOL ACCOUNTABILITY MEASURES; FED. LAW

SPONSOR(S): REPRESENTATIVE(S) KELLER

03/20/15	(H)	READ THE FIRST TIME - REFERRALS
03/20/15	(H)	EDC
03/30/15	(H)	EDC AT 8:00 AM CAPITOL 106
03/30/15	(H)	Heard & Held
03/30/15	(H)	MINUTE(EDC)
04/08/15	(H)	EDC AT 8:00 AM CAPITOL 106

BILL: HB 85

SHORT TITLE: STUDENT DATA & ASSESSMENTS

SPONSOR(S): REPRESENTATIVE(S) REINBOLD

01/28/15	(H)	READ THE FIRST TIME - REFERRALS
01/28/15	(H)	EDC, FIN
04/06/15	(H)	EDC AT 8:00 AM CAPITOL 106
04/06/15	(H)	Heard & Held
04/06/15	(H)	MINUTE(EDC)
04/08/15	(H)	EDC AT 8:00 AM CAPITOL 106

WITNESS REGISTER

MIKE HANLEY, Commissioner
Department of Education and Early Development (EED)
Juneau, Alaska

POSITION STATEMENT: During the hearing on CSHB 156, testified and answered questions.

LES MORSE, Deputy Commissioner
Office of the Commissioner
Department of Education and Early Development
Juneau, Alaska

POSITION STATEMENT: During the hearing on CSHB 156, testified and answered questions.

REPRESENTATIVE LORA REINBOLD
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented CSHB 85, as prime sponsor.

LANCE ROBERTS
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of CSHB 85.

MARGRET MULLINS
Delta Junction, Alaska

POSITION STATEMENT: Testified in support of CSHB 85.

BARBARA HANEY,
North Pole, Alaska

POSITION STATEMENT: Testified in support of CSHB 85.

TANYA HALLIDAY
Nikiski, Alaska

POSITION STATEMENT: Testified in support of CSHB 85.

TARYN LUSKLEET

North Pole, Alaska

POSITION STATEMENT: Testified in support of CSHB 85.

ANN BILLS

Sitka, Alaska

POSITION STATEMENT: Testified in support of CSHB 85.

ACTION NARRATIVE

[8:02:42 AM](#)

CHAIR WES KELLER called the House Education Standing Committee meeting to order at 8:02 a.m. Representatives Seaton, Vazquez, Colver, Drummond, Kreiss-Tomkins, Talerico, and Keller were present at the call to order.

HB 156-SCHOOL ACCOUNTABILITY MEASURES; FED. LAW

[8:02:55 AM](#)

CHAIR KELLER announced that the first order of business would be HOUSE BILL NO. 156, "An Act relating to compliance with federal education laws; relating to public school accountability; and providing for an effective date." [Having been adopted without objection at the meeting of 3/30/15, Version I was before the committee.]

CHAIR KELLER asked the Department of Education and Early Development to provide a zero fiscal note or a clear record as to the department's reasoning. He pointed to the previous indeterminate fiscal note which was based upon the requirement of providing a designation to the public system as a whole, and not upon the potential loss of federal funds which, he opined, is appropriate.

[8:05:11 AM](#)

CHAIR KELLER advised that the first issue is with regard to the requirements within Version I, [AS 14.03.123(c), Section 1, page 2, lines [7]-9, which read:

(5) the methodology used to assign the state public school system a performance designation that

compares the state public school system to public school systems in other states and countries.

CHAIR KELLER conveyed that he has an amendment to delete "and countries." He opined that the fiscal note analysis, page 2, Section 1, implies there is a new requirement. He then referred to AS 14.03.123(a), School and district accountability, which read:

(a) By September 1 of each year, the department shall assign a performance designation to each public school and school district and to the state public school system in accordance with (f) of this section.

CHAIR KELLER pointed out that the issue in question is the state public school system defined in subsection (g), which read:

(g) In this section,
(1) "district" has the meaning given in AS 14.17.990;
(2) "state public school system" means the combination of all public schools, public school districts, and state-operated schools.

[8:07:22 AM](#)

CHAIR KELLER said that currently subsection (f) does not specifically refer to that designation or the standards for that designation for a public school system. He put forth that CSHB 156 asks the basis of the designation given to the public system as a whole, which the department has not been doing. He stated he did not want to list the National Assessment of Educational Progress (NAEP) in the bill as the department may desire a broader or different metric for giving a designation to the public school system. He opined that deleting "and countries," and put on the record that the appropriate intent is for the Department of Education and Early Development (EED) to use NAEP in the public school designation, which will address the indeterminate fiscal note discussion on that section. He advised the analysis does not indicate that the indeterminate fiscal note is based upon the fact that Alaska may lose federal money. He opined that the discussion is a fundamental rights issue that he does not want to get into with HB 156 unless it is absolutely necessary. In the event the federal government had authority under the United States Constitution to tell parents and children that they have to take tests, it would have done so. He reminded the committee that this bill deleted this

