

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT KETCHIKAN, ALASKA

KETCHIKAN GATEWAY BOROUGH, an Alaska municipal corporation and political subdivision; AGNES MORAN, an individual, on her own behalf and on behalf of her minor son; JOHN COSS, a minor; JOHN HARRINGTON, an individual; and DAVID SPOKELY, an individual;

Plaintiffs,

v.

STATE OF ALASKA; MICHAEL HANLEY, COMMISSIONER OF ALASKA DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT, in his official capacity;

Defendants.

Case No. 1KE-14-00016CI

FILED in the Trial Courts
State of Alaska First District
at Ketchikan

FEB 06 2014

Clerk of the Trial Courts

By _____ Deputy

PLAINTIFFS' MOTION AND MEMORANDUM IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

Plaintiffs Ketchikan Gateway Borough ("Borough"), Agnes Moran, John Coss, John Harrington, and David Spokely (collectively "Plaintiffs"), by and through their counsel of record, move for summary judgment as set forth below.

I. INTRODUCTION

The State of Alaska ("State") has a constitutional duty to "establish and maintain a system of public schools open to all children of the State . . ."¹ "This constitutional

¹ Alaska Const. art. VII, § 1.

mandate for pervasive state authority in the field of education could not be more clear.”² The State, however, has abdicated this duty by unconstitutionally requiring the Borough to fund the Ketchikan Gateway Borough School District (“KGB School District”) with an annual required local contribution (“RLC”). The Court should therefore grant Plaintiffs’ motion for summary judgment and enter a declaratory judgment that the RLC violates three provisions of the Alaska Constitution. Longstanding Alaska Supreme Court (“Supreme Court”) case law clearly establishes that the RLC violates Article IX, Section 7 of the Alaska Constitution (the “Anti-Dedication Clause”) because the RLC is a source of public revenue that the State compels the Borough to provide to the KGB School District, thus dedicating it to a particular purpose. Furthermore, because the RLC operates in a manner that is never subject to legislative appropriation or the Governor’s veto, it also violates Article IX, Section 13 (the “Legislative Appropriation Clause”) and Article II, Section 15 (the “Governor’s Veto Clause”) of the Alaska Constitution. Additionally, because the RLC is unconstitutional, the Court should enjoin Defendants from assessing the RLC and punishing the Borough for refusing to pay the RLC, and require Defendants to fund the Basic Need provided for in AS 14.17.410 of the Ketchikan Gateway Borough School District notwithstanding the absence of future RLCs. Finally, the Court should order a refund of the 2014 RLC paid under protest in accordance with the doctrines of assumpsit and/or restitution.

² *Macauley v. Hildebrand*, 491 P.2d 120, 122 (Alaska 1971); *Matanuska-Susitna Borough School Dist. v. State*, 931 P.2d 391 (Alaska 1997); *Municipality of Anchorage v. Repasky*, 34 P.3d 302 (Alaska 2001);

II. FACTUAL BACKGROUND

A. The parties

The Borough is a second-class borough and general-law municipality. The individual plaintiffs are residents of the Borough. They pay property and sales taxes to the Borough. One individual plaintiff is currently a student at Schoenbar Middle School which is operated by the KGB School District. Another individual plaintiff is an elected Borough assembly member and the mother of the student.

Defendants are the State and Michael Hanley, the Commissioner of the Department of Education and Early Development (“DEED”). DEED is responsible for enforcing the statutory scheme at issue in this litigation.³

B. The statutory scheme for school district funding

The basic unit of school administration in Alaska is the school district.⁴ State funding for operation of school districts depends on whether the schools within the school district are located within an organized borough, a home-rule or first-class city that is outside an organized borough, or a regional educational attendance area (“REAA”).⁵ The REAAs are educational service areas established for the sole purpose of administering schools within an area of the unorganized borough.⁶

³ See AS 14.07.020(1) (DEED exercises general supervision over the public schools of the State); AS 14.07.070 (withholding of state funds from school districts that fail to comply with school laws of the State and regulations of DEED); AS 14.17.410(d) (state aid may not be provided to a city or borough school district if RLC has not been made).

⁴ AS 14.12.010.

⁵ AS 14.12.010(1) - (3).

⁶ AS 14.08.031(a).

Alaska currently has fifty-three school districts.⁷ Each of Alaska's nineteen organized boroughs constitutes a borough school district ("Borough District").⁸ Each of Alaska's fifteen home-rule and first-class cities within the unorganized borough constitutes a city school district ("City District").⁹ Borough and City Districts are referred to collectively herein as "Municipal Districts." The remaining nineteen school districts are within the portion of the unorganized borough exclusive of City Districts.¹⁰ These school districts are divided into State-created REAAs.¹¹

The current State scheme for providing operating funds for education uses a specified education fund which consists of those funds appropriated by the Alaska State Legislature ("Legislature") for distribution to school districts, the State boarding school, centralized correspondence study, and pupil transportation.¹² Whether a Municipal District or an REAA, each school district is entitled to be funded adequately according to its "Basic Need."¹³ Basic Need is the level of educational funding at which "all districts are considered equal" and that "provides all districts with needed resources."¹⁴ Basic

⁷ The location and nature of school districts in the state are generally known within the state, and are easily capable of accurate and ready notice to this Court. *See* Alaska R. Evid. 201.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See id.*, *see also* AS 14.08.031(a) (providing for creation of REAAs by Department of Commerce, Community, and Economic Development in consultation with DEED and local communities).

¹² AS 14.17.300.

¹³ *See* AS 14.17.410(b).

¹⁴ *Alaska's Public School Funding Formula: A Report to the Alaska State Legislature*, Tab 2 -- Comparison of Old to New Funding Formula, DEED, p. 8, January 15, 2001. Affidavit of Scott Brandt-Erichsen ("Brandt-Erichsen Aff."), ¶ 2 & Ex. A.

Need is determined using a weighting formula which takes into account the relative costs of providing services in various school districts, the number of students with special needs, enrollment in each school and associated economies of scale, the costs of vocational and technical instruction, and the number of correspondence students.¹⁵ The formula multiplies some of these adjustment factors by the number of students in average daily attendance during a student count period and adds weighted amounts to arrive at an adjusted average daily membership.¹⁶ This number is then multiplied by the base student allocation in AS 14.17.470 to arrive at an amount identified as the Basic Need.¹⁷

The three sources of funding that fulfill Basic Need are “state aid, a required local contribution, and eligible federal impact aid.”¹⁸ However, the State requires different combinations of this funding depending on whether the district is a Municipal District, on the one hand, or an REAA, on the other hand.¹⁹

Each school district is eligible for “State aid” under AS 14.17.410 (“State Aid”) in an amount determined by a formula, but if the appropriations in a given year are insufficient to pay the amounts authorized, then the amount provided by the State to each district is reduced on a pro-rata basis.²⁰ State Aid is provided from the funds

¹⁵ AS 14.17.410(b).

¹⁶ *Id.*

¹⁷ AS 14.17.410(b); AS 14.17.470.

¹⁸ AS 14.17.410(b). The KGB School District does not currently receive eligible federal impact aid because it does not meet the eligibility requirements. *Brandt-Erichsen Aff.*, ¶ 12 & Ex. 1.

¹⁹ AS 14.17.410(b)(1) (public school funding is State Aid, RLC, and Federal Impact Aid funding); AS 14.17.410(b)(2) (RLC required only for City Districts and Borough Districts).

²⁰ AS 14.17.400.

appropriated to the Public Education Fund by the Legislature.²¹ These funds are subject to veto by the Governor of the State of Alaska (“Governor”) in accordance with Article II, Section 15 of the Alaska Constitution.²²

Not only is the RLC “required,”²³ the penalty for a municipality and its residents if an RLC is not provided to a Municipal District is that the State will not provide *any* State Aid to the Municipal District²⁴ and the Municipal District will be disqualified from receiving supplemental funding.²⁵ The RLC payments reduce (by a 1:1 ratio) – or offset – the amount of State Aid provided from the Public Education Fund to school districts.²⁶ RLC payments do not, however, change the amount of Basic Need required to fund education.²⁷ RLC payments are made directly from each municipality to its Municipal District.²⁸ The RLC payments are therefore not available to the Legislature for appropriation to the Public Education Fund or any other purpose. Correspondingly, the Governor is not given the opportunity to veto appropriations of RLC payments by the Legislature.²⁹

²¹ See AS 14.17.300(a)(1).

²² See Alaska Const. art. II, § 15.

²³ AS 14.17.410(b); AS 14.12.020(c).

²⁴ AS 14.17.410(d).

²⁵ AS 14.17.490(b).

²⁶ See AS 14.17.410(b).

²⁷ *Id.*

²⁸ See AS 14.17.410(b) and AS 14.12.020(c).

²⁹ See generally AS 14.17.410(b) (requiring local contribution to come directly from Borough or City); see also Brandt-Erichsen Aff., ¶ 10 & Ex. G (showing payment directly from Borough to KGB School District).

The RLC is 2.65 mills of the full and true value of the taxable real and personal property in the Municipal District in the second prior fiscal year (as of two preceding fiscal years ago).³⁰ Taxable real and personal property in the “district” means taxable real and personal property within the City or Borough, because the City or Borough constitutes the district.³¹ The RLC is capped at 45% of a Municipal District’s Basic Need in the preceding fiscal year.³²

C. The impact of the RLC on provision of services in the Borough

Based upon the October 2013 student count period as reported by the KGB School District to DEED, expected FY 2014 Basic Need for the KGB School District is \$25,947,546.³³ DCCED reported the population estimate of the Borough at 13,856 as of January 15, 2014.³⁴ This represents a Basic Need amount of approximately \$1,873 per person residing in the Borough.³⁵

The Borough’s FY 2014 RLC is \$4,198,727.³⁶ This is based upon a property tax equivalent to 2.65 mills on the full and true value of \$1,584,425,200 (October 1, 2012 value) as determined by the Alaska Department of Commerce, Community, and Economic Development (DCCED).³⁷ Because of certain optional property tax

³⁰ AS 14.17.410(b).

³¹ AS 14.17.410(b); *see also* AS 14.12.010(1) - (3).

³² AS 14.17.410(b)(2).

³³ Brandt-Erichsen Aff., ¶ 3 & Ex. B.

³⁴ Brandt-Erichsen Aff., ¶ 4 & Ex. C.

³⁵ Brandt-Erichsen Aff., ¶ 4.

³⁶ Brandt-Erichsen Aff., ¶ 5.

³⁷ Brandt-Erichsen Aff., ¶ 5 & Ex. D.

exemptions, the actual taxable value in the Borough in FY 2014 is \$1,314,675,800.³⁸ Therefore, the RLC equates to an actual mill levy of 3.19 on the FY 2014 taxable property within the Borough.³⁹

The per student amount for the Borough RLC payment in FY 2014 is approximately \$1,900. This number equals the FY 2014 RLC divided by the actual number of students in average daily membership reflected in the October 2013 student count period as reported by the KGB School District to DEED.⁴⁰ In FY 2014, the Borough and its residents provided \$4,198,727 in these compulsory payments, and an additional \$3,851,273 in optional local contributions and in-kind contributions allowed by AS 14.17.410(c), for a total property tax mill equivalent of 6.12 mills based on the FY 2014 assessed value in community resources allocated to operation of KGB School District schools.⁴¹

The Borough raised revenues to meet these and other areawide Borough expenditures for FY 2014 through an areawide property tax levy of 5 mills and an areawide sales tax levy of 2.5%.⁴² There are additional taxes levied and fees charged for Borough service area and nonareawide functions, and additional sales and property taxes are levied by cities within the Borough for city services.⁴³

³⁸ Brandt-Erichsen Aff., ¶ 5 & Ex. E at 10.

³⁹ Brandt-Erichsen Aff., ¶ 5.

⁴⁰ Brandt-Erichsen Aff., ¶ 6.

⁴¹ Brandt-Erichsen Aff., ¶ 7 & Ex. F.

⁴² Brandt-Erichsen Aff., ¶ 8.

⁴³ Brandt-Erichsen Aff., ¶ 8.

As a result of the RLC, the KGB Borough School District has been substantially underfunded by the State, with the Plaintiffs being forced to make up the difference. The KGB School District receives less than 84 cents of every dollar from the State needed to adequately fund Basic Need.⁴⁴ The shortfall in this funding depletes the resources of the Borough and the taxpayer Plaintiffs. The RLC consumes just under two-thirds of the Borough's areawide property tax levy, and the remainder of the levy (as well as additional sales tax revenue) is devoted to other education-related operations funding by the Borough.⁴⁵

D. The Borough's payment of the 2014 RLC under protest

On October 9, 2013, the Borough paid \$4,198,727 to the KGB School District to satisfy the FY 2014 RLC.⁴⁶ The Borough notified Defendant Hanley that the \$4,198,727 payment "was made under protest" because it is unconstitutional and illegal, in part because it violated the Anti-Dedication Clause.⁴⁷ The Borough notified Defendant Hanley that it intended to take legal action to invalidate the RLC and seek repayment from the State of the entire \$4,198,727 that it paid under protest.⁴⁸

E. Procedural history

Plaintiffs filed their complaint in this matter on January 13, 2014, and now request that the Court resolve their claims as a matter of law.

III. LEGAL ARGUMENT

⁴⁴ Brandt-Erichsen Aff., ¶ 9.

⁴⁵ Brandt-Erichsen Aff., ¶ 9.

⁴⁶ Brandt-Erichsen Aff., ¶ 10 & Ex. G

⁴⁷ Brandt-Erichsen Aff., ¶ 11 & Ex. H.

⁴⁸ Brandt-Erichsen Aff., ¶ 11 & Ex. H.

