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MEMORANDUM

April 27, 2026

SUBJECT: Gasline Legislation: Local Contribution
(CSSB 280(RES); Work Order No. 34-GS2038\G)

TO: Senator Cathy Giessel
Chair of the Senate Resources Committee
Attn: Paige Brown

FROM: Marie Marx 
Legislative Counsel

You have asked whether secs. 1 and 2 of SB 280 raise any constitutional or other legal issues. The short answer to this question is yes, as explained below. You have also asked how these legal issues may be resolved. The short answer is that resolution of the legal issues depends on the fiscal impact the changes have on each school district and on the public school funding system as a whole.

Local contributions. AS 14.12.020(c) requires that cities and boroughs contribute to the costs of funding the public education system. The statute provides, in relevant part, that "[t]he borough assembly for a borough school district, and the city council for a city school district, shall provide the money that must be raised from local sources to maintain and operate the district." This requirement is commonly referred to as the "required local contribution." AS 14.17.410(b)(2) sets out how the required local contribution amount is calculated and provides, "the required local contribution of a city or borough school district is the equivalent of a 2.65 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. . . ." Under AS 14.17.410(b)(1), "state aid equals basic need minus a required local contribution and 90 percent of eligible federal impact aid for that fiscal year. . . ." Thus, the amount of public school funding paid by the state to a school district is directly affected by the amount obtained from the school district's required local contribution or federal impact aid.

A city or borough school district may make an additional contribution to the public school funding for the district, up to the funding cap set out in AS 14.17.410(c). This contribution is commonly referred to as the "voluntary local contribution." Under AS 14.17.410(c), the maximum allowable voluntary local contribution a city or borough school district may make is 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.

To calculate the amount of the required and voluntary local contributions, the Department of Commerce, Community, and Economic Development is currently required under AS 14.17.510 to ". . . determine the full and true value of the taxable real and personal property in each district in a city or borough." Section 1 of SB 280 amends AS 14.17.510 by adding a new subsection to exclude "a qualified property as defined in AS 43.59.100" from the calculation of the full and true value of taxable real and personal property.¹

AS 14.17.990 currently defines the term "local contribution" for purposes of public school funding under AS 14.17 as "appropriations and the value of in-kind services made by a district." Section 2 of the bill changes the meaning of the term "local contribution" to expressly exclude appropriations of tax revenue received by a municipality under proposed sec. 43.59.050 (allocation of volumetric tax). The Department of Education and Early Development (DEED) has, for purposes of AS 14.17.990, defined "appropriations" to mean "money appropriated to a district's school operating fund by the city or borough."²

Some school districts also provide "outside the cap" funding, i.e. funding outside of the definition of "local contribution" established by AS 14.17.410(c), AS 14.17.990, and 4 AAC 09.990. For example, in 2023, the City and Borough of Juneau provided

¹ Sec. 43.59.100(6) of SB 280 defines "qualified property" as:

- [A] major component of an Alaska liquefied natural gas project as defined in AS 31.25.390, taxed under AS 43.59.010(b)
 - (A) for which construction commenced on or after January 1, 2026; and
 - (B) that is owned by an instrumentality of the state or a joint venture, partnership, or other affiliated entity that includes an instrumentality of the state.

² 4 AAC 09.990; *see also* Letter from DEED Commissioner Dr. Deena Bishop to School District Superintendents and Business Managers, Dec. 1, 2023, https://education.alaska.gov/faq_local_contribution/2023-12-01_DEED-Local-Contribution-Memo-to-Districts.pdf, at p. 3 ("DEED will honor an interpretation of 'local contribution' as only including appropriations to or funds reported in a school district's operating fund.").

\$2,340,737 in "outside the cap" funding for pupil transportation, community schools, and student activities.³

Therefore, under the changes made in SB 280, school districts may not include revenues raised from qualified properties, as defined in sec. 43.59.100, or tax revenue received by a municipality under sec. 43.59.050 when calculating the required and voluntary local contributions for the districts. This may have the effect of reducing the amount of the required local contribution that an applicable district owes from the amount the district would owe if the exemptions were not in place. A district could therefore use this extra money to increase the district's "outside the cap" funding.

Equal protection. Changing how the required local contribution and the voluntary local contribution are calculated under the public school funding formula may raise equal protection issues under the Alaska Constitution if a disparity in education funding results from the change in law. The modifications to the public school funding formula made in secs. 1 and 2 of SB 280 may provide the district with a monetary advantage over other districts that do not benefit from SB 280. For example, a district could use the money "freed up" by not including qualified property under the bill in the calculation of the district's required local contribution to spend more money "outside the cap" for things such as pupil transportation, community schools, and student activities. Additionally, a municipality could increase a municipal school district's "outside the cap" funding using tax revenue received by the municipality under proposed sec. 43.59.050. Other districts would not get these funding advantages, and a disparity in education funding could result. Ultimately, analysis of whether a disparity in education funding exists depends on the actual fiscal impact the changes have on each school district. DEED or Legislative Finance may be able to provide a comprehensive analysis of the fiscal impact the changes made in secs. 1 and 2 of SB 280 would have on each school district and on the public school funding system as a whole.

