

SB

312

HFIN

FILE



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

Sponsor Statement

Senate Bill No. 312 was introduced by the Senate Finance Committee and passed the Senate as CS SB 312 (HESS) Am.

Under current law, the Department of Education must accept or reject a school construction project *in toto*; a project can only be rejected if found to be "not in the best interests of the state", an undefined standard that could easily lead to litigation if used by the department. SB 312 would allow DOE to modify or revise the scope of submitted projects to assure that schools are adequately sized for the community to be served. In addition, SB 312 would allow DOE to require that school construction projects be phased, an approach which has worked extremely well for other grant programs such as village safe water. A phased-in approach will allow DOE an opportunity to review projects through their development and make adjustments as needed.

An all-or-nothing approach to approval of school construction projects is not effective either for school districts or for the department, and this bill seeks to remedy the situation.

The HESS version included a provision that school construction projects be phased.

Two amendments were added on the floor. The Department of Education and I supported both.

Amendment 1 allowed a school term to begin and end on dates fixed by the governing body of a school district as long as the term equivalent is not less than 180 days. This allows the accommodation of situations such as Russian Orthodox holidays in certain schools on the Kenai Peninsula.

Amendment 2 concerns a pilot project for special education services. The number of students identified for special education is increasing each year. Currently school districts must identify and count students (AS 14.07.045) to receive special education funding. This amendment allows the Commissioner of Education to authorize a pilot project in four school districts for a period not to exceed three years that will not cost the state additional revenue.

(11)

Date Referred: April 20, 1994

HOUSE COMMITTEE REPORT
FURTHER REFERRALS:

Date of Committee Action: 4/28/94

The FINANCE Committee considered:

CSSB 312(HES) am

CS FOR SENATE BILL NO. 312(HES) am

SCHOOL CONSTRUCTION GRANT REVIEW

"An Act relating to the school term, school construction grants and to interscholastic school activities; relating to a pilot project for state aid for special education; and providing for an effective date."

RECOMMENDATIONS:
be replaced with H CS CSSB 312 (Fin) [X] the same title
[] a new title

[] have attached amendments(s)

[] do pass

[] do not pass

[] no recommendations

[X] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[] fiscal impact _____

[] fiscal note(s) _____ 4/20/94

[] zero fiscal note _____

[X] zero fiscal note(s) (2) DOF 3/18/94

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
EP Macheen Macheen	✓				
Ronald J. Linn Larson	X				
Mike Navarre Navarre	✓	Mark Hanley Hanley		X	
Kay Brown Brown	✓	Terry Martin Martin			X
		Sean Parnell Parnell		X	
		Ben Gussendorf Gussendorf		X	
		Guy Theriault Theriault			

Ronald J. Linn EP Macheen
CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 1
 Bill Version: SB 312
 (S) Publish Date: 3-18-94

STATE OF ALASKA
1994 LEGISLATIVE SESSION
 Revision Date: March 14, 1994
 Title: "An Act relating to school construction grants; and providing for an effective date."
 Sponsor: Senate Finance Committee
 Requester: Senate Finance Committee

Department Affected: Education
 BRU: School Finance
 Component: Educational Facilities Support

COMPONENT SERIAL NO. 1957

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME				
PART-TIME				
TEMPORARY				

Changes in CS SB 312 (HES) have no fiscal impact. This fiscal note is appropriate.
3/16/94 kah
 date Comte Aide (initial)

Estimate of current year (FY94) impact: \$ -0-

ANALYSIS: (Attach a separate page if necessary.) The proposed legislation provides an opportunity for the department to modify a school construction or major maintenance capital improvement project request in order to achieve cost effective construction and provides for phased funding of capital improvement projects.
Please see the attached continuation page for additional detail.

Prepared by: Duane Guiley Phone: 465-8679
 Division: School Finance Date: March 14, 1994

Approved by Commissioner: Jerry Covey Date: March 14, 1994
 Agency: Education

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information call the Governor's Legislative Office

FISCAL NOTE (continued): DEPARTMENT OF EDUCATION

Division School Finance Bill Number SB 312

Bill Title "An Act relating to school construction grants; and providing for an effective date."

Sponsor Senate Finance Committee

As proposed, Senate Bill 312 provides an opportunity for the department to modify a school construction or school major maintenance capital improvement project request in order to achieve cost effective construction. Further, the proposed legislation provides for phased funding of a capital improvement project.

In 1993, the eligibility, classification, evaluation and prioritization of public school capital improvement projects changed significantly, due to passage of CSSB 7(FIN) am H. Section 9 of Chapter 78 of the 1993 Session Laws of Alaska established a new Bond Reimbursement and Grant Review Committee (BR&GRC). In addition to other duties, the committee shall develop criteria for construction of schools in the state, including requirements to achieve cost effective construction and establish a form for the grant applications. SB312 matches the recommendations of the BR&GRC.

The committee has forwarded a recommendation to the commissioner which requires a standardized facility evaluation and condition survey to be attached to each 1996 full funding project request. The committee also recommended that applications lacking the detailed architectural and engineering facility condition survey, which documents the deficiencies of the existing facility, should receive no more than a planning grant. These standardized documents will allow the department to objectively assess the feasibility and the merits of phase funding the project. The BR&GRC indicated that a district can not reasonably determine the scope or cost of a project without conducting a detailed analysis of the existing facilities.

This proposed statute will facilitate the implementation of the recommendations of the Bond Reimbursement and Grant Review Committee.

APPROVED:

Director Duane Guiley Division School Finance

Signature  Date March 14, 1994

Commissioner/Deputy _____

Signature  Date 3/15/94

FISCAL NOTE

STATE OF ALASKA

1994 LEGISLATIVE SESSION

Revision Date: 4/15/94

Department Affected: Department of Education

Title: An Act relating to the school term, school construction grants, interscholastic activities & pilot project for special education.

BRU: K - 12 Support

Component: Foundation Program

Sponsor: Senate Finance Committee

Requestor: House HESS Committee

COMPONENT SERIAL NO. 141

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE FUND SOURCE:	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	-----	-----	-----	-----	-----	-----

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0


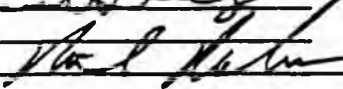
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary.)

The proposed legislation will not have an additional cost to the state. Section 4, which establishes a pilot project for state aid for special education, may have a savings to the state in the future. Please see the attached page for further detail.

Prepared by: Duane Guiley  Phone: 465-8679
 Division: School Finance Date: April 15, 1994
 Approved by Commissioner:  Jerry Covey
 Agency: Education Date: April 15, 1994

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office

COMMITTEE COPY

Fiscal Note Analysis

CSSB 312 (HES)am

"An Act relating to the school term, school construction grants and to interscholastic school activities; relating to a pilot project for state aid for special education; and providing for an effective date."

