

Original sponsors: Swackhammer, Navarre,  
and C. Davis

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2

CS FOR HOUSE BILL NO. 37 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to insurance for school facilities

7

and equipment and state aid for school construction;

8

division of duties between a borough and a borough

9

school board; and providing for an effective date."

10

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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\* Section 1. AS 14.03 is amended by adding a new section to read:

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Sec. 14.03.150. INSURANCE REQUIRED. (a) Each school district

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shall purchase and maintain or provide proof of adequate property

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insurance for the replacement cost of all school facilities and equip-

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ment. Insurance purchased to comply with this section may contain a

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deductible amount, if approved by the department. A school district

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may comply with this section by initiating and maintaining a program

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of self-insurance, if the department annually determines that the

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school district has submitted adequate evidence of the district's

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ability to self-insure for the replacement cost of all school facili-

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ties and equipment. A copy of the insurance policy or other informa-

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tion indicating compliance with this section shall be provided to the

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department.

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(b) If the department determines that a school district is not

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insured as required under (a) of this section, the department shall

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notify the school district of the determination. Unless the school

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district obtains adequate insurance within 30 days after the school

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district receives notice under this subsection, the department shall

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purchase the insurance required by (a) of this section for that school

1 district.

2 (c) The department may not award a school construction grant  
3 under AS 14.11 to a municipality that is a school district or a  
4 regional educational attendance area that is not in compliance with  
5 (a) of this section. The department shall reduce the amount of state  
6 foundation aid under AS 14.17.021 for which a school district may  
7 qualify, by the amount, if any, paid by the department under (b) of  
8 this section.

9 \* Sec. 2. AS 14.07.020(a)(13) is amended to read:

10 (13) administer the grants awarded under AS 14.11 [AS 14.-  
11 11.020];

12 \* Sec. 3. AS 14.07.170 is amended by adding a new subsection to read:

13 (b) The board shall review grant applications recommended under  
14 AS 14.11.013 and may approve grant applications under AS 14.11.015.

15 \* Sec. 4. AS 14.08.101(7) is amended to read:

16 (7) recommend to the department projects for construction,  
17 rehabilitation, and improvement of schools and education-related  
18 facilities as specified in AS 14.11.011(b) [AS 14.11.010(a)], and  
19 plan, design, and construct the project when the responsibility for it  
20 is assumed under AS 14.11.020;

21 \* Sec. 5. AS 14.11 is amended by adding a new section to read:

22 Sec. 14.11.005. SCHOOL CONSTRUCTION GRANT ACCOUNT. There is  
23 created a school construction grant fund as an account in the general  
24 fund. The fund shall be used to make grants for the costs of school  
25 construction. Legislative appropriations for school construction  
26 shall be deposited in the fund, and the proceeds from the sale of  
27 general obligation bonds for school construction may be deposited in  
28 the fund.

29 \* Sec. 6. AS 14.11 is amended by adding new sections to read:

1           Sec. 14.11.011. GRANT APPLICATIONS. (a) A municipality that is  
2 a school district or a regional educational attendance area may submit  
3 a grant request to the department for a school construction grant.

4           (b) For a municipality that is a school district or a regional  
5 educational attendance area to be eligible for a school construction  
6 grant the district shall submit

7           (1) a six-year capital improvement plan that includes a  
8 description of the district's fixed asset inventory system and preven-  
9 tive maintenance program no later than September 1 of the fiscal year  
10 before the fiscal year for which the request is made; the six-year  
11 plan must contain for each proposed project a detailed scope of work,  
12 a project budget, and documentation of conditions justifying the  
13 project; and

14           (2) evidence that the district has secured and will main-  
15 tain adequate property loss insurance for the replacement cost of all  
16 facilities for which state funds are available under AS 14.11.005 or a  
17 program of insurance acceptable to the department.

