



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

Department of Law

CIVIL DIVISION

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March 18, 2020

Senator Lyman Hoffman  
State Capitol  
120 4th Street  
Juneau, AK 99801-1182

Re: REAA Fund Appropriation

Dear Senator Hoffman:

This is in response to your inquiry regarding the advice that the Department of Law has provided to the Department of Education and Early Education (DEED) about the proposed reduction in the fiscal year 2021 appropriation to the REAA and small municipal school district school fund (REAA fund) under AS 14.11.025 and AS 14.11.030. More specifically, you have asked for further explanation about whether a reduction in the appropriation to the REAA fund that is proportional to a concurrent reduction in the appropriation for school construction debt reimbursement is consistent with the *Kasayulie* Consent Order.<sup>1</sup>

In 1999, the superior court in the *Kasayulie* case issued an order finding that the disparity in school construction funding between REAAs and municipal school districts was unconstitutional and racially discriminatory. In 2001, the superior court issued another order noting an expectation that the legislature would “within a reasonable time, create a constitutionally proper system of funding.”<sup>2</sup>

It was partly in response to the 2001 order that the legislature enacted AS 14.11.025 and AS 14.11.030 in 2010.<sup>3</sup> The intent of these enactments was to provide a reliable stream of revenue for school construction in REAAs as a means of repairing the prior disparity in funding options between REAAs and municipal districts.

The formula in AS 14.11.025(b) for appropriation to the REAA fund is tied to the annual amount of debt reimbursement for municipalities. The formula also takes into

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<sup>1</sup> Consent Order and Settlement Agreement of October 4, 2011, entered in *Kasayulie, et al v. State*, 3AN-97-3782 CI.

<sup>2</sup> Order of March 27, 2001, entered in *Kasayulie, et al v. State*, 3AN-97-3782 CI.

<sup>3</sup> These statutes took effect July 1, 2012.

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account the percentage of schools in the state that are in municipal school districts (compared to REAAs).<sup>4</sup> After that calculation, a multiplier of .244 is used to calculate the REAA fund appropriation. Most importantly, the formula is written so that the annual appropriation to the REAA fund will rise and fall with the annual appropriation for school construction debt reimbursement.

About a year after the REAA fund was created by statute, the parties to the *Kasayulie* case reached a final settlement. In the Consent Order and Settlement Agreement, the parties agreed that the formula for appropriation to the REAA fund, as a percentage of debt funding for municipal districts, provided a systematic mechanism for REAA school construction funding. The systematic mechanism under *Kasayulie* remains intact when the debt reimbursement and REAA fund appropriations are reduced proportionately. The equity sought by the *Kasayulie* Consent Order thereby remains in place.

Notably, to address recent state budget financial exigency, Governor Walker by veto made a 25 percent reduction in the appropriations to both school construction debt reimbursement and to the REAA fund for the fiscal year 2017 budget. For the fiscal year 2020 operating budget, Governor Dunleavy by veto made proportionate cuts of 50 percent to both appropriations.

Sincerely,

KEVIN G. CLARKSON  
ATTORNEY GENERAL

By:



Luann E. B. Weyhrauch  
Assistant Attorney General

LBW/ijg

cc: Michael Johnson, Commissioner, Department of Education and Early Development (*electronically*)

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<sup>4</sup> The formula was amended in 2013 to include funding for small municipal school districts without school construction bonding capacity.