Senate Health, Education and Social Services Committee

Legislation Checklist

Bill number: 351

Sponsor: P. Fischer

Date referred to committee: 1-20-86

Synopsis completed:

Fiscal note:

Further referrals:

CONTACTS:

✓ P. Fischer 3791 (Terry Otness)

✓ Bob Greene 6-1083

~~message~~ ✓ Don MacKinnon 6-9702 out of town. Admin. Assoc. supports.

~~message~~ ✓ Steve Hole 2800

✓ Larry Hurel 3865

message Linda Anderson 6-1977 Ms. Easton

message ✓ ~~Margo [illegible]~~ maternity leave, OMB 3568
Dotty Sparks

✓ Legal Services, Mike Ford 2450
"drafted properly"

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

1/20/86

Date 2-6-86

Mr. President

The Committee on HESS considered SB 351 relating to retirement of school construction debt; efd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

[X] do pass

[ ] do pass with attached amendment(s)

[ ] replace with/or adopt CS for ______
[ ] new title
[ ] same title and recommends ______

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to ______ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS
Carl Fritz	
Joe P. Gosher	
Ailis Fingelat	
Edw DeVries	

Bettie E Takenkamp Do Pass
Chairman

Chairman recommendation

FEB 21 1986 SB 351

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

REPLY TO:

☐ 1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ 1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

x P.O. Box K
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600
465-3603

February 20, 1986

The Honorable Bettye Fahrenkamp
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Re: SB 351
AS 14.11.100(k)

Dear Senator Fahrenkamp:

Please excuse my delay in responding to your letter of February 8, 1986. I did not receive it until February 18.

You have inquired regarding the interpretation given to AS 14.11.100(k) which results in the reduction of the amount reimbursed for debt retirement by the amount of interest earned on bond proceeds which is applied to the costs of the project, the payment of accrued interest, bond redemption, or the costs of the bond sale, except in the case of cost overruns which are unforeseeable or unavoidable under prudent management. This interpretation has been placed in regulations found at 4 AAC 31.058.

These regulations are the result of construing the provisions of AS 14.11.100(k) as well as other provisions of AS 14.11.100.

AS 14.11.100(k) requires municipalities to spend the interest earned on proceeds of bond sales for specific items of expense relating to the construction of a school facility. The repayment of all or a portion of these items of expense has the practical effect of reducing the amount of money owed on the debt obligations.

AS 14.11.100(a)5)(A) provides that the state will reimburse up to 80 percent of the costs of school construction for projects approved by the Department of Education. Under AS 14.11.100(k) interest money may only be spent in ways which reduce the outstanding debt obligations arising from the costs of school construction, obligations which will be reimbursed by the state.

In our interpretation of the provisions of AS 14.11.100, if there is no reduction of the amount the state will reimburse by the amount of the interest earned on bond proceeds, the state will pay more than 80 percent of the outstanding debt obligations. This result is not intended by the statute as evidenced by its language.

Sincerely yours,

HAROLD M. BROWN
ATTORNEY GENERAL

By: William F. Cummings
William F. Cummings
Assistant Attorney General

WFC:prm

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ARLISS STURGULEWSKI, Vice Chairman
JOE JOSEPHSON
PAUL FISCHER
EDNA ARMSTRONG-DE VRIES

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3762

THE SEAL OF THE STATE OF ALASKA

Senate Committee on Health, Education and Social Services

TO: Members, Senate Committee on Health, Education and Social Services

FROM: Committee Staff

RE: SB 351

DATE: February 22, 1986

As you will recall, at our committee hearing on SB 351, regarding regulations adopted by the State Board of Education on the use of interest earned on school construction bonds, the Department's representative testified that the attorney general had reviewed the legislative history and found the regulation to be consistent with existing law. Pursuant to that testimony, we did request information from the attorney on his determination. That information is attached.

TO: Bettye
FROM: Sandra

SENATE H.E.S.S. COMMITTEE, FEBRUARY 6, 1986

SB 351 RELATING TO RETIREMENT OF SCHOOL CONSTRUCTION DEBT. (P. FISCHER)

WOULD PROHIBIT THE STATE BOARD OF EDUCATION FROM ADOPTING A SPECIFIC REGULATION REGARDING USE OF INTEREST EARNED ON SCHOOL CONSTRUCTION BONDS (REQUIRING THAT THE AMOUNT OF REIMBURSEMENT FROM THE STATE BE REDUCED BY THE AMOUNT OF INTEREST EARNED). WE OPPOSED PUTTING THIS PROVISION IN STATUTE LAST YEAR AND SUBMITTED FORMAL COMMENTS OPPOSING THE REGULATION TO THE GOVERNOR THIS FALL.

