

**TESTIMONY FOR SCOTT BRANDT-ERICHSEN
FEBRUARY 24, 2014
HOUSE JUDICIARY COMMITTEE**

Mr. Chairman, Members of the Committee thank you for the opportunity to testify for you concerning House Bill 245

My name is Scott Brandt-Erichsen. I am the Borough Attorney for the Ketchikan Gateway Borough. As you are all aware, the Ketchikan Gateway Borough has brought a claim against the Department of Education and the State challenging the constitutionality of the mandatory local contribution component of the educational funding formula.

I am not here to debate the merits of that case. What I can say briefly is that the Borough's view is that the general concept for how the Constitution contemplates the State of Alaska generating and expending funds for a public purpose is a process where State revenues, regardless of their source, are deposited either in the State general fund or some other specified fund. On an annual basis the Legislature appropriates that amount from each fund that it sees fit, and that appropriation is subject to a veto by the governor, and then is administered by the executive branch.

The Borough maintains that the mandatory local contribution is a source of State revenue which is dedicated to education, and which doesn't follow that process.

The Borough's challenge is relevant, but not determinative with respect to this committee and Legislature's actions on HB 245. Apart from whether the Constitution prohibits the mandatory local contribution, the Legislature may choose, for reasons of the policy merits as discussed by Mr. Bockhorst and Rep. Tammie Wilson, to adopt HB 245. Looking at the policy merits and impacts of HB 245, one of the primary questions that people have asked is what does HB 245 do for specific districts. Notably, there is absolutely no change in the basic need amount to which each district would be entitled. The spreadsheet provided as Attachment 1 to these comments shows the estimated net change in cost to the State of providing the basic need level of education funding if HB 245 were in place in FY2014. It is set out by district. This spread sheet is based on the fiscal year 2014 projections by DEED dated November 15, 2012. The cost to the State, if it is fully funded would be about \$200 million. This corresponds directly to a dollar for dollar reduction in local property and sale tax burdens.

Where the funds come from is illustrated in the two pie charts provided as Attachment 2 showing impacts to all districts collectively, and the bar graphs (Attachments 3 and 4) with respect to some selected districts. These show an increase in the amount of federal impact aid retained by the State, and elimination of the mandatory local contribution.

Some groups have expressed concern about the possible impact of HB 245. It is instructive to look at who is concerned about this bill and why. Some school officials

have expressed concern. However, when the overall situation is explained much of that concern is resolved. HB 245 would not change the basic need amount, and thus districts would be entitled to the same amount of funds, but the money would come from different sources. A shift in sources without clear gain is perceived as a risk. This risk aversion is understandable because 1) either way the basic need is the same, so from a district perspective there is no guarantee of increased funding; and 2) if the State spends more resources to cover basic need spending, it may reduce the likelihood of more State resources being put towards increasing the base student allocation, and may reduce the availability of supplemental State funding. Essentially, these are fears of uncertainty as to potential increases in State funding.

However, these fears of uncertainty are not endorsements of an inequitable or unconstitutional system. Nor would rejection of HB 245 eliminate uncertainty. To a certain extent uncertainty as to State spending year to year is systemic and normal. Budgets may be flush or tight from year to year based largely on market factors beyond our control.

This concern is also short sighted in that it overlooks the fact that a collective 22.6% reduction in local property tax burdens (based on FY2013 figures from Alaska Taxable) would make more local resources available to increase voluntary local contributions, and could result in a net increase in funds for education. As of October 30, 2013, DEED reported FY 2014 budgeted local contributions of \$453,294,754. This represented \$221,558,397 in mandatory contributions and an additional \$231,736,357

in voluntary contributions. Using DEED's calculation of the maximum local contribution this left \$64,519,452 below the voluntary cap which could more easily be funded if the local tax burden were reduced

School districts also do not have to weigh competing demands on public funds. The legislature and local municipal officials do. Education fares well in the debate over allocation of resources, as evidenced by Governor Parnell's recommendations to increase education spending even as other types of spending are being reduced. A similar process plays out every year on the municipal level. Inflation and other factors call for increasing base student allocation and the basic need from time to time whether the State has a surplus, or a shortage.

