MATERIALS CALLING FOR FULL STATE FUNDING OF BASIC NEED FOR CITY AND BOROUGH SCHOOL DISTRICTS

FEBRUARY 2013

KETCHIKAN GATEWAY BOROUGH

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Office of the Borough Manager

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KETCHIKAN GATEWAY BOROUGH

RESOLUTION NO. 2451

A RESOLUTION OF THE KETCHIKAN GATEWAY BOROUGH ASSEMBLY REGARDING STATE UNDERFUNDING OF BASIC NEED FOR SCHOOLS

RECITALS

A. **WHEREAS**, the State of Alaska has a constitutional duty that no other unit of government shares to "establish and maintain a system of public schools," including an obligation to provide adequate funding for schools; and

B. **WHEREAS**, adequate funding for schools is represented by "Basic Need," which the Alaska Department of Education and Early Development has defined as the level of funding that "provides all districts with needed resources," and which is determined for each of Alaska's 53 school districts by formulae in AS 14.17.410 based on enrollment; school size; district cost differentials; special needs in providing special education, gifted and talented education, vocational education, and bilingual education services; secondary school vocational and technical instruction; intensive needs for students with disabilities; and correspondence students; and

C. **WHEREAS**, the State of Alaska underfunds Basic Need for the Ketchikan Gateway Borough and 33 other school districts by a "required local contribution" set out in AS 14.17.410(b)(2); at the same time, the State exempts 19 other school districts from the same required local contribution; and

D. **WHEREAS**, the required local contribution has a crushing fiscal impact upon the Ketchikan Gateway Borough, amounting to $60,915,111 or $27,994 per student during the years that Ketchikan's Class of 2013 has attended school; and

E. **WHEREAS**, as outlined in the Borough Manager's *Report Regarding State Underfunding of Basic Need for Schools* ("Report"), which is incorporated in this resolution by reference, the solemn trust between the State of Alaska and citizens of the Ketchikan Gateway Borough created under the Mandatory Borough Act is violated by depriving the Ketchikan Gateway Borough of full funding of Basic Need for Ketchikan's schools; and

F. **WHEREAS**, for reasons noted in the Report, the required local contribution serves no *justifiable* public purpose; and

G. **WHEREAS**, for reasons noted in the Report, the required local contribution is a *de facto* State tax, unlawfully dedicated; and

H. **WHEREAS**, the required local contribution for schools results in unequal treatment of classes for reasons stated in the Report; and

I. **WHEREAS**, as described in the Report, the required local contribution impairs local self-government; and

J. **WHEREAS**, the State of Alaska has never fully carried out constitutional requirements concerning boroughs, which has fostered constitutional infirmities and other problems relating to the required local contribution noted in the Report.

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE FACTS, IT IS RESOLVED BY THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH as follows:

Section 1. The Assembly of the Ketchikan Gateway Borough hereby accepts the *Report Regarding State Underfunding of Basic Need for Schools* ("Report") dated January 15, 2013, and prepared by the Borough Manager (copy attached). Further, the Assembly incorporates the Report in this resolution, and adopts the Report as findings and conclusions by the Assembly with respect to underfunding of Basic Need for schools.

Section 2. Borough officials are directed to pursue efforts to convince State executive branch and legislative branch officials to repeal the required local contribution.

Section 3. The Borough Manager, in consultation with the Borough Attorney and Robert Hicks (the attorney with whom the Borough has contracted for a specific review of legal issues relating to education funding) shall prepare a report to the Assembly by June 30, 2013, with recommendations for action with respect to the following options:

1. Continue efforts to convince State executive branch and legislative branch officials to repeal the required local contribution.
2. Use the voter initiative process to repeal the required local contribution.
3. Initiate litigation with respect to the required local contribution.