ISSUES:

- NONCOMPLIANCE WITH LEGISLATIVE INTENT
- ECONOMICS. EXAMPLE: $300 MILLION IN BONDS AT 10% INTEREST EARNS $30 MILLION. UNDER THE REGULATION, THE STATE WOULD GET $24 MILLION OF THIS (80%) THAT WOULD OTHERWISE REMAIN IN THE MUNICIPALITIES.

NOTE:

THE DEPT. ADMINISTRATION IS IN THE PROCESS OF DEVELOPING REGULATIONS TO REQUIRE THAT INTEREST EARNED ON ANY STATE GRANT MONIES BE RETURNED TO THE STATE OR, WITH THE ADMINISTRATION'S O.K., SPENT ON PROJECT COSTS. HB 520, INTRODUCED BY THE GOVERNOR LAST WEEK, WOULD PUT DEPT. EDUCATION'S REGULATORY LANGUAGE IN STATUTE.

SEPARATION OF POWERS:

ART PETERSON, ATTORNEY GENERAL'S OFFICE, SAYS LANGUAGE IN SB 351 WOULD LIKELY WITHSTAND A COURT CHALLENGE. HOWEVER, HE RECOMMENDS THAT RATHER THAN SAYING THE DEPT. CAN'T DO SOMETHING, WE AMEND THE SCHOOL CONSTRUCTION STATUTE TO BE MORE CLEAR ON THE USE OF INTEREST.

4 AAC 31.011(b), (c), (d) and (e) are proposed for adoption as follows:

(b) The cost of planning, design and construction of a facility will be approved for debt retirement when:

(1) it can be verified by the department that the enrollment of a district or an attendance area within a district will reach design capacity within two years;

(2) the situation cannot be reasonably relieved by adjusting the boundaries of the attendance areas and transporting the children to nearby schools; and

(3) it can be demonstrated by commonly accepted demographic techniques, logically applied, that the new facility will reach and sustain design enrollment within five years of the anticipated occupancy date.

(c) Requests for new facilities under AS 14.11.010 or debt retirement under AS 14.11.100 must contain documented evidence, acceptable to the department, supporting the following:

(1) enrollment projections based upon the average survival method or an equivalent methodology offering equal validity;

(2) other demographic information prepared by the district, municipality, the Department of Community and Regional Affairs, the Department of Transportation and Public Facilities, the Department of Labor, the Department of Revenue, or other state or federal agencies which have prepared demographic information on the attendance area; or

(3) any additional information supporting the enrollment projection, including, but not limited to economic and social conditions effecting local growth patterns, school and preschool census, and business or industrial forecasts indicating increased population growth.

(d) Notwithstanding the provisions of subsections (b) and (c) of this section, the cost of planning, design and construction for a new facility or the repair, rehabilitation or remodeling of an existing facility will be approved for debt retirement under the provisions of AS 14.11.100 when:

(1) a condition exists which is in violation of one or more of the nationally recognized building codes, fire codes,

health ~~or safety codes;~~ or ~~state or~~ federal statutes or regulations;

(2) the condition is verified by a means acceptable to the department;

(3) a condition exists which, if unabated, may require that the facility cease being used to provide the educational program or in support of the educational program; and

(4) the means selected by the district to cure the violation is the most cost effective method.

(e) Notwithstanding the other provisions of this section the department may in its discretion approve the planning, design and construction of a facility, as defined in 4 AAC 31.090(10)(B), for debt retirement when the project is in the best interests of the state and the school district. (Eff. 12/2/83, Reg. 88; am / / , Reg.)

Authority: AS 14.07.060
AS 14.11.010
AS 14.11.020
AS 14.11.100
AS 14.11.102

4 AAC 31.055 is proposed for adoption as follows:

4 AAC 31.055. CRITERIA FOR AMOUNTS ALLOWED FOR DEBT RETIREMENT. (a) A facility will be approved for debt retirement under AS 14.11.100 for planning, design and construction provided the project meets the requirements established in 4 AAC 31.011 and the requirements of this section.

(b) A facility to house and support the education program must meet the following criteria:

(1) the guidelines established in 4 AAC 31.020;

(2) non assignable space may not exceed 25 percent of the total space, though the department may in its discretion grant a variance of up to 35 percent of total space in small schools in remote areas where it can be demonstrated that the variance is in the best interest of the state and the district; and

(3) assignable space must be used for educational purposes at least 75 percent of the scheduled school day.

(c) The department may in its discretion either deny a request for debt retirement under the provisions of AS 14.11.100 or limit its approval to the costs for a facility which complies with the provisions of this section.

(d) The costs of planning, design, or construction of an otherwise approved facility are not eligible for debt retirement if they are incurred for or arise out of:

(1) costs of change orders, contract amendments, contractor's claims, or other modifications which enlarge the scope of the project or increase the total cost of its budget over the lesser of the amount approved by the voters at the bond election, the amount approved by the department, or the contract amount, except for unavoidable or unforeseeable circumstances under prudent management; or

(2) the cost of repairing or replacing items not essential to operation of the physical plant or normally scheduled for routine maintenance or replacement.
(Eff. / / / , Reg.)