The second concern that I've heard expressed is where the State would come up with the money for this purpose. On the one hand, the question of how the State chooses to allocate funds in any given year is always before the Legislature. Education funding, whether it is funds to replace the mandatory local contribution, funds for capital projects, or the funds that are provided as State aid currently, will always have to compete with other budget priorities. The same process plays out annually in municipal school districts as municipalities evaluate how much community tax revenues can be allocated to voluntary contributions.

The relative priority of education spending in the spectrum of State spending considerations is really a separate issue from whether the mandatory local contribution

is unfair, and, if the Borough is correct, unconstitutional. While levying and collecting a similar tax from REAA's might address the fairness issues, it would not resolve the dedicated fund defect because the Legislature could not dedicate the proceeds of such a tax to funding education in those districts. Any viable solution relies upon the State funding the basic need level on an annual appropriation basis.

On the other hand, in looking for a fund source it is helpful to view the revenues in perspective. Based on the January 23 presentation from the Department of Revenue the projected FY 2014 total of all State revenue from all sources was 12.7 billion. The \$200 million we are talking about represents less than 1.6% of that figure. The FY 2014 unrestricted general fund projection was \$4.494 billion, of which the \$200 million would be 4.5%.

The vast majority of these funds, approximately 90%, are generated from petroleum related revenues. The Department of Revenue reported a nonpetroleum revenue estimate of 571 million, or 11.6% of unrestricted general fund revenues, in its January 23, 2014, forecast for FY 2014. The total of nonpetroleum related State taxes included in this figure, estimated for FY 2014, was \$338 million.

By comparison the average annual PFD distribution in FY 2003-2012 was \$747 million. Further, the total of non-petroleum related local property and sales taxes statewide was reported in Alaska Taxable as about \$1.2 billion in 2013. Local property

taxes totaled \$882 million that year. The \$200 million represents about 22.6% of these local property taxes.

The FY 2014 total revenues from the State tax of 20 mills on oil and gas property were estimated at \$439 million, with \$100 million of that going to the State according to the January 23, 2014, Department of Revenue projections. The Supreme Court's decision issued last week upholding the increased assessment of the Trans-Alaska Pipeline System will increase the total revenues from this source by approximately 25%, or over \$100 million per year, of which the largest portion will go to the State. The State will also receive back taxes and interest. While the oil and gas property tax is but one example, clearly the State has broad ability to address revenue needs if education funding is priority.

However, the availability of funds is not, and should not be, a dominant consideration. We urge the Legislature to do the right thing by adopting HB 245 now rather than only eliminating the mandatory local contribution when the Court leaves no choice.