The Public School Foundation Program provides state aid in support of kindergarten through twelfth grade public education. In addition, the foundation program provides supplementary units for students with special needs. The fastest growing component of the foundation program is special education. From 1988 through 1993, special education units increased an average of 6.6% a year. Typically, special education units increase by about 150% of the increase in K-12 units, but the increase has been as high as 200% of the K-12 unit increase.

Establishing a pilot program which caps the percentage of students identified in certain special education service categories will not cost the state additional money. Based on previous trends, the caps will reduce the eligibility for state aid that otherwise would have been requested by a district. The results of the pilot(s) should establish the value of duplicating the special education service alternative in other districts, providing for an even greater savings.

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: HCS CSSB 312(HES)

Page 3, line 16, after "resource":

Delete "and"

Insert ","

Adopted

Page 3, line 17 after "contained":

Insert "or intensive"

Page 3, line 31:

Delete "four"

Insert "eight"

Adopted

FISCAL NOTE

STATE OF ALASKA

1994 LEGISLATIVE SESSION

Revision Date: 4/15/94

Department Affected: Department of Education

Title: An Act relating to the school term, school construction grants, interscholastic activities & pilot project for special education.

BRU: K - 12 Support

Sponsor: Senate Finance Committee

Component: Foundation Program

Requestor: House HESS Committee

COMPONENT SERIAL NO. 141

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE FUND SOURCE:	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	-----	-----	-----	-----	-----	-----

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

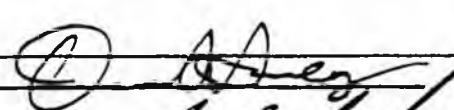
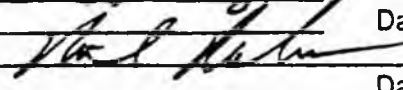
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate or current year (FY94) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary.)

The proposed legislation will not have an additional cost to the state. Section 4, which establishes a pilot project for state aid for special education, may have a savings to the state in the future. Please see the attached page for further detail.

Prepared by: Duane Guiley  Phone: 465-8679
 Division: School Finance Date: April 15, 1994
 Approved by Commissioner: Jerry Covey  Date: April 15, 1994
 Agency: Education

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office

COMMITTEE COPY

Fiscal Note Analysis

CSSB 312 (HES)am

"An Act relating to the school term, school construction grants and to interscholastic school activities; relating to a pilot project for state aid for special education; and providing for an effective date."

The Public School Foundation Program provides state aid in support of kindergarten through twelfth grade public education. In addition, the foundation program provides supplementary units for students with special needs. The fastest growing component of the foundation program is special education. From 1988 through 1993, special education units increased an average of 6.6% a year. Typically, special education units increase by about 150% of the increase in K-12 units, but the increase has been as high as 200% of the K-12 unit increase.

Establishing a pilot program which caps the percentage of students identified in certain special education service categories will not cost the state additional money. Based on previous trends, the caps will reduce the eligibility for state aid that otherwise would have been requested by a district. The results of the pilot(s) should establish the value of duplicating the special education service alternative in other districts, providing for an even greater savings.

Opposed to CSSB 312
DENALI BOROUGH SCHOOL DISTRICT

April 18, 1994

Representative Jeannette James
Alaska State Legislature
Alaska State Capitol
Juneau, Alaska 99801-1182

Dear Representative James:

I am all thanks today. I appreciated your taking a few minutes to listen to me on the telephone today on the subject of CSSB 312. I also really appreciate your efforts relating to the passage of HB 505. Thanks for the vote of confidence!

My objections to 312 are with Section 1 relating to DOE oversight of school construction. I believe that this bill would give DOE far more than just oversight responsibility. It appears that they would have the authority to overrule planning efforts that take place on a local level. It also appears that they could require districts to phase a project - not for funding, but for completion of the work. Our architects have indicated that it could make a project such as the one we are planning at Tri-Valley cost as much as \$3 million more than it should. The Tri-Valley project involves significant "major maintenance" items that they could require us to repair with our phase one funds. The only economical way to accomplish this project is to combine the increased space construction with the repairs and remodel work and complete them as part of one project. While I can envision some school district projects that might benefit from such oversight, there is no guarantee that the Department would work in the interests of local communities.

It also appears that DOE bureaucrats would have the authority

P.O. Box 280 • Healy, Alaska • 99743 • (907) 683-2278 • FAX (907) 683-2514

John Novak, Superintendent

DENALI BOROUGH SCHOOL DISTRICT

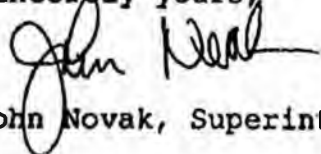
to change the scope of projects before they were even considered at the legislative levels for funding. In our case we spent hundreds of hours and some dollars to assess needs, survey local conditions, trends, desires, etc., and considered approaches to securing funding and other general planning. Do we want DOE to be able to arbitrarily override these efforts? DOE already has in place standards for school planning relating to size, square footage, etc. If our plans fit the guidelines, why should they have the authority to modify them without knowledge of our unique programs, student and staff profiles, etc? Another question I have is how many additional employees will be hired by DOE to do all of the work to make decisions about projects all over the state. Will they start taking even bigger chunks of money from legislative appropriations to school districts in the name of "overhead"?

The Department of Education has given me no reason to believe that they would utilize the authority Section 1 of this bill grants them to make any decisions that would serve our interests. I think this is an example of an action that would (probably inadvertently) expand the size of the department and cause us a great deal more work that has no chance of resulting in better school facilities.

I hope that you will consider my concerns and either work to delete Section 1 of SB 312 or defeat the bill altogether.

Thanks for taking time to consider my concerns.

Sincerely yours,



John Novak, Superintendent

P.O. Box 280 • Healy, Alaska • 99743 • (907) 683-2278 • FAX (907) 683-2514

John Novak, Superintendent

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF EDUCATION

GOLDBELT PLACE
801 WEST 10TH STREET, SUITE 200
JUNEAU, ALASKA 99801-1894

DIVISION OF SCHOOL FINANCE

Transmitted by facsimile April 25, 1994

April 25, 1994

Dr. Brent Rock
Assistant Superintendent of Administrative Services
Anchorage School District
P. O. Box 196614
Anchorage, Alaska 99519

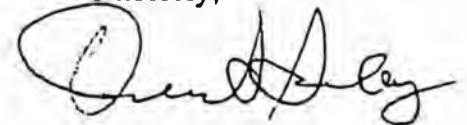
RE: Senate Bill 312, Section 1, School Construction Grants

Dear Dr. Rock:

In consideration of testimony offered by Anchorage School District during a House Health, Education and Social Services Committee hearing on the Committee Substitute for Senate Bill 312, I offer this written response to concerns raised. Section 1, of the proposed legislation, amends department authority during the review of an application for a school construction or major maintenance grant under AS 14.11.013. This section of statute applies only to grants which are funded under title 14. As you are aware, title 14 grants are the result legislative funding of first year requests included in the six year capital improvement plans, submitted by districts each year on September 1. This section of statute does not apply to projects that are funded by bonds, whether reimbursable or not, or legislative discretionary grants. Legislative discretionary grants are normally funded under title 37 as grants to named recipients. The exemption from title 14 applies to discretionary grants even if they are distributed through the Department of Education.