18           Sec. 14.11.013. DEPARTMENT REVIEW OF GRANT APPLICATIONS. (a)  
19 With regard to projects for which grants are requested under AS 14.-  
20 11.011, the department shall

21           (1) annually review the six-year plans submitted by each  
22 district under AS 14.11.011(b) and recommend to the board a revised  
23 and updated six-year construction grant schedule that serves the best  
24 interests of the state and each district; in recommending projects for  
25 this schedule, the department shall verify that each proposed project  
26 qualifies as a project required to

27           (A) avert imminent danger or correct life-threatening  
28 situations;

29           (B) house students who would otherwise be unhoused;

1 (C) protect the structure of existing school  
2 facilities;

3 (D) correct building code deficiencies that require  
4 major repair or rehabilitation in order for the facility to  
5 continue to be used for the educational program;

6 (E) achieve an operating cost savings;

7 (F) modify or rehabilitate facilities for the purpose  
8 of improving the instructional program;

9 (G) meet an educational need not specified in (A) -  
10 (F) of this paragraph, identified by the department;

11 (2) prepare an estimate of the amount of money needed to  
12 finance each project;

13 (3) provide to the governor, by November 1, and to the  
14 legislature within the first 10 days of each regular legislative  
15 session, a revised and updated six-year construction grant schedule  
16 together with a proposed schedule of appropriations.

17 (b) In preparing the construction grant schedule, the department  
18 shall establish priorities among projects for which grants are re-  
19 quested and shall award school construction grants in the order of  
20 priority established. In establishing priorities the department shall  
21 evaluate at least the following factors:

22 (1) emergency requirements;

23 (2) priorities assigned by the district to the projects  
24 requested;

25 (3) the number of students affected by the project;

26 (4) new local elementary and secondary programs;

27 (5) existing regional, community, and school facilities,  
28 and their condition; and

29 (6) alternate education program options for accomplishing

1 the project's objectives.

2 (c) The department may reject project requests and omit them  
3 from the six-year schedule due to

4 (1) incomplete information or documentation provided by the  
5 district;

6 (2) a determination by the department that existing facili-  
7 ties can adequately serve the program requirements, or that alterna-  
8 tive projects are in the best interests of the state;

9 (3) a determination that the project is not in the best  
10 interest of the state.

11 (d) The department shall reduce a project budget by the cost of  
12 those portions of a project design that the department determines are  
13 for construction of student residential space, planetariums, hockey  
14 rinks, saunas, and other facilities for single purpose sporting or  
15 recreational uses that are not suitable for other activities. This  
16 subsection does not apply to funding for swimming pools that meet  
17 criteria established by the department.

18 (e) By November 15, the department shall provide public notice  
19 of the grant applications submitted under (a) of this section and the  
20 priorities established under (b) of this section. After public notice  
21 has been given, the department shall hold a public hearing on the  
22 priorities established under (b) of this section. In this subsection,  
23 "public notice" means notice published in a newspaper of general  
24 circulation and notice to every person who has requested notice about  
25 the grant application program from the department.

26 (f) The department may not establish priorities among projects  
27 under (b) of this section based only on the number of students af-  
28 fected by the project.

29 Sec. 14.11.015. APPROVAL OF GRANT APPLICATIONS. (a) The board

1 the project's objectives.

2 (c) The department may reject project requests and omit them  
3 from the six-year schedule due to

4 (1) incomplete information or documentation provided by the  
5 district;

6 (2) a determination by the department that existing facili-  
7 ties can adequately serve the program requirements, or that alterna-  
8 tive projects are in the best interests of the state;

9 (3) a determination that the project is not in the best  
10 interest of the state.

11 (d) The department shall reduce a project budget by the cost of  
12 those portions of a project design that the department determines are  
13 for construction of student residential space, planetariums, hockey  
14 rinks, saunas, and other facilities for single purpose sporting or  
15 recreational uses that are not suitable for other activities. This  
16 subsection does not apply to funding for swimming pools that meet  
17 criteria established by the department.

18 (e) By November 15, the department shall provide public notice  
19 of the grant applications submitted under (a) of this section and the  
20 priorities established under (b) of this section. After public notice  
21 has been given, the department shall hold a public hearing on the  
22 priorities established under (b) of this section. In this subsection,  
23 "public notice" means notice published in a newspaper of general  
24 circulation and notice to every person who has requested notice about  
25 the grant application program from the department.

26 (f) The department may not establish priorities among projects  
27 under (b) of this section based only on the number of students af-  
28 fected by the project.

29 Sec. 14.11.015. APPROVAL OF GRANT APPLICATIONS. (a) The board

1 shall review grant applications that have been recommended by the  
2 department under AS 14.11.013, and may approve a grant application if  
3 the board determines that the project meets the criteria specified in  
4 AS 14.11.013(a)(1). The department may not award a school construc-  
5 tion grant unless the grant application is approved by the board.

