

# LEGAL SERVICES

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## MEMORANDUM

March 6, 2019

**SUBJECT:** Effect of reduction in state aid on local contributions  
(SSHB 39; Work Order No. 31-GH1905\M)

**TO:** David Teal  
Director, Legislative Finance Division

**FROM:** Meera Caouette *MC*  
Legislative Counsel

Pursuant to our discussion on March 4, 2019, you have asked whether a reduction in state aid results in a reduction of basic need for purposes of calculating the cap for the voluntary local contribution under AS 14.17.410(c)(2). The short answer is that there are arguments to support two conclusions but a plain reading of the statutes seems to indicate that the answer may be no.

AS 14.17.410(c) provides:

(c) In addition to the local contribution required under (b)(2) of this section, a city or borough school district in a fiscal year may make a local contribution of not more than the greater of

(1) the equivalent of a two mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year, as determined by the Department of Commerce, Community, and Economic Development under AS 14.17.510 and AS 29.45.110; or

(2) *23 percent of the total of the district's basic need for the fiscal year under (b)(1) of this section* and any additional funding distributed to the district in a fiscal year according to (b) of this section. [emphasis added].

As you know, basic need is calculated using the formula in AS 14.17.410(b)(1) by multiplying the sum of the adjustments made to the district average daily membership under that subsection by the base student allocation in AS 14.17.470. Under AS 14.17.410(b)(1), state aid equals basic need minus a required local contribution and 90 percent of federal impact aid. Under AS 14.17.400(b), if the amount appropriated to fund public education is insufficient to provide each school district with the amount of state aid calculated under AS 14.17.410, the department is required to reduce each district's basic need pro rata by the necessary percentage.<sup>1</sup>

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<sup>1</sup> AS 14.17.400(b) provides:

In general, the Alaska Supreme Court interprets statutes

according to reason, practicality, and common sense, considering the meaning of the statute's language, legislative history, and purpose. When we interpret a statute, we presume that no words or provisions are superfluous and that the legislature intended every word, sentence, or provision of a statute to have some purpose, force, and effect. . . We begin our interpretation of the statute by looking at its language. Words in statutes are construed according to their common meaning, with technical words construed according to their appropriate meaning.<sup>[2]</sup>

The voluntary local contribution cap calculation in AS 14.17.410(c)(2) expressly relies on basic need under AS 14.17.410(b)(1), but does not describe how the voluntary local contribution cap is affected, if at all, when the department reduces basic need pro rata under AS 14.17.400(b). Similarly, AS 14.17.400(b), does not specify whether the prorated basic need pertains only to how state aid is to be distributed with a budget shortfall or whether it also replaces the full basic need calculation for other purposes such as the voluntary local contribution cap. Read separately, it seems clear under AS 14.17.410(c)(2) that the cap on voluntary local contributions is based on full basic need as calculated under AS 14.17.410(b)(1) for the current fiscal year. However, taken together, these provisions do not specify whether the prorated basic need under AS 14.17.400(b) is to be used for purposes of calculating the voluntary local contribution cap under AS 14.17.410(c)(2) or whether the cap is still to be based on full basic need calculated under AS 14.17.410(b)(1), before making a pro rata reduction under AS 14.17.400(b).

Because AS 14.17.410(c)(2) explicitly refers to basic need under AS 14.17.410(b)(1), with no reference to the reduction under AS 14.17.400(b), a strong argument can be made that the voluntary local contribution cap is to be based on the full basic need calculation. AS 14.17.900(b) provides some support for the position that AS 14.17.400(b) pertains only to the distribution of state aid rather than the calculation of basic need as it applies to the voluntary local contribution cap. AS 14.17.900(b) provides:

(b) Money to carry out the provisions of this chapter may be appropriated annually by the legislature into the public education fund. If the amount appropriated to the fund for the purposes of this chapter is

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(b) If the amount appropriated to the public education fund for purposes of this chapter is insufficient to meet the amounts authorized under (a) of this section for a fiscal year, the department shall reduce pro rata each district's basic need by the necessary percentage as determined by the department. If the basic need of each district is reduced under this subsection, the department shall also reduce state funding for centralized correspondence study and the state boarding school by the same percentage.

<sup>2</sup> *Adamson v. Municipality of Anchorage*, 333 P.3d 5, 16 (Alaska 2014) (Internal citations and quotations omitted).

insufficient to meet the allocations authorized under AS 14.17.400 - 14.17.470 for a fiscal year, state aid shall be reduced according to AS 14.17.400(b).