(indicated an amount of paper) which is the federal law out of state law, and unwittingly there is one particular regulation which states that Alaska cannot systemically allow students to opt out of tests. He added he would like the committee to consider the discussion as fundamental rights and the school system is in a good position if it can entice parents and students to take tests based upon the benefits. He remarked that he is calling it into question because the requirements that say Alaska cannot systemically exclude any students from these tests is above and beyond the input that the legislature has had, and he is insisting that the legislature has a voice. He added that the people in EED and the United States Department of Education are sincere and have the best interests of children at heart, but this is a fundamental individual and state's rights issue to be addressed.

8:11:45 AM

MIKE HANLEY, Commissioner, Department of Education and Early Development (EED), agreed that the challenge regarding the indeterminate fiscal note falls largely around the component on page 2, Section 1. He advised the department is not attempting to deter this bill based upon the fiscal note, but the challenge is that there are currently district school, district, and state methodologies and use Annual Measureable Objectives (AMOs) derived from No Child Left Behind (NCLB). He noted that states have their own sets of standards and now states have applied for waivers from NCLB, and there is a divergence from a common adequate early progress model in NCLB which, in effect, makes it more difficult to compare states. With regard to how the systems are compared, he noted, there are different sets of standards and different accountability measures. He pointed out that it has been a challenge, particularly with the removal of the compliance to federal law, which potentially removes the responsibility to take NAEP. It is a federal test and he opined he was not certain how to adequately compare Alaska to other states. He offered that NAEP is the one tool that is available, given on bi-annual basis, to fourth and eighth graders, which is a sample that cannot be broken down into schools as it is at state level only, but it does a decent job of comparing states to states. He said, "If that is adequate, we are doing that ... I just am not sure ... I wasn't sure in regards to this, it seems that there is more that truly allows us to compare our systems ... NAEP really doesn't compare systems ... I want to make sure that we match up with what the sponsor's intent is and if there more than a comparison such as NAEP on a bi-annual

basis, we might have to develop something that will allow us to compare."

8:14:41 AM

CHAIR KELLER related that NAEP is sufficient for him and reiterated that the option is open for the department. He offered that his ultimate comparison is an academic comparison which is what NAEP performs, which is limited but also has good credibility. He said that should the department prefer the bill specifies NAEP, the committee will work on an amendment.

8:15:25 AM

COMMISSIONER HANLEY asked whether the removal of the responsibility to comply with federal law makes this silent with regard to compliance with federal law, and not prohibitive.

CHAIR KELLER replied "absolutely," as the United States Department of Education, in 2005 or 2006, explicitly said federal law was not required to be incorporated into state law. Also, EED has stated, and the fiscal note reads, that Alaska is in compliance with federal law. Thereby, by taking it away leaves Alaska in compliance with the federal law, and it does not go beyond that and suggest that the legislature defy the law in any sense unless it gets into the area of threatening individual rights, he said. He pointed to Sec. 6, requiring the department to reevaluate, with the school districts, where the state is on the standards based assessment process. The bill asks that the legislature is involved in the process and offer suggested action in the event laws should be updated. He said, "And if failing our legislative action, everything that is in law stays in place. That is very explicitly said in this bill in Sec. 6."

8:17:43 AM

LES MORSE, Deputy Commissioner, Office of the Commissioner, Department of Education and Early Development, recalled testifying in 2005 on the bill establishing the accountability system.

CHAIR KELLER pointed out that several members on the committee also watched the process.

MR. MORSE advised that in 2005 it became clear what Alaska's accountability system had to be under the Elementary and

Secondary Education Act (ESEA). At that time, in state law was a system called the Alaska Designator System for School Accountability and there were conflicts between the two systems, he explained. It didn't make sense at the time, he related, to have an accountability system that said one thing, and potentially another accountability system that said something else about the schools. The department proposed that one single accountability system be built to meet both state and federal law. Since that time, he said, an accountability system was built that is more in favor of the state's interest over the last two years. He referred to the Alaska School Performance Index which is more on the lines of the state's interest discovered through the department's regulatory process versus the Adequate Yearly Progress (AYP) system. He noted that it is important to understand that within Section 1, it is understood the latitude given to the department to make a decision around accountability. Currently, he remarked, the department performs a statewide accountability system based upon annual measurable objectives. However, he pointed out, it does not compare Alaska to other states, but the department's interest is that NAEP could be utilized. He noted he was uncertain whether that language should be included within the bill as it may cause the department or the legislature to be in a box it may not prefer in the future. He conveyed that NAEP is the only tool that would assist Alaska in a comparison to other states in the most statistically sound manner.