However, even if a disparity in education funding results from the changes made in secs. 1 and 2 of SB 280, the disparity might not violate the Alaska Constitution's equal protection clause. The Alaska Constitution provides that "all persons are equal and entitled to equal rights, opportunities, and protection under the law[.]"⁴ "The common question in equal protection cases is whether two groups of people who are treated differently are similarly situated and thus entitled to equal treatment."⁵ While the Alaska Constitution recognizes that different classes of people may be treated differently, classifications must bear a fair and substantial relation to a valid public purpose to pass

³ *Id.* See also Ordinance 2022-06(b)(AR) An Ordinance Appropriating up to \$2,340,737 to the Manager for Juneau School District Special Revenue Fund Deficits and Current Year Student Activities; Funding Provided by General Funds (adopted Apr. 17, 2023).

⁴ Art. I, sec. 1, Constitution of the State of Alaska.

⁵ *Gonzales v. Safeway Stores, Inc.*, 882 P.2d 389, 396 (Alaska 1994).

constitutional muster.⁶ The changes made to public education funding in secs. 1 and 2 of SB 280 would be subject to this equal protection analysis. A court would consider whether school districts that benefit from the changes are similarly situated to school districts that do not. A court would also consider whether there is a valid public purpose served by treating some school districts differently from other school districts.

Here, it is possible that a court could find that school districts that benefit from the changes made in secs. 1 and 2 of SB 280 are not similarly situated to school districts that do not benefit from these changes. For example, some school districts may be located in a city or borough through which the pipeline and related facilities run, while other school districts might not be. Additionally, some disparity already exists in the current public school funding system, as some districts currently have a larger (or smaller) property tax base than others. In *Moore v. State*, a superior court recognized that education policy is complex, and that the legislature has discretion and a duty to decide how to provide an adequate education and how to allocate funding among districts.⁷ Therefore, it is possible that a court could find that, even if a disparity in education funding results from the changes made in secs. 1 and 2 of SB 280, the changes do not violate the Alaska Constitution's equal protection clause.

Federal disparity test. When determining state aid entitlements to school districts, states are generally prohibited from taking into consideration impact aid payments.⁸ However, a state may take impact aid payments into consideration if the Impact Aid Program "determines and certifies . . . that the State has in effect a program of State aid that equalizes expenditures for free public education among [school districts] in the State."⁹ The disparity test is the method by which the Impact Aid Program determines whether a state's program of state aid equalizes expenditures among school districts.¹⁰ Whether specific types or amounts of local funding may affect the state's ability to pass the federal disparity test is a highly fact-specific question and application of the disparity test involves a complex calculation. Ultimately, to pass the disparity test, the difference in the amount of per-pupil funding may not be more than 25 percent between a school district

⁶ *Wilson v. Municipality of Anchorage*, 669 P.2d 569, 572 (Alaska 1983).

⁷ *Moore v. State*, No. 3AN-04-9756, 2007 WL 8310251, at *79 (Alaska Super. June 21, 2007); see also *Matanuska-Susitna Borough v. State*, 931 P.2d 391 (Alaska 1997) (upholding the school funding formula).

⁸ 20 U.S.C. § 7709(a).

⁹ 20 U.S.C. § 7709(b).

¹⁰ 34 C.F.R. § 222.162.

that has revenues and expenditures in the fifth percentile and a school district with revenues and expenditures in the ninety-fifth percentile.¹¹

SB 280 does not explicitly change the maximum amount that a school district may provide under the voluntary local contribution. However, as discussed above, SB 280 may have the effect of reducing the amount of the required local contribution that an applicable district owes from the amount the district would owe if the exemptions were not in place, and may also have the effect of allowing a district to increase the district's "outside the cap" funding. Therefore, it is possible that the changes in this bill could result in the state failing the disparity test. If the state fails the disparity test, then the state would not be able to subtract the district's federal impact aid from the state's share of the district's public school funding. The state therefore would be responsible for a greater contribution to public education funding. You may wish to discuss with DEED and the United States Department of Education whether, with the changes made in SB 280, the state can still pass the federal disparity test. Ultimately, however, it is the Impact Aid Program, and not the department or school districts, that determines and certifies that the state has in effect a program of state aid that equalizes expenditures for free public education among school districts in the state.

Resolution of legal issues. One way to resolve the legal issues raised by the changes made in secs. 1 and 2 of SB 280 would be to remove these sections from the bill. Otherwise, resolution of the legal issues depends on the actual fiscal impact the changes have on each school district and on the public school funding system as a whole. I do not know, as a factual matter, how the changes would actually affect the amount of each school district's public school funding or calculation under the federal disparity test. As mentioned above, DEED or Legislative Finance may be able to provide a comprehensive analysis of the fiscal impact these changes would have on each school district and on the public school funding system as a whole.

If I can be of further assistance, please let me know.

MYM:mis
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¹¹ 20 U.S.C. 7009(b)(2)(A).