6 (b) The department shall award grants approved under (a) of this  
7 section in the order of the projects' priority on the date the appro-  
8 priation bill funding the school construction grant fund is passed by  
9 the legislature, regardless of any appeal pending under AS 14.11.016.  
10 Appeals pending under AS 14.11.016 at the time that grants are awarded  
11 may not delay the funding of grants awarded under this section.

12 (c) If a project is assigned a new priority ranking under  
13 AS 14.11.016 after the date of passage by the legislature of the  
14 appropriation bill for the school construction grant fund, the project  
15 must be funded in accordance with the new priority ranking at the next  
16 time that school construction grants are awarded.

17 Sec. 14.11.016. ADMINISTRATIVE AND JUDICIAL REVIEW. (a) A  
18 district may request reconsideration of a decision of the department  
19 assigning a priority to the district's project, establishing the scope  
20 of the project, or establishing the budget for the project. The  
21 request must be in writing and must include a statement of the spe-  
22 cific changes desired, and a summary of the evidence supporting the  
23 district's claim that the department has erred in its review of the  
24 district's grant application. A request for reconsideration must be  
25 received by the department by the day of the public hearing held under  
26 AS 14.11.013(e). The department shall review its decision on the  
27 basis of the request by the district and determine whether its deci-  
28 sion should be changed. The department shall issue its determination  
29 in writing within 15 days after the last day of the public hearing

1 held under AS 14.11.013(e).

2 (b) A district may appeal an adverse decision of the department  
3 under (a) of this section to the commissioner on the ground that the  
4 department has not complied with AS 14.11.013. The notice of appeal  
5 must be in writing and must include a statement of evidence supporting  
6 the district's claim that the department has not complied with AS 14.-  
7 11.013. The notice of appeal must be received by the commissioner  
8 within 15 days after the department issues its determination under (a)  
9 of this section. The commissioner shall issue a written decision on  
10 the appeal within 15 days after receiving the notice of appeal.

11 (c) A district may appeal an adverse decision of the commis-  
12 sioner under (b) of this section by filing a written notice of appeal  
13 with the board within 30 days after the date of the commissioner's  
14 decision. The notice of appeal must state the legal and factual basis  
15 for the appeal and the precise relief sought. The failure of the  
16 district to include an issue in a notice of appeal constitutes a  
17 waiver of the right to have the issue considered under this subsec-  
18 tion. If the board finds that the notice of appeal does not raise a  
19 reasonable issue of fact or law, it shall issue a written decision.  
20 If the board finds that the notice of appeal raises a reasonable issue  
21 of fact or law, the board shall appoint a hearing officer who is  
22 qualified under AS 44.62.350(c) to conduct a hearing on those issues.  
23 The hearing officer shall conduct a hearing on the issues raised in  
24 the notice of appeal, make findings of fact and law, and recommend a  
25 decision to the board within 60 days after the last day for filing a  
26 notice of appeal with the board. The board shall consider the recom-  
27 mended decision of the hearing officer at its next regularly scheduled  
28 meeting and may adopt all, part, or none of the recommended decision  
29 or may remand the issue to the hearing officer for further hearings.

1 The board shall issue its decision in writing.

2 (d) The board shall consolidate appeals under (c) of this sec-  
3 tion, if the notices of appeal raise related issues of fact or law.

4 (e) A district may appeal an adverse decision of the board under  
5 (c) of this section to the superior court in the manner provided by  
6 AS 44.62.560 - 44.62.570.

7 (f) The board shall adopt regulations governing procedures for  
8 the reconsideration and appeal of decisions under this section. The  
9 regulations adopted under this subsection are not required to conform  
10 to AS 44.62.330 - 44.62.630, but shall be consistent with minimum  
11 standards of due process.

12 (g) A district may not request reconsideration of or appeal a  
13 priority determination on the grounds that a revised priority assigned  
14 to another project, due to a reconsideration or appeal under this sec-  
15 tion, has resulted in a lower priority being accorded to the dis-  
16 trict's project.