Section 4. A copy of this resolution including the attached Report shall be provided to the following:

a) The Honorable Sean Parnell, Governor;
b) The Honorable Charlie Huggins, Senate President;
c) The Honorable John Coghill, Senate Majority Leader;
d) The Honorable Kevin Meyer, Senate Finance Committee Co-Chair;
e) The Honorable Pete Kelly, Senate Finance Committee Co-Chair;
f) The Honorable Gary Stevens, Senate Education Committee Chair;
g) The Honorable Bert Stedman, Senator, District Q;
h) The Honorable Mike Chenault, House Speaker;

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g) The Honorable Bert Stedman, Senator, District Q;
h) The Honorable Mike Chenault, House Speaker;
i) The Honorable Lance Pruitt, House Majority Leader;
j) The Honorable Bill Stoltze, House Finance Committee Co-Chair;
k) The Honorable Alan Austerman, House Finance Committee Co-Chair;
l) The Honorable Lynn Gattis, House Education Committee Chair;
m) The Honorable Peggy Wilson, Representative, District 33;
n) The other 33 borough and city governments that operate school districts; and
o) The Honorable Mike Hanley, Commissioner, Alaska Department of Education and Early Development.

Section 5. This Resolution shall be effective immediately.

ADOPTED this 21st day of January, 2013.

Dave Kiffer, Borough Mayor

ATTEST:

Kacie Paxton, Borough Clerk

APPROVED AS TO FORM:

Scott A. Brandt-Erichsen, Borough Attorney

EFFECTIVE DATE:	JANUARY 21, 2013		
ROLL CALL	**YES**	**NO**	**ABSENT**
Bailey	✓		
Moran	✓		
Painter	✓		
Phillips	✓		
Rotecki	✓		
Thompson			✓
Van Horn	✓		
Mayor (tie votes only)			
4 AFFIRMATIVE VOTES REQUIRED FOR PASSAGE			

KETCHIKAN GATEWAY BOROUGH
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Office of the Borough Manager

MEMORANDUM

To: The Honorable Mayor and Assembly, Ketchikan Gateway Borough

From: Dan Bockhorst, Borough Manager DB

Date: January 15, 2013

Subject: Report Regarding State Underfunding of Basic Need for Schools

The Ketchikan Gateway Borough faces severe fiscal challenges.[i] Yet, the largest Borough outlay is one over which Borough officials literally have no control: the "required local contribution" for schools mandated by AS 14.17.410(b)(2).

The required contribution has a crushing fiscal impact on the Ketchikan Gateway Borough. To be exact, during the years that Ketchikan's Class of 2013 has attended school, the cost has been $60,915,111 or $27,994 per student.[ii] That figure will climb significantly in the years ahead unless changes are made. Currently, the required contribution consumes two-thirds of the Borough's areawide property tax levy.[iii]

Elimination of the required contribution by political or legal means will not come easily or quickly. Officials of the Ketchikan Gateway Borough have diligently pursued relief for the last five years. We have pleaded with Alaska's governors and lieutenant governors, State legislators, the Alaska Municipal League, the Alaska Municipal Management Association, and officials of other affected local governments.[iv]

Regrettably, State executive and legislative branch officials have yet to show any willingness to repeal the required contribution.[v] Officials of a number of the other 33 affected local governments have expressed support for the Borough's efforts.

Reasons for the elimination of the required local contribution abound. The following lists seven of the more compelling reasons to repeal the required contribution:

1. the required contribution violates a solemn trust between the State of Alaska and its citizens;
2. the required contribution serves no *justifiable* public purpose;
3. Alaska's Constitution imposes on the state government an exclusive duty to fully fund the equivalent of "basic need;"
4. the required contribution is a *de facto* state tax, unlawfully dedicated;
5. the required contribution results in unequal treatment of classes;
6. the required contribution impairs local self-government; and
7. the State has never fully carried out constitutional requirements concerning boroughs.

Three methods hold promise for elimination of the required contribution:

1. convince elected State officials to repeal the required local contribution;
2. use the voter initiative process to repeal the required local contribution; or
3. litigation.

The seven principal arguments for change and three options to bring about change are explored below.

Seven Arguments for Repeal of the Required Local Contribution

1. The Required Contribution Violates a Solemn Trust Between the State of Alaska and its Citizens.

State officials have frequently criticized the federal government for violating the Alaska Statehood Compact. In 1993, Governor Hickel went so far as to bring a lawsuit against the federal government.