Authority: AS 14.07.060
AS 14.11.100

4 AAC 31.057 is proposed for adoption as follows:

4 AAC 31.057. APPROVALS, ALLOCATIONS, DISALLOWANCE OF COSTS, AUDITS, AND APPEALS. (a) A project approved for debt retirement for planning, design, and construction is subject to review and approval for site selection and acquisition under the provisions of 4 AAC 31.025, and the construction plans are subject to review and approval under the provisions of 4 AAC 31.030 and 040.

(b) A school district may until October 15 of each year submit to the department a request for an allocation of money for bond payments eligible for debt retirement under AS 14.11.100 for the following fiscal year as provided under 4 AAC 31.060(e). Failure to submit a request for an allocation by October 15, shall result in the denial of an allocation of money for otherwise eligible bond payments notwithstanding that allocations had been made for previous years.

(c) The department in its discretion may deny, or limit the reimbursement for costs associated with a facility's construction, when the facility fails to meet the requirements of 4

AAC 31.020 or 4 AAC 31.055 or when upon audit the costs are excessive.

(d) All projects approved for debt retirement which exceed $300,000 are subject to audit. These audits will be performed by the district's auditor and submitted on forms prescribed by the department. Nothing in this subsection precludes the department in its discretion from auditing a project at any time.

(e) In the event that the department denies or limits reimbursement of costs, the district may appeal the decision in accordance with the provisions of 4 AAC 40.020 through 4 AAC 40.050. (Eff. / / / Reg.)

Authority: AS 14.07.060
AS 14.11.100

4 AAC 31.058. USE OF INTEREST EARNED ON BOND PROCEEDS. (a) Interest on proceeds of bonds approved by municipal voters before July 1, 1985 and sold after January 1, 1986 and all bonds approved by municipal voters after July 1, 1985 for which debt retirement under AS 14.11.100 is sought may only be used to:

(1) pay the costs of the project;

(2) pay accrued interest on the bond issue;

(3) redeem all or part of the bonds; or

(4) pay the costs of the bond sale.

(b) If the money earned as interest on the proceeds of bonds is used to pay the costs of the project, then the amount for which debt retirement is allowed will be reduced by that amount.

(c) If the money earned as interest on the proceeds of bonds is used to pay accrued interest, redeem all or part of the bonds, or pay the costs of the bond sale; then the amount for which debt retirement is allowed will be reduced by that amount.

(d) The accounts in which the proceeds of bonds are placed are subject to audit under the provisions of 4 AAC 31.057 and the district shall report, on forms prescribed by the department, the use to which the money is put. (Eff. / / , Reg.)

Authority: AS 14.07.060
AS 14.11.100

4 AAC 31.060(e) is proposed for amendment as follows:

(e) A request for an allocation for debt retirement under AS 14.11.100 must be submitted on a form prescribed by the commissioner, and must be received by the department not later than October 15 of the fiscal year preceeding the fiscal year in which reimbursement will be sought. A school district's claim must contain at least the following:

(1) bond sale date or proposed bond sale date;

(2) bond redemption schedule;

(3) education facility portion of the bond;

(4) department's project approval number;

(5) debt payment schedule or estimated debt service schedule; and

(6) certification as to accuracy of claim by a bonded official of the municipality. (Eff. 3/1/78, Reg. 65; am 2/24/83, Reg. 85; am 12/2/83, Reg. 88; am / / / , Reg.)

Authority: AS 14.07.020(10) and (11)
AS 14.07.060
AS 14.11.010
AS 14.11.100

4 AAC 31.090(10) is proposed for adoption as follows:

4 AAC 31.090. DEFINITIONS.

(10) "facility" means for the purposes of debt retirement mean

(A) the buildings and grounds need to house and support the educational program; or

(B) the buildings and grounds needed to provide a centralized support service which is required to affect an efficient and cost effective operation of the district's education program.

(Eff. 3/1/78, Reg. 65; am 6/9/83, Reg. 86; am 12/2/83, Reg. 88)

Authority: AS 14.07.020
AS 14.07.060
AS 14.11.010
AS 14.11.020
AS 14.11.100

payments may not be made for costs that are incurred under a contract after the contract has been released.