A. Standard

Plaintiffs seek summary judgment and the entry of a declaratory judgment and injunction on their constitutional claims, as well as entry of judgment on the Borough's request for a refund of the 2014 RLC. Under Alaska R. Civ. P. 56, "[a] party seeking to recover upon a claim . . . or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move for a summary judgment in the party's favor upon all or any part thereof."⁴⁹ Summary judgment must be entered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that (i) there is no genuine issue as to any material fact and (ii) that any party is entitled to a judgment as a matter of law.⁵⁰

The entry of a declaratory judgment is governed by AS 22.10.020(g) and Alaska R. Civ. P. 57(a). AS 22.10.020(g) provides that in the case of an actual controversy, the Superior Court "may declare the rights and legal relations of an interested party seeking the declaration, whether or not further relief is or could be sought." The declaration has the force and effect of a final judgment or decree.⁵¹ Rule 57(a) permits a declaratory judgment to be obtained in the same manner as any other judgment under the civil rules.⁵² While entry of a declaratory judgment is discretionary, the discretion allowed under the

⁴⁹ Alaska R. Civ. P. 56(a).

⁵⁰ *Id.* 56(c).

⁵¹ AS 22.10.020(g). The Court may also grant further necessary or proper relief based upon a declaratory judgment. *See id.*

⁵² *See* Alaska R. Civ. P. 57(a); *Jefferson v. Asplund*, 458 P.2d 995, 998 (Alaska 1969) (noting that intent of this rule is "to establish that general rules of pleading and of civil procedure [a]re to be made applicable to actions for declaratory relief").

Act “should be liberally exercised to effectuate the purposes of the Declaratory Judgment Act and thereby afford relief from uncertainty and insecurity with respect to rights, status and other legal relations.”⁵³ Finally, a permanent injunction is appropriately issued to insure compliance with a court’s declaratory judgment and such injunctions are frequently issued to prevent enforcement of unconstitutional statutes as explained further below.

B. No genuine issues of material fact preclude the Court’s resolution of Plaintiffs’ claims as a matter of law.

Summary judgment is an efficient means of disposing of purely legal claims for which no factual disputes need be resolved.⁵⁴ The constitutionality of a statute is a pure question of law.⁵⁵ While the *legal* effect of the RLC is disputed, the facts material to resolution of the issues are not disputed. Therefore, the Court may resolve these issues at this stage of the proceedings.

The following are the only *material* facts necessary to the resolution of Plaintiffs’ claims in this matter, none of which are subject to genuine dispute:

(1) The State compels the payment of the RLC by boroughs and cities to the Municipal Districts.

⁵³ *Jefferson*, 458 P.2d at 998 (quoting *Lehigh Coal & Navigation Co. v. Central R.R.*, 33 F. Supp. 362, 365 (E.D. Pa. 1940)).

⁵⁴ See *In re Estate of Evans*, 901 P.2d 1138, 1140 (Alaska 1995) (whether undisputed documentary evidence constituted a legally sufficient notice of disallowance was question of law for which summary judgment is appropriate). “A genuine issue of material fact exists where reasonable jurors could disagree on the resolution of a factual issue.” *Burnett v. Covell*, 191 P.3d 985, 989 (Alaska 2008) (citations omitted).

⁵⁵ *Hickel v. Cowper*, 874 P.2d 922, 926 (Alaska 1994) (quoting *Sun v. State*, 830 P.2d 772, 775 n. 4 (Alaska 1992) (“Questions concerning the constitutionality of a statute are questions of law and are reviewed de novo.”)).

(2) The Borough is subject to the RLC and thereby compelled to provide the RLC to the KGB School District.

(3) The Borough is required by the State to transmit its RLC payment directly to the KGB School District.

(4) The RLC is designed in a manner in which it is not subject to annual appropriation by the Legislature or to the Governor's veto.

(5) The Borough paid the 2014 RLC in the amount of \$4,198,727.00 under express protest, and along with notification that it intended to seek a refund of the unconstitutional payment.

For the reasons set forth below, these established facts entitle Plaintiffs to judgment as a matter of law that (1) the RLC violates the Alaska Constitution; (2) the Borough is entitled to a refund of the 2014 RLC payment; and (3) an injunction should be entered preventing the State from assessing the RLC or otherwise denying full funding of basic need to the KGB School District.

C. Plaintiffs are entitled to judgment as a matter of law on their claims for declaratory judgment that the RLC violates the Alaska Constitution.

1. As a matter of law, the RLC violates the Anti-Dedication Clause in Article IX, Section 7 of the Alaska Constitution.

The Anti-Dedication Clause found in Article IX, Section 7 of the Alaska Constitution “prohibits the earmarking of state funds for predetermined purposes.”⁵⁶ The provision states that:

The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

⁵⁶ *Se. Alaska Conservation Council v. State*, 202 P.3d 1162, 1167 (Alaska 2009).

Since the seminal case of *State v. Alex*,⁵⁷ the Supreme Court has interpreted the Anti-Dedication Clause to prohibit “any and all dedications.”⁵⁸ In reaching this conclusion, the Court defined the phrase “the proceeds of any state tax or license” to include “the sources of any public revenues.” including a “tax, license, rental, sale, bonus-royalty, royalty, or whatever . . .”⁵⁹

Alex applied this definition of “the proceeds of any tax or license” to a statute requiring an assessment on commercial salmon fishing that was collected by commercial fish buyers and provided directly to private aquaculture associations.⁶⁰ The statute at issue (AS 16.10.530 (1982)) required that commercial fishermen pay a “royalty assessment” on certain species of salmon “for the purpose of providing revenue” to the private aquaculture association⁶¹ in which the royalty assessment was made.⁶² The assessments were collected by the commercial buyers to whom the salmon were sold, and the funds forwarded directly to the aquaculture association’s trust account.⁶³ A group of commercial fishermen brought a class action claim against two of the aquaculture associations and the State, seeking a declaratory judgment holding unconstitutional the

⁵⁷ 646 P.2d 203 (Alaska 1982).

⁵⁸ *Id.* at 210.

⁵⁹ *Id.* at 210 (quoting 1975 Alaska Op. Att’y Gen. No. 9 at 24 (May 2)).

⁶⁰ *Id.* at 204.

⁶¹ The aquaculture associations were formed for the purpose of enhancing salmon production, at least in part by constructing salmon hatcheries. *Id.* at 205-06 (citations omitted).

⁶² *Id.* at 205.

⁶³ *Id.* (citing 3 AAC 88.020(b)(1)(H), 88.040(b), (c), 88.900(2) (1982)).

statute, a refund of all assessments that had been paid by the fishermen, and a permanent injunction to restrain future collection of the assessments.⁶⁴

The Supreme Court affirmed the trial court's order granting partial summary judgment to the plaintiffs, which had held the assessment statute unconstitutional because it created a dedicated tax.⁶⁵ After examining the history of the Anti-Dedication Clause and concluding that it prohibited the dedication of any source of public revenue, the Court concluded that the assessments imposed upon the salmon fishermen were “‘proceeds of a state tax or license,’ within the meaning of article IX, section 7 . . .”⁶⁶ In the thirty plus years since it was decided, *Alex*'s holding has been reaffirmed numerous times and applied to dedications of revenues derived from the sale, lease, or management of public lands,⁶⁷ income from tobacco companies as a result of litigation settlements,⁶⁸ and restrictions on an agency's ability to access general funds.⁶⁹

The same constitutional infirmities present in *Alex* and its progeny are present with the RLC. Like the special assessments imposed on the commercial fishermen in *Alex*, the

⁶⁴ *Id.* at 204.

⁶⁵ *Id.* at 205, 215.

⁶⁶ *Id.* at 210.

⁶⁷ *See Alaska Conservation Council*, 202 P.3d at 1165-66.

⁶⁸ In *Myers v. Alaska Housing Finance Corp.*, 68 P.3d 386, 391 (Alaska 2003), the Alaska Supreme Court held that the one-time sale of the right to future payments from the master tobacco settlement agreement did not violate the Anti-Dedication Clause, in the same way that the one-time sale of any state asset such as a building would similarly not be violative of the Anti-Dedication Clause. The Court recognized, however, that the Anti-Dedication Clause “would prohibit the legislature from appropriating the tobacco settlement revenue stream for more than the immediately forthcoming fiscal year” for a specific purpose. *Id.*

⁶⁹ *Sonneman v. Hickel*, 836 P.2d 936, 939 (Alaska 1992) (limitation on ability of DOTPF to ask for funds from the Marine Highway Transportation System Fund to be used to fund capital projects violates the Anti-Dedication Clause).

RLC imposed on the Borough is a “source[] of any public revenue[.]”⁷⁰ namely a payment compelled by the State to be collected by the Borough and paid to the KGB School District.⁷¹ That public revenue in the form of the RLC is then dedicated for a particular purpose to a particular source, the KGB School District, in a manner that is materially indistinguishable from the compelled payment to the commercial buyers in *Alex* for the purpose of funding regional aquaculture associations. Like the compelled special assessments on the sale of salmon in *Alex*, the compelled RLC creates an impermissible dedication of public revenue, thereby violating the Anti-Dedication Clause.

In 2009, the Supreme Court held in *Southeast Alaska Conservation Council* that it was “reaffirm[ing] the reasoning and language of *Alex*...”⁷² The Supreme Court then provided another rationale for its holding:

[A]rticle IX, section 7 creating an exception for the Permanent Fund indicates that the prohibition [on dedicated funds] is meant to apply broadly. If only revenue collected as taxes or license fees were included there would have been no need to expressly exempt “all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State” to ensure that placing those revenues in the Permanent Fund did not violate the constitution.⁷³

Thus, just five years ago, the Supreme Court again broadly interpreted “proceeds of any tax or license” to mean all “revenues.”⁷⁴

⁷⁰ *Alex*, 646 P.2d at 210.

⁷¹ See AS 14.17.410(b), (c).

⁷² 202 P.3d at 1169 (net proceeds of sales of land conveyed to the University could not be dedicated to a University endowment fund).

⁷³ *Id.* at 1170.

⁷⁴ In discussing an unrelated statutory term, in *Alaskans For Efficient Government, Inc. v. Knowles*, 91 P.3d 273, 276 n.11 (Alaska 2004), the Supreme Court described *Alex* as “concluding that the meaning of “tax” must be determined from its context in the text of

That the RLC is not paid into the State treasury has no bearing on whether it constitutes a dedicated source of public revenue. In *Alex*, the special assessments were never deposited into the State general fund. They were collected by buyers of salmon and forwarded directly to the particular regional aquaculture association trust account without deposit into the State treasury.⁷⁵ The compelled transfer in *Alex* is indistinguishable from the compelled transfer of funds from thirty four municipalities to their respective municipal school districts without deposit into the State treasury.

In its anti-dedication/appropriation clause case law, the Supreme Court has looked to see whether the dedication at issue is mandatory in addition to whether or not the revenue at issue enters the State (or local) treasury. For example, in *City of Fairbanks v. Fairbanks Convention and Visitors Bureau*, 818 P.2d 1153 (Alaska 1991), the Court held that a local initiative that broadened the use of bed tax funds to uses other than tourism did not make or repeal an appropriation or dedicate revenues in violation of Art. IX, sec. 7 (initiatives cannot appropriate money or dedicate revenues). The initiative allowed any organization to apply for funds from a discretionary fund containing bed tax receipts instead of a more limited list of organizations provided for in the city ordinance that the initiative had amended. The Court first held that the initiative did not make or repeal appropriations because it did not “set aside a certain specified amount of money or property for a specific purpose or object in such a manner that is executable, mandatory and reasonably definite with no further legislative action.”⁷⁶ In fact, the initiative gave

the Alaska constitution and in discussions at the constitutional convention.” The Court added this canon: “Where a word of common usage has more than one meaning, the meaning which will best attain the purpose of the legislature should be adopted in construing the statute. 2A Singer. supra note 4, § 47.28.” *Id.*

⁷⁵ *Alex*, 646 P.2d at 207.

⁷⁶ *Fairbanks Convention*, 818 P.2d at 1157.

the Council more discretion rather than less with respect to which organizations could receive funds from the fund.⁷⁷

The Court then adopted the *Alex* analysis for whether the initiative dedicated funds.⁷⁸ It stated that the salmon assessment in *Alex* was problematic because “the allocation of revenues to the regional associations was mandatory, leaving no discretion to the legislature to spend the money in any other way.” In contrast, “the questioned initiative would not create any similar ‘right’ for any person or group. It would not earmark any funds for any particular organizations. Nor does it create any mandatory expenditures.”⁷⁹ “The initiative might be better described as an ‘undedication’ [rather] than a dedication.”⁸⁰

The payment of the RLC is mandatory, leaving the legislature without discretion to collect these revenues and use them in some other way. Instead, the RLC is earmarked for use by school districts. Therefore, *Fairbanks Convention* also supports a conclusion that the RLC violates the Anti-Dedication Clause as well as the Legislature’s power to appropriate and the Governor’s power to veto appropriations.

2. As a matter of law, the RLC violates the appropriation requirement of Article IX, Section 13 of the Alaska Constitution and the Governor’s veto requirement of Article II, Section 15 of the Alaska Constitution.

The Alaska Constitution “defines with specificity the mechanics of legislation. Each provision has a purpose ‘designed to engender a responsible legislative process

⁷⁷ *Id.*

⁷⁸ *Id.* at 1158.

⁷⁹ *Id.* The Court pointed out that “... the two main motivations behind the ban on dedicated revenues were to maintain the potential of flexibility in budgeting and to ensure that the legislature did not abdicate responsibility for the budget.” *Id.*

⁸⁰ *Id.* at 1159.

worthy of the public trust.”⁸¹ The Legislature cannot exercise its legislative power without following the enactment provisions of the Alaska Constitution; otherwise, these provisions “would serve no purpose.”⁸² The RLC violates two of these enactment provisions by being designed in a manner to evade the Legislature’s appropriations power and the Governor’s veto power.

The Legislative Appropriation Clause found in Article IX, Section 13 of the Alaska Constitution provides: “No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void.” The purpose of the appropriations power is to require annual appropriations of funds, and “to strictly limit the practice of long- lived appropriations.”⁸³

The Governor’s Veto Clause found in Article II, Section 15 of the Alaska Constitution provides that the Governor “may, by veto, strike or reduce items in appropriation bills” (the “Governor’s Veto Clause”). The item veto “gives the governor the power to influence the state’s budget by requiring him or her to submit a proposed budget and general appropriation bill to the Legislature and by striking or reducing items appropriated by the Legislature.”⁸⁴ The constitutional history underlying this provision “indicates a desire by the delegates to create a strong executive branch with a strong

⁸¹ *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769, 772 (Alaska 1980) (quoting *Plumley v. Hale*, 594 P.2d 497, 500 (Alaska 1979)).