The 1994 Alaska State Legislature, through *Legislative Resolve 33* "strongly" supported Governor Hickel's action. Later, on the fiftieth anniversary of statehood, former Governor Walter Hickel reflected on the outcome:[vi]

> *For the Ketchikan Gateway Borough and its citizens, the Mandatory Borough Act is the moral equivalent of the Alaska Statehood Act*

> In 1993, as governor, I sued the federal government . . . . By the time that case went to trial I had left office, and it was halfheartedly pursued and poorly framed by those in charge.
>
> One day . . . a successor will recast that landmark lawsuit and take it to the U.S. Supreme Court and, if necessary, to the World Court. Because if the U.S. government fails to keep its promises to its own people, what can the rest of the world expect?

For the Ketchikan Gateway Borough and its citizens, the Mandatory Borough Act is the moral equivalent of the Alaska Statehood Act. In the Mandatory Borough Act, the State of Alaska promised that "No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation." (Section 1 Chapter 52, Session Laws of Alaska 1963). The required contribution violates that guarantee; a fact that has been acknowledged by multiple State agencies.[vii] Yet, as recently as two weeks ago, Borough officials were told by an elected State official that the current legislature cannot be bound by a prior legislature. To paraphrase Walter Hickel: the State doesn't have to keep its promises to its own people.

With respect to legislative intent of that Act, John L. Rader, sponsor of the Mandatory Borough Act, stated:

> Our present system of local government is inadequate and cannot be made adequate because of constitutional limitations. Because of the vast size of Alaska, local government is even more important than in the smaller states. State government invariably forces administration from great distances. This is expensive, undesirable and, in fact, impractical when it comes to the solution of local problems. **<u>People should</u>**

> **be encouraged to form local government** on boundaries which they draw themselves. Local government must be attractive, not only as a political theory, but as a practical reality. **This demands the giving of funds, assets and revenues to local governments** so that they can truly participate in the development of their own areas. (Emphasis added. *Metropolitan Experiment in Alaska: A Study of Borough Government*, pp. 105-106.)

Instead of creating incentives to form boroughs as intended by the framers of our Constitution; instead of ensuring that boroughs are not deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation as called for in the Mandatory Borough Act; the State has shifted major responsibility for operation of schools to the Ketchikan Gateway Borough but currently gives the Borough less than 82 cents of every dollar needed to provide adequate funding for our schools. That has cost the Ketchikan Gateway Borough nearly $61 million ($27,994 per student) since 2000.

Niccolo Machiavelli said that "The promise given was a necessity of the past: the word broken is a necessity of the present." In this particular case, the "promise given" was a "necessity of the past." It was an enticement to Ketchikan voters to form a borough under the Mandatory Borough Act. It was also necessary to convince reluctant legislators and the governor in 1963 to answer Representative John Rader's plea to enact legislation in the fifth year of statehood to require creation of certain boroughs before the opportunity to do so was lost.[viii]

While the 1963 "promise given was a necessity of the past," there is no "necessity of the present" to break that promise. That fact is demonstrated in the segment below.

Ketchikan voters were the first in Alaska to accept the State's 1963 promise and incorporate a borough. Thus, it is a particular affront to citizens of Ketchikan when State officials don the Machiavellian mask and dismiss the 1963 promise as not legally binding on current legislators. Ideally, they would follow the advice of William Penn who urged, "Rarely promise, but, if lawful, constantly perform."

2. The Required Local Contribution Serves No *Justifiable* Public Purpose.

The State of Alaska currently has more than $16 billion in budget reserves, and more than $44 billion in its Permanent Fund. In each of the last three successive years, the State has attained a higher pinnacle of financial achievement owing in large part to its "exceptionally large reserves."[ix]

Why is the Ketchikan Gateway Borough, which is facing severe and growing fiscal challenges . . . forced to make up State underfunding of basic need which only serves to add to the already "exceptionally large reserves" of the State of Alaska?