(j) The state may not allocate money to a municipality for a school construction project under (a)(5) of this section unless the municipality complies with the requirements of (1) — (4) of this subsection and the project is approved by the commissioner before the local vote on the bond issue for the project. In approving a project under this subsection, the commissioner shall require

(1) the municipality to include on the ballot for the bond issue the estimated total cost of each project including estimated annual operation and maintenance costs and the estimated amounts that will be paid by the state and by the municipality;

(2) that the bonds may not be refunded unless the annual debt service on the refunding issue is not greater than the annual debt service on the original issue;

(3) that the bonds must be repaid in approximately equal annual principal payments or approximate equal debt service payments over a period of at least 10 years;

(4) the municipality to demonstrate need for the project by establishing that the school district has

(A) projected long-term student enrollment that indicates the district has inadequate facilities to meet present or projected enrollment; or

(B) facilities that require repair or replacement in order to meet health and safety laws or regulations or building codes.

(k) An amount equal to the interest earned on the investment of the proceeds of bonds issued for a school construction project shall be used by the municipality to

(1) pay the costs of the project;

(2) pay accrued interest on the bond issue;

(3) redeem all or part of the bonds; or

(4) pay the costs of issuing the bonds. (§ 1 ch 249 SLA 1970; am § 1 ch 93 SLA 1971; am § 2 ch 137 SLA 1972; am § 1 ch 28 SLA 1973; am § 47 ch 127 SLA 1974; am §§ 1 — 3 ch 120 SLA 1977; am §§ 12, 17 ch 147 SLA 1978; am § 25 ch 168 SLA 1978; am §§ 8 — 10 ch 92 SLA 1982; am §§ 1 — 3 ch 82 SLA 1983; am § 47 ch 6 SLA 1984; am § 1-5 ch 78 SLA 1985)

Revisor's notes. — Enacted as AS 43.18.100. Renumbered in 1983.

Cross references. — For present provisions of former subsection (g) of this section, see AS 14.11.135(3).

Effect of amendments. — The 1982 amendment, substituted "a municipality that" for "an organized borough or a city which" in the introductory language of subsection (a), substituted "the municipality" for "the borough or city" in paragraphs (1), (2)(A) and (B), and (3)(A) and (B), substituted "90 percent" for "80 percent" in the introductory language of

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ARLISS STURGULEWSKI, Vice Chairman
JOE JOSEPHSON
PAUL FISCHER
EDNA ARMSTRONG-DE VRIES

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3762

Senate Committee on Health, Education and Social Services

October 7, 1985

The Honorable William Sheffield
Governor, State of Alaska
Pouch A
Juneau, Alaska 99811

Dear Governor Sheffield:

As you are aware, last session the Senate Committee on Health, Education and Social Services developed SB 51, which proposed to revise the State's current system of financing public school construction. The basic intent of the legislation was twofold: to provide an increased level of State support to municipalities for school construction and to control the State's expenditure for schools by limiting the number and type of projects in which the State would participate. The HESS Committee Substitute was developed by working with your office and the Office of Management and Budget, and incorporated many of your recommendations for cost containment. However, as you are also aware, the bill that reached final passage and was signed into law (Chapter 78, SLA 85) differed substantially from the HESS proposal; in short, many of the cost containment provisions were rejected by the Legislature.

The State Board of Education recently adopted emergency regulations to implement Chapter 78; proposed permanent regulations are now out for public comment. I would like to call your attention to the proposed provision governing the use of interest earned on bond proceeds.

Proposed 4 AAC 31.058(a) limits the use of interest to paying the costs of the project, paying accrued interest on the bond issue, redeeming all or part of the bonds, or paying the costs of issuing the bonds, as outlined in Chapter 78. However, 31.058(b)-(c) proposes a reduction in the amount of state reimbursement to municipalities based on the amount of interest earned. This concept was considered by the Legislature and expressly rejected; including the provision in the permanent regulations is clearly counter to legislative intent. It is therefore my recommendation that proposed 4 AAC 31.058(b)-(c) be dropped.

I appreciate your attention to this matter.

Sincerely,

Bettye

Bettye Fahrenkamp
Chairman

cc: Commissioner Raynolds, Department of Education
Dotty Sparks, Office of Management and Budget
Ernestine Griffin, President, State Board of Education

BF/ss

SENATE HEALTH, EDUCATION AND SOCIAL SERVICES
STANDING COMMITTEE
February 6, 1986
1:42 P.M.

MEMBERS PRESENT:

Senator Bettye Fahrenkamp, Chairman
Senator Edna DeVries
Senator Paul Fischer
Senator Joe Josephson
Senator Arliss Sturgulewski

COMMITTEE CALENDAR:

SB 351 Relating to retirement of school construction debt.

HJR 59 Urging Congress to pass AFDC Error Reduction and Quality Control Act.

Briefing, Alaska Native Health Services.

WITNESS REGISTER:

Steve Hole
Department of Education
P.O. Box F
Juneau, AK 99811
Position Statement: State Board of Education has no position on SB 351.