The reference to AS 14.17.400(b) implies that the reduction to basic need is the method by which the department is to reduce state aid under AS 14.17.900(b) when faced with an insufficient appropriation to the public education fund. Based on this logic, the pro rata reduction to basic need under AS 14.17.400(b) would not affect the voluntary local contribution cap because AS 14.17.400(b) reduces basic need only for purposes of determining the amount of state aid to be distributed to school districts, not for any other purpose. If the legislature intended to reduce the voluntary contribution at the same time districts were faced with an insufficient appropriation, the legislature could have done so as it did in other contexts.<sup>3</sup> Based on this argument, the voluntary local contribution cap would not be affected by a pro rata reduction to basic need under AS 14.17.400(b) and would be calculated based on the full basic need as calculated under AS 14.17.410(b)(1), regardless of a large budget shortfall.<sup>4</sup>

It is significant that AS 14.17.400(b) instructs the department to reduce "basic need" pro rata rather than "state aid." When enacting AS 14.17.400(b), the legislature clearly knew how to distinguish between "basic need" and "state aid" because AS 14.17.900(b), which refers to reducing state aid, and AS 14.17.400(b) were enacted in the same year.<sup>5</sup> It therefore seems clear that the term "basic need" was not used superfluously in AS 14.17.400(b).

AS 14.17.400(b) was part of a major rewrite of the foundation formula in CSSB 36(FIN) (Work Order 20-LS0070\R) in the 20th Legislature and initially read, in part, as follows: "the department shall reduce pro rata the state share of public school funding for which districts are eligible by the necessary percentage as determined by the department." This provision was subsequently amended in HCS CSSB 36(HES) to read "the department shall reduce pro rata each district's basic need by the necessary percentage as determined by the department." According to the House Health, Education and Social Services Standing Committee minutes from March 25, 1998, and April 1, 1998,<sup>6</sup> this change — along with other similar terminology changes — was recommended by the Department of Education to clarify the calculations of basic need and state support and to fine-tune terms to avoid confusion between "state share" and "state aid." The committee minutes

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<sup>3</sup> See, AS 14.17.430 and 14.17.440, providing an exception for a reduction under AS 14.17.400(b) when calculating funding for correspondence studying and boarding schools.

<sup>4</sup> We are aware that the Department of Law disagrees with this position based primarily on the resulting loss of federal impact aid from insufficient state funding of as much as a 24 percent reduction and an increase in disparity across districts.

<sup>5</sup> See sec. 2, ch. 83, SLA 1998.

<sup>6</sup> The relevant excerpts from these minutes are attached for your convenience.

do not provide any guidance about how the language of AS 14.17.400(b) relates to other calculations that rely on basic need, however, they clarify that "basic need" was precisely used in favor of "state share of public funding" when drafting the current version of AS 14.17.400(b).

If the legislature intended for the department to reduce only "state aid" pro rata across school districts when faced with an insufficient appropriation, then the legislature could have drafted AS 14.17.400(b) to capture that intent. Instead, AS 14.17.400(b) requires the department to reduce "basic need" pro rata across districts. The legislature could also have specified that this reduction of basic need is to be made only for the purpose of distributing state aid across school districts and not for the purpose of calculating the voluntary local contribution cap. Because the legislature failed to make this distinction or to discuss the effect on the cap resulting from insufficient funding, an argument can be made that the pro rata reduction of "basic need" in AS 14.17.400(b) requires funding from all relevant sources to be calculated based on the reduced basic need figure, including the voluntary local contribution cap. This argument is indirectly supported by the department's statement before the House Finance Committee that it "is important that SB 36 meet the federal disparity test" but that the test is "run on actual audited local contributions and revenues."<sup>7</sup>

Based on the logic of this argument, the function of AS 14.17.900(b) may not be to dictate how state aid must be reduced when an appropriation is insufficient to fund the amount calculated under AS 14.17.410. Rather, AS 14.17.900(b) refers to the pro rata reduction of basic need under AS 14.17.400(b), which consequently determines the reduction in state aid but also affects the calculation of other contributions, including the voluntary local contribution cap. While this argument is persuasive, it requires making connections that are not explicit in statute.

As you can see, the statutory scheme is ambiguous with respect to this issue and there is very little relevant legislative history. Therefore, there is no clear answer to your question. In my opinion, it is significant that the legislature specifically chose a pro rata reduction to basic need rather than state aid but did not indicate that the pro rata reduction to basic need under AS 14.17.400(b) be used to reduce the voluntary local contribution cap. As explained above, there are strong arguments on both sides of this issue and, unfortunately, we are without guidance on how a court would weigh in.

If I may be of further assistance, please advise.

MBC:mjt  
19-117.mjt

Attachments

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<sup>7</sup> Minutes, House Finance Committee, April 29, 1998 (98 - 135). (Attached.)