

HOUSE FINANCE COMMITTEE

April 7, 2010

1:52 p.m.

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CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 1:52 p.m.

MEMBERS PRESENT

Representative Mike Hawker, Co-Chair
Representative Bill Stoltze, Co-Chair
Representative Bill Thomas Jr., Vice-Chair
Representative Allan Austerman
Representative Mike Doogan
Representative Neal Foster
Representative Les Gara
Representative Reggie Joule
Representative Mike Kelly
Representative Woodie Salmon

MEMBERS ABSENT

Representative Anna Fairclough

ALSO PRESENT

Rob Earle, Staff, Representative Bob Herron; Jomo Stewart, Staff, Senator Kevin Meyer; Jay Livey, Staff, Senator Hoffman; Eddy Jeans, Director, School Finances and Facilities, Department of Education and Early Development; Eric Gebhart, Superintendent, Nenana Society School District; Carl Rose, Executive Director, Alaska Association of Alaska School Boards; Amy Lujan, Executive Director, Alaska Association of School Business Officials (ALASBO); Mary Francis, Executive Director, Alaska Council of School Administrators; Paul Verhagen, Board Member, Nenana School District

PRESENT VIA TELECONFERENCE

Mike Barnhill, Attorney, Department of Law

SUMMARY

HB 363 AIDEA MEMBERSHIP

CS HB 363 (FIN) was REPORTED out of Committee with a "do pass" recommendation and with new fiscal note from the Department of Commerce, Community and Economic Development.

SB 237 SCHOOL CONSTRUCTION DEBT REIMBURSEMENT

CS SB 237(FIN) was HEARD and HELD in Committee for further consideration.

[1:52:56 PM](#)

#hb363

HOUSE BILL NO. 363

"An Act relating to the membership of the Alaska Industrial Development and Export Authority."

Representative Kelly MOVED to adopt Amendment 1, 26-LS1503\S.2, Cook, 4/7/10:

Page 2, line 18, following "serve":

Insert **"at the pleasure of the governor for"**

Co-Chair Stoltze OBJECTED for the purpose of discussion.

Representative Kelly explained Amendment 1.

Co-Chair Stoltze MAINTAINED his OBJECTION. He thought that the amendment could cause confusion and create a false sense of uncertainty for other boards.

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Representative Doogan requested a clearer explanation of the law in respect to the changes proposed in the amendment.

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MIKE BARNHILL, ATTORNEY, DEPARTMENT OF LAW (via teleconference), stated that opinions from the department

dating back to the 1980s suggest that when a board member was to serve for a specified period of time, a property interest was created for the amount of time the board member would serve. At that time the department recommended that the governor should not remove board members prematurely without an established cause. In the interest of caution, if the legislature believed that the board members should serve at the pleasure of the governor, it should be explicitly stated in the legislation.

A roll call vote was taken on the motion.

IN FAVOR: Doogan, Foster, Gara, Kelly, Salmon, Thomas,
Austerman
OPPOSED: Hawker, Stoltze

The MOTION PASSED (7-2).

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ROB EARLE, STAFF, REPRESENTATIVE BOB HERRON, discussed the fiscal note. He stated that the fiscal impact had increased due to the addition of 3 public members to the board.

Vice-Chair Thomas MOVED to REPORT CS HB 363(L&C), 26-LS1503\S, as amended, out of Committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CS HB 363 (L&C) was REPORTED out of Committee with a "do pass" recommendation and with new fiscal note from the Department of Commerce, Community and Economic Development.

[2:00:53 PM](#) AT EASE

[2:02:03 PM](#) REONVENNED

[2:02:12 PM](#)

#sb237

SENATE BILL NO. 237

"An Act extending the deadline for authorizing school construction debt reimbursed by the state."