Betty Glick
P.O. Box 528
Kenai, AK 99611
Position Statement: Support SB 351

Tom Wagoner
4040 Primrose Pl.
Kenai, AK 99611
Position Statement: Support SB 351

Joyce Fischer
P.O. Box 784
Soldotna, AK 99669
Position Statement: Support SB 351
Stan Thompson
P.O.Box 650
Soldotna, AK 99669
Position Statement: Support SB 351

John Calhoun
Mayor of Homer

Homer, AK 99603
Position Statement: Support SB 351

Representative Max Gruenberg
Pouch V
Juneau AK 99811
Position Statement: Support for CSHJR 59

John Taber, Director
Div. of Public Assistance, Department of Health and Social Services
P.O. Box H-07
Juneau, AK 99811
Position Statement: Support for CSHJR 59

Robert Singyke
P.O. Box 7-741
Anchorage, AK 99501
Position Statement: Overview of Alaska Native Health Services

Osamu Matsutani
P.O. Box 7-741
Anchorage, AK 99501
Position Statement: Overview of Alaska Native Health Services

PREVIOUS ACTION:

SB 351, No previous action to record.

HJR 59, Please refer to committee minutes dated 01/24/86, 01/27/86 and 02/07/86 in HESS Committee.

ACTION NARRATIVE

TAPE ONE, SIDE ONE
February 6, 1986

Number 020

Senator Paul Fischer stated that in the past when school construction bonds were sold the interest they earned stayed with the municipality which used its own judgment regarding use of the money. Last year legislation (SB 51) was passed requiring that the interest go to the cost of the project. In November, 1985 the State Board of Education adopted a regulation requiring that the state's reimbursement to the municipality be reduced by the amount of interest earned.

Number 091

Steve Hole, Special Assistant to the Commissioner, Department of Education, stated that the Board has not taken a position on SB 351. Hole stated that the legislative intent of SB 51 is that the state is to contribute 80% to the cost of a project while municipalities are to contribute 20%. He feels the Department's regulation is consistent with this intent.

Number 232

Hole stated, in response to questions by Senators Fahrenkamp and Josephson, that the Department verified through the attorney general that they had the authority to adopt the regulation.

Number 457

Betty Glick, President, Kenai Peninsula Borough Assembly, stated that the Assembly supports SB 351. The regulations would cause a $6 million loss of interest income to the Kenai Peninsula Borough. In addition, she said the regulations were implemented after voter approval of the bonds, hence, voters were led to believe that passage of the bond levy would not result in a signigicant increase in the mill levy. In fact, under the new regulations, the rate would be increased 2 mills.

Number 594

Tom Wagoner, Mayor of Kenai, spoke in support of SB 351.

Number 621

Joyce Fischer, Member, Kenai School Board, stated that the Board supports SB 351 because of the increase in the mill rate necessitated by the Department's regulation.

Number 693

Stan Thompson, Mayor, Kenai Peninsula Borough, spoke in support of overruling the Department's regulation through SB 351.

Number 754

John Calhoun, Mayor of Homer, also spoke in support of SB 351, stating that his community cannot suffer a 2 mill increase.

Number 840

Senator Fischer asked unanimous consent that SB 351 be moved from committee with individual recommendations. There were no objections.

Number 853

Representative Max Gruenberg stated that HJR 59 is necessary in attempting to reduce fiscal sanctions on states for AFDC program errors. TAPE ONE SIDE TWO

Number 109

John Taber, Director, Division of Public Assistance, Department of Health and Social Services, said that the Department is trying to pinpoint fraud because the state is held responsible for client mistakes, intentional or otherwise. Currently, the state is 6.7% over the 5% tolerance for food stamp program errors, Taber said. He stated that Alaska's error rate is rising despite efforts to reduce it because case loads have increased and there have been no staff increases.

Number 393

Senator Josephson asked unanimous consent that HJR 59 be moved from committee with individual recommendations. There were no objections.

Number 429

Robert Singyke, Director, Alaska Native Health Services (ANHS), discussed the impacts of the Gramm-Rudman Act on ANHS. Administration would be cut 13%, while direct services would receive a 2% cut. Because of the cuts, he said, ANHS is beginning to concentrate on prevention efforts such as seatbelt, helmet, and smoking laws. Singyke said that Alaska is probably the only state in which the Indian Health Service (IHS) has a strong working relationship with the state.

Number 565

Singyke emphasized the need for designated beds in various facilities for the mentally ill.

Number 693

Dr. Osamu Matsutani, Deputy Director and Chief Medical Officer, ANHS, discussed two impacts of the Gramm-Rudman Act: first, ANHS will need to reallocate resources among IHS service areas; second, the eligibility criteria for service by IHS will be tightened.

Number 800

Singyke and Senators Fahrenkamp and Sturgulewski discussed the coordination between the Arctic Research commission and

ANHS in researching health and human services needs in Alaska.

Number 805

Senator Fahrenkamp adjourned the meeting at 3:30.