It is notable that at a time when it had far less financial capability than it currently has, the State fully funded basic need. The House Research Agency of the Alaska State Legislature observed a quarter-century ago that the State's increasing commitment to education and its growing fiscal capacity had led to full State funding of basic need and the elimination of required local contributions:

> In reviewing the history of education organization and funding in Alaska several trends become apparent. The most striking is the steadily increasing level of State support for education. After statehood, the reimbursement system was replaced by a foundation formula which required local districts to pay a portion of local education costs, but also made the State a more active participant in funding education. The second foundation formula [implemented in 1971], fueled by revenue from Prudhoe Bay, eventually eliminated required local effort and increased State aid to 100 percent of basic need . . . (*PUBLIC SCHOOL FINANCING IN ALASKA*, *House Research Agency Report 87-A*, House Research Agency, Alaska State Legislature, p. 9 (February 1987)).

The collapse of oil prices in the mid-1980s likely led the State to retrench from full funding of basic need. However, the current unprecedented financial strength of the State of Alaska begs the question: What *justifiable* public purpose is served by the required local contribution?

That key question is vital in terms of any political debate on the matter. Moreover, given the disparate application of the required local contribution law (only 34 of Alaska's 53 school districts are subject to the requirement), the question is also a critical one in terms of any legal challenge.[x]

The required local contribution serves only to further the financial interests of the State of Alaska.[xi] The $60 billion in State reserves and permanent fund monies for a statewide population of 722,190 is equivalent to Ketchikan Gateway Borough (population 13,686) having reserves and a permanent fund well in excess of a billion dollars ($1,137,041,499). The Borough's General Fund reserve is a tiny fraction of that figure – only $5 million.

Thus, the ultimate question that must be asked and answered is: Why is the Ketchikan Gateway Borough, which is facing severe and growing fiscal challenges and has General Fund reserves sufficient to pay just 14 months' of the required local contributions, forced to make up State underfunding of basic need which only serves to add to the already "exceptionally large reserves" of the State of Alaska?

3. Our Constitution Imposes on the State Government an Exclusive Duty to Fully Fund the Equivalent of "Basic Need."

Art. VII, §1 of the Alaska Constitution creates a duty for the State to "establish and maintain a system of public schools." The Alaska Supreme Court, in *Macauley v. Hildebrand*, 491 P.2d 120, 122 (Alaska 1971), held that the "constitutional mandate for pervasive state authority in the field of education could not be more clear . . . the language is mandatory, not permissive . . . the section not only requires that the legislature 'establish' a school system, but also gives to that body the continuing obligation to 'maintain' the system . . . the provision is unqualified; no other unit of government shares responsibility or authority."

Superior Court Judge Sharon L. Gleason held in *Moore, et al. v. State of Alaska*, 3AN-04-9756 CI, p. 174 (June 2007) that the State's constitutional obligation to maintain a system of public schools includes the duty to provide adequate funding.

Adequate funding is represented by "basic need." The Alaska legislature has enacted formulae in AS 14.17.410 that take into account many factors to determine the "basic need" for each of Alaska's 53 school districts. These factors include enrollment; school size; district cost differentials; special needs in providing special education, gifted and talented education, vocational education, and bilingual education services; secondary school vocational and technical instruction; intensive needs for students with disabilities; and correspondence students.

> *"[Art. VII, §1] not only requires that the legislature 'establish' a school system, but also gives to that body the continuing obligation to 'maintain' the system . . . the provision is unqualified; no other unit of government shares responsibility or authority."*

The Alaska Department of Education and Early Development has defined "basic need" as the level of funding at which "all districts are considered equal" and that "provides all districts with needed resources" (*Public School Funding Formula*, Alaska Department of Education and Early Development; p. 8, January 15, 2001).

State education aid to the Ketchikan Gateway Borough equals "basic need" minus the required local contribution. As noted at the beginning of this memorandum, the underfunding of basic need for Ketchikan's schools was nearly $61 million (nearly $28,000 per student) during the years that the Class of 2013 has been in school.[xii] Thus, the State fails by a huge margin to fully fund basic need for Ketchikan's schools.