[8:21:26 AM](#)

MR. MORSE advised that NAEP is proctored every two years, in specific grades, and covers English language arts and mathematics. Due to Alaska's population, approximately 50 percent of the student body takes the assessment statewide, he explained. He reiterated another concern of the department is if the federal compliance was removed, and if the state became non-compliant with federal law, the money used to build Alaska's accountability system primarily is federal dollars. Therefore, the cost to the state would be whatever costs it would be to build an accountability system that is separate aside from the federal system. He advised the last time the state went down this path was building the designator system just prior to the NCLB amendments to ESEA. The costs involved were costs for technical design of the system, stakeholder input, and whatever it costs to run the analytics to put that in place. Federal compliance allows utilization of the funds for continuing the system, and does not prohibit Alaska being compliant with federal law, he explained. An unknown cost could be approval of

the standards-based and teacher performance system because if anything there causes the state to go in a completely different direction than now, there could be costs to switching those processes at that time, he stated. He said he was uncertain whether that process would require new legislation as fiscal costs would be attached. He said, "The fiscal note would then be attached to anything that occurred at that time because there were costs that we anticipated in some of those other sections if we had to build a state system and if we had to give up the federal money. And that's why we put the amount of federal money that comes in."

[8:26:52 AM](#)

CHAIR KELLER asked whether Mr. Morse had comments to other sections as he has responses and questions, he asked the committee to join him.

MR. MORSE said he previously pointed out the department's issues with Section 1, and there are no issues with Sec. 2-3. He said issues with Sec. 4, were put on the record as it is receiving clarity around compliance with the federal law. He referred to Sec. 6, approval of standards-based assessments and teacher performance he previously cover as there are issues to be dealt with as it is different from the way the department runs its regulatory process, which is to put things out for a regulatory review and seek input. He noted the department will have to work through how this particular piece works for the department in addressing soliciting regulation response. He pointed to Sec. 5, and advised that the information obtained within the assessments is good information as it tells how Alaska's schools are doing. In the event a large number opts out, it is harder for those schools to advocate for their good solid programs if they are missing a large number of students participating in the assessment, he explained. He said, "That's the argument to have all students assessed, but I also hear the argument that you are making, that ... in this case you want people to have a choice around them and so it is a decision that you have to work through, I guess."

[8:29:53 AM](#)

COMMISSIONER HANLEY added that he agrees with Deputy Commissioner Morse. He referred to AS 14.03.123(h)(2), Sec. 5, page 3, lines 14-18, which read:

(2) ensure that individually identifiable data pertaining to a student collected under this section is stored securely and is only accessible to the student, the student's parents or guardian, the student's teacher, and other individuals in the state with a legitimate need for the information to perform the duties described under this section.

COMMISSIONER HANLEY continued that ensuring the individually identifiable data is the key issue and is a concern he hears around assessments. He explained that assessments are not being taught to the students, but are lessons taking place throughout the year as a measurement on the student's progress. He said if the department can ensure that data is protected, he looks forward to making informed decisions. He expressed his fear that the department has come to a point where it is able to obtain decent data around Alaska, and not just for majority students or Caucasian students, but for all aggregated students. He explained that currently that data goes to students and families, and to the schools. He remarked that the aggregated not identifiable by students goes to the schools as a school report card, which goes to the public. He related his concern that in some of Alaska's small schools in rural Alaska it wouldn't take much for many students to opt out to invalidate data and the state has masked under-performance in the ability to help address those needs. He clarified that he is not advocating against more tests, or against parental rights. He then brought forth the approval of the standards by the legislature, and knowing what it takes to develop standards and "for the legislature to approve." He said he has confidence in legislators, but the legislature and the infrastructure in which it operates appears to be a difficult place to "adequately review the standards that we teach our children." Offering a third grade example, he said there was a standard that says, "a student can identify the meaning of a word based on the context of the sentence and the paragraph." He pointed out that the legislature would question whether that standard was developmentally appropriate, is that measureable, are there scaffolding skills in second grade, first grade, and kindergarten that lead up to that, and whether that builds on the skill needed in fourth grade so ultimately when they are in fifth grade and graduate they have the skills necessary based upon the skills required at universities and career training centers. He cautioned that together with that example, there are many standards and due to the legislature's time frame of 90 days it appears to be a large challenge and responsibility.

8:33:57 AM

CHAIR KELLER requested the amount of NAEP's cost to the state.

MR. MORSE responded that the cost for NAEP administration comes under federal funding, and the costs to individual schools are a small amount of time. He explained that the principal reviews the list of students required to take the tests and determines whether there is a student with a significant cognitive disability, someone sets up the room, and teachers have to deal with some students being pulled from their classroom. The proctors are not active class teachers, but often are retired teachers contracted by NAEP, he remarked.