Official Business

Alaska State Legislature
Senate

Senator Paul Fischer

Pouch V
State Capitol
Juneau, Alaska 99811

To: All Senate HESS Committee Members

From: Senator Paul Fischer PF.

Date: February 1, 1986

Subject: SB 351, Retirement of school construction debt.

I have introduced this legislation to clarify the legislature's intent when Senate Bill 51 became law last year.

From my conversations with officials of the Kenai Peninsula Borough, there is a deep concern that the regulations do not carry out the intent of Senate Bill 51.

Senate Bill 51 requires interest earned on bond proceeds be used for the projects for which the bonds were sold. The regulations which are now in effect do not reflect state statutes, but seem to be the Department of Education's own interpretation. I believe that the department should propose this type of legislation rather than writing it through regulations.

I have included a letter from the Kenai Peninsula Borough that better interprets the problems inherent in the regulations.

To my knowledge, the Anchorage, Matanuska-Susitna, North Star, and the Kenai Peninsula Boroughs are adversely affected by these regulations.

I encourage your support of this bill.

enclosures:

KENAI PENINSULA BOROUGH

BOX 850 • SOLDOTNA, ALASKA 99669
PHONE 262-4441

STAN THOMPSON
MAYOR

January 24, 1986

The Honorable Paul Fischer
Pouch V
Juneau, AK 99811

Dear Senator Fischer:

Enclosed is a detailed summary of our problem with the D.O.E. regulations.

In essence, the D.O.E. regulations would not allow the Borough to retain interest earnings on the investment of bond proceeds. This would result in an estimated loss of $6 million (2 mills) this year alone.

Remember, too, that this is changing the rules in the middle of the game - after the bonds were voted on and sold.

We feel this is not only totally unfair, but illegal in that it is contrary to the statute.

Sincerely,

Stan Thompson

Stan Thompson
Borough Mayor

ST:lc
Enclosure
cc: All legislators

KENAI PENINSULA BOROUGH

BOX 850 · SOLDOTNA, ALASKA 99669
PHONE 262-4441

STAN THOMPSON
MAYOR

January 24, 1986

Senator Paul Fischer
Pouch V
Juneau, AK 99811

Re: Department of Education's regulations on school debt reimbursement.

Dear Senator Fischer:

In our last discussions with you regarding the school construction debt reimbursement regulations, you requested that we prepare information regarding our position and views on these regulations. This letter is in response to that and addresses our particular concerns with 4AAC 31.058. That section deals with interest earnings on bond proceeds. It deals with these in two ways. The first is to specify the limitations on the use of these proceeds. These interest earnings may only be used for certain specified items listed in the regulation. The second aspect of this regulation is that any interest earnings reduce eligibility for reimbursement. We are mandated to use the interest earnings for certain purposes and then the regulation contains a Catch-22 that causes us to essentially forfeit those interest earnings. Our analysis of this regulation leads us to three conclusions:

1. The regulations reducing eligibility for debt reimbursement by the amount of interest earnings on the bonds are in direct conflict with the statutory plan of school construction debt reimbursement set forth in AS 14.11.100.

2. These regulations reducing eligibility for debt reimbursement are not authorized by statute and those provisions are therefore beyond the authority of the Department of Education to adopt.

3. That the regulations reducing the debt reimbursement eligibility work an undue hardship and unfairness on local government. This hardship is an unfairness due to the fact that the State passed a plan of debt

> reimbursement and required municipalities to submit the estimates under that plan to the voters showing an estimated 80% reimbursement from the State. These regulations if implemented, would in fact substantially reduce the State's share without prior warning to the local governments. These unauthorized regulations increase the cost by introducing a new scheme to be applied to bond issues approved prior to the regulations being adopted.

These additional restrictions and conditions are not set forth in the statute, and as stated above, are directly contrary to the program established by the State legislature. Even were the Legislature to choose to amend the statute to impose additional restrictions regarding the disposition of interest earnings on bond proceeds, it would be most unfair to apply them to bond issues that were passed prior to those changes. We will attempt to set forth in this letter a more detailed analysis regarding the validity of these regulations and the effect of their application to our existing bond issues.

Subsection (a) of 4AAC 31.058 contains language similar to that set out in AS 14.11.100(k). There is a minor variation in the language between the statute and the proposed regulation. The statute, AS 14.11.100(k) reads:

> An amount equal to the interest earned on the investment of the proceeds of the bonds issued for school construction projects <u>shall</u> be used by the municipality to 1) cost of the project; 2) pay accrued interest on the bond issue; 3) redeem all or part of the bonds; or 4) pay the cost of issuing the bonds. (Emphasis added.)