⁸² *Id.* at 772.

⁸³ 1991 Alaska Op. Att’y Gen. (Inf.) 337 (June 27).

⁸⁴ *Simpson v. Murkowski*, 129 P.3d 435, 446 (Alaska 2006) (quoting *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 371 (Alaska 2001)).

control on the purse strings of the state.”⁸⁵ Combined, the Legislative Appropriation and Governor’s Veto Clauses reflect a policy that “under the Alaska Constitution “it is the joint responsibility of the governor and the Legislature to determine the State’s spending priorities on an annual basis.”⁸⁶

By compelling a direct transfer of public funds from a municipality to a Municipal District, the RLC violates both of these constitutional requirements as well as the Anti-Dedication Clause. RLC payments must be provided directly to Municipal Districts instead of being paid into the State treasury for possible appropriation by the Legislature to school districts, or for some other purpose to be determined by the Legislature. In stark contrast to State Aid from the Public Education Fund, the RLC is not appropriated by the Legislature.⁸⁷ In this way, the RLC circumvents the Legislature’s authority to appropriate the funds by compelling a direct transfer from a municipality to its respective Municipal District. Similarly, the Governor has no opportunity to exercise his item veto power.

In cases involving dedicated funds, the Supreme Court has suggested that constitutional issues associated with the legislative process are implicated, because a dedicated fund frequently operates in a manner that evades the requirements of appropriations and the Governor’s veto power. In *Sonneman*,⁸⁸ the Supreme Court held:

⁸⁵ *Id.* (quoting *Thomas v. Rosen*, 569 P.2d 793, 795 (Alaska 1977) (internal quotation marks omitted)).

⁸⁶ *Id.* (quoting with approval the superior court’s reasoning in opinion below).

⁸⁷ See AS 14.17.300(a)(1).

⁸⁸ 836 P.2d at 939 (limitation on ability of DOTPF to ask for funds from the Marine Highway Transportation System Fund to be used to fund capital projects violates the anti-dedication clause),

The principle on which the act is based, that the administrators of the Alaska Marine Highway System and the legislature will treat the fund as if the Marine Highway System had a right to its proceeds, is inconsistent with the model contemplated by the anti-dedication clause, under which the disposition of all revenues will be decided anew on an annual basis. Nevertheless, the expectations created by the act are a mere 'talking point' because they impose no legal restraint on the appropriation power of the legislature. The act clearly states that the fund is part of the general fund and it may not be spent until and unless it is appropriated by the legislature.

In contrast, the RLC is a dedication because it is not available annually for appropriation as the Legislature sees fit each year. Additionally, the Court in *Sonneman* held that the portion of the statute that restricted executive authority to seek appropriations from the fund for other purposes also violated the anti-dedication clause because it not only bound the Legislature but also restricted the executive branch from asking for appropriations from all sources of funds.⁸⁹ The RLC suffers from the same flaw, and therefore, is also unconstitutional under the Legislative Appropriation and Governor's Veto Clauses. Similarly, in *Myers* (an Anti-Dedication Clause case that permitted the sale of the present value of tobacco settlement money to a third party), the dissenting justices suggested that an automatic payment flowing to a private entity upon receipt by the State was vulnerable to an attack under the Legislative Appropriation Clause because it operated without requiring an appropriation.⁹⁰ The same infirmity is present with the RLC, which exists in perpetuity and is never subject to appropriation or the Governor's veto. It therefore violates the Legislative Appropriation and Governor's Veto Clauses.

D. The Borough is entitled to judgment as a matter of law on its claim for return of the 2013 RLC in assumpsit and restitution.

⁸⁹ *Id.* at 940.

⁹⁰ *Myers v. Alaska Hous. Fin. Corp.*, 68 P.3d 386, 399 & 399 n.9 (Alaska 2003) (Bryner, J., dissenting) (citing with approval memorandum opinion of Director of Legislative Services for the Legislative Affairs Agency).

The United States Supreme Court has described assumpsit as a cause of action that “has been gradually expanded as a medium for recovery upon every form of quasi-contractual obligation in which the duty to pay money is imposed by law, independently of contract, express or implied in fact.”⁹¹ In *Alex*, 646 P.2d at 215, the Court stated that the plaintiffs had brought a “general assumpsit common-law cause of action for the refund of taxes wrongly paid.” In *Era Aviation, Inc. v. Campbell*,⁹² the Court treated a claim for refund of illegally collected landing fees as one in “assumpsit” and required that a refund claim could only be brought in assumpsit if the plaintiffs protested the payments at the time they were made. Like the plaintiffs in *Alex* and in *Era Aviation*, the Borough is entitled to a refund of the RLC in accordance with the assumpsit doctrine.

The Borough effectively protested the payment of the RLC, and the RLC itself, at the time of payment of the 2014 RLC. In order to effectively protest, the payer must “not only notify the State that the payer believes the levy to be illegal, but must also signal that the payer intends to seek a refund of the monies illegally levied.”⁹³ In other words, the payer “must specifically notify the State, whether by the words “paid under protest” or otherwise, that it intends to seek reimbursement.”⁹⁴ The Borough’s October 9, 2013 notification plainly satisfies these requirements: it notified Defendant Hanley that the \$4,198,727 payment “was made under protest,” it stated that the Borough would seek a

⁹¹ *State Commercial Fisheries Entry Comm’n v. Carlson*, 270 P.3d 755, 765 n.65 (Alaska 2012) (quoting *Stone v. White*, 301 U.S. 532, 534 (1937)).

⁹² 915 P.2d 606, 608-611 (Alaska 1996).

⁹³ *Id.* at 611.

⁹⁴ *Id.* at 612.

refund of the amount, and it stated that the amount was paid to satisfy an unconstitutional dedication.

Alternatively, Section 19 of the Restatement (Third) of Restitution and Unjust Enrichment recognizes that “[e]xcept to the extent that a different rule is imposed by statute, the payment of a tax by mistake, or the payment of a tax that is erroneously or illegally assessed or collected, gives the taxpayer a claim in restitution against the taxing authority as necessary to prevent unjust enrichment.” “Tax” is also defined broadly as “every form of imposition or assessment collected under color of public authority.”⁹⁵ The State was enriched by the Borough’s payment of the RLC to the KGB School District even though it did not directly receive the RLC because the RLC reduced the amount of money that the State itself provided to the KGB School District. Moreover, the October 9, 2013 letter to Defendant Hanley put the State on notice that its decision to fund Basic Need in this way would be affected by this suit.

In sum, under either theory, the Borough is entitled to a refund of the unconstitutional RLC paid to the KGB School District for 2014.

E. In addition to a declaratory judgment, the Court should enter a permanent injunction prohibiting Defendants from requiring the RLC, and from depriving the Borough of full funding of basic need without the RLC.

Because the RLC violates the Anti-Dedication Clause, the Legislative Appropriation Clause, and the Governor’s Veto Clause, the Court should enter a declaratory judgment under AS 22.10.020(g) stating that the RLC is unconstitutional under these provisions.

The Court should additionally grant a permanent injunction (a) prohibiting Defendants from requiring the Borough to pay the RLC in accordance with AS 14.12.020

⁹⁵ Restatement (Third) of Restitution and Unjust Enrichment § 19(1) (2011).

and AS 14.17.410(b); (b) prohibiting Defendants from denying State Aid in accordance with AS 14.17.410 and State supplemental aid in accordance with AS 14.17.490(c) to the KGB School District as a result of enjoining the State from requiring the Borough to pay the RLC; and (c) requiring Defendants to fund the Basic Need of the KGB School District notwithstanding the absence of an RLC. A permanent injunction is appropriate when “the plaintiff . . . prevail[s] on the merits of his or her claim and establish[es] that equitable relief is appropriate in all other respects.”⁹⁶ An injunction “shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.”⁹⁷

An injunction is appropriate here to both ensure compliance with the Court’s declaratory judgment and to ensure that the Borough is not adversely affected by refusing to pay the unconstitutional RLC. First, courts in Alaska have frequently issued permanent injunctions to prevent enforcement of an unconstitutional statute or regulation.⁹⁸ Second, an injunction will serve to clarify that the Borough may not be

⁹⁶ 42 Am. Jur. 2d Injunctions, § 11 (2d ed., updated Nov. 2013).

⁹⁷ Alaska R. Civ. P. 65(d).

⁹⁸ See, e.g., *Valley Hosp. Ass’n v. Mat-Su Coalition*, 948 P. 2d 963, 965 (Alaska 1997) (affirming summary judgment and entry of permanent injunction preventing hospital from enforcing policy to restrict access to abortion, where policy violated Alaska constitutional right to abortion); *Alex*, 646 P.2d at 214-215 (affirming superior court’s judgment in all respects following Supreme Court’s conclusion that fisheries assessments violated Anti-Dedication Clause, including by affirming superior court’s entry of permanent injunction to restrain future collection of assessments); see also *Municipality of Anchorage v. Gentile*, 922 P. 2d 248, 260 (Alaska 1996) (affirming superior court’s permanent injunction against any reduction of retiree benefits after determining that

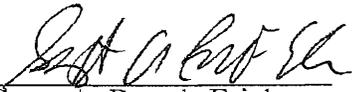
punished for future failure to pay the unconstitutional RLC. In addition to a declaration stating the RLC is unconstitutional, the Court should order that the potential collateral effects of nonpayment of the RLC – a complete loss of State aid for schools under AS 14.17.410 and AS 14.17.490(c), and underfunding of Basic Need without the payment of the RLC – may not be visited upon the Borough as a result of this suit.

IV. CONCLUSION

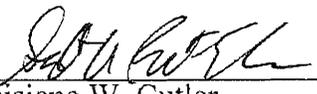
For the reasons stated in this motion and memorandum, plaintiffs respectfully request summary judgment, a declaratory judgment and injunction in their favor, and an order to refund the 2014 RLC.

Dated this 6th day of February, 2014.

KETCHIKAN GATEWAY BOROUGH

By: 
Scott A. Brandt-Erichsen
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Alaska Bar No. 9106028

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Attorneys for all Plaintiffs

retirement benefits had become contractually vested, and not addressing superior court's alternate basis for injunction that reduction in benefits was also unconstitutional).

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT KETCHIKAN, ALASKA

KETCHIKAN GATEWAY BOROUGH, an Alaska municipal corporation and political subdivision; AGNES MORAN, an individual, on her own behalf and on behalf of her minor son; JOHN COSS, a minor; JOHN HARRINGTON, an individual; and DAVID SPOKELY, an individual;

Case No. 1KE-14-00016CI

Plaintiffs,

v.

STATE OF ALASKA; MICHAEL HANLEY, COMMISSIONER OF ALASKA DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT, in his official capacity;

Defendants.

FILED in the Trial Courts
State of Alaska First District
at Ketchikan

FEB 06 2014

Clerk of the Trial Courts
By _____

AFFIDAVIT OF SCOTT BRANDT-ERICHSEN IN SUPPORT OF PLAINTIFFS' MOTION AND MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

STATE OF ALASKA)
)ss:
FIRST JUDICIAL DISTRICT)

Scott Brandt-Erichsen, being duly sworn, states:

1. I am the Borough Attorney for the Ketchikan Gateway Borough (the "Borough") and have personal knowledge of the facts stated herein.

K&L GATES LLP
420 E. STREY SUITE 400
ANCHORAGE, ALASKA 99501-1971
TELEPHONE: (907) 276-1969

2. A true copy of *Alaska's Public School Funding Formula: A Report to the Alaska State Legislature*, executive summary and Tab 2, prepared by the State of Alaska, Department of Education and Early Development ("DEED"), is attached as Exhibit A.

3. Based upon the October 2013 student count period as reported by the KGB School District to DEED (a true copy of which is attached as Exhibit B), expected FY 2014 Basic Need for the Ketchikan Gateway Borough School District ("KGB School District") is \$25,947,546.

4. The Alaska Department of Labor and Workforce Development reported the population estimate of the Borough at 13,938 as of July 2012 and therefore, this estimate was included in the Borough's Complaint in this case. However, on January 15, 2014, the Alaska Department of Commerce, Community and Economic Development ("DCCED") provided the Borough with a new estimate of 13,856 for 2013. A true copy of DCCED's letter with the new estimate is attached as Exhibit C. This represents a Basic Need amount of approximately \$1,873 per person residing in the Borough.

5. The Borough's FY 2014 RLC is \$4,198,727. This is based upon a property tax equivalent to 2.65 mills on the full and true value of \$1,584,425,200 (October 1, 2012 value) as determined by DCCED. A true copy of DCCED's determination is attached as Exhibit D. Because of certain optional property tax exemptions, the actual taxable value in the Borough in FY 2014 is \$1,314,675,800. Borough's Annual Report on Assessment and Taxation provided to DCCED (Borough Assessment Report) at p. 5. A true copy of

the Borough Assessment Report is attached as Exhibit E. Therefore, the RLC equates to an actual mill levy of 3.19 on the FY 2014 taxable property within the Borough.

6. The per student amount for the Borough RLC payment in FY 2014 is approximately \$1,900. This number equals the FY 2014 RLC divided by the actual number of students in average daily membership reflected in the October 2013 student count period as reported by the KGB School District to DEED (Ex. B).

7. In FY 2014, the Borough and its residents provided \$4,198,727 in these compulsory payments, and an additional \$3,851,273 in optional local contributions and in-kind contributions allowed by AS 14.17.410(c), for a total property tax mill equivalent of 6.12 mills based on the FY 2014 assessed value in community resources allocated to operation of KGB School District schools. *See* Exhibit F (true copy of a May 22, 2013 letter from the Borough Manager to the KGB School Board President summarizing these payments) at 2.

8. The Borough raised revenues to meet these and other areawide Borough expenditures for FY 2014 through an areawide property tax levy of 5 mills and an areawide sales tax levy of 2.5%. There are additional taxes levied and fees charged for Borough service area and nonareawide functions, and additional sales and property taxes are levied by cities within the Borough for city services.