Based upon DEED FY 2014 Projection as of 11/2012

School District	\$5,680 Basic Need	Required Local Effort	Eligible		Impact AID Percent	Deductible		State AID	Net Gain or Loss from HB 245 if Formula is Fully Funded
			Federal Impact AID	Impact AID		Impact AID 90.0%	Impact AID		
Alaska Gateway	7,793,414	0	321,942	100.00%	289,748	7,503,666	0		
Aleutian Region	1,283,907	0	24,970	100.00%	22,473	1,261,434	-		
Aleutians East	5,941,223	615,516	683,016	42.71%	262,545	5,063,162	263,346		
Anchorage	427,251,190	94,828,797	17,862,949	46.30%	7,443,491	324,978,902	86,195,634		
Annette Island	3,981,850	0	1,757,208	100.00%	1,581,487	2,400,363	(0)		
Bering Strait	37,274,773	0	10,547,255	100.00%	9,492,529	27,782,244	(0)		
Bristol Bay	2,440,639	715,872	128,610	54.67%	63,280	1,661,487	663,403		
Chatham	3,374,034	0	188,617	100.00%	169,755	3,204,279	(0)		
Chugach	2,531,349	0	44,496	100.00%	40,046	2,491,303	(0)		
Copper River	7,039,735	0	272,259	100.00%	245,033	6,794,702	(0)		
Cordova	4,249,890	709,139	13,727	40.31%	4,980	3,535,771	701,765		
Craig	5,333,179	338,704	438,055	42.32%	166,847	4,827,628	111,301		
Delta/Greely	9,959,142	0	352,420	100.00%	317,178	9,641,964	-		
Denali	6,932,781	658,294	11,852	31.65%	3,376	6,271,111	651,003		
Dillingham	6,941,698	526,870	644,443	41.77%	242,265	6,172,563	189,136		
Fairbanks	151,471,514	26,940,883	13,001,630	56.92%	6,660,475	117,870,156	21,899,891		
Galena	19,422,476	80,489	15,048	4.88%	661	19,341,326	67,607		
Haines	4,020,872	907,376	0	58.21%	0	3,113,496	907,376		
Hoonah	2,155,958	195,429	197,387	49.57%	88,060	1,872,469	105,841		
Hydaburg	1,146,906	40,849	283,659	18.07%	46,131	1,059,926	(168,313)		
Iditarod Area	5,518,006	0	259,362	100.00%	233,426	5,284,580	0		
Juneau	51,056,952	12,464,402	0	52.60%	0	38,592,550	12,464,402		
Kake	2,091,149	75,414	326,074	29.31%	86,015	1,929,720	(132,038)		
Kashunamiut	5,266,666	0	1,947,522	100.00%	1,752,770	3,513,896	0		
Kenai Peninsula	97,940,808	22,690,959	0	51.48%	0	75,249,849	22,690,959		
Ketchikan Gateway	26,213,427	4,198,727	0	50.53%	0	22,014,700	4,198,727		
Klawock	2,246,838	147,806	600,244	73.72%	398,250	1,700,782	5,836		
Kodiak Island	29,821,818	3,806,666	1,877,029	36.81%	621,841	25,393,311	2,739,181		
Kuspuk	7,548,890	0	1,679,850	100.00%	1,511,865	6,037,025	-		
Lake & Peninsula	9,447,828	391,926	1,624,255	27.25%	398,349	8,657,553	(671,555)		
Lower Kuskokwim	73,077,517	0	17,137,316	100.00%	15,423,584	57,653,933	(0)		

