



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

Office of the Governor

OFFICE OF MANAGEMENT AND BUDGET  
Pat Pitney, Director

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January 30, 2017

The Honorable Paul Seaton  
Co-Chair, House Finance Committee  
Alaska State Legislature  
State Capitol, Room 505  
Juneau, AK 99801-1182

The Honorable Neal Foster  
Co-Chair, House Finance Committee  
Alaska State Legislature  
State Capitol, Room 410  
Juneau, AK 99801-1182

Dear Co-Chair Seaton and Co-Chair Foster:

I am writing to you to inform you of the status of school construction funding in Regional Educational Attendance Area's (REAA school fund).

The school construction funding for REAA's was set up by the legislature under SB237 in 2010, in response to the *Kasayulie* case in order to provide a fair and equitable funding mechanism for rural school projects. In 2013, eligibility for these funds was extended to small municipal school districts. Funding from the REAA fund is spent using a prioritized list of eligible projects that is assembled by the Department of Education and Early Development (DEED) using 17 specific criteria.

The Department of Law has determined that once funds are appropriated by the legislature into the REAA school fund, no additional appropriation is required for DEED to provide grant funding under its Capital Improvement List. This determination was based on the court rulings in *Kasayulie*; the language and intent of SB 237, which created the REAA fund in 2010; the terms of the Consent Decree and Settlement Agreement in *Kasayulie*; and legal precedent regarding the distinctions between funds available for expenditure and funds that require an additional appropriation. The language in the authorizing statutes for the REAA fund states that REAA funds are available each fiscal year for "expenditure". See AS14.11.025 and AS 14.11.030.

In FY2017, the REAA appropriation was \$41,640,000, providing a beginning balance of \$69,866,424. The legislature appropriated \$7,129,765 for the Bethel Regional High School Central Kitchen and Multipurpose Addition. This brought the REAA fund balance down to \$62,736,659. With sufficient funding available for the first two projects on the DEED school construction priority CIP list, the funds were distributed to the following projects:

Lewis Angapak K-12 School Renovation/Addition, Tuntutuliak

A project agreement, effective November 4, 2016, has been executed with the Lower Kuskokwim School District (LKSD) for this project with a state-share amount of \$40,343,416. These funds are now obligated.

The Honorable Paul Seaton  
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Jimmy Huntington K-12 Renovation/Addition, Huslia

A project agreement, effective September 1, 2016, has been executed with the Yukon Koyukuk School District for this project with a state share amount of \$15,394,787. These funds are now obligated.

In FY2018, the proposed FY2018 REAA Fund Capitalization of \$40,640,000 would be added to the remaining FY2017 balance of \$6,998,456 and would total \$47,638,456. Attached is the DEED school construction priority list. This appropriation is sufficient for the Bering Strait, Shishmaref K-12 School Renovation/Addition to be funded in FY2018.

The REAA funding is based on the urban school debt service reimbursement amount that is funded in the FY2018 budget at \$115,956,600.

Sincerely,



Pat Pitney  
Director

Enclosure: 18\_school\_construction\_priority\_final

cc: David Teal, Legislative Fiscal Analyst, Legislative Finance Division  
Michael Johnson, Commissioner, Department of Education and Early Development

State of Alaska  
Department of Education and Early Development  
Capital Improvement Projects (FY2018)  
School Construction Grant Fund