17 Sec. 14.11.017. SCHOOL CONSTRUCTION GRANT CONDITIONS. (a) The  
18 department shall require in the grant agreement that a municipality  
19 that is a school district or a regional educational attendance area

20 (1) agree to construction of a facility of appropriate size  
21 and use that meets criteria adopted by the department;

22 (2) demonstrate by a means acceptable to the department  
23 that the proposed project should be a capital construction project and  
24 not part of a preventive maintenance program or regular custodial care  
25 program;

26 (3) provide reasonable assurance by a means acceptable to  
27 the department, that the cost of the project will be uniform with the  
28 costs of the most current construction projects in the area;

29 (4) agree to limit equipment purchases to that required for

1 the approved school construction plan and account for all equipment  
2 purchased for the project under a fixed asset inventory system ap-  
3 proved by the department;

4 (5) submit project budgets for department approval and  
5 agree that the grant amount may, at the discretion of the department,  
6 be reduced or increased by amounts equal to the amounts by which  
7 contracts vary from the budget amounts approved by the department; and

8 (6) submit to the department for approval, before award of  
9 the construction contract, a plan for school construction that in-  
10 cludes educational specifications, final construction drawings, and  
11 contract documents.

12 (b) The cost of any school construction activity encompassed by  
13 the definition of "costs of school construction" under AS 14.11.135 is  
14 payable under a grant awarded under AS 14.11.015 without regard to  
15 whether the costs were incurred prior to the

16 (1) award of the grant;

17 (2) approval of the grant application by the board; or

18 (3) effective date of an appropriation to the school con-  
19 struction grant account for the year in which the grant is funded.

20 Sec. 14.11.019. SCHOOL CONSTRUCTION GRANT APPROPRIATIONS.  
21 Within the general appropriation bill submitted to the legislature  
22 under AS 37.07.020, the governor shall include an appropriation for  
23 school construction grants in the succeeding fiscal year as determined  
24 by the six-year construction grant schedule prepared under AS 14.-  
25 11.013.

26 \* Sec. 7. AS 14.11.100(a)(5) is amended to read:

27 (5) subject to (h), (i), and (j) of this section, 80 per-  
28 cent of

29 (A) payments made by the municipality during the

1 fiscal year for the retirement of principal and interest on  
2 outstanding bonds, notes or other indebtedness authorized by the  
3 qualified voters of the municipality after June 30, 1983, but  
4 before July 1, 1989, to pay costs of school construction, addi-  
5 tions to schools, and major rehabilitation projects that exceed  
6 \$25,000 and are approved under AS 14.07.020(11); and

7 (B) cash payments made after June 30, 1983, by the  
8 municipality during the fiscal year two years earlier to pay  
9 costs of school construction, additions to schools, and major  
10 rehabilitation projects that exceed \$25,000 and are approved by  
11 the department before July 1, 1990, under AS 14.07.020(11).

12 \* Sec. 8. AS 14.11.100(c) is amended to read:

13 (c) The school construction account is established. Funds to  
14 carry out the provisions of this section shall be included within the  
15 general appropriation bill submitted to the legislature under AS 37.-  
16 07.020 and may be appropriated annually by the legislature to the  
17 account. If amounts in the account are insufficient for the purpose  
18 of providing the share to which a borough or city is entitled under  
19 this section, those funds that are available shall be distributed pro  
20 rata among the eligible local governments except that the legislature  
21 may direct that additional debt service on refunding bonds that ex-  
22 ceeds the total debt service on the refunded bonds be disregarded in  
23 whole or in part.

24 \* Sec. 9. AS 14.11.102 is amended to read:

25 Sec. 14.11.102. ALLOCATION REQUESTS. [EVALUATION OF PROJECTS.  
26 THE DEPARTMENT SHALL EVALUATE PROJECTS FOR WHICH RETIREMENT OF SCHOOL  
27 CONSTRUCTION DEBT IS REQUESTED BY SCHOOL DISTRICTS IN ACCORDANCE WITH  
28 THE PROCEDURES SET OUT IN AS 14.11.010.] A request for an allocation  
29 of funds under AS 14.11.100 must be submitted to the department by the

1 school district not [NO] later than October 15 of the fiscal year  
2 before the fiscal year for which the request is made.

3 \* Sec. 10. AS 14.11 is amended by adding a new section to read:

4 Sec. 14.11.127. ALLOCATION OF APPROPRIATIONS FOR SCHOOL CON-  
5 STRUCTION. (a) If the amount appropriated to the department for  
6 school construction in a fiscal year is less than the amount necessary  
7 to fund full entitlements for school construction debt retirement  
8 under AS 14.11.100 and the amount necessary to fully fund all projects  
9 required to avert imminent danger or correct life-threatening situa-  
10 tions that have been approved by the board under AS 14.11.015, then  
11 the amount appropriated for that fiscal year shall be allocated,  
12 unless otherwise provided by law, between the school construction  
13 grant account under AS 14.11.005 and the school construction account  
14 under AS 14.11.100(c) in the following proportions:

15	Fiscal year	School Construction	School Construction
16		Grant Account	Account
17	1991	.11	.89
18	1992	.13	.87
19	1993	.15	.85
20	1994	.21	.79
21	1995	.29	.71
22	1996	.36	.64
23	1997	.46	.54
24	1998	.58	.42
25	1999	.60	.40
26	2000 and subsequent		
27	fiscal years	.62	.38

28 (b) If the amount appropriated to the department for school  
29 construction debt retirement exceeds the amount necessary to pay full

1 entitlements under AS 14.11.100(c), the excess amount of the  
2 appropriation may be deposited, unless otherwise provided by law, in  
3 the school construction grant account under AS 14.11.005.

4 \* Sec. 11. AS 14.11.130 is repealed and reenacted to read:

5 Sec. 14.11.130. CONSTRUCTION OF CHAPTER. This chapter may not  
6 be construed to prevent a municipality that is a school district or a  
7 regional educational attendance area from using other revenue to  
8 include additional or expanded facilities as part of approved school  
9 construction projects.

10 \* Sec. 12. AS 14.11.135(3) is amended to read:

11 (3) "costs of school construction" means the cost of ac-  
12 quiring, constructing, enlarging, repairing, remodeling, equipping or  
13 furnishing of public elementary and secondary schools that are owned  
14 or operated by the state, a municipality, or a district [SCHOOL BUILD-  
15 INGS] and includes the sum total of all costs of financing and carry-  
16 ing out the project; these include, but are not limited to, the costs  
17 of all necessary studies, surveys, plans and specifications, architec-  
18 tural, engineering or other special services, acquisition of real  
19 property, site preparation and development, purchase, construction,  
20 reconstruction and improvement of real property and the acquisition of  
21 machinery and equipment as may be necessary in connection with the  
22 project; an allocable portion of the administrative and operating  
23 expenses of the grantee; the cost of financing the project, including  
24 interest on bonds issued to finance the project; and the cost of other  
25 items, including any indemnity and surety bonds and premiums on insur-  
26 ance, legal fees, fees and expenses of trustees, depositaries, finan-  
27 cial advisors, and paying agents for the bonds issued as the issuer  
28 considers necessary;

29 \* Sec. 13. AS 14.11.135 is amended by adding a new paragraph to read:

1 (5) "district" means the districts described in AS 14.12.-  
2 010.

3 \* Sec. 14. AS 14.14.060 is amended by adding a new subsection to read:

4 (i) Notwithstanding (e) and (f) of this section, a borough  
5 assembly and a borough school board may divide the duties imposed  
6 under (e) and (f) of this section by agreement between the borough  
7 assembly and borough school board.

8 \* Sec. 15. AS 46.11.900(8) is amended to read:

9 (8) "state financial assistance" means a loan, grant,  
10 guarantee, insurance, payment, rebate, subsidy, or other form of state  
11 assistance other than aid under AS 05.35.010 - 05.35.070, AS 14.11,  
12 [AS 14.11.100 - 14.11.135,] and AS 29.60, including the purchase by a  
13 state agency of a loan to finance the construction of a new resi-  
14 dential, commercial, or industrial building;

15 \* Sec. 16. AS 46.11.900(8) is amended to read:

16 (8) "state financial assistance" means a loan, grant,  
17 guarantee, insurance, payment, rebate, subsidy, or other form of state  
18 assistance other than aid under AS 05.35.010 - 05.35.070, [AS 14.11,]  
19 and AS 29.60, including the purchase by a state agency of a loan to  
20 finance the construction of a new residential, commercial, or indus-  
21 trial building;

22 \* Sec. 17. AS 14.11.010, 14.11.105, 14.11.110, 14.11.115, 14.11.120,  
23 and 14.11.125 are repealed.

24 \* Sec. 18. AS 14.03.150; AS 14.07.020(a)(13), 14.07.170(b); AS 14.08.-  
25 101(7); and AS 14.11 are repealed.

26 \* Sec. 19. Notwithstanding AS 14.11.013(b), added by sec. 6 of this  
27 Act, the Department of Education shall endeavor to complete construction of  
28 public schools that were in their final phase before January 1, 1989.

29 \* Sec. 20. Except for secs. 16 and 18 of this Act, this Act takes

1 effect July 1, 1989.

2 \* Sec. 21. Sections 16 and 18 of this Act take effect July 1, 1995.