JOMO STEWART, CO-COMMITTEE AID, SENATE EDUCATION COMMITTEE, STAFF, SENATOR KEVIN MEYER, explained that the bill would make permanent a program that the legislature had been

running through regular reauthorizations. It would codify in statute a system for the equitable distribution of school construction funds, historically achieved thorough yearly budgetary processes. He stated that The State of Alaska School Bond Debt Rimbusement Program provided the important partnership between local communities and the state. The program was open to any municipality that had the capacity to bond. It had allowed projects on the Department of Education and Early Development's approved list to be reimbursed by the state for up to 70 percent of the cost, and had allowed local governments to perform school construction that might not have otherwise been able to afford. The program was a long-running initiative that had been regularly reaffirmed with the extension of the sunset date. The benefits of the program had been limited to localities with bonding capacity, which had left a large section of the state's student population without access to program benefits. The bill would create in statute a comparable statutory mechanism for school construction in Rural Education Attendance Areas (REAA). The legislation would create a REAA, into which proportional state appropriations would be placed for the funding of rural construction into the future. Yearly deposits into the fund were estimated at \$40 million per year, and at no time would the value of the fund exceed \$100 million.

JAY LIVEY, STAFF, SENATOR HOFFMAN, explained that the legislation was drafted in response to *Kasayulie v. State*, 3AN-97-3782 Civ. (Superior Court of Alaska, Sept. 1, 1999), which ruled that the state had a duty to provide adequate funding for facilities in rural areas, as well as urban areas. This was an attempt to put into statute a reliable stream of revenue for REAAs, which would make planning building projects easier. He referred to the "SB 237 Funding Formula" handout (copy on File). The handout illustrates the generation of funds into the future, based on what has happened in REAA construction in the past and what was projected to happen in the future. The number \$344,190,425 was comprised from a list of 11 REAAs that were next on the department's list. The \$887,836,319 represented the REAA funding that would be necessary through FY11. The \$1,230,933,627 represented the outstanding school construction debt. At any point in time there was an outstanding debt number that was the states obligation for the 70 percent of approved bonds. The number would vary each year. Any school would have to go through all the processes to qualify for the program. The

funding formula was comprised of a constant and two variables; from year-to-year the outstanding school construction debt changed, as did the percentage number of REAA students, while the constant was the 28 percent differential percent proxy. Based on the FY2009 numbers the formula would be approximately \$38 million per year. Unused funds would roll over into the following year. He reiterated that any school that wanted to receive funds would need to go through the department's process of project approval.

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Representative Kelly understood that the \$1,230,933,627 represented a decade's long obligation, with a share ratio up to 90/10 and down to 60/40. He wondered what the corresponding numbers for the REAAs were.

Mr. Livey was not sure. He thought that there were a significant number of dollars that had been made for REAA construction through the grant process that would not be reflected in the debt number. Not all schools in the boroughs were funded through debt.

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Representative Doogan found the funding formula confusing.

Representative Gara expressed the desire for further clarification of the funding formula.

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Representative Joule suggested examining historical discussions and past proposed solutions for school construction, as a means of informing the current discussion.

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Mr. Livey relayed that that the \$543,645,894 figure had stemmed from looking back 10 years to determine the amount of money that had been spent in grants to REAA districts. There were currently 11 schools on the list that were waiting to be funded. The hope into the future was that there would eventually be a process, outside of the legislation, that would fund the schools. When the money being spent in REAAs was compared with the amount of money

being spent in the district, it was assumed that the \$344,190,425 would have been spent. The total of \$887,836,319 was a combination of what had been spent in the past, plus what would be spent over the next few years.

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Representative Gara asked how long the reimbursement program would be extended by the legislation. Mr. Stewart replied that the sunset date would be removed entirely. Representative Gara asked under what conditions state compensation would be reduced from 70 percent to 60 percent. Mr. Stewart responded that he did not know.

Co-Chair Stoltze added that the answer to the question was complicated.

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EDDY JEANS, DIRECTOR, SCHOOL FINANCES AND FACILITIES, DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT, testified that the administration was neutral concerning the legislation.

Representative Salmon requested further explanation of the SB 237 funding formula.

Mr. Jeans stated that the first concern for the administration was with the report language. Currently, report language referred to the information reported back to the legislature on the impact to the state's debt capacity. He stated that several offices had been provided with the language that the administration wanted incorporated into the bill. The administration requested a more thorough report on the impacts of funding the program, both grant and debt reimbursement, including funding sources.