CHAIR KELLER noted that Mr. Morse pointed out several times that if Alaska is not in compliance there is a financial impact, and reiterated that CSHB 156 does not take the state out of compliance with federal law. Rather, he explained, it burdens EED with further responsibility. He pointed out that education in Alaska is a state constitutional requirement and absolutely not a federal mandate. Education in Alaska is a state driven assessment system and the legislature wants to be convinced in order to convince parents as to what is appropriate and beneficial. In effect, he opined, this goes back to Judge Moore's decision that the legislature was not doing its job in overseeing education, a federally mandated program. Further, he stated, it is written in such a manner that the State Board of Education and Early Development determines regulations for the opt out provision and he is open to passing that responsibility to the school districts and they make it a matter of policy for their districts. He opined it is appropriate that the policy comes from the State Board of Education and Early Development as the board has the responsibility of setting policy for Alaska's statewide system.

8:38:59 AM

REPRESENTATIVE COLVER referred to AS 14.03.124(b), Sec. 6, page 4, lines 4-9, which read:

(b) If the legislature fails to take action on the standards-based assessments or teacher performance standards before the end of the legislative session in which the standards-based assessments or teacher performance standards are submitted to the legislature, or, if submitted during the interim, the standards-based assessments or teacher performance

standards on which the legislature failed to act are approved.

REPRESENTATIVE COLVER noted the concern of obtaining legislative approval, and pointed out that they are approved if the legislature doesn't act. He asked whether that addresses the concerns of the department.

COMMISSIONER HANLEY agreed it does help him as there could simply not be enough time and consequently Alaska's schools would be in limbo. He reiterated that with the relatively short amount of time, the challenge becomes committee members determining whether, within a kindergarten standard, the students should be able to count to 100, or 85. He opined the committee may not want to go there but the challenge becomes huge for the legislature.

[8:40:50 AM](#)

REPRESENTATIVE SEATON said he is unclear how the department will establish regulations, how it submits something to the legislature, what the procedure is should the legislature fail to act, and asked for clarification.

CHAIR KELLER suggested Representative Seaton offer an amendment clarifying that section as the intent of the sponsor "is legislative and ... beyond that dialogue and vetting and interaction ... you know, and so approval would ... as I understand it the only thing we can do is ... the legislature approve something is to pass a bill. So that's where I'm viewing it right now."

REPRESENTATIVE SEATON questioned what would happen if the legislature took action and the governor vetoes it, is it the passage of a law, or the passage of a bill through one or both houses.

CHAIR KELLER advised he sees it as law.

[8:42:27 AM](#)

MR. MORSE spoke to the language regarding "if the legislature doesn't act then they are approved," and opined that it mirrors language in the school accreditation standards adopted by the State Board of Education and Early Development. He advised those standards were changed once because school districts asked for a change, and the accreditation process is run by school

districts and the department has minimal involvement. He said, "They came to the state board, well ... the way that process works is, we then submit, and I think we submit a letter to the standing committees over our department at the beginning of that session, after that regulation has been put in place. And then, if the legislature doesn't take an action, which I make the assumption that that action would be by passing a law countering what was done, then those standards stay in place."

CHAIR KELLER opined that is consistent with case law.

[8:44:37 AM](#)

REPRESENTATIVE SEATON directed attention to subsection (5), page 2, lines 7-9, and referred to "the methodology used to assign the state public school system a performance designation ...". He surmised Alaska had a performance designation standard based upon the annual measurable objective which is not comparable with other states. He said, "I don't see how, unless we change and make NAEP our public school system performance designation ... and give that somehow throughout classes, we can say that we would fulfill this criteria by using NAEP and only comparing two grades and high school doesn't matter basically about comparing our self to other states."

COMMISSIONER HANLEY deferred to the sponsor, and said that was a concern he had expressed in that it appears NAEP will not do everything the department needs it to, and it looks like it is asking for more than the NAEP. But, he noted, the sponsor clarified that NAEP does allow the department to compare in a manner that appears appropriate and meets the needs of the sponsor.

[8:46:20 AM](#)

CHAIR KELLER referred Representative Seaton to a document he previously passed out depicting AS 14.03.123(a), School and district accountability, which read:

(a) By September 1 of each year, the department shall assign a performance designation to each public school and school district and to the state public school system in accordance with (f) of this section.

CHAIR KELLER advised it gives the state public school system a designator and specifically refers to subsection (f), which read:

(f) In the accountability system for schools and districts required by this section, the department shall ...