9. The KGB School District receives less than 84 cents of every dollar from the State needed to adequately fund Basic Need. The RLC consumes just under two-thirds of the Borough's areawide property tax levy, and the remainder of the levy (as well

as additional sales tax revenue) is devoted to other education-related operations funding by the Borough.

10. On October 9, 2013, the Borough paid \$4,198,727 to the KGB School District to satisfy the FY 2014 RLC. A true copy of the payment check is attached as Exhibit G.

11. Simultaneously with this payment, the Borough notified DEED Commissioner Michael Hanley that the \$4,198,727 payment "was made under protest ..." because it is unconstitutional and illegal. A true copy of this correspondence is attached as Exhibit H.

12. The KGB School District applied for federal Impact Aid Program funding for FY 2013. The United States Department of Education denied the application in a letter dated December 4, 2013, from Cara Aboona (Program Analyst) to Robert Boyle (KGB School District Superintendent). A true copy of this letter is attached as Exhibit I.

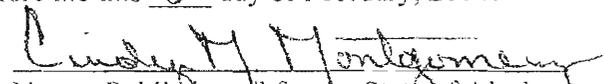
DATED at Ketchikan, Alaska, this 6th day of February, 2014.



Scott Brandt-Erichsen

SUBSCRIBED and SWORN TO before me this 6th day of February, 2014.




Notary Public in and for the State of Alaska
My commission expires: 5-7-15

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Alaska's Public School Funding Formula:

A Report to the Alaska State Legislature



January 15, 2001

**Alaska's Public School
Funding Formula:**

**A Report to the Alaska
State Legislature**

January 15, 2001

TABLE OF CONTENTS

	<u>Pages</u>
Executive Summary	1-4
TAB 1- District Cost Factors.....	1-16
TAB 2- Comparison of Old to New Funding Formula	1-14
TAB 3- Educational Adequacy	1-34

Shirley J. Holloway, Ph.D.
Commissioner, Department of Education & Early Development



Public School Funding Formula *Executive Summary*

The passage of Senate Bill 36, Ch. 83, SLA 1998, carried with it certain reporting requirements for the Department of Education & Early Development to the 22nd legislature by January 15, 2001. Following is a brief summary of each of the three required reports.

Tab 1 District Cost Factors

Background

This report addresses the requirement of: SB 36 section 41. TRANSITION: PROPOSED DISTRICT COST FACTORS. The Department of Education shall submit the initial proposed district cost factors, required under AS 14.17.460(b), enacted in sec. 2 of this Act, to the Alaska State Legislature by January 15, 2001.

Legislation requires the department to monitor district cost factors and submit a report to the legislature every other year beginning January 15, 2001. Cost factors are specific to each district and adjust funding to account for regional cost differences between districts. The lowest factor is 1.000 and the highest is 1.736.

Current district cost factors were adopted by the legislature and became effective July 1, 1998. These factors were based on the best data available at the time as provided by the McDowell 1998 Alaska Cost Study. To recalculate current district cost factors the department again utilized the 1998 McDowell Alaska School Operating Cost Study methodology.

Findings

The department utilized the 1998 McDowell Alaska Cost Study methodology to calculate updated district cost factors that created results that were not defensible or supported by underlying data. The department contracted with the McDowell group to verify the accuracy of the calculation.

The McDowell Group reviewed the department's calculations and found that the results were not meaningful. The McDowell Group determined that the 1998 methodology is not usable to update district cost factors for a number of reasons as outlined in their report included under Tab 1.

Recommendation

The department recommends that district cost factors remain at their current levels as designated in statute under AS 14.17.460 because there is not any empirical data to support changing the district cost factors at this time. The



Public School Funding Formula *Executive Summary*

department also recommends that a new district cost model be developed to properly account for cost differences between districts on an ongoing basis.

Tab 2 Comparison of Old to New Funding Formula

Background

This report addresses the requirement of: SB 36 Sec. 47. REQUIRED REPORT. The Department of Education shall compare the use of per school funding required under this Act to the use of funding communities required in AS 14.17 before the effective date of the Act and submit a report to the Alaska State Legislature by January 15, 2001.

This required report compares the per school funding under SB 36 to the previous funding formula. The old formula uses student enrollment grouped by community and the new formula uses enrollment grouped by school to determine basic need. This report compares adjustments between the old and new funding formulas such as size, special needs and supplemental funding floor.

The 1998 McDowell Alaska Cost Study review panel did not suggest that any school districts were over funded under the previous funding formula, rather that some districts appeared to be under funded under the new school funding model. The McDowell group report suggested that no district lose money. The legislature adopted as a component of SB36 the supplemental funding floor that erodes over time.

Findings

The supplemental funding floor is subject to erosion as school district enrollments increase. As district enrollments increase these additional students are only funded at 60% of entitlement. In the department's analysis of the district cost factors and comparing the old and new funding formula, there is no data to support the erosion of the supplemental funding floor that penalizes districts that have increased enrollment.

The previous funding formula had a hold harmless provision for school districts that experienced a substantial decrease in student enrollment from one year to the next. The current funding formula has no such provision and school districts immediately absorb the reduction in revenue due to decreased enrollment.



Public School Funding Formula *Executive Summary*

Recommendations

The department recommends the repeal of AS 14.17.490(d), erosion of the supplemental funding floor.

The department recommends that AS 14.17 be amended to include a hold harmless provision for school districts that experience a decrease in student enrollment of 10% or more from one year to the next.

Tab 3 Educational Adequacy

Background

This report addresses the requirement of: SB 36 Letter of Intent. "It is the intent of the Legislature to direct the Department of Education to include in the required report of Section 47 a thorough review of educational adequacy in the schools of Alaska, paying particular attention to differences in costs of school operations between communities, differences in costs of school operations depending on their size, and the particular effects and impacts described in AS 14.17.490 section (d), and to report to the Legislature no later than January 15, 2001."

The department brought together a broad based group of Alaskan's to define educational adequacy and the underlying factors. The group focused primarily on the impact of inflation on education funding.

Based on direction from the adequacy group, the department examined the changes that have occurred in education funding over the past ten years and the impacts of those changes on school districts. The effects of inflation over the past ten years are identified in the report. The department found that a significant effect of inflation is that school districts are limited in their ability to recruit and retain teachers.

Findings

From FY90 to FY00 inflation has increased approximately 30% but the public school funding program was increased only 5% during this time.

From FY90 to FY00 enrollment increased 25% and the legislature fully funded the increase.



Public School Funding Formula *Executive Summary*

School districts in Alaska are having a difficult time recruiting and retaining teachers due to the competitiveness of teacher salaries in other states and the vast number of incentives being afforded to new hires in other states.

Recommendations

Based on the adequacy group's work and the department's analysis, the department recommends that changes be made to the public school funding formula to recoup losses due to inflation and to provide for future inflationary adjustments. These recommendations and others included in Tab 1 and 2 will be forwarded to the governor's education funding task force. The task force recommendations are due to the governor and the State Board of Education & Early Development on February 1, 2001.

TAB 2

**Comparison of Old to New
Funding Formula**



Public School Funding Formula *Comparison of Old to New Funding Formula*

Introduction

The passage of Senate Bill 36, Ch. 83, SLA 1998, carried with it certain reporting requirements for the Department of Education & Early Development to the 22nd Alaska State Legislature by January 15, 2001. This report responds to the requirement under Section 47 that the department review *Funding Communities* versus *School* adjustments in the public school funding formula. In addition, a letter of intent adopted by the legislature provided further direction to the department in completing the required reports. This report will highlight key components and adjustments within Alaska's public school funding formula and illustrate the application of these components and adjustments from the previous funding *community* based formula to the current *school* based funding formula.

For the past 20 years, Alaska's public school funding formula has historically contained four major adjustments to the formula. These same adjustments can be found in most public school funding formulas in the nation. These adjustments include:

1. sparseness and size of student population;
2. special needs or categorical funding;
3. regional cost differences;
4. equalization; and
5. supplemental funding floor.



Public School Funding Formula *Comparison of Old to New Funding Formula*

Fiscal year 1999 was the first year of implementation of Senate Bill 36 and distribution of public school funding based on the new school based funding formula. Table 1 provides a comparison of the prior community based funding formula and the current school based funding formula using the same fiscal year 1999 data set. This comparison required the conversion from instructional units under the old community formula to per student units under the newly adopted school formula. Fiscal year 1999 is the only year school district state aid was calculated using the old and new formula. This comparison was required for the first year of implementation to determine the supplemental funding floor for the school districts that needed additional funding to help transition to the new formula.

The department has analyzed each of these adjustments and compared their use with the prior funding community formula and under the new school funding formula.

Sparseness and size of student population

Senate Bill 36 changed the method that the State of Alaska used to determine adjustments for sparseness and size of student population. The previous funding formula utilized a concept known as *funding communities*. The average daily membership of schools within a school district were grouped into funding communities and a formula was applied to determine the number of instructional units for the purpose of calculating each school district's basic need.



Public School Funding Formula *Comparison of Old to New Funding Formula*

The McDowell Group assembled a panel of Alaskans with many years of experience in the field of education to review and make recommendations to improve the adjustment mechanism in the public school funding formula. The group reviewed the funding community concept and its application under the instructional unit funding formula. The group determined that although the definition of funding communities was not being applied consistently across school districts, that even a consistent application would not result in an equitable distribution system of resources. The group determined that the school, not the community, is the fundamental cost center for delivering instructional services. The panel determined that adopting the school as the basis for funding would result in a more equitable allocation of instructional resources by providing comparable levels of instructional staffing in all schools regardless of district size and location. The group determined that schools of similar size should receive similar resources for staffing regardless of location.

Table 2 shows the change in the distribution of resources from the *funding community* concept model to the *school* model that was adopted by the legislature under Senate Bill 36. This comparison does not include other adjustments due to changes in district cost factor or special needs funding. As shown in Table 1, the range of change is an increase of 15.8% for the Alyeska Central School to -36.8% for the Aleutian Region School District by the elimination of the funding community concept and basing the allocations on the number of students at each school. The school district with the largest increase was Petersburg at 11.2%.



Public School Funding Formula *Comparison of Old to New Funding Formula*

It should be noted that the McDowell Group review panel did not suggest that any school districts were over funded under the previous funding community model rather some districts appeared to be under funded under the school funding model. Table 3 shows the change in dollars per student under the new formula as compared to the old formula. This table shows that under the old formula for the first 10 to 20 students, the allocation remains the same at \$12,200 per student. This flat level of funding for the first group of 20 students was to provide funding for fixed cost associated with operating a school facility. The change in funding on a per student basis gradually decreases after the first 20 students to accommodate for economies of scale, while the new formula provides a larger allocation initially for the first 10 students, it decreases to below \$8,000 per student by the time you reach 20 students. Table 4 demonstrates the reduction in resources being allocated to small schools serving less than 100 students.

Another issue that contributes to the change in funding is the number of items that receive adjustment. For example in FY 99, using the funding community model there were 267 funding communities that received the adjustment for size while with the per school model there were 499 adjustments for size. Of the 499 adjustments for schools there were 143 schools serving less than 100 students. Table 5 shows the number of funding communities compared to the number of schools by district and the number of schools serving less than 100 students by school district.

The funding community formula had a hold harmless provision for school districts that experienced a 10% drop in K-12 instructional units from one year to the next. The year before the school district experienced a decrease in K-12 instructional units



Public School Funding Formula *Comparison of Old to New Funding Formula*

by 10% or more became the base year. In addition to its current K-12 instructional units a school district was awarded in the first year of decline, 75% of the difference from the base year, in the second year 50% of the difference between the current year and the base year, and in the third year 25% of the difference between the current year and the base year.

Special needs or categorical funding

Categorical funding for special education, gifted and talented education, vocational education and bilingual/bicultural educational programs changed from the funding community model to the school funding model. The funding community model provided resource allocations to school districts based on the numbers of students and the types of special need services provided to each student. The program adjustments were based on the average cost of providing various levels of service within each of the program areas. For example, special education provided four adjustments ranging from \$1,525 for each student identified as gifted and talented to \$20,300 for each student identified as requiring special education intensive services. Bilingual/bicultural educational programs had three levels of adjustments for the various types of services that students were identified as needing and vocational education had one adjustment for each student identified as enrolled in a vocational program course.

With the passage of Senate Bill 36, and the implementation of the school based funding formula, the legislature approved a block funding approach for allocating resources for special need programs. The school funding model provides an increased adjustment of 20% to the districts' average daily membership after it has



Public School Funding Formula *Comparison of Old to New Funding Formula*

been adjusted for school size and district cost factor. The 20% increase is intended to allocate resources for special education, gifted and talented education, vocational education and bilingual/bicultural educational programs. This change has resulted in an increased allocation for categorical programs of approximately \$13 million dollars under the school funding model over the funding community model. It is important to understand that although there are additional resources allocated for special needs programs under both funding models, school districts are not required to expend these funds on special needs programs. In other words, the funds are discretionary and local school boards have the responsibility to determine the appropriate expenditures for these funds.

Regional cost differences

Senate Bill 36 continues to provide an adjustment for regional cost differences. The McDowell Group report defined these costs as "District Cost Factors." The District Cost Factors differ from the previous Area Cost Differentials in how they were derived. There is also a slight change in the way they are applied in the two funding formulas. The previous Area Cost Differentials were applied to all instructional units which included the K-12 and categorical units. The current District Cost Factors are applied to the student counts at the point they have been adjusted for school size and carry through to the 20% special needs adjustment. The District Cost Factors are not applied to the adjustments for students requiring intensive services or correspondence program counts.



Public School Funding Formula *Comparison of Old to New Funding Formula*

The previous Area Cost Differentials were calculated using a market basket approach measuring the differences in items such as fuel and utilities between districts. The current District Cost Factors were calculated using school district audited financial data and reflect the per student district operating cost, compared to per student statewide operating costs, as well as other adjustments. The District Cost Factors represent the cost of goods, numbers of students, dispersion of schools, cost of travel, and other factors that affect district operational costs. Because the District Cost Factors reflect factors other than the price of goods, neighboring districts will not necessarily have similar cost factors.