Thank you for providing me the opportunity to respond to the district's concern and for taking the time to discuss those concerns with me. If I can be of further assistance, please call me at 465-8679.

Sincerely,



Duane Guiley
Director

Attachment

cc: Jerry Covey
Commissioner

DEPARTMENT OF EDUCATION

Testimony CS for SB312

Senate Bill 312 is not intended to give the Department of Education unilateral control over the scope or cost of a school district capital project, nor to give the Department unilateral authority to determine which projects should be phase funded. The bill is intended to provide more options to the Department, during the initial review process, than what exists currently in statute. AS14.11.013(c) describes three conditions under which the Department may reject a school capital project request, as follows: (1) incomplete information; (2) a determination that existing facilities can meet the need or that alternative projects are in the best interest of the state; or (3) a determination that the project is not in the best interest of the state. Under current law, a decision by the Department to reject a project may be unilateral and is not subject to appeal under AS14.11.016. A rejected project delays the district a minimum of another year.

Assignment of priority, establishment of project scope and establishment of project budget are all subject to appeal under AS14.11.016. If SB312 passes and if the Department exercises the authority granted by section one in evaluating a capital project budget request, then each of those decisions would be subject to appeal. An appeal provides an opportunity for the district to provide information to the Department and an independent hearing officer in order to overturn the Departments initial consideration.

The Department intends to provide no more than three phases of funding. Planning, design, and construction phases will assist districts in developing accurate cost projections, utilizing state resources. As the department develops more stringent criteria for project applications, the cost of developing a capital project request will increase. Some districts will not have the financial or human resources needed to develop the standardized form. By providing a planning and design grants districts will be able to develop accurate cost estimates for the construction phase of the project they will know where they are going to build, what they are going to build and how they are going to build it.

Under the current system districts must cover the potential cost increases, project contingencies and all other unknowns in their initial project application. At the time of application most districts have no idea where they will build the new building, what the community need or what the cost will be. As a result some projects are short funded while other projects are over funded. Rarely do districts return money to the state. Rather than returning money, districts increase the scope of the project or enhance the project in some way to utilize the total grant amount.

In order to alleviate some of the concern which has been expressed about the potential misuse of Department authority, the Department would suggest deleting lines 9 & 10 on page 1 and inserting :

(2) require that a school construction project be phased for purposes of planning, design and construction.

DEPARTMENT OF EDUCATION

Testimony CS for SB312

Senate Bill 312 is not intended to give the Department of Education unilateral control over the scope or cost of a school district capital project, nor to give the Department unilateral authority to determine which projects should be phase funded. The bill is intended to provide more options to the Department, during the initial review process, than what exists currently in statute. AS14.11.013(c) describes three conditions under which the Department may reject a school capital project request, as follows: (1) incomplete information; (2) a determination that existing facilities can meet the need or that alternative projects are in the best interest of the state; or (3) a determination that the project is not in the best interest of the state. Under current law, a decision by the Department to reject a project may be unilateral and is not subject to appeal under AS14.11.016. A rejected project delays the district a minimum of another year.

Assignment of priority, establishment of project scope and establishment of project budget are all subject to appeal under AS14.11.016. If SB312 passes and if the Department exercises the authority granted by section one in evaluating a capital project budget request, then each of those decisions would be subject to appeal. An appeal provides an opportunity for the district to provide information to the Department and an independent hearing officer in order to overturn the Departments initial consideration.

The Department intends to provide no more than three phases of funding. Planning, design, and construction phases will assist districts in developing accurate cost projections, utilizing state resources. As the department develops more stringent criteria for project applications, the cost of developing a capital project request will increase. Some districts will not have the financial or human resources needed to develop the standardized form. By providing a planning and design grants districts will be able to develop accurate cost estimates for the construction phase of the project they will know where they are going to build, what they are going to build and how they are going to build it.

Under the current system districts must cover the potential cost increases, project contingencies and all other unknowns in their initial project application. At the time of application most districts have no idea where they will build the new building, what the community need or what the cost will be. As a result some projects are short funded while other projects are over funded. Rarely do districts return money to the state. Rather than returning money, districts increase the scope of the project or enhance the project in some way to utilize the total grant amount.

In order to alleviate some of the concern which has been expressed about the potential misuse of Department authority, the Department would suggest deleting lines 9 & 10 on page 1 and inserting :

(2) require that a school construction project be phased for purposes of planning, design and construction.

Bond Reimbursement and Grant Review Committee
Facility Evaluation/Inventory Sub-Committee Report
Wednesday, February 16, 1994

SCHOOL CAPITAL IMPROVEMENT PROGRAM PROPOSAL

Issue: Facility condition survey and provision for school facility inventory

Background: Concerning standards for school construction, prioritization of capital projects and inventory and condition surveys of existing facilities, the Alaska 2000 Facilities Committee recommended the following:

Alaska Department of Education should develop a set of standards to guide school construction. Topics include space (overall size and distribution), quality (materials) and cost, both construction and "soft" costs.

Alaska Department of Education should, Provide annual set aside for major maintenance of \$20-40 million, require adequate preventive maintenance in order to be eligible for state funding, create incentives for good programs and institute an independent assessment program for State funded projects and for preventive maintenance programs.

A statewide educational facility inventory process is required. Inventory efforts should be focused in the areas of most critical need and should increase as funding becomes more likely. Technical and program evaluation should be included. The process should be standardized and state funded.

Based on these recommendations, the Commissioner appointed an eighteen member committee, chaired by Superintendent, Dick Clevenger, to provide a more detailed description of a capital improvement evaluation and ranking process, school construction standards and a state-wide facility inventory. The committee met over the spring and summer of 1993. Included in the list of findings was the following Matrix Sub-Committee recommendation:

The State of Alaska should adopt a matrix model that will be utilized to prioritize school districts capital improvement projects. The matrix model should be similar to the State of Washington's and address both the condition of existing facilities and student populations served. The building condition evaluation forms presented in the CEFPI "School Facility Appraisal Guide" should be used in lieu of the Washington State forms. Both Models will require modification to meet the unique requirements of Alaska.

The results of prior committee work were distributed at the organizational meeting of the Bond Reimbursement and Grant Review Committee (BR&GRC). Copies of the Council of Educational Facility Planners (CEFPI) Comprehensive Facility Evaluation Process and the Washington State Prioritization Model were distributed and discussed at the December 9, 1993, BR&GRC meeting. In order to provide for a detailed review of both processes and prior committee work and for the purpose of making a BR&GRC recommendation, the Chair appointed the four person, Facility Evaluation/Inventory Sub-committee. The sub-committee was charged with developing a recommendation for BR&GRC consideration, related to a state-wide education facility inventory and a facility condition survey process.