CHAIR KELLER continued that it is difficult to determine the criteria used to give a state public school system designation in (f) but it does reference academic proficiency. The language in Section 1 discusses a performance designation that compares state public school systems, but it could be amended to include academic performance, he said. He remarked that it doesn't change things in subsection (e) or Sec. 5, because it is not directly related to the requirement. He reiterated that the added Sec. 5, page 2, lines 7-9, was intended for the process used to give the public school system of the State of Alaska a designator which has not been defined in the past, but assumed it was being done but evidentially not. In offering a designator to the state system, he could not imagine who else would be compared to except other states or countries. He reiterated that "or countries" will be deleted. He opined that the interest from policy makers is "how are we doing," which is a valid question so the self-designator which is done by the department for the public school system is valuable.

[8:48:52 AM](#)

REPRESENTATIVE SEATON questioned whether the students are allowed to opt out of the randomized student selection across the state for NAEP, can it still be utilized to compare nationally. He said, "We have a mechanism for actually schools to take all their lower performing students and not have them participate in NAEP, or in the test, and then change the comparison."

COMMISSIONER HANLEY pointed out that the opportunity to opt out creates the risk of altering the sample size which could jeopardize the outcome and national comparability. He advised that NAEP has a methodology of choosing schools and districts around the state.

[8:50:20 AM](#)

REPRESENTATIVE DRUMMOND referred to the statement that the principal of the school reviews the list of the students chosen to take the NAEP test and perhaps remove a child with cognitive disabilities, and asked for an explanation in how it is a

randomized test if the principal can remove students from the list.

MR. MORSE responded that students with a severe cognitive disability take an alternate assessment and never take a standardized assessment in any testing condition as it would provide an invalid score. Also, he pointed out, a principal may be able to remove a student, for example, an enrolled student is in the hospital on medical leave but performing studies through the district in a correspondence set up. In the event a student is removed in that manner, the sample pulls another student that fits the demographic makeup of the student removed, he explained.

[8:52:34 AM](#)

CHAIR KELLER read 4 AAC 06.820(b), "A school or district may not systemically exclude students from assessment."

He opined that is a red flag which includes the motivation of HB 156, as to say Alaska cannot systemically exclude students from assessment if that is a constitutional issue and a fundamental right of the parents, if systemically means that Alaska cannot pass laws to allow for an opt out, that's what motivates him.

[8:53:24 AM](#)

REPRESENTATIVE VAZQUEZ opined that NAEP is administered on a random sampling basis and asked whether there is a nationally recognized standardized test that is provided or given to each student. She noted that NAEP may have a useful purpose but for the individual parents who may want to know how their child is doing compared to the rest of the students in the state, or the nation, whether there is a mechanism for that type of testing.

COMMISSIONER HANLEY offered there is not a national assessment to compare students, but statewide there is the standards-based assessment (AMP) that measures students on their proficiency which does allow for a statewide comparison.

REPRESENTATIVE VAZQUEZ questioned whether he is saying there is nothing out there that other states may be using comparing students across state lines.

COMMISSIONER HANLEY responded "No, I'm not because what that would require is that all states participate." He offered there are international tests but those are by state choice.

[8:55:36 AM](#)

REPRESENTATIVE DRUMMOND asked what the department considers the SAT and ACT in that respect as they are self-selected tests any child can take at the end of their K-12 education, but it provides a comparison to other students.

MR. MORSE responded it is a national test in that all students across the nation have a choice to take it, but it isn't a comparative test as not all students participate. He added that there are other "norm referenced" assessments, but are norm referenced to a group of students drawn across the country who took it when the norms were set, but not all states offer any single tests. He pointed out that for ongoing comparisons in how Alaska's students perform over the years relative to other states at the individual student level, no tool has been used in that manner in the state's educational history.

COMMISSIONER HANLEY added that Alaska's students perform well, nationwide, on the SAT and ACT. He opined that is due to larger groups of students taking the tests in other states, whereas, Alaska has always been a voluntary system based upon parent's payments until last year. Therefore, the sampling is small compared to other states, skewing the statistics.

[8:57:57 AM](#)

REPRESENTATIVE SEATON referred to AS 14.03.123(d), Sec. 2, page 2, line 17-20, which read:

(d) ... The improvement plan must give preference to measures that increase local control of education and parental choice and that do not require a direct increase in state or federal funding for the school or district.

REPRESENTATIVE SEATON advised that subsection (d) is with regard to a public school or district that received a low performing designation in that it must submit an improvement plan to the department. He referred to the new language, in that it includes "must" for the improvement plan and questioned how it works in a local district. He noted that a portion of the problem is that a local district, charged with the education, has been low performing and according to the new language more local control must be given to the low performing district.

COMMISSIONER HANLEY advised that the department always gives preference to finding ways to empower local communities. Interestingly, he noted, Judge Sharon Gleason in Moore v. State, Dept. of Natural Resources, 992 P.2d 576 (Alaska 1999), found the state deficient when local districts were not performing well and local control had failed to make changes to that and the state had failed to step in and provide additional oversight and support, it was negligent in its duty. For example, he explained, a trustee was in the state's lowest performing school district and that strategy was met with great resistance as he represented the state. He opined this as being problematic and the department works to engage local districts to the greatest extent possible.