Senate Bill 36 requires the department to review the District Cost Factors and recommend changes to the legislature every other year beginning January 2001. The department intends to employ the McDowell Group methodology in order to update the current District Cost Factors. The first report on the District Cost Factors and the results of the department's review are presented to the legislature under a separate report.



Public School Funding Formula *Comparison of Old to New Funding Formula*

Equalization

The funding community and the school models both make adjustments for instructional units or average daily membership then apply dollars to the base to arrive at Basic Need. Basic Need is the starting point of the equalization formula and provides all districts with needed resources based on the various formula adjustments. Funding components of Basic Need include required local effort, federal impact aid, and state aid. These three components determine the shares of local, federal, and state resources that make up Basic Need.

The State of Alaska must meet a federal equalization test known as the "disparity test" in order to consider federal impact aid dollars in the public school funding formula. The disparity test measures the amount of revenue per student among the 53 school districts. The federal law limits the per student wealth between districts to 25%. The wealthiest district in the state is not allowed to have more than a 25% increased per pupil revenue over the poorest district in the state. The state maintains this standard by placing a cap on local contributions that exceed the required local effort. The state imposed cap on excess local contributions is equal to 23% of the districts' basic need. Again, all districts are considered equal at basic need so by placing a cap on excess local revenues equal to 23% of the districts' basic need, the state will continue to meet the federal equalization standard of 25%.



Public School Funding Formula *Comparison of Old to New Funding Formula*

Supplemental funding floor

The supplemental funding floor is a mechanism to assist school districts in the transition from the funding community based formula to the school formula. In the first year of the new formula, districts that qualified for more state aid under the funding community formula than they did under the new school formula were allocated transition funding called the "Supplemental Funding Floor."

For example, under the funding community formula a district may have qualified for \$10,000 per student but under the new school formula calculation, will qualify for \$9,000 per student. Using the supplemental funding floor, under the school formula the district was allocated \$9,000 per student plus an addition \$1,000 per student as a supplemental funding floor to ease the transition to the new funding level. As the school districts' student population changes, the \$1,000 per student of supplemental funding floor will erode. The erosion of the supplemental funding floor will eventually bring the school districts' per student allocation down to a total of \$9,000 per student as determined by the new school funding formula.

This transitional provision differs substantially from other transitional or hold harmless clauses previously used when the funding formula was modified. Previous transition language required a school district to adjust to its new funding level in a three-year period. The supplemental funding floor only erodes due to changes in the district student population providing a much more gradual change to the new funding level.



Public School Funding Formula *Comparison of Old to New Funding Formula*

School districts qualified for a total of \$17.4 million dollars in supplemental funding floor in fiscal year 1999. As the supplemental funding floor erodes, the money is lost from the funding formula. This means the public school funding formula will have \$17.4 million less in state support once the supplemental funding floor is completely eroded.

Recommendations

The department recommends the repeal of AS 14.17.490(d), erosion of the supplemental funding floor.

The department recommends that AS 14.17 be amended to include a hold harmless provision for school districts that experience a decrease in student enrollment of 10% or more from one year to the next.

District Foundation Summary
 Fall 2013 OASIS Collection from State Report Manager
 School Year 2013-2014

	Certified/Submitted SRM Data as of 11/6/2013				Reconciled OASIS Data as of January 2014				Change in ADM
	Elementary (PK-5)	Secondary (7-12)	Total (PK-12)	Intensive	Elementary (PK-5)	Secondary (7-12)	Total (PK-12)	Intensive	
Ketchikan Gateway Borough School District									
Fast Track (258010)	37.70	46.02	83.7250	0	39.20	46.03	85.23	11.00	1.51
Fawn Mountain Elementary (250050)	266.10	0.00	266.1000	11	266.10		266.10	11.00	-
Houghtaling Elementary (250010)	313.10	0.00	313.1000	16	313.10		313.10	15.00	-
Ketchikan Charter School (259010)	127.95	32.40	160.3500	2	127.95	32.40	160.35	2.00	-
Ketchikan High School (250020)	0.00	579.08	579.0750	15		578.95	578.95	15.00	(0.13)
Ketchikan Regional Youth Facility (257050)	0.00	1.00	1.0000	0		1.00	1.00	7.00	-
Point Higgins School (250100)	217.60	0.00	217.6000	7	217.60		217.60	7.00	-
Revilla Jr/Sr High School (257010)	0.00	126.98	126.9750	0		126.98	126.98	4.00	0.01
Schoenbar Middle School (250040)	0.00	284.15	284.1500	4		284.15	284.15	3.00	-
Tongass School of Arts and Sciences Charter School (257050)	168.55	0.00	168.5500	3	167.05		167.05	3.00	(1.50)
Sub Total	1131.00	1069.62	2200.6250	58	1,131.00	1,069.51	2,200.51	57.00	(0.11)
Difference in Youth Facility bed count.							9.00		
TOTAL							2,209.51	57.00	



THE STATE
of **ALASKA**

GOVERNOR SEAN PARNELL

Department of Commerce, Community,
and Economic Development

DIVISION OF COMMUNITY AND REGIONAL AFFAIRS

550 West Seventh Avenue, Suite 1640
Anchorage, Alaska 99501
Main: 907.269.4501/907.269.4581
Programs fax: 907.269.4539

January 15, 2014

Ketchikan Gateway Borough
1900 First Avenue, Suite 210
Ketchikan, AK 99901



RE: FY 15 POPULATION DETERMINATION

Dear Mayor:

CLERK'S OFFICE

The Department of Commerce, Community, and Economic Development annually certifies the population of each municipality for use in various financial assistance programs based upon population estimates prepared by the State Demographer at the Department of Labor and Workforce Development.

The 2013 population of the Ketchikan Gateway Borough has been determined to be 13,856.

If you do not agree with this figure, you may request an adjustment to your population by using two approved methods – Head Count Census and Housing Unit. Municipalities with a population of less than 1,000 must conduct a “head count census”. Municipalities with a population of 1,000 or more may conduct a “head count census” or use the “housing unit” method, to estimate the population. The department requires that the population adjustment process be completed and postmarked by April 1, 2014 and that the request include:

1. Comprehensive documentation of the proposed population figure using either of the approved methods, and
2. A resolution of the governing body (assembly or council) adopting the new population.

If you choose to request a population adjustment, please review the Head Count Census and Housing Unit Method manuals that the department has published to assist you with this process. These manuals are available at <http://commerce.alaska.gov/dnn/dcra/Home.aspx>. You may also contact the department for a copy of the manuals. Call (907) 269-7959 or send an email to DCRARResearchAndAnalysis@alaska.gov for additional information.

Sincerely,

Scott Ruby,
Division of Community and Regional Affairs, Director

Cc: Division of Community and Regional Affairs, Research and Analysis Section
Division of Community and Regional Affairs, Community Aid and Accountability Section



STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Division of Community and Regional Affairs

Sean Parnell, Governor
Susan K. Bell, Commissioner
Scott Ruby, Director

October 1, 2012

CERTIFIED/RETURN RECEIPT REQUESTED
7010-2780-0000-5223-2106

Mayor Dave Kiffer
Ketchikan Gateway Borough
1900 First Avenue, Suite 115
Ketchikan, AK 99901

RE: 2012 FULL VALUE DETERMINATION

Dear Mayor Kiffer:

As required by AS 14.17.510 (Public Schools Foundation Program), the Department of Commerce, Community, and Economic Development has determined that, as of January 1, 2012, the full and true value of taxable real and personal property within your municipality is as follows:

Real Property:	\$ 1,386,571,100
Personal Property	\$ 197,854,100
State Assessed Property (AS 43.56):	\$0
TOTAL:	\$ 1,584,425,200

This full value determination may be appealed administratively by you within fifteen (15) days of receipt of this notice. In addition, AS 14.17.510 also allows for judicial review of the determination. If you have any questions concerning this full value determination for 2012, please contact our office at 269-4565 or 269-4605.

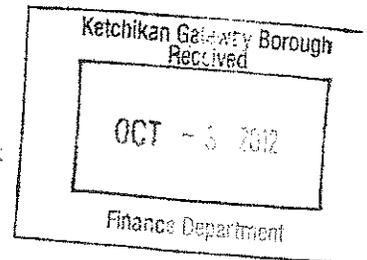
RECEIVED
KETCHIKAN GATEWAY BOROUGH

OCT 4 2012

CLERK'S OFFICE

Sincerely,

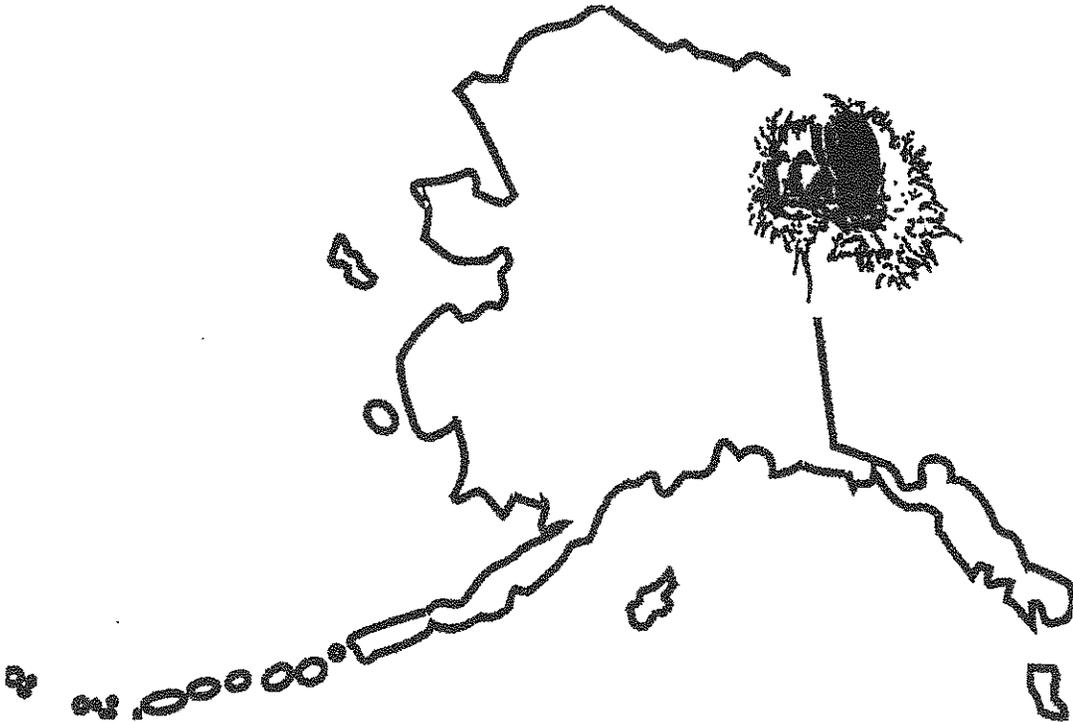
Steve Van Sant
State Assessor



550 W. 7th Avenue, Suite 1640, Anchorage, Alaska 99501-3510
Telephone: (907) 269-4580 Fax: (907) 269-4539 Text Telephone: (907) 465-5437
Email: questions@alaska.gov Website: <http://www.commerce.alaska.gov/dca/>

Annual Report on Assessment and Taxation

AS 29.20.640



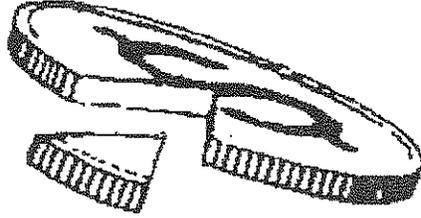
Report due by August 2, 2013



State of Alaska
Sean Parnell, Governor

Department of Commerce,
Community, and Economic
Development
Susan Bell, Commissioner





**OFFICE OF THE
STATE ASSESSOR**

PLEASE MAIL, OR FAX, ON OR BEFORE AUGUST 2, 2013 TO:

<p>DCCED/DCRA Office of the State Assessor 550 W. 7th Avenue, Suite 1640 Anchorage, AK 99501-3510 FAX: (907) 269-4539</p>
--

MUNICIPAL CONTACT INFORMATION	
Reporting Municipality:	Ketchikan Gateway Borough
Report Prepared By:	Ronald E. Brown
Job Title:	Director of Assessment Ph #: (907) 228-6653

If you have any questions or problems with any part of this questionnaire, please contact the *Office of the State Assessor* in Anchorage at 907-269-4565 or 907-269-4605.

**2013
ANNUAL REPORT
ON
ASSESSMENT AND TAXATION**

The information published in Alaska Taxable is based on the annual reporting of assessments and taxation information from each municipality. Your cooperation in completing this report is essential to the accuracy of the publication and information distributed by the Department of Community and Economic Development. This report is also a requirement under AS 29.20.640(a)(3) as prerequisite for receipt of state shared revenue under AS 29.60 and other state programs, including education funding under AS 14.17.510.

It is required that a report be certified both by the Assessor, who has chief responsibility for values, and the Chief Administrator, who has a large degree of responsibility of rates and overall administration.

Document Certification

I, Ronald E. Brown, Director of Assessment
(type or print name) (type or print title)

for the Ketchikan Gateway Borough, hereby certify
(municipality)

the information contained in the attached report is complete and correct to the best
of my knowledge.

Ronald E. Brown
Signature

7/18/2013
Date

I, Dan Bockhorst, Borough Manager
(type or print name) (type or print title)

for the Ketchikan Gateway Borough, hereby certify
(municipality)

the information contained in the attached report is complete and correct to the best
of my knowledge.

Dan Bockhorst
Signature

7/18/2013
Date

ASSESSING DEPARTMENT

BUDGET

Total FY14 (TY13) budget or contract amount for your assessing dept. \$695,829
 (If the assessment portion of your budget overlaps with other functions, please provide your best estimate of the cost for the assessing department only.) If the Assessment function is contracted, please provide contract amount. Please indicate which of the following the contract covers:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Reappraisal | <input checked="" type="checkbox"/> Maintenance |
| <input checked="" type="checkbox"/> Real Property | <input checked="" type="checkbox"/> Personal Property |

PERSONNEL

MUNICIPAL ASSESSOR

NAME: Ronald E. Brown
 (please print)

- Full-Time
 Part-Time
 Contract* (Please Provide name and address below)

NUMBER OF APPRAISERS

Real Property Appraisers: 3.00
 Personal Property Appraisers: 1.00
 Support Staff: _____

(*If assessment office duties are performed by a contractor, please attach a copy of the most recent contract.)