The sub-committee obtained a commitment from Michael Roberts, Washington State Director of School Facilities and Organization, to attend the meeting and provide an overview of Washington's experience in developing and implementing its model. The sub-committee met on February 15, 1994 in the Department's second floor conference room of the Goldbelt Building in Juneau, Alaska. The group consisted of the four committee members, Ed Crittenden, staff program consultant, and Michael Roberts. The Educational Facilities Support staff observed.

Mr. Roberts presented an overview of the prior and current school construction evaluation, prioritization and funding processes, as well as a differentiation of the terms "eligibility" and "priority". Many similarities were noted between the prior Washington and the current Alaska programs. However, the current Washington system requires a significantly greater up front share to be provided by the local district through passage of a local bond and a reduced state fund share. All Washington school districts have limited bonding and mill levy authority. Project eligibility is based on a 14 question state study and survey, which includes building condition surveys of all district facilities and a comprehensive six year plan, partially state funded once each six years. Priority is based on a single scoring matrix which classifies projects as 1) growth construction or 2) modernization or new in-lieu/major renovation. The minimum threshold for a modernization or new in-lieu/major renovation project is 40% of current facility replacement cost. The state share is based on a standard gross square foot per student, grouped by grade level, times a standard per square foot construction cost, times a state match ratio, determined by assessed valuation per pupil. State match ranges from a high of 96% to a low of 20% of standard cost. The eligibility and formula establish the state share, while, the priority determines in what order the state will fund. Front funding with local dollars, with subsequent reimbursement through the prioritization process is an option. In each case, the district is the owner, the district manages the project and the district determines space utilization. The state match is tied to specific timelines and is based on "on-site" costs and excludes all "off-site" costs, (ie, access roads, utility hook-ups, traffic signals). The state share is funded with earnings of the School Lands Trust Fund, after the required local dollars are expended.

Recommendation: The State should require a standardized evaluative instrument that considers the educational program suitability and general condition of an existing facility, for the purpose of determining eligibility for state funding. This instrument would be similar to the CEFPI Comprehensive Facility Evaluation, adapted for Alaska. A more technical, standardized facility condition survey should be required in order to evaluate state-wide priority and determine the state share of a specific construction project. The condition survey should be comparable to an amended Washington State form and require surveyor training or experience similar to an architect or engineer.

The facility evaluation and the facility condition survey should be considered in the assignment of priority and be required as an attachment to each fiscal year 1996 construction phase project application. Districts which lack the human or financial resource to prepare the technical facility condition survey should submit the facility evaluation as part of the application package for a FY96 planning grant.

Districts should be required to submit standardized facility evaluations on all existing educational facilities within the district, as a prerequisite to school capital improvement funding in fiscal year 1998. These evaluations will provide the basis for a state-wide educational facility inventory.

The Department should make copies of the standardized documents available to all districts and provide training to interested parties by May 30, 1994, in order to require submittal by September 1, 1994. Districts which have an existing facility evaluation and/or facility condition survey document should be required to "cross walk" the district document to the standardized form.

Response: The Bond Reimbursement and Grant Review Committee adopted this report on February 16, 1993, for the purpose of submitting it as a recommendation to Commissioner Covey and for making a report to the State Board of Education. The Board accepted the report at its regular meeting on February 18, 1994. Subsequent to that meeting, Commissioner Covey accepted the recommendation.

Pilot Project for Special Education Services

Special Education Funding

Special education is funded pursuant to AS 14.17.045, which specifies that exceptional children generate additional instructional units if they receive gifted services (0.025 units), resource services (0.056 units), self-contained services (0.1 units), or intensive services (0.333 units), as those services are defined by regulation.

Problem

The funding mechanism provides a financial incentive for districts to identify as many children as possible for special education. Funding use is discretionary at the district level. In other words, funds generated through the foundation program due to the classification of children as exceptional need not be spent on special education services. In some instances, districts may label students unnecessarily. The result is contrary to the most current research and litigation, which speaks to inclusion of children in the regular education program to the maximum extent appropriate.

The number of students identified for special education is increasing each year as a result of many factors, including greater social and emotional needs of children entering our schools. The expansion of the special services program is putting a tremendous financial burden on the state. Many of the students whose evaluations result in identification as disabled may not be disabled themselves, but may be reflecting a disability of our schools to meet their educational needs.

Alternative Model

A number of districts believe that many children are inappropriately labeled mildly or moderately disabled. They believe that these children can be served in the regular educational program with satisfactory educational results without the stigma and harm that can follow from being labeled disabled or handicapped. The department believes that districts will be able to demonstrate that with additional training for teachers and more emphasis on early intervention programs, these children will meet or exceed educational results that could be expected from identifying the children as disabled. However, if districts do not identify and count students according to AS 14.17.045, they cannot receive special education funding at all.

Solution

The Department of Education believes an alternative approach should be encouraged. It is recommended that a pilot project be authorized for four school districts. The project would cap the percentage of resource and self-contained students at the district's current level, would allow greater flexibility in serving students in the regular educational program, and would remove the incentive for identifying and labeling students. The department believes the concept is in line with the most current research in special education, is in the best interest of our students, and will ultimately save the state money.

ALASKA DEPARTMENT OF EDUCATION
 FY88-94 FOUNDATION PROGRAM
 Special Education Units