Based upon DEED FY 2014 Projection as of 11/2012

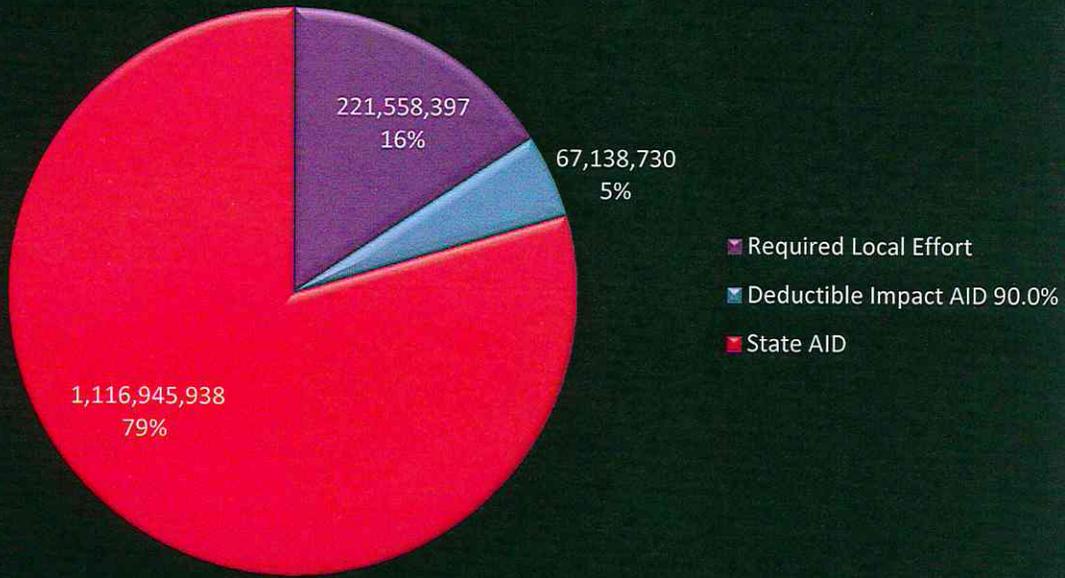
Lower Yukon	40,515,781	0	9,160,843	100.00%	8,244,759	32,271,022	0
Mat-Su	161,047,596	25,355,209	0	50.76%	0	135,692,387	25,355,209
Nemana	6,505,247	75,994	0	58.67%	0	6,429,253	75,994
Nome	9,220,117	834,289	30,236	40.70%	11,075	8,374,753	818,152
North Slope	28,657,986	12,573,041	3,685,919	37.73%	1,251,628	14,833,317	10,507,342
Northwest Arctic	37,221,097	2,216,005	4,206,871	44.16%	1,671,979	33,333,113	101,800
Pelican	404,643	39,553	0	73.71%	0	365,090	39,553
Petersburg	6,659,346	901,121	0	48.60%	0	5,758,225	901,121
Pribilof	1,930,178	0	563,287	100.00%	506,959	1,423,219	0
Saint Mary's	3,152,684	36,034	0	46.20%	0	3,116,650	36,034
Sitka	16,436,273	3,051,149	20,659	56.96%	10,591	13,374,533	3,043,147
Skagway	1,018,481	425,600	0	37.63%	0	592,881	425,600
Southeast Island	5,116,998	0	0	100.00%	0	5,116,998	-
Southwest Region	12,999,305	0	3,779,752	100.00%	3,401,777	9,597,528	0
Tanana	1,186,893	24,863	88,096	100.00%	79,286	1,082,744	24,863
Unalaska	5,935,941	1,462,492	22,362	50.78%	10,220	4,463,229	1,452,586
Valdez	7,766,662	3,576,713	14,807	43.70%	5,824	4,184,125	3,569,211
Wrangell	4,443,862	470,852	1,037	30.13%	281	3,972,729	470,200
Yakutat	1,634,988	181,364	184,147	35.65%	59,084	1,394,540	74,716
Yukon Flats	7,841,240	0	567,343	100.00%	510,609	7,330,631	0
Yukon/Koyukuk	12,189,394	0	452,806	100.00%	407,525	11,781,869	(0)
Yup'it	9,083,115	0	2,914,860	100.00%	2,623,374	6,459,741	-
Mt. Edgecumbe	3,898,809	0	863,665	100.00%	777,299	3,121,510	1
TOTALS:	1,405,643,065	221,558,397	98,797,886		67,138,730	1,116,945,938	199,779,030

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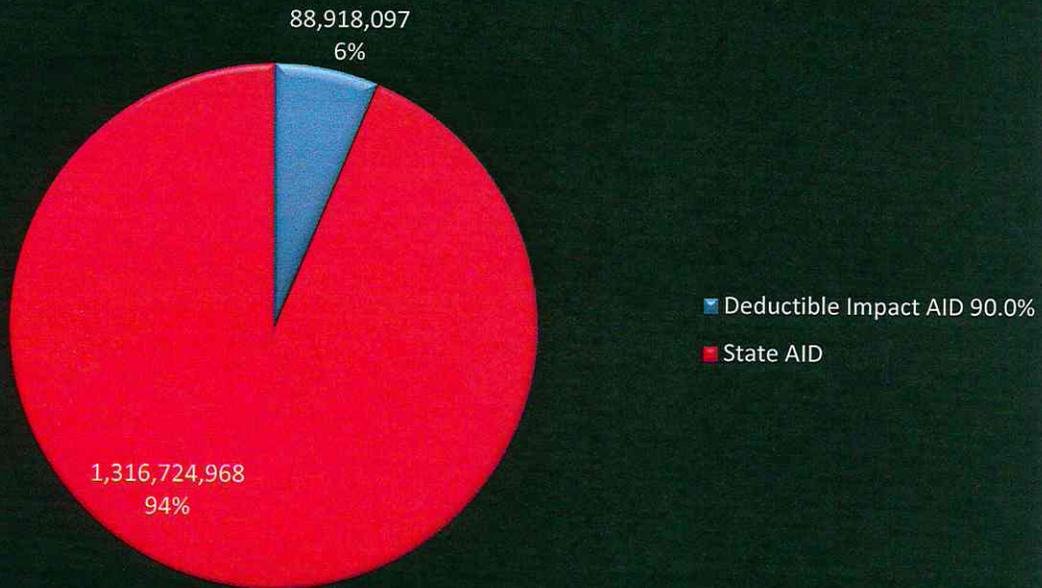
Required Local Effort	Deductible Impact AID 90.0%	State AID
221,558,397	67,138,730	1,116,945,938