4. The Required Local Contribution is an Unlawful Dedicated State Tax.

The required local contribution mandated by AS 14.17.410(b)(2) is a *de facto* State tax. Moreover, the *de facto* tax is a "stealth tax" – one that is levied in such a way that is not recognized as a State tax.[xiii] The State requires the contribution and the State exclusively benefits from that contribution in the form of a reduction in its own constitutional obligation to provide adequate funding for schools (i.e., basic need). The tax is levied according to the taxable value of property. These characteristics make it a *de facto* State tax on boroughs as well home-rule and first-class cities outside boroughs.

This *de facto* State tax is dedicated to funding education even though Alaska's Constitution prohibits dedication of State taxes except in instances not applicable here. Specifically, Art. IX, §7 provides 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 [Alaska Permanent Fund] or when required by the federal government for state participation in federal programs . . . ."

This stealth State tax is critically flawed in other respects. Tax equity was a principal goal of the Mandatory Borough Act of a half-century ago. Yet, Alaskans who reside within REAAs – 19 of the State's 53 school districts (36%) – are exempt from the *de facto* tax. Careful study has shown that educational service areas include "some of the most prosperous regions of the State of Alaska," while a number of borough and city school districts are "economically distressed" (*Local Contributions to Public Education in Alaska*, Robert Hicks, p. 55 (February 2012)).

Applied nationally, Alaska's approach of exempting 36% of the districts from the *de facto* tax without a rational basis is analogous to the federal government exempting residents of 18 states (36%) from federal income taxes while taxing the remaining 32 states.

Another concern relates to classifications with disparate treatment concerning full value determinations upon which the *de facto* tax is based. Eleven of the 34 municipalities subject to the *de facto* State tax do not levy property taxes while the remaining 23 do. The 23 municipalities that levy property taxes spend more than $17 million annually just to maintain accurate assessments.[xiv] While the State relies on the assessment data of the 23 municipalities that levy property taxes in making full value determinations for those municipalities; the State has no such local data for the remaining 11 municipalities. Those 11 municipalities combined encompass an area larger than any of 39 states in our nation. With a personnel budget of $289,683, the two-person State office charged with making full value determinations in those 11 governments cannot possibly determine the full and true value for such a vast area with no local assessment data to the same standard that it does for the other 23. Using the analogy of federal income tax, the lack of tax records for those 11 districts is comparable to having no income tax records reported to the IRS for 10 of the 32 taxed states, leaving a small crew of IRS auditors to "guess" at income for those residents.

This de facto State tax is dedicated to funding education even though Alaska's Constitution prohibits dedication of State taxes.

5. The System Produces Unequal Treatment.

Nineteen school districts organized as "educational service areas" (regional educational attendance areas or REAAs) receive full funding equal to basic need in the form of State aid plus 90% of federal impact aid. The 34 municipal school districts do not. This creates disparate classes of school districts.

The State underfunds basic need payments to municipal districts by an amount equal to a 2.65 mill levy on the full and true value of taxable property or 45% of basic need, whichever is less.

Ketchikan receives less than 82 cents of every dollar needed to adequately fund education.

The 45%-of-basic-need limitation gives rise to further disparities in the form of unequal tax rates on those subject to the *de facto* tax. Thirty-one of the municipal governments pay a proportional *de factor* State tax at a rate of 2.65 mills; the remaining three – those with substantially greater tax bases than the other thirty-one – pay regressive tax rates ranging from the equivalent of just 0.7 mills to 1.5 mills.

The Ketchikan Gateway Borough is projected to receive 81.75% of basic need in the current fiscal year. In other words, Ketchikan receives less than 82 cents of every dollar needed to adequately fund education.

The unequal treatment of districts in terms of taxes (i.e., no taxes for 19 districts; taxes using a proportional rate for 31 districts, and taxes using regressive rates for three districts) gives rise to a number of legal and public policy concerns. Although equal protection claims were litigated in the *Matanuska-Susitna Borough* case, that litigation failed to address many relevant facts and issues. Too, as Governor Hickel observed with regard to the lawsuit he initiated regarding the Statehood Compact, the appeal was "halfheartedly pursued and poorly framed by those in charge" after he left office. The *Matanuska-Susitna Borough* case may have suffered from the same circumstances as it dragged on for eleven years.