4/6/94 FILE: 7YRSPED.XLS

	FY88 Spec. Ed.	FY89 Spec. Ed.	FY90 Spec. Ed.	FY91 Spec. Ed.	FY92 Spec. Ed.	FY93 Spec. Ed.	FY94 Spec. Ed.	Area Diff.
ADAK	4.58	4.58	3.79	3.56	5.14	5.17	3.53	1.27
ALASKA GATEWAY	7.49	7.21	6.16	7.01	7.41	7.05	8.76	1.19
ALEUTIAN REGION	1.03	1.48	3.64	1.00	1.00	1.00	1.00	1.31
ALEUTIANS EAST	3.17	3.21	1.00	4.22	4.60	3.68	3.86	1.31
ANCHORAGE	437.70	450.78	453.62	475.17	533.78	603.05	593.60	1.00
ANNETTE ISLANDS	4.57	5.74	5.75	5.69	5.57	5.00	5.04	1.03
BERING STRAIT	14.04	14.18	14.81	15.54	16.51	18.66	19.94	1.39
BRISTOL BAY	2.84	2.96	2.73	3.21	3.07	3.34	3.07	1.27
CHATHAM	4.04	4.40	4.44	4.45	4.48	4.59	4.67	1.03
CHUGACH	1.20	1.24	2.27	2.10	2.14	1.47	1.84	1.14
COPPER RIVER	3.57	5.45	6.41	9.62	7.85	6.73	6.51	1.14
CORDOVA	4.07	5.03	4.97	4.98	5.69	5.99	5.92	1.11
CRAIG	1.83	1.94	1.79	2.30	3.55	4.25	4.92	1.03
DELTA/GREELY	11.26	11.72	10.76	12.28	14.53	13.84	16.12	1.16
DENALI	2.60	2.78	2.75	2.72	3.12	3.40	3.55	1.23
DILLINGHAM	4.52	7.02	8.80	9.11	12.15	10.20	9.26	1.27
FAIRBANKS	133.62	140.30	142.84	145.58	154.87	181.06	190.77	1.04
GALENA	1.00	1.02	1.00	2.02	2.11	1.49	1.74	1.30
HAINES	2.55	2.85	2.12	3.33	4.07	3.87	4.05	1.05
HOONAH	2.80	2.52	2.43	2.69	3.97	6.19	6.61	1.08
HYDABURG	1.39	1.25	1.25	1.45	1.17	1.39	1.00	1.03
IDITAROD	4.51	5.01	6.70	7.13	6.29	6.18	6.75	1.33
JUNEAU	63.81	67.36	68.66	72.42	85.30	98.70	98.73	1.00
KAKE	3.15	3.30	2.74	2.56	2.42	2.93	2.29	1.03
KASHUNAMIUT	2.42	2.75	2.85	2.01	3.50	2.54	3.14	1.33
KENAI	80.29	85.40	92.18	98.35	120.39	117.88	118.32	1.00
KETCHIKAN	26.38	29.32	26.88	28.35	28.02	27.66	23.19	1.00
KLAWOCK	2.07	2.73	2.62	3.14	3.11	3.75	3.58	1.03
KODIAK	27.39	26.03	25.82	25.84	28.91	31.31	30.84	1.09
KUSPUK	4.80	5.97	5.53	6.76	7.56	7.72	6.50	1.33
LAKE AND PENN.	4.13	3.97	5.71	4.97	4.08	5.88	6.78	1.31
LOWER KUSKOKWIM	31.88	29.69	33.71	36.03	38.77	40.23	38.23	1.42
LOWER YUKON	14.74	14.18	15.32	18.48	22.63	18.79	17.77	1.35
MATSU	74.73	81.97	87.72	104.77	117.44	126.04	136.27	1.00
NENANA	2.92	2.13	1.88	1.79	2.05	2.25	1.61	1.20
NOME	6.63	7.97	6.62	8.95	10.33	10.77	10.14	1.34
NORTH SLOPE	7.16	7.45	7.96	8.78	8.09	9.24	10.98	1.45
NORTHWEST ARCTIC	16.33	20.50	21.14	20.94	24.79	18.52	21.35	1.45
PELICAN	1.00	1.00	1.00	1.09	1.00	1.00	1.00	1.08
PETERSBURG	7.82	6.99	8.06	7.85	7.38	6.91	7.02	1.00
PRIBILOF	1.83	2.08	2.19	2.48	2.05	2.24	2.16	1.30
SITKA	16.88	18.35	14.70	17.85	15.77	15.70	15.23	1.00
SKAGWAY	1.00	1.28	1.23	1.16	1.46	1.23	1.48	1.05
SOUTHEAST	4.55	4.62	5.67	6.09	5.26	5.64	6.22	1.04
SOUTHWEST	5.13	5.01	5.12	6.24	6.31	5.52	4.96	1.31
ST MARY'S	2.05	1.85	1.98	1.93	1.77	1.97	1.22	1.30
TANANA	1.00	1.00	1.00	1.32	1.28	1.20	1.11	1.30
UNALASKA	1.21	1.93	1.81	2.18	2.16	2.50	2.77	1.27
VALDEZ	3.77	4.77	4.90	5.99	5.22	8.71	9.19	1.11
WRANGELL	5.82	7.51	9.50	8.22	8.59	5.71	7.17	1.00
YAKUTAT	1.03	1.17	1.00	1.20	1.63	2.42	2.35	1.08
YUKON FLATS	3.97	4.57	5.17	4.21	3.84	3.74	4.72	1.46
YUKON/KOYUKUK	6.38	6.52	8.12	8.80	10.74	10.07	11.84	1.34
YUPIIT	4.38	5.00	4.70	4.48	6.01	4.85	6.49	1.41
TOTALS	1,091.03	1,147.04	1,173.52	1,250.39	1,390.93	1,501.22	1,517.16	

ALASKA DEPARTMENT OF EDUCATION
 FY88-94 FOUNDATION PROGRAM
 Special Education Basic Need