The regulations change the emphasis somewhat. They read that the interest on proceeds "may only be used" for the four items listed in the regulations. The statute specifically says they <u>shall</u> be used. In examining AS 14.11.100, of which subsection (k) is a part, it becomes clear that the approval of eligible amounts and the debt reimbursement program are fixed by that statute. The statute provides for project approval which is a maximum amount upon which reimbursement can be given. For example, if the project is approved for $1 million, only the million dollars together with interest is eligible for the 80% reimbursement. Without adjustment of this amount, no additional amounts in excess of 80% of the million dollar basis could be reimbursed. This statute provides a scheme whereby the project is given approval at a specific amount. Subsection (k) provides that municipalities are not free to use the interest earnings except for the specified purposes. They limit us in our use but do not provide that we lose the interest when we utilize the interest earnings for the specified purposes. Any attempt by regulation to "forfeit" those interest earnings exceeds the statutory framework which merely requires us to use those earnings for specific purposes.

Subsections (b) and (c) of 4AAC 31.058, by their very wording, cause the local government to forfeit those interest earnings when we utilize them for the purposes that are required under the statute. Under subsection (b), the amount eligible for reimbursement is reduced if we utilize the funds to pay the cost of the project. Subsection (c) causes us to lose eligibility for reimbursement if we utilize them for cost of the bond sale interest payments on the bonds or redemption of the bonds. This is effectively a "Catch-22." The statute through which the regulations are purportedly authorized, requires us to utilize the money for specified purposes. When we utilize the money for those purposes, it reduces the our eligibility for reimbursement, without regard to the amount of monies appropriated by the Legislature for the reimbursement program which is now currently set at up to 80%. The statute provides that if the money is appropriated we are entitled to 80%, yet these regulations provide something totally different. They effectively reduce the rate of reimbursement by the State even if the monies have been appropriated and are available.

Some examples may be helpful to illustrate this.

1. The first example will show the effect of utilizing interest earnings to pay the cost of the project. In this example, we will use a $1 million bond issue. The project has approval for reimbursement as a million dollar project. The bonds are sold and the interest earnings are $100,000. In the early stages of construction unexpected site conditions are discovered which require a $100,000 change order to deal with the problems. This increases the cost of the project to $1.1 million. Under the regulations, the project approval amount could not increase, thus only 80% of $1 million is reimbursable yet the project is now $1.1 million. If the interest earnings are applied to this project, as allowed, and mandated by statute to cover the unexpected site problems, this effectively reduces the State's share because the $100,000 will be deducted from the reimbursement program.

Alternatively, these regulations could be read as reducing the approved project amount which has an even more serious effect. In that case, the million dollar approval would be reduced to $900,000, thereby obligating the State only to reimburse 80% of $900,000 of bonds rather than the originally approved million. Either one of these approaches is contrary to the statutory program that says that if the money is appropriated for the 80% level, then it shall be paid at that level.

2. The second example regards the use of the interest to pay bond sale costs, redeem the bonds, or payment of interest on the bonds. We will use the same $1 million bond sale with $100,000 interest earnings. The first annual payment is $200,000. Under the statute, the State would reimburse the Borough 80% of the $200,000 payment with the Borough paying $40,000. Under the regulation, the $100,000 interest would have to be deducted from the $160,000 share of the State leaving the State's share at $60,000. The Borough's share would still be 20% plus the $100,000 interest earning. Under this, the Borough would pay $140,000 or 70% of that payment with the State only paying 30%.

The regulations as pointed out in the previous example, state that the amount allowed upon amount for which debt retirement is allowed would be reduced by that amount. Once again, the regulation could be interpreted as reducing the approved project amount by the amount of interest earnings. If this were to occur, under our example, only $900,000 would be eligible for reimbursement. The State would pay 80% of that reduced payment and the Borough 20% plus the full burden of the debt service on ineligible $100,000. The payment would still be $200,000 but only approximately $180,000 would be subject to reimbursement. That would be split with the State to paying $144,000 and the Borough paying $36,000 on that eligible portion. This would result in the State paying 72% instead of 80%. This would of course fix that rate for the life of the bonds by reducing the project amount. If there were further interest earnings, then the State's share would lessen in succeeding years until there were no further interest earnings on the bond proceeds.

It is unclear as to which interpretation is to be given to these regulations. It is also very clear that either interpretation is contrary to the direct statutory intent that the program is to be on an 80/20 split so long as it is in effect and any regulations that try to alter this by counting the interest earnings against reimbursement eligibility would be contrary to the statute. Subsection (k) specifically stated that we could not use the funds on other items but must use them on the projects, yet the regulations seek to penalize and reduce the State's share in a manner not allowed under the statute. These regulations very clearly exceed the scope of statutory authority.