An extensive contemporary review of the *Matanuska-Susitna Borough* case and other aspects of education funding in Alaska, has led Robert Hicks, an esteemed legal scholar, to conclude that the *Matanuska-Susitna Borough* case "is a weak and vulnerable precedent."[xv]

Alaska's Constitution not only provides that all Alaskans are "equal and entitled to equal rights" but that "all persons have corresponding obligations to the people and to the State." Clearly, not all Alaskans have the same obligations when it comes to education.

6. The Required Local Contribution Impairs Local Self-Government.

"Maximum local self-government" was foremost in the minds of those who wrote the local government article of Alaska's Constitution. Art. X, §1 provides, "The purpose of [the local government] article is to provide for maximum local self-government . . ."

Clearly, the authority and discretion of the Ketchikan Gateway Borough Assembly to exercise fiscal policy – a principal component of "maximum local self-government – is greatly compromised by the required local contribution.

The State's mandatory local contribution severely impairs local self-government. As noted above, the Ketchikan Gateway Borough has been required by State law to pay nearly $61 million (nearly $28,000 per student) in the past thirteen years to fund that portion of basic need for Ketchikan's schools that the State has failed to pay. The mandated *de facto* State tax constitutes two-thirds of the current areawide property tax levy of the Ketchikan Gateway Borough.

Clearly, the authority and discretion of the Ketchikan Gateway Borough Assembly to exercise fiscal policy – an essential component of "maximum local self-government – is deeply wounded by the required local contribution.

The Assembly has far less ability to levy taxes without unduly straining local citizens because the State preempts the Assembly by mandating that the Borough collect the stealth State tax. Consequently, the

Assembly is far less able to provide adequate funding for essential needs. These circumstances violate the principle of maximum local self-government.

The State of Alaska has rightfully criticized the federal government in the past for imposing unfunded mandates. For example, in his FY 2012 State Budget Address, Governor Parnell stressed that he had excluded from his budget proposal "the $123 million annual increase in mandated coverage that the Federal Government gifted us." He explained, "They made this mess, and I'm challenging them to clean it up and fund it." By the same token, the State should fully fund basic need.

7. These Problems Continue Because the State has Never Fully Carried Out Constitutional Requirements Concerning Boroughs.

The constitutional infirmities and many of the other problems noted above exist because the State maintains two vastly different systems for delivery of services. In one, the State shifts major responsibilities and fiscal burdens to local residents. In the other, the State is content to allow local citizens to avoid responsibility. There is no rational basis for this disparity.

These circumstances have severely arrested the development of borough government in Alaska. That, in turn, has brought about the infirmities noted in this report.

This problem exists because the State has clearly failed to comply with Art. X, §3, which provides:

> The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

Specifically, no "manner" and "standards" have ever been "provided by law" for the establishment of unorganized boroughs. Moreover, the single unorganized borough is a huge, non-contiguous, amorphous area that lacks the "common interests to the maximum degree possible" required by our Constitution.

This neglect to carry out a clear constitutional mandate has severely arrested the development of borough government in Alaska. That, in turn, has allowed the infirmities noted in this report to exist.

As long as organized areas and unorganized areas exist where boroughs are "deprived of state services, revenues, or assistance or … otherwise penalized" the State will always be at fault in terms of meeting its guarantees under the Mandatory Borough compact.

As long as organized areas and unorganized areas exist where boroughs must pay hundreds of millions of dollars annually toward basic need, while REAAs, regardless of fiscal capacity, avoid that responsibility, the State will be responsible for allowing disparate classifications of citizens. It will also be culpable in terms of impairing local self-government.

Three Options for Repeal of the Required Local Contribution

Repeal of the required local contribution will eliminate the problems noted above.

There are three principal means of bringing about the repeal of the required local contribution.

1. Continue to Urge Elected State officials to Repeal the Required Local Contribution.

If State officials can be convinced of the need to do so, this would be the fastest, easiest, and least expensive option. After all, as noted herein, the 2012 Legislature, with assistance from the executive branch, introduced and passed major changes to the law at issue in just two days (Sections 3, 7, and 8 of *HOUSE CS FOR CS FOR SENATE BILL NO. 182(FIN)*).