4/6/94 FILE: 7YRSPED.XLS

Unit Value >>>>	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$61,000	\$61,000
	FY88 Spec. Ed.	FY89 Spec. Ed.	FY90 Spec. Ed.	FY91 Spec. Ed.	FY92 Spec. Ed.	FY93 Spec. Ed.	FY94 Spec. Ed.
ADAK	\$349,200	\$349,200	\$288,600	\$271,200	\$391,800	\$400,770	\$273,280
ALASKA GATEWAY	534,600	514,800	439,800	500,400	529,200	511,790	635,620
ALEUTIAN REGION	81,000	116,400	286,200	78,600	78,600	79,910	79,910
ALEUTIANS EAST	249,000	252,600	78,600	331,800	361,800	294,020	308,660
ANCHORAGE	26,262,000	27,046,800	27,217,200	28,510,200	32,026,800	36,786,050	36,209,600
ANNETTE ISLANDS	282,600	354,600	355,200	351,600	344,400	314,150	316,590
BERING STRAIT	1,171,200	1,182,600	1,235,400	1,296,000	1,377,000	1,582,340	1,690,920
BRISTOL BAY	216,600	225,600	208,200	244,800	234,000	258,640	237,900
CHATHAM	249,600	271,800	274,200	274,800	276,600	288,530	293,410
CHUGACH	82,200	84,600	155,400	143,400	146,400	102,480	128,100
COPPER RIVER	244,200	372,600	438,600	658,200	537,000	467,870	452,620
CORDOVA	271,200	334,800	331,200	331,800	379,200	405,650	400,770
CRAIG	112,800	120,000	110,400	142,200	219,600	267,180	309,270
DELTA/GREELY	783,600	816,000	748,800	854,400	1,011,000	979,050	1,140,700
DENALI	192,000	205,200	202,800	201,000	230,400	254,980	266,570
DILLINGHAM	344,400	535,200	670,800	694,200	925,800	789,950	717,360
FAIRBANKS	8,337,600	8,754,600	8,913,000	9,084,000	9,663,600	11,486,300	12,102,400
GALENA	78,000	79,800	78,000	157,800	164,400	118,340	137,860
HAINES	160,800	179,400	133,800	210,000	256,200	247,660	259,250
HOONAH	181,200	163,200	157,200	174,600	257,400	408,090	435,540
HYDABURG	85,800	77,400	77,400	89,400	72,600	87,230	62,830
IDITAROD	360,000	399,600	534,600	568,800	502,200	501,420	547,780
JUNEAU	3,828,600	4,041,600	4,119,600	4,345,200	5,118,000	6,020,700	6,022,530
KAKE	194,400	204,000	169,200	158,400	149,400	184,220	143,960
KASHUNAMIUT	193,200	219,600	227,400	160,200	279,600	206,180	254,980
KENAI	4,817,400	5,124,000	5,530,800	5,901,000	7,223,400	7,190,680	7,217,520
KETCHIKAN	1,582,800	1,759,200	1,612,800	1,701,000	1,681,200	1,687,260	1,414,590
KLAWOCK	127,800	168,600	162,000	193,800	192,000	235,460	225,090
KODIAK	1,791,600	1,702,200	1,688,400	1,690,200	1,890,600	2,081,930	2,050,820
KUSPUK	382,800	476,400	441,000	539,400	603,000	626,470	527,650
LAKE AND PENN.	324,600	312,000	448,800	390,600	320,400	469,700	541,680
LOWER KUSKOKWIM	2,716,200	2,529,600	2,872,200	3,069,600	3,303,000	3,484,930	3,311,690
LOWER YUKON	1,194,000	1,148,400	1,240,800	1,497,000	1,833,000	1,547,570	1,463,390
MATSU	4,483,800	4,918,200	5,263,200	6,286,200	7,046,400	7,688,440	8,312,470
NENANA	210,000	153,600	135,600	129,000	147,600	164,700	117,730
NOME	532,800	640,800	532,200	719,400	830,400	880,230	821,990
NORTH SLOPE	622,800	648,000	692,400	753,800	703,800	817,400	971,120
NORTHWEST ARCTIC	1,420,800	1,783,800	1,839,000	1,821,600	2,157,000	1,637,850	1,888,560
PELICAN	64,800	64,800	64,800	70,800	64,800	65,880	65,880
PETERSBURG	469,200	419,400	483,600	471,000	442,800	421,510	428,220
PRIBILOF	142,800	162,000	171,000	193,200	160,200	177,510	171,410
SITKA	1,012,800	1,101,000	882,000	1,071,000	946,200	957,700	929,030
SKAGWAY	63,000	80,400	77,400	73,200	91,800	78,690	94,550
SOUTHEAST	283,800	288,000	354,000	379,800	328,200	358,070	394,670
SOUTHWEST	403,200	393,600	402,600	490,200	496,200	441,030	396,500
ST MARY'S	160,200	144,600	154,200	150,600	138,000	156,160	96,990
TANANA	78,000	78,000	78,000	103,200	99,600	95,160	87,840
UNALASKA	92,400	147,000	138,000	166,200	164,400	193,980	214,720
VALDEZ	250,800	317,400	326,400	399,000	347,400	589,870	622,200
WRANGELL	349,200	450,600	570,000	493,200	515,400	348,310	437,370
YAKUTAT	66,600	75,600	64,800	78,000	105,600	159,210	154,940
YUKON FLATS	348,000	400,200	453,000	369,000	336,600	333,060	420,290
YUKON/KOYUKUK	513,000	524,400	652,800	707,400	863,400	822,890	968,070
YUPIIT	370,800	423,000	397,800	379,200	508,200	417,240	558,150
TOTALS	\$69,721,800	\$73,336,800	\$75,181,200	\$80,130,600	\$89,073,600	\$97,172,390	\$98,340,540

Pilot Project for Special Education Services

- School districts must identify and count students (according to AS 14.07.045) to receive special education funding.
- Funds generated for special education students need not be spent on special education services.
- The number of students identified for special education is increasing each year. In some instances, districts may label students as special needs students unnecessarily.
- The result is contrary to the most current research, which speaks to inclusion of children in the regular educational program to the maximum extent appropriate.
- An alternative approach should be encouraged. This amendment would authorize a pilot project for four school districts. The pilot project would not exceed three years.
- The Commissioner of the Department of Education would need to find that the project is in the best interests of the students and the state.
- The project would comply with the requirements of federal law, including the Individuals with Disabilities Education Act (IDEA).
- The pilot project would
 - cap the percentage of resource and self-contained students at the district's current level.
 - allow greater flexibility in serving students in the regular educational program.
 - remove the incentive for identifying and labeling students.
- Establishing a pilot program will not cost the state additional revenue. Based on previous trends, the caps will reduce the eligibility for state aid that would otherwise have been requested by a district.

Fiscal Impact - Proposed Amendment to CSSB312 (HESS)

The Public School Foundation Program provides state aid in support of kindergarten through twelfth grade public education. In addition, the foundation program provides supplementary units for students with special needs. Supplementary units are provided for special education, bilingual education and vocational education. The fastest growing component of the foundation program is special education. From 1988 through 1993, special education units increased an average of 6.6% a year. Typically, special education units increase by about 150% of the increase in K-12 units. The special education unit increase has been as high as 200% of the K-12 unit increase.

Establishing a pilot program which provides for special education service alternatives, while capping the percentage of students identified in certain special education service categories will not cost the state additional revenue. Based on previous trends, the caps will reduce the eligibility for state aid that would otherwise have been requested by a district. The results of the pilot(s) should establish the value of duplicating the special education service alternatives in other districts, providing for an even greater savings.

ALASKA SCHOOL ACTIVITIES ASSOCIATION
Prepared by the Department of Education

Subject

Repeal of the statutes creating the Alaska School Activities Association (ASAA) (AS 14.07.058) and the Alaska School Activities Fund within the State general fund (AS 14.07.059).

Background

*The purpose of ASAA is to promote and govern interscholastic activities, such as basketball, swimming, band, football, and wrestling.

*ASAA was formed in 1956 under a superintendent's advisory commission to the commissioner of education.

*Twenty years later, in 1976, the Legislature established the ASAA in statute.

*In 1986, the Legislature removed ASAA from the Department of Education's budget.

*In January 1987, the organization filed articles of incorporation to become ASAA, Incorporated, a 501C(3) private non-profit corporation.

*ASAA, Inc. currently raises funds for operations through gate receipts, dues from member districts and corporate donations.

*The State Board of Education continued to serve as the appeals review body for the Association to hear student appeals for waivers to compete in interscholastic activities, such as basketball, football and swimming.

*During the past two years, the State Board of Education was named in three court actions involving ASAA, Inc. These actions (two students contesting waiver denials; one student contesting a rule) caused the State to expend resources to defend in court the rules and regulations of a non-profit corporation over which the State has no oversight or authority.

*In 1994, the Attorney General's Office held that ASAA is no longer operating and that ASAA, Inc. is performing the functions of ASAA. ASAA, Inc. is not part of the apparatus of State government; the statutes creating ASAA and the ASAA Fund are no longer in force.

*The AG's opinion also held that the State Board of Education had no legal authority over ASAA, Inc. and should not serve as the appeals review body over a private non-profit corporation over which it has no authority.

*The AG recommended that the statutes relative to ASAA be repealed.

*Officials of ASAA, Inc. agree with this course of action.

Recommended Action

*The Department of Education supports the repeal of AS 14.07.058-.059.

MEMORANDUM

State of Alaska
Department of Law

Honorable Jerry Covey
Commissioner
Department of Education

DATE: January 19, 1994
FILE NO.: 663-94-0078
TEL NO.: 465-3603
SUBJECT: ASAA and ASAA, Inc.