Co-Chair Stoltze stated that the sponsor of the bill had expressed concern about tracking the states bonded indebtedness. He wondered if the administration had similar concerns. Mr. Jeans replied that the individual communities bonding capacity were driven by the number of bonds the community passed. The states bond rating would be minimally impacted by the legislation.

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Mr. Jeans reminded the committee that passage of the legislation would eliminate the sunset date for the program. There were two separate authorizations; 70 percent for districts or municipalities that remain within the departmental space guidelines, and 60 percent for those districts that desire to build beyond the space guidelines. Mr. Jeans said that the sunset provisions had been in place since the mid-1980s. The second piece of the legislation was the creation of the REAA construction fund. The department had figured 12 percent of REAA students into its funding formula and would need to amend it to reflect the 11 percent submitted by Mr. Livey.

Mr. Jeans continued. The bill would provide a revenue stream to fund the school construction list for REAAs. The department anticipated funding down the list of projects, if the top projects were REAA projects, funds would be available to fund those projects. Municipal projects would need legislative funding through a general fund grant. The department would not recommend funding the next REAA project until the time that the municipal project, which was at the top of the list, had been funded.

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Mr. Jeans cited the Alaska Department of Education and Early Development Capital Improvement Projects (FY2011) (copy on file). The first six projects on the list were in REAA areas. The proposed revenue stream would provide \$40 million annually, which would complete one project per year for the next three years. The Northwest Arctic Borough School District would not have direct access to the REAA fund. The department would spend out of the fund only after the legislature appropriated funding to build the Kivalina School in Northwest Arctic. He thought that there was the possibility of a bottleneck at the top of the project funding list, but that it would apply adequate pressure to fund programs and continue down the list.

Representative Joule asked how the legislation applied to major maintenance projects. Mr. James replied that the way that the legislation was drafted provided a funding stream for the school construction list for REAAs. Nothing in the bill would restrict any school district from applying for a school construction or a major maintenance grant. The legislation hoped to fund the REAA school construction

projects that had had difficulty receiving funding in the past.

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Representative Gara asked if the bill limited the \$40 million in funding to only REAAs projects. Mr. Jeans explained that if the first project on the list was a REEA, with a projected cost of \$35 million, a deposit into the REEA fund of \$40 million would be made. The extra \$5 million would stay in the fund. When city or borough project was number 1 on the list, the department would not skip over it in order to fund an REEA project. The integrity of the program would be maintained by following the list.

Representative Gara asked if there was language written into bill that would limit the funding to non-REAA projects until the REEA projects were funded. Mr. Jeans replied no.

Representative Gara understood that \$40 million went into the fund each year. The money could be used to build REEA schools, but in an effort to maintain good public policy non-REAA projects should not be skipped over. Mr. Jeans reiterated that the language had not been incorporated into the legislation.

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Mr. Jeans stated that the governor would like to see contingency language that would tie dismissal of the Kasayulie lawsuit to the passage of the bill.

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Representative Kelly understood that the crux of the Kasayulie lawsuit was that projects had been chosen out of order from the original project list. Mr. Jeans rebutted that the main argument presented in the lawsuit was that the state had two funding mechanisms for school construction or major maintenance, and that municipalities had the benefit of using either methodology. Conversely, REAAs were restricted to the grant program. He added that at the time the Kasayulie lawsuit was being heard, little funding was available for the school construction list.

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Co-Chair Stoltze asked if the language of the court finding was accurately translated into Section 1, sub-Sections (A) and (B) of the legislation. Mr. Jeans replied that the Section was an accurate summary of the crux of the Kasayulie lawsuit. Co-Chair Stoltze highlighted Section 1, Line 8, through Page 2, Line 5, of the bill.

Representative Doogan if the urban schools funding mechanisms were limited to bond debt and taxes, would there still be a cause of action in Kasayulie. Mr. Jeans reiterated that the thrust of the lawsuit had been the dual funding mechanism available to municipalities.

Co-Chair Stoltze thought that further legal analysis would be needed to clarify the issue for the committee.

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Co-Chair Stoltze opened public testimony.

