

LEGAL SERVICES

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MEMORANDUM

March 29, 2018

SUBJECT: REAA fund balance
(CSHB 212(); Work Order No. 30-LS0741\U)

TO: Representative Neal Foster
Attn: Jane Pierson

FROM: Allison M. Laffen *AML*
Legislative Counsel

Attached is the abovementioned bill draft. You asked whether the \$70,000,000 fund cap in AS 14.11.030(b) refers to unexpended and unobligated funds only, or if the fund also includes obligated funds. AS 14.11.030(b) is silent as to how to calculate the fund balance; the amendment to AS 14.11.030(b) proposed in the attached bill draft resolves any ambiguity or question on the issue.

AS 14.11.025(a) allows the department to "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."¹

AS 14.11.030 states:

(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.

¹ The amount available for expenditure from the REAA fund by the department is calculated under AS 14.11.025(b).

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AS 14.11.030(b) states that "[t]he fund balance may not exceed \$70,000,000," and AS 14.11.030(c) states that the funds do not lapse "except to the extent money in the fund exceeds the maximum fund balance." In my opinion, AS 14.11.030(b), refers to the unexpended and unobligated balance of the REAA fund that may not exceed \$70,000,000. In addition, only unexpended and unobligated funds may lapse under AS 14.11.030(c). Legislative history seems to also support this conclusion.

In general, the amount of money that can be saved by a lapse, repeal, or suspension of prior appropriations is dependent upon the portion of an appropriation that has not been expended or obligated as of the date on which the money is due to lapse, or the date the repeal or suspension takes effect. Once the state has incurred a legal obligation to expend funds, the state cannot renege on that obligation. The state is bound by provisions of the federal constitution prohibiting the state from impairing the obligation of contracts (art. I, sec. 10, United States Constitution). Therefore, money that has been expended or obligated does not lapse, and a repeal or suspension of the authority to expend funds under an appropriation will not apply to the those funds legally obligated before the effective date of the repeal or suspension.

During committee hearings, it was explained that the bill established a "funding formula" to provide adequate funding for facilities in rural areas and that "[u]nused funds would roll over into the following year." (Testimony of Jay Livey, Staff, Senator Hoffman, House Finance Committee, April 7, 2010). Representative Mike Hawker stated "[t]he original version proposed setting up a \$100 million fund; the amount has been dropped to \$70 million to allow for latitude after the \$38 million projected for one school was spent. He viewed the fund as a 'mini capital budget' to meet the commitment to construct one school each year. . . ." (House Finance Committee, April 17, 2010).

For these reasons, while AS 14.11.030(b) is silent as to how to calculate the "fund balance," only the unexpended and unobligated balance of the REAA fund should be subject to lapse under AS 14.11.030(c). While the amendment to proposed AS 14.11.030(b) in the attached bill draft may be unnecessary, clarifying AS 14.11.030(b) as proposed in the attached bill draft resolves any ambiguity or question as to whether the fund cap applies only to unexpended and unobligated funds.

If I may be of further assistance, please advise.

AML:dls
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Attachment