[9:01:24 AM](#)

REPRESENTATIVE SEATON stated he does not understand how, with a low performing designation school district, they must give preference to greater local control when it had complete local control of the curriculum previously, and questioned whether the legislature fulfills its obligation to be responsible for education.

COMMISSIONER HANLEY stated the requirements for schools that receive low performance designations, in this section, determine the school improvement plans. With regard to the 12 lowest [designator] schools, the state provides coaches and additional support. He advised the state's preference is to advise the school of its weaknesses and work with the teachers, principals, and superintendents, as to where they believe the state could be of the most assistance. He said he understands the concern of a mandate on local control, but does not see it as problematic.

[9:03:40 AM](#)

CHAIR KELLER opined that he is gratified this is EED's policy, which is the purpose of the section, as ultimately the answer to a quality education is engagement of the parents, communities, and local school districts.

[9:04:38 AM](#)

CHAIR KELLER announced CSHB 156 is held in committee.

HB 85-STUDENT DATA & ASSESSMENTS

[9:04:58 AM](#)

CHAIR KELLER announced that next order of business would be HOUSE BILL NO. 85, "An Act relating to college and career readiness assessments for secondary students; and relating to restrictions on the collection, storage, and handling of student data."

[9:05:30 AM](#)

REPRESENTATIVE VAZQUEZ moved to adopt CSHB 85, 29-LS0301\S as the working document. There being no objection Version S was before the committee.

[9:06:07 AM](#)

The committee took a brief at ease.

[9:06:47 AM](#)

REPRESENTATIVE LORA REINBOLD, Alaska State Legislature, referred to Article I, Section 22, of the Alaska State Constitution, which reads:

The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

REPRESENTATIVE REINBOLD stated that Alaska's education is the most treasured resource; thus a parent's right to decide what is best for their child's education is necessary for the success of Alaskan students, and this bill allows students to opt out of statewide assessments. As the educational system merges into the Digital Age it includes assessments, and it is the legislature's duty to protect the privacy, security, and confidentiality of Alaska citizens, including student data, she remarked. She indicated that throughout the nation there has been growing public concerns regarding the collection of personal data and the breach of that data. She conveyed that HB 85 addresses the concerns by strengthening digital privacy laws and enhancing data collection transparency to parents and guardians. It also requires the State Board of Education and Early Development to make publically available an inventory and index of data elements with definitions of individual student data fields currently in the statewide longitudinal data system. She explained this legislation will require the establishment of a data security plan, ensuring compliance with federal and state privacy laws and policies, and will prohibit the sharing of

personally identified information for commercial purposes. She referred to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and stated that FERPA defines educational records personal identifiable information (PII) if it directly relates to a student, maintained by an agency or party acting for the agency. She advised the indirect identifiable information is the date of birth, mother's maiden name, et cetera, but the student's name or the name of a family member is PII.

9:10:11 AM

REPRESENTATIVE REINBOLD proceeded with a brief sectional summary of HB 85, and said Section 1, requires the Department of Education and Early Development (EED) to provide an annual security report to the legislature. Also, she said, it is critical to assist in preventing lawsuits and ensure that a data policy is in place to reduce liability to the state as the legislature does not want Alaska's children exposed. She referred to Section 2, and offered that it allows school districts to provide either written or electronic copies of student records to parents, foster parents, or guardians. She explained that Section 3, prohibits the use of student data containing personally identifiable information (PII), or data pertaining to parents, teachers, or staff, for commercial purposes; and this section prohibits the release of student data to consortiums or interstate educational organizational organizations without prior consent, and prohibits schools, school districts, and the department from requesting students' social media passwords. She commented that a stay was put in place on a lawsuit in Missouri as it was making interstate compacts and found it had not been approved through Congress. Section 4, she related, adds requirements for school districts related to data security and the school districts must provide plans. She added that Section 5, defines "student data," and Section 6, requires the department to adopt procedures allowing parents to opt their children out of statewide student assessments. She said there is an opportunity for parents to opt out, on page 112 in the district's manual, using code 999, and it is called "Refuse the Test," but many parents are using the word "opt out" and the district will not accept it. She referred to Section 7, which requires the State Board of Education and Early Development to adopt policies and procedures related to data privacy. She stated that Section 8, repeals AS 14.03075(a),(b),(c), (e)(1), and AS 14.03.078(a), which relate to college and career readiness assessments, SAT and ACT, and to annual reports by the department. She noted there a \$525,000

figure, included in Governor Bill Walker's FY2016 request, depicted on the fiscal note, but opined it has always been the parents' responsibility to pay for those tests.