ERIC GEBHART, SUPERINTENDENT, NENANA SOCIETY SCHOOL DISTRICT, testified that the district was comfortable with the assurance that the smaller city school districts, without bond capacity, would receive the funding necessary to complete capital projects. He expressed support for the legislation.

Representative Joule wondered what Mr. Gebhart had heard in discussion that prompted support of the bill. He queried what had been said that had provided a level of comfort that the issues faced by Nenana would be addressed by the legislation. Mr. Gebhart responded that he had heard of a possible amendment that would be offered, and that would ensure a benefit for Nenana.

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Vice-Chair Thomas stated that he would not be offering Amendment 1(no amendment action was taken on the legislation):

Page 1, line 2, following "areas":

Insert "**and city school districts in the unorganized borough**"

Page 2, lines 7 - 8:

Delete "**regional educational attendance areas**"

Insert "**the unorganized borough**"

Page 2, line 10:

Delete "that is a regional educational attendance area"

Insert "in the unorganized borough"

Page 2, line 12, following "AS 14.11.005 - 14.11.020":

Insert "and for which sufficient bond funding is unavailable"

Page 2, following line 17:

Insert a new subsection to read:

"(c) The department shall determine for each school district that is in the unorganized borough whether the district has the bonding capacity necessary to finance construction of a project approved under AS 14.11.005 - 14.11.020. If the department determines that sufficient bond funding is unavailable to the district, the project may receive a grant under this section."

Page 2, line 18:

Delete "**Regional educational attendance area school fund**"

Insert "**Fund for school construction in the unorganized borough**"

Page 2, line 19:

Delete "regional educational attendance area school fund"

Insert "fund for school construction in the unorganized borough"

Page 2, lines 21 - 22:

Delete "regional educational attendance areas"

Insert "the unorganized borough"

Page 2, line 25:

Delete "\$100,000,000"

Insert "\$120,000.000"

Representative Thomas felt comfortable with the assurances made by Mr. Jeans that smaller schools would be on the capital improvements projects list.

Representative Joule could remember a time when some schools were "cherry picked" over others for construction and maintenance funding. He noted that over time, an effort had been made to adhere to the list put out by the department.

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CARL ROSE, EXECUTIVE DIRECTOR, ALASKA ASSOCIATION OF ALASKA SCHOOL BOARDS stated that the association was in support of the bill. He shared that some of the larger school districts were in favor of the removal of the sunset date, while many of the REAA schools were in favor of the bill as a means of funding. In 2002, the state issued a GEO bond to clear the back log of construction and major maintenance projects. At that time, there was not a formula that addressed equity moving forward. The association saw the bill as a means of merging the 2 methods of school funding. The Kasayulie lawsuit had highlighted the issue of major maintenance neglect. The association believed that adhering to the capital list was crucial. If the list was not followed people would lose faith in the process.

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Representative Joule stated that when applying for the list schools have one shot each year to get building issues taken care of. He wondered if the list could be frozen to allow the legislature time to study it. Mr. Rose replied that schools that were in disrepair needed immediate assistance. Unchecked maintenance issues would become replacement issues. He added that it was expensive to continually apply for the list.

Representative Kelly asked if the membership was unanimous in its support for the bill. Mr. Rose replied that the association was unanimous in its support. He said that the assurance of 2 funding mechanisms, assuring districts that there would be a level of funding available for both large and small districts, would be ideal. Mr. Rose added that some of larger groups would be better served by the removal of the sunset date plan, and REAAs by the implementation of an additional funding mechanism.

Co-Chair Stoltze asserted that when discussing a major policy issue such as this he expected to see more representation from the different school districts. He

mentioned that the superintendent from Mat-Su was in the building, but had not talked with him concerning the issue. He said he had not had discussions with the Anchorage School District. He felt that the legislation had not been properly vetted through the process.

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Representative Doogan stated that he had not heard from a school district representative from his area concerning the issue.

Representative Gara relayed that the district he represented had the desire for funding needed in the district, but not to the exclusion of another district. He believed that his district would want equitable funding for all school districts.

Representative Salmon said that he had heard from 5 of the 13 districts he represented, and had heard no complaints concerning the legislation.