Final List

Jan. 17	Dec. 16	Nov. 5	School District	Project Name	Amount Requested	Eligible Amount	Prior Funding	EED Recommended Amount	Participating Share	State Share	Aggregate Amount
1	1	1	Bering Strait	Shishmaref K-12 School Renovation/Addition	\$19,193,631.00	\$16,514,294.00	\$0.00	\$16,514,294.00	\$330,286.00	\$16,184,008.00	\$16,184,008.00
2	2	2	Lower Kuskokwim	J Alexie Memorial K-12 School Replacement, Almatluuak	\$48,920,307.00	\$44,376,426.00	\$0.00	\$44,376,426.00	\$887,529.00	\$43,488,897.00	\$59,672,905.00
3	3	3	Lower Kuskokwim	Eek K-12 School Renovation/Addition	\$32,901,573.00	\$30,922,520.00	\$0.00	\$30,922,520.00	\$618,450.00	\$30,304,070.00	\$89,976,975.00
4	4	4	Kuspuk	Auntie Mary Nicolli Elementary School Replacement, Aniak	\$19,665,966.00	\$19,021,816.00	\$0.00	\$19,021,816.00	\$380,436.00	\$18,641,380.00	\$108,618,355.00
5	5	6	Ketchikan	Houghtaling Elementary Traffic Safety Revisions	\$624,987.00	\$495,980.00	\$0.00	\$495,980.00	\$173,593.00	\$322,387.00	\$108,940,742.00
6	6	7	Lower Kuskokwim	Water Storage & Treatment, Kongiganak	\$6,139,710.00	\$5,813,798.00	\$0.00	\$5,813,798.00	\$116,276.00	\$5,697,522.00	\$114,638,264.00
7	7	8	Aleutians East	Sand Point K-12 School Paving	\$441,630.00	\$441,630.00	\$0.00	\$441,630.00	\$154,570.00	\$287,060.00	\$114,925,324.00
8	8	9	Hydaburg City	Hydaburg School Covered Playground Structure	\$884,201.00	\$402,392.00	\$0.00	\$402,392.00	\$40,239.00	\$362,153.00	\$115,287,477.00
9	9	10	Hydaburg City	Hydaburg Elementary Playground Upgrades	\$105,009.00	\$101,727.00	\$0.00	\$101,727.00	\$10,173.00	\$91,554.00	\$115,379,031.00
10	10	11	Lower Kuskokwim	Bethel Campus Drainage and Traffic Upgrades	\$1,119,880.00	\$1,119,880.00	\$0.00	\$1,119,880.00	\$22,398.00	\$1,097,482.00	\$116,476,513.00
11	11	12	Aleutians East	King Cove K-12 School Paving	\$110,049.00	\$110,049.00	\$0.00	\$110,049.00	\$38,517.00	\$71,532.00	\$116,548,045.00
12	12	13	Southeast Island	Kasaan K-12 School Covered Play Area Construction	\$448,077.00	\$448,077.00	\$0.00	\$448,077.00	\$8,962.00	\$439,115.00	\$116,987,160.00
13	13	14	Annette Island	Meliakatie Schools Track and Field Construction	\$5,617,749.00	\$5,617,749.00	\$0.00	\$5,617,749.00	\$112,355.00	\$5,505,394.00	\$122,492,554.00
14	14	15	Southeast Island	Thome Bay K-12 School Playground Upgrades	\$227,111.00	\$221,703.00	\$0.00	\$221,703.00	\$4,434.00	\$217,269.00	\$122,709,823.00
15	15	16	Yupik	Playground Construction, 3 Schools	\$1,465,747.00	\$596,527.00	\$0.00	\$596,527.00	\$11,831.00	\$584,596.00	\$123,294,419.00
TOTALS:					\$135,665,627	\$126,204,568	\$0	\$126,204,568	\$2,910,149	\$123,294,419	
0	Northwest Arctic			Kivalina K-12 Replacement School - Kasayville FY16 Final List Eligible Amount	\$9,048,027	\$63,094,777	\$43,237,400	\$9,048,027	\$1,809,605	\$7,238,422	\$7,238,422
FINAL TOTALS:					\$144,713,654	\$189,299,345	\$43,237,400	\$135,252,595	\$4,719,754	\$130,532,841	\$130,532,841

<b>Department of Education &amp; Early Development</b>									
<b>Division of School Finance &amp; Facilities</b>									
Updated December 8, 2016									
<b>Deposits:</b>	<b>FY2013</b>	<b>FY2014</b>	<b>FY2015</b>	<b>FY2016</b>	<b>FY2017</b>	<b>Projected FY2018</b>	<b>Total</b>		
REAA Fund Capitalization	35,512,300	35,200,000	39,921,078	38,789,000	31,230,000	40,640,000	221,292,378		
Interest Earned (Actual as of 12/7/16)	118,206	368,142	383,180	-	-	-	869,528		
Subtotal Deposits	35,630,506	35,568,142	40,304,258	38,789,000	31,230,000	40,640,000	222,161,906		
<b>REAA-funded Capital Project Funded Projects:</b>									
Nightmute School Renovation/Addition	-	32,965,301	-	-	-	-	32,965,301		
Kuinerramiut Elitnaurviat K-12 Renovation/Addition, Quinhagak	-	13,207,081	-	-	-	-	13,207,081		
Kwethluk K-12 Replacement School Design, Planning, Foundation	-	25,008,100	31,516,900	-	-	-	56,525,000		
St. Mary's Andreafski High School Gym Construction	-	-	8,958,100	-	-	-	8,958,100		
Bethel Regional High School Central Kitchen & Multipurpose Addition	-	-	-	-	7,129,765	-	7,129,765		
Lewis Angapak K-12 School Reno/Add, Tuntutuliak	-	-	-	-	40,343,416	-	40,343,416		
Jimmy Huntington K-12 Reno/Add, Huslia	-	-	-	-	15,394,787	-	15,394,787		
Subtotal REAA-funded Projects	-	71,180,482	40,475,000	-	62,867,968	-	174,523,450		
<b>Reconciliation of Available Funds:</b>									
	35,630,506	18,166	(152,576)	38,636,424	6,998,456	47,638,456	47,638,456		
C:\Users\lhscmk\ Desktop\ Education Finance Subcommittee\ [REAA Fund Reconciliation 12.8.16.xlsx] REAA									