ASSESSMENT CYCLE

1. Over what period of time are all the parcels in your taxing district measured and inspected? (e.g., one year, two years, four years, etc...)

Number of years: 4

2. Date of most recently completed evaluation (inspection) cycle? 2013

SCHEDULED CALENDAR OF EVENTS

(Deadlines, due dates, tec...)

1. Mailing date of assessment notices (Real Property):	<u>07-Feb-13</u>	6. No. Inquiries	<u>101</u>
1a. Mailing date of assessment notices (Personal Property):	<u>26-Mar-13</u>	7. No. Appeals Filed	<u>16</u>
2. Meeting date of Board of Equalization:	<u>18-Mar-13</u>	8. No. Appeals Heard at BOE	<u>2</u>
3. Mailing date of tax statements:	<u>28-Jun-13</u>	9. Date Personal Property Filing Due	<u>15-Jan-13</u>
4. Date first half of tax payment due:	<u>30-Sep-13</u>		
5. Date second half of tax payment due	<u>N/A</u>		

MUNICIPAL MILL RATE SHEET

Directions

Please complete the following chart with the appropriate mill rates for Areawide Administration (Admin.) and Education (Educ.) for each Service Area/Zone No. Extra columns are provided for additional services provided by your municipality. Add mill rates across for "Total Mills". Also, remember to answer the Property Tax Cap and Residential Property Tax Exemption questions at the bottom of this page

If spacing below is inadequate, please attach your own summary or use the PG 3EX sheet for more lines..

Service Area or Zone #	Service Area or Zone Name	Areawide Admin.	Areawide Educ.	Additional Services (Please specify)				Total Mills
See Page 3B								

Local Property Tax Legislation

Does your municipality have a LOCAL tax or revenue cap for property taxes? If so, please describe, in detail, how it is calculated?

(Please include an example. Attach additional pages if needed.)

KGBC 45.11.120(c)the assembly shall not levy a general property tax in excess of eight (8) mills. For the purposes of this section, general property tax means an areawide levy only and does not include any special assessments or service area levies.

Residential Property Tax Exemption

Has your municipality adopted the residential homeowner's exemption AS 29.45.050(a)? Yes _____ No X

Is the exemption limited to owner-occupied properties? Yes _____ No _____

Has your municipality changed the maximum limit or percentage factor for the residential homeowner's exemption AS 29.45.050(a)? Yes, new limit _____ No X

Yes, new percentage _____ No _____

How is this exemption applied? For example, 25% of value up to the maximum of \$50,000.

SUPPLEMENTAL MUNICIPAL MILL RATE SHEET

Service Area or Zone #	Service Area or Zone Name	Areawide Admin.	Areawide Educ.	Additional Services (Please specify)				Total Mills
				City	Non-Area Wide	Service Area 1	Service Area 2	
1	City of Ketchikan	5.00		6.70				11.70
30	Borough N. Tongass	5.00			0.70			5.70
31	Fire/EMS	5.00			0.70	1.70		7.40
33	Waterfall	5.00			0.70	1.70		7.40
36	Mud Bight	5.00			0.70	1.70		7.40
58	Vallenar Bay	5.00			0.70			5.70
65	Loring	5.00			0.70		3.00	8.70
67	Deep Bay	5.00			0.70			5.70
68	Long Arm	5.00			0.70			5.70
70	S. Tongass	5.00			0.70	2.60		8.30
71	Forest Park	5.00			0.70	2.60	2.20	10.50
73	Gold Nugget	5.00			0.70	2.60		8.30
74	Gold Nugget / Homestead	5.00			0.70	2.60		8.30
75	Homestead	5.00			0.70	2.60		8.30
77	Nichols View	5.00			0.70	2.60		8.30
85	Saxman	5.00						5.00

OPTIONAL EXEMPTIONS AS 29.45.050

Please list property that has been exempted from property tax by local ordinance. The estimated value of this exempted property is added to your local Full Value Determination. Please identify the exemption and list your estimated value for the property exempted.

OPTIONALLY EXEMPTED:

<input checked="" type="checkbox"/>	Up to the first \$50,000 of assessed value of residential property AS 29.45.050(a)			
	Your estimate of value of exempt property	[]		
<input type="checkbox"/>	Senior Citizen/Disabled Veteran over the \$150,000 mandated exemption AS 29.45.050(l)			
	Your estimate of value of exempt property	[]		
<input checked="" type="checkbox"/>	Community Purpose Exemption			
	Exemption Explanation Southern S.E. Reg. Aquaculture, N. Tongass Comm Club, Historic Ketchikan			
	Your estimate of value of exempt property	\$2,808,300		
<input checked="" type="checkbox"/>	Machinery	<input type="checkbox"/> Exempt	<input checked="" type="checkbox"/> Partially Exempt	<input type="checkbox"/> Flat Tax <input type="checkbox"/> Other
	Exemption Explanation No estimate of value available.			
	Your estimate of value of exempt property	[]		
<input checked="" type="checkbox"/>	Furniture/Fixtures	<input type="checkbox"/> Exempt	<input checked="" type="checkbox"/> Partially Exempt	<input type="checkbox"/> Flat Tax <input type="checkbox"/> Other
	Exemption Explanation No estimate of value available.			
	Your estimate of value of exempt property	[]		
<input checked="" type="checkbox"/>	Inventory	<input type="checkbox"/> Exempt	<input checked="" type="checkbox"/> Partially Exempt	<input type="checkbox"/> Flat Tax <input type="checkbox"/> Other
	Exemption Explanation No estimate of value available.			
	Your estimate of value of exempt property	[]		
<input checked="" type="checkbox"/>	Aircraft	<input type="checkbox"/> Exempt	<input checked="" type="checkbox"/> Partially Exempt	<input type="checkbox"/> Flat Tax <input type="checkbox"/> Other
	Exemption Explanation No estimate of value available.			
	Your estimate of value of exempt property	[]		
<input checked="" type="checkbox"/>	Boats & Vessels	<input type="checkbox"/> Exempt	<input checked="" type="checkbox"/> Partially Exempt	<input type="checkbox"/> Flat Tax <input type="checkbox"/> Other
	Exemption Explanation No estimate of value available.			
	Your estimate of value of exempt property	[]		
<input checked="" type="checkbox"/>	Recr. Equipment	<input type="checkbox"/> Exempt	<input checked="" type="checkbox"/> Partially Exempt	<input type="checkbox"/> Flat Tax <input type="checkbox"/> Other
	Exemption Explanation No estimate of value available.			
	Your estimate of value of exempt property	[]		
<input type="checkbox"/>	Total Other Exemptions from Page 4B			
	Your estimate of value of exempt property	\$63,058,300		
	TOTAL OPTIONAL EXEMPTIONS	\$65,866,600		

OPTIONAL EXEMPTIONS CONTINUED AS 29.45.050 (CONT.)

Please list property that has been exempted from property tax by local ordinance. This page is provided for any exemptions that were not included on the previous page. Please attach any documentation. The sum of these exemptions is automatically presented on Page 4A.

OPTIONALLY EXEMPTED (CONT.):

Optional Exemption Description: Exempt **Business Personal Property** Partially Exempt Flat Tax Other
 Exemption Explanation **Business Personal Property is Exempt in the Borough. City of Ketchikan has exempted the first \$25,000 of value. COK Ord. 12-1698**
 Your estimate of value of exempt property **OSA VALUE**

Optional Exemption Description: **KETCHIKAN SHIPYARD (AIDEA Lease)** Exempt Partially Exempt Flat Tax Other
 Exemption Explanation **KGB 45.11.025 (g) AIDEA lease to VIGOR Industries. New Constr. In 2012 was only 50% complete, 100% finished for 2013.**
 Your estimate of value of exempt property **\$61,536,200**

Optional Exemption Description: **THRHA/KIC HOUSING** Exempt Partially Exempt Flat Tax Other
 Exemption Explanation **KGB 45.11.030 - Possessory Interest in NRHA Housing**
 Your estimate of value of exempt property **\$1,522,100**

Optional Exemption Description: Exempt Partially Exempt Flat Tax Other
 Exemption Explanation
 Your estimate of value of exempt property

Optional Exemption Description: Exempt Partially Exempt Flat Tax Other
 Exemption Explanation
 Your estimate of value of exempt property

Optional Exemption Description: Exempt Partially Exempt Flat Tax Other
 Exemption Explanation
 Your estimate of value of exempt property

Total Optional Exemptions (Page 4B) \$63,058,300

Include only that property which is taxable under state law. If property is exempt by local ordinance (Optional Exemption), please estimate value that was exempted. Do not include the exempt value of any property that falls under a mandatory exemption contained in AS 29.45.030 and AS 29.45.060. For example, exclude the senior citizen and disabled veteran exemption which is mandatory. For Boroughs, please complete one form for each incorporated city within your Borough and one other sheet that provides the sum value of all areas outside of incorporated cities. For Cities, simply provide one sheet for your community. The sum of all the sheets provided should encompass the entire tax roll.

City/Borough Name

Ketchikan Gateway Borough

REAL PROPERTY CLASSIFICATION

REAL PROPERTY TYPE	VALUE OF OPTIONALLY EXEMPT REAL PROPERTY	ACTUAL TAXABLE REAL PROPERTY \$
RESIDENTIAL (1-4 family)	\$1,522,100	\$558,831,600
VACANT		\$108,833,000
FARM		\$0
COMMERCIAL	\$64,344,500	\$390,971,100
INDUSTRIAL		\$0
APARTMENT		\$217,656,000
CONDOMINIUM		\$32,767,400
MOBILE HOME PARKS		\$3,553,000
MOBILE HOMES (REAL)		\$1,886,600
OTHER ()		\$377,100
TOTAL REAL PROPERTY:	\$65,866,600	\$1,314,675,800

PERSONAL PROPERTY CLASSIFICATION

PERSONAL PROPERTY TYPE	VALUE OF OPTIONALLY EXEMPT PERSONAL PROPERTY	ACTUAL TAXABLE PERSONAL PROPERTY \$
INVENTORY	EXEMPT	EXEMPT
MACHINERY/FIXTURES/EQUIP	EXEMPT	EXEMPT
MOTOR VEHICLES	EXEMPT	EXEMPT
AIRCRAFT	EXEMPT	EXEMPT
BOATS AND VESSELS	EXEMPT	EXEMPT
OTHER (RECR. EQUIP, MBHM'S)	EXEMPT	EXEMPT
TOTAL PERSONAL PROPERTY:	EXEMPT	EXEMPT

REAL & PERSONAL TOTALS	\$65,866,600	\$1,314,675,800
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Include only that property which is taxable under state law. If property is exempt by local ordinance (Optional Exemption), please estimate value that was exempted. Do not include the exempt value of any property that falls under a mandatory exemption contained in AS 29.45.030 and AS 29.45.060. For example, exclude the senior citizen and disabled veteran exemption which is mandatory. For Boroughs, please complete one form for each incorporated city within your Borough and one other sheet that provides the sum value of all areas outside of incorporated cities. For Cities, simply provide one sheet for your community. The sum of all the sheets provided should encompass the entire tax roll.

City/Borough Name

City of Ketchikan

REAL PROPERTY CLASSIFICATION

REAL PROPERTY TYPE	VALUE OF OPTIONALLY EXEMPT REAL PROPERTY	ACTUAL TAXABLE REAL PROPERTY \$
RESIDENTIAL (1-4 family)	\$5,500	\$201,372,900
VACANT		\$40,812,100
FARM		\$0
COMMERCIAL	\$61,841,900	\$325,506,900
INDUSTRIAL		\$0
APARTMENT		\$133,682,200
CONDOMINIUM		\$32,767,400
MOBILE HOME PARKS		\$1,852,900
MOBILE HOMES (REAL)		\$1,051,100
OTHER ()		\$377,100
TOTAL REAL PROPERTY:	\$61,847,400	\$737,422,600

PERSONAL PROPERTY CLASSIFICATION

PERSONAL PROPERTY TYPE	VALUE OF OPTIONALLY EXEMPT PERSONAL PROPERTY	ACTUAL TAXABLE PERSONAL PROPERTY \$
INVENTORY	OSA VALUE	EXEMPT
MACHINERY/FIXTURES/EQUIP	\$4,796,180	\$39,072,000
MOTOR VEHICLES	OSA VALUE	EXEMPT
AIRCRAFT	\$1,504,700	\$12,257,300
BOATS AND VESSELS	OSA VALUE	EXEMPT
OTHER (RECR. EQUIP, MBHM'S)	\$1,093,700	\$8,908,700
TOTAL PERSONAL PROPERTY:	\$7,394,580	\$60,238,000
REAL & PERSONAL TOTALS	\$69,241,980	\$797,660,600

Include only that property which is taxable under state law. If property is exempt by local ordinance (Optional Exemption), please estimate value that was exempted. Do not include the exempt value of any property that falls under a mandatory exemption contained in AS 29.45.030 and AS 29.45.060. For example, exclude the senior citizen and disabled veteran exemption which is mandatory. For Boroughs, please complete one form for each incorporated city within your Borough and one other sheet that provides the sum value of all areas outside of incorporated cities. For Cities, simply provide one sheet for your community. The sum of all the sheets provided should encompass the entire tax roll.