[9:15:42 AM](#)

CHAIR KELLER referred to Sec. 3, "prohibits release of student data to consortiums here in the state ... educational organization without prior consent, and asked the consent of what."

REPRESENTATIVE REINBOLD advised the person identified in the personal identifiable information would have to offer a release.

[9:16:13 AM](#)

REPRESENTATIVE SEATON referred to Sec. 8, repealing SAT and ACT and asked whether it is also repealing the WorkKeys requirement in grade 11.

REPRESENTATIVE REINBOLD responded that the bill is not intended to repeal WorkKeys and if it does, it should be amended.

[9:16:43 AM](#)

REPRESENTATIVE DRUMMOND referred to an undated letter from Dr. Susan Henrichs, Provost and Executive Vice Chancellor for Academic Affairs, University of Alaska Fairbanks contained within committee packets, and said it expresses concerns that "the University teacher education programs demonstrate that the teachers they have prepared are effective. That must be done by measuring student learning in the classes that the graduates teach. If no data about K-12 student learning are available to UA, that will be impossible."

REPRESENTATIVE REINBOLD advised she has another letter regarding concerns about the accreditation issues with the UAF in order to have this information. She indicated the letter is from Steve Chepko, Senior Vice President, Council for Accreditation of School Educators (CAEP) specifically addressing the concerns of Provost Henrichs, and advised the letter will be made available to the committee. She said, "they assured that the digital privacy for K-12 data didn't [sic] any way jeopardize UA's accreditation. She indicated that only high level data would be used and it never requires the release of individual student data. In fact, they don't even want that data, they stated. Furthermore, the state ... the states that did not allow for

aggregated data to be released still were able to show efficacy of students' performance without the aggregated data." She related that she specifically requested information regarding Section 4.1 from Provost Henrichs, and Steve Chepko stated that "actually the K-12 data in individual [indisc.] data in individual, each candidate is required for accreditation at all. And they said they would be ... from Tiffany Erickson ... that they're willing to do an official statement in regards to this issue."

CHAIR KELLER opened public testimony.

[9:19:44 AM](#)

LANCE ROBERTS said he is on the Fairbanks Borough Assembly, is representing himself, and also reporting various viewpoints from the public. He offered support for protecting the privacy of the data and allowing parents to opt out. Parents have advised him that they may put their children into private home schooling as opposed to the public school system so they don't have to deal with the information they are required to offer. He remarked that federal overreach is fought on many levels, such as land and resources, and it is "sad" to see Alaska "bow down" to federal overreach in the area of education. He described the federal government as performing poorly in the area of education and since the federal government has gotten involved, education has gotten worse. He said, "EED, and I want you guys to remember this, that last year you told them not to do anything implementing costs for which is what our state standards are." He advised that Fairbanks has a textbook that reads "Common Core" on its face. He pointed out that EED has not been acting in the best interest of the parents who are primarily responsible for the education of their children. Protecting parental rights is a primary responsibility, he related, and the constitutional right to privacy, "the legislature is the one that implements that right to privacy." He indicated it is important legislators support CSHB 85, and other measures designed to protect the privacy of the students and parents, and their ability to direct the education and assessment of their children.

[9:22:41 AM](#)

MARGRET MULLINS [Technical difficulties] stressed that privacy issues have come to the fore based upon the invasive common core practices, and opined that the thrust of the common core testing includes unlawful questions. Therefore, she related, the

students' ability to learn results in an empty skill set, while providing data that supports/clarifies lack of response to specific curriculum. She said that in the event a student disregards the indoctrination information that is presented, the teachers are held responsible and acquainted this to Nazi Germany methods of funneling information through teachers. She noted that Bill Gates has funded the Common Core movement, but his children are not subject to the same standard as they attend a private school. She conveyed that the indoctrination program is serious and eliminates critical and independent thinking, and the commonality is the low denominator used, and privacy is important to protect.

[9:32:16 AM](#)

BARBARA HANEY said that the data on Alaska's students is at an indeterminate state. Although, she remarked, EED has assured everyone that the data is not shared, except the testimony of the Alaska Commission on Postsecondary Education (ACPE) of 2/9/15 indicated it obtains the information it needs and retains it in a personally identifiable form, even though it is separate from the [indisc.] system, it does retain it so it can link the information in future years. She described a problem in that Alaskans do not know what is included in that data as there is not a clear policy. During the 2/20/15 hearing, ACPE said it has policy in progress, but no policy has been established. She remarked ACPE also indicated there was an opportunity for them to join the Western Interstate Commission for Higher Education (WICHE) P-20W of which five states currently participate, and WICHE was heavily involved in the grant for Alaska's P-20W system. Also, a State Authorization Reciprocity Agreement (SARA) exists which is a portal of concern for data mining. She said that in addition to the WICHE P-20W, the state is involved in SARA and apparently there was a WICHE and a Midwest Higher Education Commission P-20W with 16 states, and ACPE in Alaska is listed as a portal. She is unsure whether any of Alaska's data has been entered into it currently, but Alaska is on their map as a participating state and whether any House Education Standing Committee member is aware of its existence. She referred to Provost Henrichs' concerns about the data privacy bill and assured the committee that the accreditation agency will not deny accreditation. She advised that Kansas, with a tougher bill than CSHB 85, doesn't allow sharing of aggregated data, and yet its schools have accreditation from CAEP.