There are certain other provisions to the proposed regulations that concern us very greatly. In particular, these pertain to the criteria for project approval. 4AAC 31.011(b) provides that the cost of planning, design and construction of a facility will be approved for debt retirement when, among other things, the situation cannot be reasonably relieved by adjusting the boundaries of the attendance areas or transporting the children to nearby schools. We have concern over this because there are no standards as to what is meant by "reasonably relieved" by adjusting the boundaries or transporting students. This regulation could give rise to denial of project approval because there is a school that has some additional capacity 12 to 15 miles distant to which students can be transported. An example would be, denial of project approval for an elementary school in the Homer/Anchor Point area because there is some classroom space at the McNeil Canyon School 12 miles east of Homer. The Department could apply this regulation as it is written in a rather arbitrary manner. The result would be to increase transportation costs while at the same time the Department of Education is reducing allowances for bus transport. In a district such as the Kenai Peninsula Borough School District, this could be applied to require transport of students as much as 40 or 50 miles if there are seats available in one facility and not in another. It could be applied to defeat the addition of classrooms which could be the most cost effective method for handling extra enrollment in an area.

I believe that this letter sets forth the items that you wanted me to address, and if there are any further questions we may answer regarding this, please do not hesitate to contact me. Once again, we feel that the proposed regulations impose additional requirements not contained in the statutes and those additional requirements effectively increase the local share of school construction contrary to the statutory language. The addition of the language requiring the municipalities to use the interest earnings on bond proceeds for only specified purposes does not authorize regulations which cause us to forfeit all use or benefit from those interest earnings when used for the specified purposes.

Sincerely,

Thomas R. Boedeker
Borough Attorney

TRB:bl

Introduced by: Moore
Date: Feb. 4, 1986
Vote: Unanimous
Action: Adopted

KENAI PENINSULA BOROUGH

RESOLUTION 86-21

SUPPORTING PASSAGE BY THE ALASKA STATE LEGISLATURE OF SENATE BILL 351, AN ACT RELATING TO RETIREMENT OF SCHOOL CONSTRUCTION DEBT.

WHEREAS, municipalities of the State of Alaska have historically sold bonds to finance construction of public schools; and

WHEREAS, municipalities have invested the proceeds of bond sales during the construction of the school facilities; and

WHEREAS, interest from these investments has been used to help reduce the burden of school construction cost upon the local taxpayer; and

WHEREAS, the State of Alaska, Department of Education, has enacted regulations which would deprive the municipalities of the State of the benefits of bond investment earnings; and

WHEREAS, Senate Bill 351 has been introduced into the Alaska State Senate; and

WHEREAS, Senate Bill 351 would prohibit the Department of Education from adopting regulations reducing the amount for which school construction debt retirement is allowed equal to the amount expended by a municipality under AS 14.11.100(K).

NOW THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

Section 1. That the Kenai Peninsula Borough supports the passage by the Alaska State Legislature of Senate Bill 351, which would nullify the regulations of the Department of Education which would deprive municipalities of the State of interest earnings on invested school construction bonds.

Section 2. That the assembly directs the Borough clerk to forward a copy of this resolution to Governor William Sheffield; Commissioner of Education, Harold Raynolds; Senators Paul Fischer, Jalmar Kerttula, Edna DeVries and John Sackett; and Representatives Mike Navarre, Andre Marrou, Bette Cato, Mike Szymanski, and Kay Wallis

Section 3. That this resolution takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 4th DAY OF February, 1986.

Betty J. Glick

Betty J. Glick, Assembly President

ATTEST:

Joanne W. Brindley

Borough Clerk

SB 351, ~~An Act relating to medical assistance.~~ retirement of school construction debt.

In January the State Board of Education adopted regulations to implement SB 51, legislation enacted last session which increases the amount of debt reimbursement for school projects from 50% to 80%, requires that a district demonstrate need for a project, and restricts the use of interest earned on bond proceeds. Under the provisions of SB 51, the regulations were submitted to the legislature on the 10th day of session and will take effect the 90th day unless a law is enacted disapproving them.

SB 351 would prohibit the board from requiring through regulation that the amount allowed for debt retirement be reduced by the amount of interest earned on the bond proceeds. This provision is in addition to the interest restrictions enacted by SB 51, specifically that interest be used to pay project costs, pay accrued interest on the bond issue, redeem the bonds, or pay the costs of bond issuance.

The Governor recently introduced HB 520, which would place the reduction requirement in statute.

In addition, the committee will receive a briefing on the mutual concerns of the Alaska Native Health Service (ANHS) and the Department of Health and Social Services. The Alaska Native Health Service provides comprehensive health services to Alaska Natives at hospitals and outpatient clinics across the state. Mr. Robert Singyke, Director of the ANHS, and Commissioner John Pugh will discuss:

1) Impacts of the Gramm, Rudmann, Hollings budget deficit procedures on ANHS and DHSS programs,

2) the hepatitis B program,

3) the ANHS hospital and health facility construction program, and,

4) ANHS allocation study.