City/Borough Name

City of Saxman

REAL PROPERTY CLASSIFICATION

REAL PROPERTY TYPE	VALUE OF OPTIONALLY EXEMPT REAL PROPERTY	ACTUAL TAXABLE REAL PROPERTY \$
RESIDENTIAL (1-4 family)	\$1,516,600	\$8,218,800
VACANT		\$2,929,900
FARM		
COMMERCIAL		\$5,529,900
INDUSTRIAL		
APARTMENT		\$1,334,200
CONDOMINIUM		
MOBILE HOME PARKS		
MOBILE HOMES (REAL)		
OTHER ()		
TOTAL REAL PROPERTY:	\$1,516,600	\$18,012,800

PERSONAL PROPERTY CLASSIFICATION

PERSONAL PROPERTY TYPE	VALUE OF OPTIONALLY EXEMPT PERSONAL PROPERTY	ACTUAL TAXABLE PERSONAL PROPERTY \$
INVENTORY	OSA VALUE	\$0
MACHINERY/FIXTURES/EQUIP	OSA VALUE	\$0
MOTOR VEHICLES	OSA VALUE	\$0
AIRCRAFT	OSA VALUE	\$0
BOATS AND VESSELS	OSA VALUE	\$0
OTHER (RECR. EQUIP. MBHM'S)	OSA VALUE	\$0
TOTAL PERSONAL PROPERTY:		
REAL & PERSONAL TOTALS	\$1,516,600	\$18,012,800

LOCALLY TAXED PROPERTY

This page should summarize the combined total taxable value of all service areas or tax zones. Do not include values for optional or mandatory exemptions (i.e., senior citizens), or, state assessed oil and gas production property (AS 43.56.) Values for AS 43.56 property are obtained directly from the Department of Revenue. Be sure to include any supplemental roll values. If your supplemental rolls are not certified at the time you complete this report, please indicate when they will be available and we will contact you for that information at a later date.

REAL PROPERTY		LOCALLY TAXABLE VALUE (AS 29.45)
TOTAL LAND VALUE		\$492,561,400
TOTAL IMPROVEMENT VALUE		\$822,114,400
TOTAL REAL PROPERTY:		\$1,314,675,800
PERSONAL PROPERTY		LOCALLY TAXABLE VALUE (AS 29.45)
TOTAL BUSINESS		\$60,238,000
TOTAL GENERAL		\$0
TOTAL PERSONAL PROPERTY:		\$60,238,000
SUPPLEMENTAL ROLLS		LOCALLY TAXABLE VALUE (AS 29.45)
REAL PROPERTY		\$0
PERSONAL PROPERTY		\$0
TOTAL SUPPLEMENTAL ROLL VALUE:		
Number of Supplemental Rolls	Real Property	0
	Personal Property	0
TOTAL PROPERTY VALUE		\$1,374,913,800
TOTAL PROPERTY TAXES LEVIED/BILLED		\$13,387,396

**Possessory Interest Assessments
and
Property Parcel Count**

Possessory Interest Assessed Value on Tax Exempt Property, Article IX,	\$5,764,200
Explain method of possessory interest valuation below:	
Method: 39 PI's with a taxable value. Leasehold interest valuation with 0.83% / Month Rate.	

**Total Municipal Real Property Parcel Count
(see instructions)**

REAL PROPERTY TYPE	NUMBER OF PARCELS
RESIDENTIAL (FOUR FAMILIES OR LESS)	3,684
VACANT	1,908
FARM	0
COMMERCIAL	613
INDUSTRIAL	0
APARTMENT	65
CONDOMINIUMS	521
MOBILE HOME PARKS	5
MOBILE HOMES	170
OTHER	4
TOTAL REAL PROPERTY COUNT	6,970

PERSONAL PROPERTY TYPE	NUMBER OF ACCOUNTS
BUSINESS	681
GENERAL	
TOTAL PERSONAL PROPERTY COUNT	681

TOTAL PERSONAL AND REAL COUNT	7,651
--------------------------------------	--------------

PERSONAL PROPERTY TYPE	ESTIMATED VALUE IF LOCALLY EXEMPT (\$) *	ACTUAL TAXABLE VALUE (\$)	BASED UPON:
BUSINESS INVENTORY & CONSIGNED GOODS	\$0	\$0	<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Full and True Value
BUSINESS MACHINERY, FIXTURES & EQUIPMENT	\$4,796,180	\$39,072,000	<input type="checkbox"/> Exempt <input checked="" type="checkbox"/> PARTIAL EXEMPT
MOBILE HOMES	REAL PROPERTY	REAL PROPERTY	<input type="checkbox"/> Exempt <input type="checkbox"/> Full and True Value <input type="checkbox"/> Flat rate of \$
MOTOR VEHICLES	MVRT	MVRT	<input type="checkbox"/> Exempt <input type="checkbox"/> Full and True Value <input type="checkbox"/> Flat rate of \$
AIRCRAFT PRIVATE	EXEMPT	EXEMPT	<input type="checkbox"/> Exempt <input type="checkbox"/> Full and True Value <input type="checkbox"/> Number of Landings
AIRCRAFT COMMERCIAL	\$1,504,700	\$12,257,300	<input type="checkbox"/> Full and True Value <input checked="" type="checkbox"/> PARTIAL EXEMPT
BOATS & VESSELS	EXEMPT	EXEMPT	<input type="checkbox"/> Exempt <input type="checkbox"/> Full and True Value <input type="checkbox"/> Tonnage or Length
PRIVATE EQUIPMENT	EXEMPT	EXEMPT	<input type="checkbox"/> Exempt <input type="checkbox"/> Full and True Value
PRIVATE RECREATIONAL EQUIPMENT	EXEMPT	EXEMPT	<input type="checkbox"/> Exempt <input type="checkbox"/> Full and True Value <input type="checkbox"/> Other
OTHER	\$1,087,300	\$8,857,000	<input type="checkbox"/> Exempt <input type="checkbox"/> Full and True Value <input checked="" type="checkbox"/> PARTIAL EXEMPT
LEASEHOLD	\$6,400	\$51,700	<input type="checkbox"/> Exempt <input type="checkbox"/> Full and True Value <input type="checkbox"/> PARTIAL EXEMPT
			<input type="checkbox"/> Exempt <input type="checkbox"/> Full and True Value <input type="checkbox"/> Other
			<input type="checkbox"/> Exempt <input type="checkbox"/> Full and True Value <input type="checkbox"/> Other
Totals	\$7,394,580	\$60,238,000	
Note: The total values provided above, should match the numbers that were provided for personal property on pages six and seven.			

* Please provide estimated value exempted from levy or subject to a flat rate tax

The "Sales Ratio Report" should be self-explanatory. Remember older sales should be trended to January 1st. The weighted mean is the key figure we are looking for and it is helpful if you have ample market data to develop a weighted mean for both vacant and improved property. Please report ALL SALES DATA, not just those sales between 70% and 130% of value. Report which sales, if any, were excluded as non-market transactions. **ALSO PLEASE PROVIDE A SEPERATE SHEET FOR EACH MUNICIPALITY WITHIN YOUR JURISDICTION.** Any statistical sales data you can include would be appreciated, including the COD.

The weighted mean is used to adjust locally assessed values into full and true values. Call the Office of the State Assessor at 269-4605 if you have questions concerning this page.

If you have enough sales or the capacity to develop sale ratios for each municipality within your jurisdiction, the end product would be a more accurate full value determination. However, if this is not possible, simply provide an overall rate for your jurisdiction.



REAL PROPERTY SALES RATIO	VACANT	IMPROVED
Total number of sales occurring in area	26	224
Total number of sales not utilized.	4	8
COD with Median	7.011	8.274
PRD (Price Related Differential)	1.01	1.006
COD with Weighted Mean	7.375	8.496
Weighted Mean	1.001%	94.800%
Mean	1.012	95.40%
Median	1.027	96.20%
Overall Weighted Mean for all Real Property *		95.000%

* The Overall Weighted Mean will be used to calculate your municipality's Real Property Full Value Determination.

The "Sales Ratio Report" should be self-explanatory. Remember older sales should be trended to January 1st. The weighted mean is the key figure we are looking for and it is helpful if you have ample market data to develop a weighted mean for both vacant and improved property. Please report ALL SALES DATA, not just those sales between 70% and 130% of value. Report which sales, if any, were excluded as non-market transactions. **ALSO PLEASE PROVIDE A SEPERATE SHEET FOR EACH MUNICIPALITY WITHIN YOUR JURISDICTION.** Any statistical sales data you can include would be appreciated, including the COD.

The weighted mean is used to adjust locally assessed values into full and true values. Call the Office of the State Assessor at 269-4605 if you have questions concerning this page.

If you have enough sales or the capacity to develop sale ratios for each municipality within your jurisdiction, the end product would be a more accurate full value determination. However, if this is not possible, simply provide an overall rate for your jurisdiction.



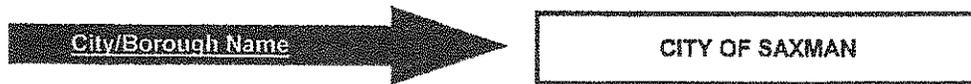
REAL PROPERTY SALES RATIO	VACANT	IMPROVED
Total number of sales occurring in area	8	145
Total number of sales not utilized.	1	4
COD with Median	3.047	8.419
PRD (Price Related Differential)	1.011	1.001
COD with Weighted Mean	3.065	8.513
Weighted Mean	99.300%	95.400%
Mean	100.4%	95.50%
Median	99.4%	96.10%
Overall Weighted Mean for all Real Property *	95.528%	

* The Overall Weighted Mean will be used to calculate your municipality's Real Property Full Value Determination.

The "Sales Ratio Report" should be self-explanatory. Remember older sales should be trended to January 1st. The weighted mean is the key figure we are looking for and it is helpful if you have ample market data to develop a weighted mean for both vacant and improved property. Please report ALL SALES DATA, not just those sales between 70% and 130% of value. Report which sales, if any, were excluded as non-market transactions. **ALSO PLEASE PROVIDE A SEPERATE SHEET FOR EACH MUNICIPALITY WITHIN YOUR JURISDICTION.** Any statistical sales data you can include would be appreciated, including the COD.

The weighted mean is used to adjust locally assessed values into full and true values. Call the Office of the State Assessor at 269-4605 if you have questions concerning this page.

If you have enough sales or the capacity to develop sale ratios for each municipality within your jurisdiction, the end product would be a more accurate full value determination. However, if this is not possible, simply provide an overall rate for your jurisdiction.



REAL PROPERTY SALES RATIO	VACANT	IMPROVED
Total number of sales occurring in area	0	2
Total number of sales not utilized.	0	2
COD with Median	N/A	N/A
PRD (Price Related Differential)	N/A	N/A
COD with Weighted Mean	N/A	N/A
Weighted Mean	N/A	N/A
Mean	N/A	N/A
Median	N/A	N/A
Overall Weighted Mean for all Real Property *		N/A

* The Overall Weighted Mean will be used to calculate your municipality's Real Property Full Value Determination.

Personal Property is taxable within the City of Ketchikan ONLY! Personal Property has been exempted by the Ketchikan Gateway Borough. Comments have been added to Page 7 to reflect the addition of the BP Assessed Value for the City of Ketchikan as well as the total amount of COK BP taxes.



KETCHIKAN GATEWAY BOROUGH

1900 First Avenue, Suite 210, Ketchikan, Alaska 99901

• telephone: (907) 228-6625 • fax (907) 228-6684

Office of the Borough Manager

May 22, 2013

Ms. Ginny Clay
School Board President
Ketchikan Gateway Borough School District
333 Schoenbar Road
Ketchikan, Alaska 99901

RE: Notice of FY 2014 Expenditure Authority and Funds to be Made Available from
Local Sources for School Purposes During FY 2014

Dear Board President Clay:

On behalf of the Borough Assembly and in accordance with AS 14.14.060(c)¹ and KGBC 2.35.050,² this letter provides notice of the total expenditures authorized by the Borough Assembly for the School District during FY 2014. Additionally, this letter provides notice of the amount of money to be made available from local sources for school purposes during FY 2014. The spending limit and local funding determinations were made by the Borough Assembly through the adoption of Ordinance No. 1669-Amended on May 20, 2013 (unsigned copy enclosed).

The total expenditures authorized for the District *Operating Budget* during FY 2014 are \$42,097,709 based on the following anticipated revenues:

- | | |
|--|--------------|
| a) State Aid, estimated at 82.8% of adequate funding where
"adequate funding" is represented by Basic Need | \$20,783,958 |
| b) State "Quality School" funding per AS 14.17.480 | 70,374 |
| c) Borough appropriation: local contribution required by
AS 14.17.410(b)(2) to pay 17.2% of adequate funding
(portion of Basic Need not paid by the State of Alaska) | 4,198,727 |
| d) Borough appropriation: discretionary funding per
AS 14.17.410(c)(2) (undesignated by the Assembly) | 3,077,270 |
| e) Borough appropriation: discretionary funding per
AS 14.17.410(c)(2) (designated by the Assembly for
payment of contractual services) | 533,600 |
| f) Borough appropriation: discretionary funding per
AS 14.17.410(c)(2) (designated by the Assembly for
payment of "building insurance") | 220,000 |

g) Borough appropriation: discretionary funding per AS 14.17.410(c)(2) (designated by the Assembly for payment of "Homestead Road Maintenance")	20,403
h) State Funding Outside Formula	450,000
i) Other Operating Revenues	98,000
j) Carryover Funds	1,033,221
k) Charter School Carryover Funds	0
l) Medicaid	150,000
m) TRS On-behalf Payments	\$5,353,723
n) PERS On-behalf Payments	743,933
o) Grants and Other Revenues	<u>5,364,500</u>
TOTAL	\$42,097,709

The Assembly has determined that the sum of \$8,050,000 will be made available from local sources for school purposes, exclusive of debt service and funding for school construction and major maintenance projects, subject to the terms of Section 2 of Ordinance No. 1669-Amended (enclosed). Of that amount, \$4,198,727 is the Borough contribution required by AS 14.17.410(b)(2) to pay the 17.2% State underfunding of the amount needed to provide adequate funding for education (Basic Need). Additionally, \$533,600 represents local contributions of cash to pay for contractual services to be provided pursuant to Attachment A of Ordinance No. 1669-Amended; \$220,000 represents local contributions of cash for "building insurance;" \$20,403 represents funds designated for the District's share of the cost of maintaining Homestead Road; and the remaining \$3,077,270 in local contributions is undesignated by the Assembly.

Please note that the District's share of the cost of maintaining Homestead Road is listed incorrectly in the District's budget as \$38,740. Moreover, I believe that the District's allocation of \$220,000 for "building insurance" is in error since it is more than 2.6 times the cost last year (\$84,000). For that reason, Section 2(b)(2) of Ordinance No. 1669 expressly provides that any portion of the \$220,000 remaining after the payment of "building insurance" may be used for other purposes lawfully authorized by the School Board.