CHAIR KELLER asked whether the SARA agreement can be researched through the Alaska Commission on Postsecondary Education (ACPE).

MS. HANEY opined that the House Education Standing Committee should ask ACPE to testify or submit written questions. In addition, she remarked, the committee may want to consider testimony from David Bodnick from WICHE, as apparently the Gates Foundation is funding "a good chunk of this stuff."

[9:37:59 AM](#)

TANYA HALLIDAY testified in support of CSHB 85 and stated that one of her children took the AMP test even though she sent a "request for him that specifically said I refuse testing for my child in all four sections of the Alaska Measures of Progress and they still made him take that test." She related that on the Alaska Measures of Progress (AMP) website they're intending to use the AMP scores used in educator evaluations, and she has concerns regarding her family's right to privacy. She suggested the committee review last year's testimony from the Kansas State Legislature, Representative Ron Highland. She mentioned an on-line article citing national issues with OASIS metadata and the P-20W. She advised she has an issue with EED in that it has a student data reporting manual and is concerned with all the advances in technology required being updated.

MS. HALLIDAY, in response to Chair Keller, advised the "Data Reporting Manual, a Handbook for the State of Alaska," found online.

[9:42:00 AM](#)

TARYN LUSKLEET said she is testifying for herself with children in the Interior Distance Education of Alaska (IDEA) program and is concerned about the advent of data bases being connected to the test results. She conveyed that data security issues abound greatly, especially in light of ACPE's testimony, on 2/9/15 and 2/20/15, regarding its plans for student data. According to that testimony, she related, it plans to track the student from Pre-K continuing throughout their workforce years, during their adult life as it will check in on an individuals to track their success and progress at regular, ongoing intervals throughout adulthood. She said ACPE's also stated that the Alaska P-20W database will include the standards-based tests mandated by ESEA, the AMP in Alaska, as well as home school data, and that data will go across state lines. She referred to page 96, of the "SSSS (indisc.) Report for Phase 2, lists the project entitled "Data Mart," and questioned who the stakeholders were. She related that parents are concerned, in light of the Family

Educational Rights and Privacy Act (FERPA) having been gutted by U.S. Secretary of Education Arne Duncan in December 2011, effective January 2012. The Electronic Privacy Information Center (EPIC) sued the U.S. Department of Education over that very issue. The constant reassurance she sees in grant documents in various state websites reference FERPA as some kind of reassurance are no reassurance any more. It doesn't require parental or student consent for sharing personally identifiable information as it only recommends it as a best practice and that is not enforceable. She advised that the date coincides with when the federal government approached the states about setting up the Statewide Longitudinal Data System (SLDS) and their own (indisc.) initiative for the granddaddy of all those databases.

[9:45:20 AM](#)

MS. LUSKLEET continued that given ACPE's testimony and her review of the grant, she is completely uncomfortable with her children participating in that system and many parents question whether enrollment in a public school system is a good idea. Alaska Standards are coded with exactly the same electronic codes as the Common Core Standards. Ms. Luskleet referred to Commissioner Mike Hanley's correspondence with DigitalChalk Single Sign-on (DCSSO), and with Patrick Rooney, United States Department of Education, which confirms that the final edition of the Alaska Standards "align very closely to the Common Core." She noted she has seen the list of exactly where they differ, it is 10 pages long where Alaska Standards and Common Core Standards is where the electronic codes differ. She explained that these codes garner information regarding exactly how a student performed on each standard. She offered a web site regarding the globally unique made for the use of computers by the federal government.

CHAIR KELLER commented that testing is an important part of the common core initiative.

MS. LUSKLEET reiterated that it all ties together because the AMP standards have the same electronic core and the information going into the databases is not just the overall test score as in the past. She said her concern is who has access to the databases knowing precisely how Alaska's children are thinking about each one of the verbs inside the standards which allows a person to access to a huge glimpse into a student's brain.

[9:49:37 AM](#)

ANN BILLS said she is representing her family in asking the committee to support CSHB 85. She echoed the sentiments of the previous witnesses.

CHAIR KELLER announced CSHB 85 was held in committee.

[9:51:27 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Education Standing Committee meeting was adjourned at 9:51 a.m.