Janice Levy

FROM:

Janice Gregg Levy
Assistant Attorney General
Human Services Section-Juneau

INTRODUCTION

You have asked our opinion regarding two organizations -- the Alaska School Activities Association (ASAA) created at AS 14.07.058, and the Alaska School Activities Association, Inc. (ASAA, Inc.), a nonprofit corporation. Specifically, you asked the following questions:

1. Is ASAA, Inc. statutorily the same entity as ASAA?
2. If ASAA, Inc. is a different entity than ASAA, is the state legally responsible for the actions of ASAA, Inc.?
3. Is the Commissioner of Education required to enforce AS 14.07.058 - 14.07.059 in light of the legislature's defunding of ASAA?
4. If ASAA, Inc. is not the same entity as ASAA, is it appropriate, in light of the potential legal liability and other unbudgeted financial commitment of the state, for the State Board to serve as the ASAA, Inc. Appeals Review Commission?

The short answers to your questions are that ASAA and ASAA, Inc. are distinct legal entities; the state should not be liable for the acts of a nonprofit corporation, but the present arrangement may make the state vulnerable to claims; the commissioner need not on his own attempt to revive ASAA; and the State Board of Education should refrain from serving as the Appeals Review Commission for ASAA, Inc.

DISCUSSION

1. Is ASAA, Inc. statutorily the same entity as ASAA?

The answer to this question is no. ASAA, Inc. is a nonprofit corporation, created by individuals, not the state. It

was certified as a nonprofit corporation on April 21, 1986, in accordance with the corporate laws of Alaska, AS 10.20. In contrast, ASAA was created by the legislature in 1976 at AS 14.07.058.¹ Although they share similar names and were created to perform similar functions, ASAA and ASAA, Inc. are legally two distinct entities. ASAA is within state government, while ASAA, Inc. is a private, nongovernmental, nonprofit corporation.

The relationship between the two organizations is, as you indicate, an unusual one. At the time that ASAA, Inc. filed its articles of incorporation, its executive director and Board of Control were the executive secretary and Board of Control of the statutory ASAA.² Thus, at the time of the formation of ASAA, Inc., the two entities had the same functions, the same personnel, and a similar name. Additionally, ASAA, Inc. used the constitution and bylaws of ASAA. The corporation revised those documents to add "Inc." wherever "ASAA" was referenced, and added some administrative policies to what had been the ASAA handbook.³ Additionally, it is possible that some member schools believed that ASAA (the statutory entity) had simply incorporated, and that it continued to be within the Department of Education. Despite the

¹ The purpose and structure of ASAA are described in statute. A board of control is to be elected from regions in the state, and, in consultation with the department, is to hire an executive secretary. AS 14.07.058(d)-(e). The department is to approve the association's constitution and bylaws to ensure equitable treatment. AS 14.07.058(g). Additionally, the legislature established a fund within the general fund to receive deposits of ASAA fees, including membership fees and activity and events fees collected by the association. AS 14.07.059.

² Tom Wagner, then Assistant Attorney General advising the department, has pointed out that there is an inherent conflict of interest in a state employee acting as head of a nonprofit corporation whose purposes are substantially the same as the statutory program he was hired to implement. See 1983 Inf. Op. Att'y Gen. at 7 (Jan. 6; 663-86-0418). See also the January 12, 1987 memorandum from Tom Wagner to Acting Attorney General Ron Lorensen.

³ These changes were not approved by the Board of Education, and do not amend ASAA's constitution and bylaws. Thus, at the present time there exists a constitution and bylaws for ASAA, Inc. and a constitution and bylaws for ASAA. They are similar, but not identical.

overlapping functions and players, however, ASAA and ASAA, Inc. are distinct legal entities.

2. If ASAA, Inc. is a different entity than ASAA, is the state legally responsible for the actions of ASAA, Inc.?

The state should not be liable for the actions of a nonpublic corporation. Although ASAA, Inc. performs functions that serve a public interest (as do many nonprofit corporations), it is not a public entity. The interaction between the two organizations over the last six years, however, has blurred what would otherwise be a bright line legally separating these two organizations.

The most obvious way in which the two organizations have remained intertwined is that the State Board of Education has continued to sit as the Appeals Review Commission for eligibility determinations made by ASAA, Inc.'s Board of Control. This action gives the appearance that the state remains connected to ASAA, Inc., or that ASAA, Inc. is in some way within the Department of Education. A party with a claim against the corporation may well exploit that connection in an attempt to hold the state liable for the corporation's acts. Whether the state would succeed in avoiding liability would probably depend on the nature of the claim. It is in the state's best interests to take steps to avoid exposing itself to liability for acts of a nonstate entity over which it has no control.

3. Is the Commissioner of Education required to enforce AS 14.07.058 - 14.07.059 in light of the legislature's defunding of ASAA?

In our opinion, the commissioner need not attempt to administer an association which has no members and no budget. Although ASAA continues to exist in statute, its vitality depends on the participation of member schools who join by submitting an application and paying dues. There are no current members of ASAA. Those schools who once belonged to ASAA have now become members of and pay dues to ASAA, Inc. We agree with the 1988 opinion of Tom Wagner that the legislature's defunding of the ASAA budget did not operate to repeal ASAA from statute. 1988 Inf. Op. Att'y Gen. at 6 (Jan. 6; 663-86-0418). The statutory creature continues to exist, but it is in a state of hibernation. Your question, as I understand it, is whether the department is obliged to wake it up. In our opinion, it is not.

First, the legislature's defunding of the program suggests that it understood and approved of the corporation taking

over what had heretofore been a governmental function. ASAA, Inc. has governed interscholastic activities in Alaska since 1987. The Department of Education has not sought funding from the legislature for ASAA since that time. In our opinion the Department of Education is not obliged to needlessly spend time attempting to administer a program for the benefit of schools who have all joined another organization. It is unlikely that the legislature intended such a result.

Second, the language of the statute describes a whole scheme that contemplates an active membership. The only real department mandate set out in AS 14.07.058 is that the department shall make applications available to schools in the state. AS 14.07.059 requires the commissioner and the department to handle the ASAA budget in a certain manner. The department cannot carry out these duties in a vacuum. No schools have requested application or membership in ASAA, and there are no program receipts and no active association seeking a budget. The statutes do not require the department to actively solicit membership in ASAA. For these reasons, we do not believe that the department fails to perform its statutory obligations by refraining from attempting to revive ASAA. If the legislature does not approve of the manner in which interscholastic activities are governed, and desires the direct governance of those activities by the Department of Education, it is free to breathe life into ASAA by funding it again.

4. If ASAA, Inc. is not the same entity as ASAA, is it appropriate, in light of the potential legal liability and other unbudgeted financial commitment of the state, for the State Board to serve as the ASAA, Inc. Appeals Review Commission?