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AMY LUJAN, EXECUTIVE DIRECTOR, ALASKA ASSOCIATION OF SCHOOL BUSINESS OFFICIALS (ALASBO), explained that ALASBO members were the staff that handled the budgets, accounting, and business operations of Alaska school districts. She stated that the capital improvement project list was good process, but that there had never been a reliable source of funding to back it up for rural areas. Due to the inconsistent funding, many districts could not keep up with the expensive planning process each year. She felt that if the legislation were in place, districts would have the confidence that projects would eventually be funded. The existing sub-standard facilities in rural Alaska had hindered the deliverability of quality education. She voiced support for the removal of the sunset date. Voters in municipal districts would support school bonds provided the commitment for the state's share was strong.

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MARY FRANCIS, EXECUTIVE DIRECTOR, ALASKA COUNCIL OF SCHOOL ADMINISTRATORS, testified that the organization supported the bill. She mentioned that the superintendents from Anchorage and Fairbanks had spent time with the sponsor

during the development of the bill. She pointed out to the committee that there were many projects that were not on the capital improvement project list. The members supported the list, but thought that a statewide audit of school construction and major maintenance needs could provide insight. The requirements for getting on the list were complicated. She cited "Position Statement 09-5, Funding Bond Debt Reimbursement and the Capital Improvement Program" (copy on file). She trusted that the committee understood that not all necessary projects were on the list.

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Representative Gara voiced concern that the capital improvement program was not an accurate reflection of the needs throughout the state, and that legitimate projects did not always make the list. Ms. Francis assured the committee that she had not intended to suggest that the list was not a good list. She clarified that there were needs in the state that were not on the list because of time and resource constraints. Representative Gara wondered how big of a problem the constraints were for districts trying to make the list. Ms. Francis replied that the statewide audit of school construction and major maintenance needs would provide the necessary information from all districts.

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Vice-Chair Thomas asked if the superintendents had taken a position on energy efficiency in regard to school construction. Ms. Francis replied that the proposed audit should focus on the expectation that all school facilities were maximally energy efficient, and provided safe environments.

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PAUL VERHAGEN, BOARD MEMBER, NENANA SCHOOL DISTRICT, expressed concern that Representative Thomas had withdrawn Amendment 1. The amendment would have included rural schools in the language of the bill, which was at the heart of the issue.

Co-Chair Stoltze clarified that no action would be taken on amendments during the meeting. If Vice-Chair Thomas wanted

to take action at a later meeting, that was his prerogative.

Vice-Chair Thomas stated for the record that if it was clear in conversation that schools would be treated equally, the intent language of the amendment was not necessary.

Representative Doogan understood that the bill would indefinitely extend the 70/60 payment schedule for larger districts, and create a funding mechanism for REAAs. He expressed concern that schools in middle would still have to come to the legislature for funding.

Representative Kelly related to the desire to put a funding mechanism in place and make it predictable. He was not comforted by the numbers illustrated on Mr. Livey's handout. He thought the overall numbers for the legislation were too high.

Co-Chair Stoltze requested a representative from the Department of Law attend the next hearing of the bill to discuss the Kasayulie case.

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Representative Salmon asked what the qualifications were to be placed on the capital improvements project list. Mr. Jeans stated that there was an application process that districts had to go through on an annual basis. The schools detailed what projects were school construction or major maintenance based on the criteria set out in law. The department prioritized the projects based on need.

Representative Salmon asked how the department prioritized projects. Mr. Jeans stated that typically the school construction list was slow moving, except when projects were funded. The first 10 projects currently on the list pertained to overcrowding issues.

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Representative Gara asked Mr. Livey about the handout which illustrated 5 year periods of REAA funding. According to the chart between 2001 and 2010 the REAA school construction funding had been \$750 million. He wondered

what the \$40 million per year would solve, as it was lower than the average spending over the last 10 years.

Mr. Livey responded that the \$40 million was not intended as all of the construction funding for the REAAS. The amount that the state would spend was expected to fluctuate from year to year. The \$40 million would be the steady stream of revenue.

CS SB 237(FIN) was HEARD and HELD in Committee for further consideration.

#

ADJOURNMENT

The meeting was adjourned at 3:19 PM