

Original sponsors: Swackhammer, Navarre,
and C.Davis

1 IN THE HOUSE BY THE FINANCE COMMITTEE
2 CS FOR HOUSE BILL NO. 37 (Finance)
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:
11 * Section 1. AS 14.03 is amended by adding a new section to read:
12 Sec. 14.03.150. INSURANCE REQUIRED. (a) Each school district
13 shall purchase and maintain or provide proof of adequate property
14 insurance for the replacement cost of all school facilities and equip-
15 ment. Insurance purchased to comply with this section may contain a
16 deductible amount, if approved by the department. A school district
17 may comply with this section by initiating and maintaining a program
18 of self-insurance, if the department annually determines that the
19 school district has submitted adequate evidence of the district's
20 ability to self-insure for the replacement cost of all school facili-
21 ties and equipment. A copy of the insurance policy or other informa-
22 tion indicating compliance with this section shall be provided to the
23 department.
24 (b) If the department determines that a school district is not
25 insured as required under (a) of this section, the department shall
26 notify the school district of the determination. Unless the school
27 district obtains adequate insurance within 30 days after the school
28 district receives notice under this subsection, the department shall
29 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;

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; and

18 (3) evidence acceptable to the department that the proposed
19 project should be a capital construction project and not part of a
20 preventive maintenance program or regular custodial care program.

21 Sec. 14.11.013. DEPARTMENT REVIEW OF GRANT APPLICATIONS. (a)
22 With regard to projects for which grants are requested under AS 14.-
23 11.011, the department shall

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

1 (A) avert imminent danger or correct life-threatening
2 situations;

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

4 (C) protect the structure of existing school facil-
5 ities;

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

9 (E) achieve an operating cost savings;

10 (F) modify or rehabilitate facilities for the purpose
11 of improving the instructional program;

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

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

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

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

25 (1) emergency requirements;

26 (2) priorities assigned by the district to the projects
27 requested;

28 (3) new local elementary and secondary programs;

29 (4) existing regional, community, and school facilities,

1 and their condition; and

2 (5) alternate education program options for accomplishing
3 the project's objectives.

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

6 (1) incomplete information or documentation provided by the
7 district;

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

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

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

20 (e) By November 5, the department shall provide public notice of
21 the grant applications submitted under (a) of this section and the
22 priorities established under (b) of this section. After public notice
23 has been given, the department shall, not later than December 1, hold
24 a public hearing on the priorities established under (b) of this sec-
25 tion. In this subsection, "public notice" means notice published in a
26 newspaper of general circulation and notice to every person who has
27 requested notice about the grant application program from the depart-
28 ment.

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 by filing a written notice of appeal with
4 the commissioner within 15 days after the date of the department's
5 decision. The notice of appeal must state the legal and factual basis
6 for the appeal and the precise relief sought. The failure of the
7 district to include an issue in a notice of appeal constitutes a
8 waiver of the right to have the issue considered. Not later than 10
9 days after receipt of a notice of appeal, the commissioner shall
10 appoint a hearing officer who is qualified under AS 44.62.350(c) to
11 consider the appeal. If the hearing officer finds that the notice of
12 appeal does not raise a reasonable issue of fact or law, the hearing
13 officer shall issue a written decision denying the appeal. Denial of
14 an appeal by a hearing officer is a final decision that may be
15 appealed under (d) of this section. If the hearing officer finds that
16 the notice of appeal raises a reasonable issue of fact or law, the
17 hearing officer shall conduct a hearing on those issues and recommend
18 a decision to the board. The hearing officer shall issue a decision
19 on the appeal not later than 60 days after being appointed. The board
20 shall consider the recommended decision of the hearing officer at its
21 next regularly scheduled meeting and may adopt all, part, or none of
22 the recommended decision or may remand the issue to the hearing offi-
23 cer for further hearings. The board shall issue its decision in
24 writing within 10 days after consideration of the hearing officer's
25 decision.

26 (c) The hearing officer may consolidate appeals under (b) of
27 this section, if the notices of appeal raise related issues of fact or
28 law.

29 (d) A district may appeal an adverse decision of a hearing

1 officer or the board under (b) of this section to the superior court
2 in the manner provided by AS 44.62.560 - 44.62.570.