We believe the answer to this question is no. As described above, it is the intertwining of these distinct legal entities that exposes the state to liability for the acts of a nonstate corporation. In the past year, the Department of Education has expended significant legal fees defending in court decisions first made by a nonprofit corporation over which it exercises no control. This arrangement results in an inappropriate expense for the state, and unnecessary exposure for greater liability.

Additionally, the Board of Education simply has no statutory authority for hearing appeals from a nongovernmental corporation. That it has done so over the years may be the result of a misunderstanding by the Board of Education of an earlier attorney general opinion. Ed Nash (originally Executive Secretary

for ASAA and then Executive Director for ASAA, Inc.) asked the Board of Education in 1987 if it would consider being the final appeal step in an appeal that began before ASAA, Inc. incorporated. He suggested that ASAA, Inc. and the Board of Education could consider having the Board continue in its appellate capacity, depending on the advice of the parties' counsel.

The Board of Education apparently asked its attorney whether it should continue to hear appeals. A 1988 memo from Tom Wagner stated in relevant part:

We conclude that ASAA still exists as a legal entity within the Department of Education, that its board of control is still responsible for making eligibility decisions in accordance with its bylaws approved under 4 AAC 06.111, and that the state board still acts as an appeal body under those bylaws.

1988 Inf. Op. Att'y Gen. at 1 (Jan. 6; 663-86-0418). This view, with which we agree, states that the State Board continues to sit as the appeals body for the ASAA Board of Control. This is to be distinguished from the ASAA, Inc. Board of Control. The Board of Education may have misunderstood his advice to be that it should continue to hear any appeals that came to it. The appeals have come from the ASAA, Inc. Board of Control, not the statutorily created ASAA Board of Control. Thus, in our view the Board of Education has been improperly hearing appeals from a nonstate entity's board. The procedure should not continue.

It would be appropriate to inform ASAA, Inc. and its member schools in writing that the Board of Education will no longer hear the appeals of decisions of the ASAA, Inc. Board of Control. That body may wish to set up another appeals procedure.

CONCLUSION

In conclusion, the concerns you raise are serious. ASAA, Inc. is not the same entity as ASAA, and the Board of Education acts beyond the scope of its statutory authority when it sits as an appeals body for the nonprofit corporation. Besides acting outside the scope of its authority, it unnecessarily entangles itself with the corporation, possibly exposing the department to liability for the acts of the corporation.

In our opinion it would be appropriate for the Board of Education to notify the corporation and its member schools that it will no longer sit as the Appeals Review Commission for the

Honorable Jerry Covey
Commissioner, Department of Education
663-34-0078

January 19, 1994
Page 6

corporation. The notice should explain that the corporation is a legal entity distinct from the statutory ASAA, and that ASAA, Inc. is not within the state apparatus. Although the statutes related to the Alaska School Activities Association will continue to exist, they will simply be in disuse. The legislature may choose at some point to repeal them, or alternatively may one day revive them by funding the program and requiring membership within the statutory association.

I hope this answers the questions you raised concerning ASAA and ASAA, Inc. Please do not hesitate to contact me if I can be of further assistance.

JGL/bap

Attachments

cc: Harry Gamble ✓



Lawrence A. Wiget, Ed.D.
Director, Government Relations/Legislative Liaison
4600 Debarr Road
P.O. Box 196614
Anchorage, Alaska 99519-6614
(W) 907 269-2255 (FAX) 907 269-2107

TO: HOUSE HESS COMMITTEE

SUBJECT: SENATE BILL NO. 312

DATE: APRIL 18, 1994

While we appreciate the efforts of DOE and the legislature in attempting to address containing school construction costs statewide, the proposed legislation and proposed DOE criteria for unhoused students remains too subjective in areas which require objectivity.

Thus, the administration of the Anchorage School District is opposed to Senate Bill No. 312. We believe that the bill is not in the best interest of the Anchorage School District. It usurps local control and does not address our unhoused students needs.

Specific areas of objection include the following:

I. Section 1. AS 14.11.013 (c), is amended to read;

(c) The department may

(1) modify a project request when necessary to achieve cost-effective school construction;

(2) require that school construction in a project request be phased; and...

The proposed legislation would further erode local control in making decisions concerning cost effective school construction. Currently, DOE requires that certain subjective criteria must be met, including a maximum of 100 square feet per student maximum for elementary schools and 150 square feet per student for secondary schools.

While we understand that the proposed legislation is being put forth to control construction costs, it is our belief from past experience that the current regulations already provide for that while allowing for some local control.

What is being proposed is such that while we may meet all the current criteria on a cost-efficient project, DOE may still modify the project including forcing the district to use cheaper materials to lower the cost, thus lowering the life expectancy of the building while increasing maintenance costs.

In addition, by requiring a district to phase in a project rather than completing it at the time of initial construction, could increase the overall costs of the project. This decision should be left to the local school board based on what they believe is the most cost-effective method for the project.

For the Anchorage School District, with its strong local control through Board, Municipal Assembly and bonding ability, building unnecessary or extravagant facilities is not permitted.

There are times in which we do complete renovations of schools on a phased-in schedule, but that is determined by the local board based on multiple factors, such as that which is in the best interest of our students, as well as community and cost considerations.

For further information please contact Dr. Brent Rock, Assistant Superintendent, Administrative Services at 269-2281; or, Dr. Larry Wiget at 269-2255.



Lawrence A. Wiget, Ed.D.
Director, Government Relations/Legislative Liaison
4600 Debarr Road
P.O. Box 196614
Anchorage, Alaska 99519-6614
(W) 907 269-2255 (FAX) 907 269-2107

PLEASE DISTRIBUTE THE ATTACHED ASD POSITION ON SB 312 TO ALL MEMBERS OF THE HESS.

ALSO, PLEASE CONTACT DR. BRENT ROCK, ASSISTANT SUPERINTENDENT FOR FURTHER INFORMATION ON OUR POSITION.

HE CAN BE REACHED AT 268-2281.

THANK YOU!

d

4/20/94

Finance

(9)
Date Referred: April 14, 1994

HOUSE COMMITTEE REPORT
FURTHER REFERRALS:

Date of Committee Action: 4/19/94

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: CSSB 312(HES) am

CS FOR SENATE BILL NO. 312(HES) am SCHOOL CONSTRUCTION GRANT REVIEW

"An Act relating to the school term, school construction grants and to interscholastic school activities; relating to a pilot project for state aid for special education; and providing for an effective date."

RECOMMENDATIONS:
be replaced with HCS CSSB 312 (HES) the same title
 a new title
 have attached amendments(s)
 do pass
 do not pass
 no recommendations
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)
 fiscal impact _____ fiscal note(s) _____
 zero fiscal note DOE zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>		<i>[Signature]</i> Kott		X	
<i>[Signature]</i> G. Davis	X	<i>[Signature]</i> B. Davis			X
<i>[Signature]</i> Bunde		<i>[Signature]</i> Olberg		✓	
<i>[Signature]</i> Tooney	✓				
	(3)			(2)	(1)

[Signature] Bunde
-CHAIRMAN'S SIGNATURE