Additionally, I note that, yesterday, Governor Parnell signed *HCS CSSB 18(FIN) am H* into law as Chapter 16 SLA 2013. As approved by the Governor, the bill appropriated \$21 million for student safety and security enhancement and for fixed costs and energy relief. The allocation of those funds will result in an additional estimated \$370,000 to the Ketchikan Gateway Borough School District in FY 2014. Those funds were not included in the District's FY 2014 budget.

Ms. Ginny Clay
May 22, 2013
Page 3

On behalf of the Assembly, I request that you provide (for informational purposes) an updated budget reflecting Ordinance No. 1669-Amended and Chapter 16 SLA 2013. Specifically, this would entail changes to the District budget to provide for the payment of contractual services, building insurance; and the District's share of the cost of maintaining Homestead Road. The revisions would also reflect local funding of \$8,050,000 and an additional \$370,000 from Chapter 16 SLA 2013. If you provide the revised budget by June 6, the information can be considered at the June 11 Assembly/School Board Liaison Committee meeting.

Sincerely,



Dan Bockhorst
Borough Manager

Enclosure: Ordinance No. 1669-Amended (adopted but unsigned)

cc: Mayor and Assembly Members
School Board Members
Robert Boyle, Superintendent
Kacie Paxton, Borough Clerk
Scott Brandt-Erichsen, Borough Attorney
Mike Houts, Finance Director

¹ AS 14.14.060(c) reads as follows:

Sec. 14.14.060. Relationship between borough school district and borough; finances and buildings.

(c) Except as otherwise provided by municipal ordinance, the borough school board shall submit the school budget for the following school year to the borough assembly by May 1 for approval of the total amount. Within 30 days after receipt of the budget the assembly shall determine the total amount of money to be made available from local sources for school purposes and shall furnish the school board with a statement of the sum to be made available. If the assembly does not, within 30 days, furnish the school board with a statement of the sum to be made available, the amount requested in the budget is automatically approved. Except as otherwise provided by municipal ordinance, by June 30, the assembly shall appropriate the amount to be made available from local sources from money available for the purpose.

Ms. Ginny Clay
May 22, 2013
Page 4

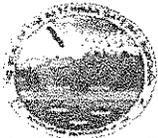
" Section 2.35.050 of the Ketchikan Gateway Borough Code reads as follows:

2.35.050. School budget. The borough school board shall submit the school budget for the following school year to the borough assembly by May 1 for approval of the total amount. Within thirty (30) days after the receipt of the budget, the assembly shall determine the total amount of money to be made available from local sources for school purposes and shall furnish the school board with a statement of the sum to be made available. If the assembly does not, within thirty (30) days, furnish the school board with a statement of the sum to be made available, the amount requested in the budget is automatically approved. By June 30, the assembly shall appropriate the amount to be made available from local sources from money available for the purpose.

Invoice Number	Date	Description	Amount	Discount	Net Amount
KNDC PROTEST	9/30/2013	FY 14 required local contribution AS 14.17.410(b) - Totals:	\$4,198,727.00 \$4,198,727.00	\$0.00 \$0.00	\$4,198,727.00 \$4,198,727.00

DEDICATED TAX PAID UNDER PROTEST- FY 2014 REQUIRED LOCAL CONTRIBUTION UNDER AS 14.17.410(b)(2)

THIS DOCUMENT CONTAINS A COLORED BACKGROUND AND MICRO PRINTED SIGNATURE LINES



KETCHIKAN GATEWAY BOROUGH
ACCOUNTS PAYABLE ACCOUNT
 1900 FIRST AVENUE, SUITE 118
 KETCHIKAN, ALASKA 99901

Wells Fargo
 KETCHIKAN, ALASKA 99901
 89-5
 1252

CHECK DATE	CHECK NO
9/30/2013	39153
CHECK AMOUNT	

DEDICATED TAX PAID UNDER PROTEST- FY 2014 REQUIRED LOCAL CONTRIBUTION AS 14.17.410(b)

PAY **Four million one hundred ninety eight thousand seven hundred twenty seven and no/100 \$ 4,198,727.00

TO THE ORDER OF

KGB SCHOOL DISTRICT
 333 SCHOENBAR ROAD
 KETCHIKAN, AK 99901

COPY

VOID AFTER 120 DAYS

 AUTHORIZED SIGNATURE

⑆039153⑆ ⑆125200057⑆89932516107⑆



KETCHIKAN GATEWAY BOROUGH

1900 First Avenue, Suite 210, Ketchikan, Alaska 99901

• Telephone: (907) 228-8625 • Fax (907) 228-8684

Office of the Borough Manager



October 9, 2013

Michael Hanley, Commissioner
Alaska Department of Education and Early Development
PO Box 110500
Juneau, AK 99811-0500

Dear Commissioner Hanley:

Today, the Ketchikan Gateway Borough paid \$4,198,727 to the Ketchikan Gateway Borough School District by Check # 39153. A copy of that check is enclosed. Check # 39153 was issued as payment of the FY 2014 "required local contribution" of the Ketchikan Gateway Borough to the Ketchikan Gateway Borough School District mandated by AS 14.12.020(c) and AS 14.17.410(b).

As reflected on the check, the \$4,198,727 payment was made under protest because the required local contribution mandated by AS 14.12.020(c) and AS 14.17.410(b) is a dedicated State tax that is prohibited by Art. IX, § 7 of the Constitution of the State of Alaska. The Borough reserves the right to seek return of the amount of these funds from the State of Alaska as a refund of the illegal tax. This tax is paid in lieu of a payment of equal amount from the State treasury.

Despite the Borough's recognition that the required local contribution is an illegal tax, the Ketchikan Gateway Borough was forced to make the payment because AS 14.17.410(d) provides that State aid for education may not be provided to a borough school district if the local contribution required under AS 14.17.410(b)(2) has not been made. The required local contribution suffers from numerous other legal infirmities, including several that render the required local contribution an illegal obligation.

On October 6, 2013, the Ketchikan Gateway Borough Assembly directed that steps be taken to initiate a complaint against the State of Alaska on the claims described in the enclosed memorandum dated October 3, 2013. The memorandum is labeled as "confidential;" however, that privilege as it pertains to the memorandum was waived by the Assembly Monday evening.

As part of its suit, the Borough intends to seek repayment from the State of Alaska of the entire unconstitutional dedicated tax of \$4,198,727 paid under protest through Check # 39153.

Cordially,

Dan Bockhorst
Borough Manager

cc: Mayor and Assembly, Ketchikan Gateway Borough
Scott Brandt-Erichsen, Borough Attorney
Robert Boyle, Superintendent, Ketchikan Gateway Borough School District
Angela Rodell, Acting Commissioner, Alaska Department of Revenue

TRANSMISSION VERIFICATION REPORT

TIME : 12/06/2013 16:00
NAME :
FAX : 2022050000
TEL : 2022050000
SER.# : BRDL8J003177

DATE, TIME	12/06 14:59
FAX NO./NAME	919072473823
DURATION	00:00:56
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

December 4, 2013

Mr. Robert Boyle
Superintendent
Ketchikan Gateway Borough School District
333 Schoenbar Road
Ketchikan, AK 99901
ATTN: Matthew C. Groves

VIA FAX (907) 247-3823

Impact Aid Application No.: 11-AK-2014-1606

Dear Mr. Boyle:

This letter is in reference to your district's fiscal year (FY) 2014 application for financial assistance under Section 8003 of the Impact Aid Program law. We have determined that your school district is ineligible for section 8003 funds for FY 2014 because your school district does not meet the basic eligibility threshold.

In order to qualify for funding under Section 8003, a district's federally connected children must number at least 400 in average daily attendance (ADA) or must be equal to at least three percent of the district's total ADA. Your districts' ADA percentage of federally connected students is only 1.40% and, therefore, does not meet the eligibility



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

December 4, 2013

Mr. Robert Boyle
Superintendent
Ketchikan Gateway Borough School District
333 Schoenbar Road
Ketchikan, AK 99901
ATTN: Matthew C. Groves

VIA FAX (907) 247-3823

Impact Aid Application No.: 11-AK-2014-1606

Dear Mr. Boyle:

This letter is in reference to your district's fiscal year (FY) 2014 application for financial assistance under Section 8003 of the Impact Aid Program law. We have determined that your school district is ineligible for section 8003 funds for FY 2014 because your school district does not meet the basic eligibility threshold.

In order to qualify for funding under Section 8003, a district's federally connected children must number at least 400 in average daily attendance (ADA) or must be equal to at least three percent of the district's total ADA. Your districts' ADA percentage of federally connected students is only 1.40% and, therefore, does not meet the eligibility requirements for Impact Aid Program funds.

In addition, the legislation imposes a further limitation on eligibility and payments associated with children that either reside on federal property (other than low-rent housing property) or have a parent employed on federal property, but not both. To be eligible for a payment, these children must number at least 1,000 in ADA or constitute at least 10 percent of the district's total ADA. Your districts' ADA percentage of federally connected students whose parent is a civilian working on federal property on Table 5 is only 3.93% and, therefore, does not meet the civilian eligibility requirements for Impact Aid Program funds.

Page 2 – Impact Aid 8003 Field Review Notice

Please note that this finding of your district's ineligibility is for FY 2014 only. It is possible that your district could qualify for funding in a future fiscal year. If you have any questions about this determination, please contact me at (202) 453-5539.

Sincerely,



Cara Aboona
Program Analyst
Impact Aid Program

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT KETCHIKAN, ALASKA

KETCHIKAN GATEWAY BOROUGH, an Alaska municipal corporation and political subdivision; AGNES MORAN, an individual, on her own behalf and on behalf of her minor son; JOHN COSS, a minor; JOHN HARRINGTON, an individual; and DAVID SPOKELY, an individual;

Case No. 1KE-14-16 CI

Plaintiffs,

v.

STATE OF ALASKA; MICHAEL HANLEY, COMMISSIONER OF ALASKA DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT, in his official capacity;

Defendants.

[PROPOSED] ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

The Court having considered Plaintiff s' Motion and Memorandum for Summary Judgment ("Motion"), and arguments for and against the Motion, HEREBY ORDERS:

The Motion is GRANTED. The required local contribution provided for in AS 14.17.410(b) ("RLC") violates Article IX, Section 7, Article IX, Section 13; and Article II, Section 15 of the Alaska Constitution. Defendants are permanently enjoined from assessing the RLC and punishing Plaintiffs for failure to pay future RLCs. Defendants shall fund the Basic Need provided for in AS 14.17.410 of the Ketchikan Gateway Borough School District notwithstanding the absence of future RLCs. Finally,

FEB 06 2014

Defendants shall refund the 2014 RLC paid by the Ketchikan Gateway Borough to the Ketchikan Gateway Borough School District.

SO ORDERED

DATED at _____, _____ this ____ day of _____, 2014.

The Honorable William B. Carey
Superior Court Judge

FEB 06 2014

K&L GATES LLP
420 L STREET, SUITE 400
ANCHORAGE, ALASKA 99501-1971
TELEPHONE: (907) 276-1969

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT KETCHIKAN, ALASKA

KETCHIKAN GATEWAY BOROUGH, an Alaska municipal corporation and political subdivision; AGNES MORAN, an individual, on her own behalf and on behalf of her minor son; JOHN COSS, a minor; JOHN HARRINGTON, an individual; and DAVID SPOKELY, an individual;

Plaintiffs,

v.

STATE OF ALASKA; MICHAEL HANLEY, COMMISSIONER OF ALASKA DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT, in his official capacity;

Defendants.

Case No. 1KE-14-00016CI

FILED in the Trial Courts
State of Alaska First District
at Ketchikan

FEB 06 2014

Clerk of the Trial Courts

By _____ Deputy

PLAINTIFFS' NOTICE TO DEFENDANTS REQUIRED UNDER AK. R. CIV. PROC. 77(b)(4)

Plaintiffs Ketchikan Gateway Borough ("Borough"), Agnes Moran, John Coss, John Harrington, and David Spokely (collectively "Plaintiffs"), by and through their counsel of record, hereby provide notice to the Defendants State of Alaska and Michael Hanley (collectively "Defendants") as follows:

Defendants have the right to file a written opposition to Plaintiffs' Motion and Memorandum for Summary Judgment, Declaratory Judgment and Permanent Injunction

("Motion") in accordance with the time limits provided for in Ak. R. Civ. Proc. 77(c)(2).

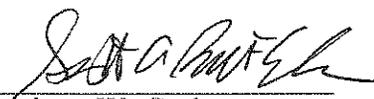
The opposition must be filed in Ketchikan, Alaska.

Dated this 6th day of February, 2014.

KETCHIKAN GATEWAY BOROUGH

By: 
Scott A. Brandt-Erichsen
Ketchikan Gateway Borough Attorney
Alaska Bar No. 8811175

K&L GATES LLP

By: 
Louisiana W. Cutler
Alaska Bar No. 9106028

Jennifer M. Coughlin
Alaska Bar No. 9306015

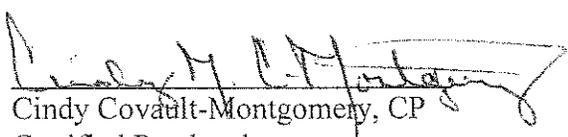
Attorneys for all Plaintiffs

K&L GATES LLP
420 L STREET, SUITE 400
ANCHORAGE, ALASKA 99501-1971
TELEPHONE: (907) 276-1969

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Margaret Paton-Walsh
Assistant Attorney General
1031 West Fourth Avenue, Suite 200
Anchorage, AK 99501

Rebecca E. Hattan
Assistant Attorney General
P.O. Box 110330
Juneau, AK 99801



Cindy Covault-Montgomery, CP
Certified Paralegal
Ketchikan Gateway Borough

Office of the
Borough Attorney
1900 1st Avenue,
Suite 215
Ketchikan, Alaska
99901
(907)228-6635
Fax(907)228-6683

Certificate of Service
KGB et al. v. SOA et al.
1KE-14-0016 CI
2 of 2