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

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

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

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

18 (2) provide reasonable assurance by a means acceptable to
19 the department, that the cost of the project will be uniform with the
20 costs of the most current construction projects in the area;

21 (3) agree to limit equipment purchases to that required for
22 the approved school construction plan and account for all equipment
23 purchased for the project under a fixed asset inventory system ap-
24 proved by the department;

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

29 (5) submit to the department for approval, before award of

1 the construction contract, a plan for school construction that in-
2 cludes educational specifications, final construction drawings, and
3 contract documents.

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

8 (1) award of the grant;

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

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

12 Sec. 14.11.019. SCHOOL CONSTRUCTION GRANT APPROPRIATIONS.
13 Within the general appropriation bill submitted to the legislature
14 under AS 37.07.020, the governor shall include an appropriation for
15 school construction grants in the succeeding fiscal year as determined
16 by the six-year construction grant schedule prepared under AS 14.-
17 11.013.

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

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

21 (A) payments made by the municipality during the
22 fiscal year for the retirement of principal and interest on

23 (i) outstanding bonds, notes or other indebted-
24 ness authorized by the qualified voters of the municipality
25 after June 30, 1983, but before July 1, 1989, to pay costs
26 of school construction, additions to schools, and major
27 rehabilitation projects that exceed \$25,000 and are approved
28 under AS 14.07.020(11);

29 (ii) outstanding bonds, notes, or other

1 indebtedness authorized by the qualified voters of the
2 municipality before July 1, 1989, and reauthorized before
3 November 1, 1989, to pay costs of school construction,
4 additions to schools, and major rehabilitation projects that
5 exceed \$25,000 and are approved under AS 14.07.020(11); and

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

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

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

23 * Sec. 9. AS 14.11.102 is amended to read:

24 Sec. 14.11.102. ALLOCATION REQUESTS. [EVALUATION OF PROJECTS.
25 THE DEPARTMENT SHALL EVALUATE PROJECTS FOR WHICH RETIREMENT OF SCHOOL
26 CONSTRUCTION DEBT IS REQUESTED BY SCHOOL DISTRICTS IN ACCORDANCE WITH
27 THE PROCEDURES SET OUT IN AS 14.11.010.] A request for an allocation
28 of funds under AS 14.11.100 must be submitted to the department by the
29 school district not [NO] later than October 15 of the fiscal year

1 before the fiscal year for which the request is made.

2 * Sec. 10. AS 14.11.130 is repealed and reenacted to read:

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

8 * Sec. 11. AS 14.11.135(3) is amended to read:

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

27 * Sec. 12. AS 14.11.135 is amended by adding a new paragraph to read:

28 (5) "district" means the districts described in AS 14.12.-
29 010.

1 * Sec. 13. AS 14.14.060 is amended by adding a new subsection to read:
2 (i) Notwithstanding (e) and (f) of this section, a borough
3 assembly and a borough school board may divide the duties imposed
4 under (e) and (f) of this section by agreement between the borough
5 assembly and borough school board.

6 * Sec. 14. AS 46.11.900(8) is amended to read:

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

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

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

20 * Sec. 16. AS 14.11.010, 14.11.105, 14.11.110, 14.11.115, 14.11.120,
21 and 14.11.125 are repealed.

22 * Sec. 17. AS 14.03.150; AS 14.07.020(a)(13), 14.07.170(b); AS 14.08.-
23 101(7); and AS 14.11 are repealed.

24 * Sec. 18. Notwithstanding AS 14.11.013(b), added by sec. 6 of this
25 Act, the Department of Education shall award school construction grants in
26 the following order:

27 (1) projects required to avert imminent danger or correct
28 life-threatening situations;

29 (2) projects that are in their final phase as of January 1,

1 1989, and that have received more than \$2,500,000 in school construc-
2 tion grant funds; and

3 (3) other projects approved under AS 14.11.015, added by
4 sec. 6 of this Act.

5 * Sec. 19. Except for secs. 15 and 17 of this Act, this Act takes
6 effect July 1, 1989.

7 * Sec. 20. Sections 15 and 17 of this Act take effect July 1, 1995.