# LEGAL SERVICES

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## MEMORANDUM

January 19, 2017

**SUBJECT:** REAA appropriations (Work Order No. 30-LS0344)

**TO:** Lacey Sanders  
Legislative Fiscal Analyst

**FROM:** Megan A. Wallace   
Legislative Counsel

You have asked for an opinion as to whether money deposited into the regional educational attendance area and small municipal school district fund ("REAA fund"), established under AS 14.11.030, requires further legislative appropriation before expenditure by the Department of Education and Early Development ("department").

**Short Answer:** Based on the language in AS 14.11.025 and 14.11.030, it does not appear that further legislative appropriation is required for the department to provide grant funding in accordance with those provisions.

### **Background and Relevant Statutory Provisions**

Alaska Statute 14.11.030, which establishes the REAA fund, states:

**Sec. 14.11.030. Regional educational attendance area and small municipal school district fund.** (a) The regional educational attendance area and small municipal school district school fund is created as an account in the general fund to be used, in addition to other funding sources, to fund projects approved under AS 14.11.025 for the costs of school construction in regional educational attendance areas and small municipal school districts.

(b) Legislative appropriations, including appropriations of interest earned on the fund, shall be deposited in the fund established under this section. The fund balance may not exceed \$70,000,000.

(c) Money appropriated to the fund does not lapse except to the extent money in the fund exceeds the maximum fund balance specified in (b) of this section.

(d) In this section, "small municipal school district" has the meaning given in AS 14.11.025.

Expenditure from the REAA fund is governed by AS 14.11.025, which provides:

**Sec. 14.11.025. State aid for school construction in regional educational attendance areas and small municipal school districts.**

(a) In addition to other appropriations and funding sources, the department may provide grant funding from the fund established under AS 14.11.030 to a school district that is a regional educational attendance area or a small municipal school district.

(b) The amount of money available each fiscal year for expenditure under (a) of this section shall be the annual debt service on debt incurred under AS 14.11.100(a) divided by the percentage of all schools that are located in a city or borough school district that is not a small municipal school district, the quotient of which is to be multiplied by .244.

(c) In this section, "small municipal school district" means a city or borough school district in the state that has an ADM of not more than 300 and in which the district's full value per ADM is not more than \$500,000. In this subsection, the district's full value per ADM is determined by dividing the full and true value of the taxable real and personal property in the district, calculated as described in AS 14.17.510, by the district ADM, as defined in AS 14.17.990, for the same fiscal year for which the valuation was made.

Historically, since AS 14.11.025 and 14.11.030 took effect in fiscal year 2013,<sup>1</sup> money has been annually appropriated into the REAA fund from the general fund through the operating budget, under the fund transfers section. However, the legislature has also appropriated out of the REAA fund through capital appropriations for school construction.<sup>2</sup> Apparently, based on the information you provided, the department no longer believes that capital or further legislative appropriation is necessary to expend from the REAA fund.

**Discussion**

Under AS 14.11.030, funds that are appropriated into the REAA fund do not lapse, except to the extent that the balance of the fund exceeds \$70,000,000. In that case, the excess of the maximum fund balance lapses into the general fund, presumably at the end of the fiscal year.

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<sup>1</sup> Sec. 5, ch. 93, SLA 2010. These provisions were enacted following the *Kasayulie* litigation. While this legislative history is certainly relevant, given the session workload, I have not included a detailed recitation. If additional information is necessary, please advise, and I would be happy to discuss or provide additional detail. This history may be relevant if the department's expenditure is challenged and the legislative history behind AS 14.11.025 and 14.11.030 is examined.

<sup>2</sup> See sec. 1, ch. 16, SLA 2013, page 62, lines 22-24; sec. 1, ch. 18, SLA 2014, page 50, lines 30-33; and sec. 1, ch. 2, 4SSLA 2016, page 3, lines 26-30.

Lacey Sanders, Legislative Fiscal Analyst  
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Furthermore, Alaska Statute AS 14.11.025 authorizes the department to provide grant funding "from the fund established under AS 14.11.030" - the REAA fund - and sets the "amount of money available each fiscal year for expenditure" under the formula in AS 14.11.025(b).

Based on the foregoing, it is my opinion that AS 14.11.025 and 14.11.030 allow for the department to provide grant funding using the REAA fund, without further legislative appropriation, so long as the department follows the AS 14.11.025 grant process and the amount expended by the department does not exceed the "amount of money available each fiscal year for expenditure" under the formula in AS 14.11.025(b).

If you have any further questions, please advise.

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