Total 1,405,643,065

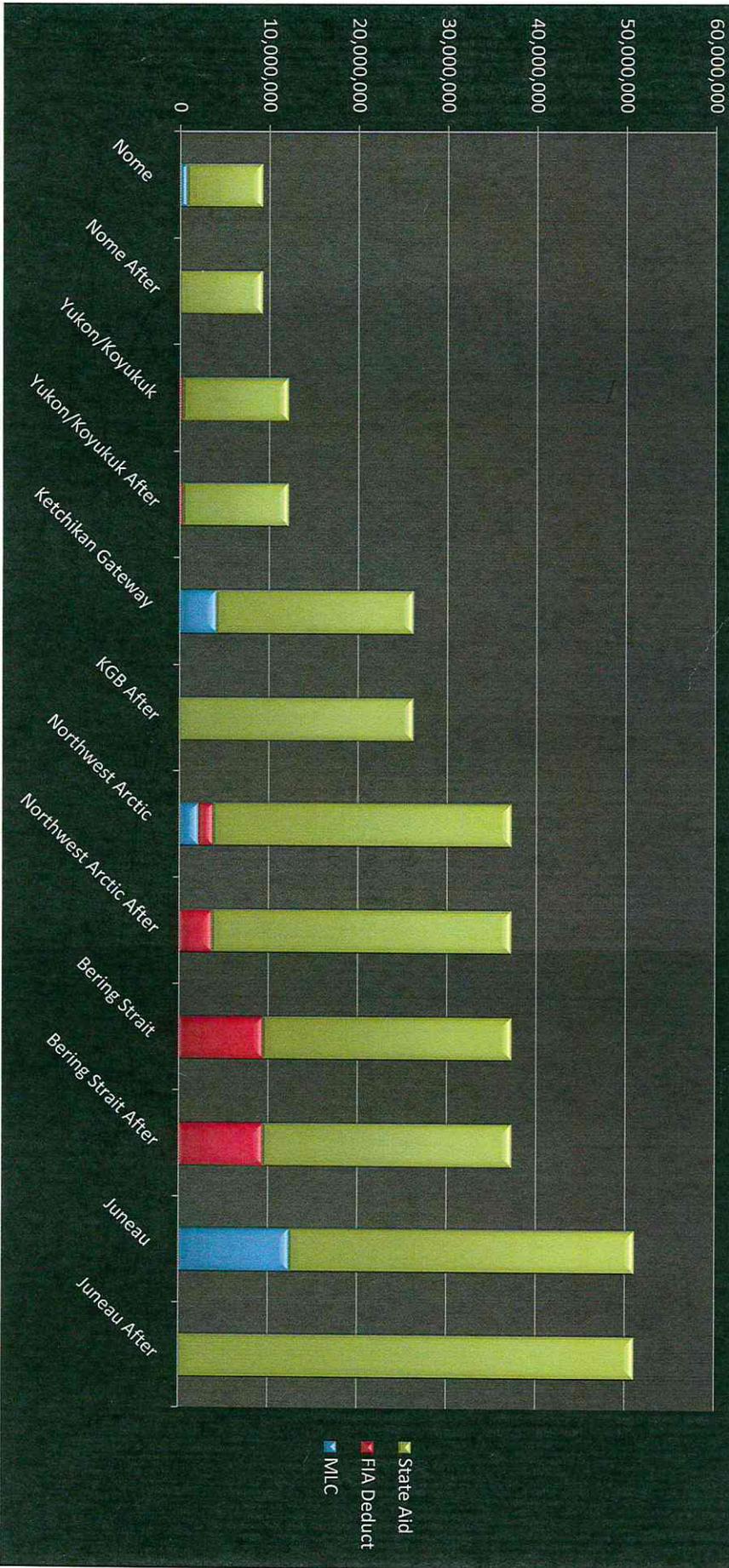
Before HB 245



After HB 245



Cost Impact



Cost Impact