The likelihood of success of this option, however, is a major question. As noted in this report, State officials have shown no interest in repealing the law over the past five years. The Borough will again address local funding issues during the visit to Juneau planned for next month, thus exercising yet another attempt at this option.

2. Use the Initiative Process to Repeal the Required Local Contribution.

An initiative allows voters to introduce and enact laws. The initiative process may not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. None of those limitations would prohibit the repeal of the required local contribution by initiative.

This option probably has the greatest chance for success. Given the compelling arguments involved, it is easy to imagine that voters would embrace repeal of the required contribution. This option would also be faster and less expensive than litigation.

The initiative petition process is outlined below.

Application Process:
1. Preparation of language by an initiative petition committee for the application.
2. Collection of signatures by the initiative petition committee of 100 qualified voters who agree to act as sponsors for petition circulation purposes.

3. Present application to the Lieutenant Governor for review with assistance from the Department of Law and Division of Elections.
4. Notification by the Lieutenant Governor if the application is certified or denied.
5. If certified, the Lieutenant Governor will provide the ballot title and the true and impartial summary to the initiative committee.

Initiative Petition Booklet Process

1. Upon notification that an application is certified, the Division of Elections prepares 500 initiative petition booklets for the initiative committee.
2. Upon notification to the initiative committee by the Division of Elections that the booklets are ready for distribution, the initiative committee has 365 days to collect signatures of qualified voters.
3. The initiative committee must gather signatures of qualified voters equal in number to 10 percent of those who voted in the preceding General Election and are residents of at least three-fourths of the house districts and who, in each of the house districts, are equal in number to at least seven percent of those who voted in the preceding General Election in the house district.
4. The initiative committee files the initiative petition with the Division of Elections.

Signature Review Process

1. The Division of Elections reviews the signatures.
2. Lieutenant Governor notifies the initiative committee whether there were enough qualified signatures for the initiative to appear on the ballot.

Preparation of the ballot language if successful.

1. Lieutenant Governor prepares a ballot title and proposition summarizing the proposed law, and places the measure on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing.
2. If, before the election, substantially the same measure has been enacted, the petition is void.

Enactment

1. If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted.
2. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected.
3. An initiated law becomes effective ninety days after certification, is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time.

3. Litigation.

While our arguments for repeal of the required local contribution are compelling, litigation is expensive and time consuming. Some of the issues raised by the Borough were litigated in the *Matanuska-Susitna Borough* case. While that litigation failed to address many relevant facts and issues and may have suffered from a prolonged – 11-year – struggle, the court also seemed reluctant to venture into what it considered to be political issues. Still, the contemporary review of the *Matanuska-Susitna Borough* case by Mr. Hicks suggests it is a "weak and vulnerable precedent."

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[i] This topic was addressed in an 8-page memorandum dated May 31, 2012, from the Borough Manager to the Mayor and Assembly (see Agenda Item 9c for June 4, 2012 Assembly meeting). The following constitute the more significant challenges ahead:

(1) The potential loss of Federal Secure Rural Schools funding, a program that provided $1,177,561 to the Borough in FY 2013, and has been in place in its current or prior form (National Forest Receipts) for the past 105 years (since 1908). The funding compensates for the loss of property tax revenue from tax-exempt national forest lands, of which there are 3,052,216 acres within the corporate boundaries of the Ketchikan Gateway Borough. Based on the current assessed value of taxable property within the Borough ($1,269,523,500), the potential loss is equivalent to a 0.93-mill areawide levy.
(2) The potential loss of Federal Payments in Lieu of Taxes, a program that provided $1,038,263 to the Borough in FY 2013. That program has been in place since 1976 to help offset losses in property taxes due to nontaxable federal lands, which constitute 96.5% of the lands within the corporate boundaries of the Borough. This potential loss is equivalent to a 0.82-mill areawide levy.
(3) A $1,840,307 General Fund deficit in the Borough's FY 2013 Budget. The deficit is equivalent to a 1.45-mill areawide levy.
(4) A determination that the Ketchikan Gateway Borough School District is ineligible for Federal Impact Aid. The District had conservatively estimated that it would receive $165,000 in FY 2013 from the program. The Federal Impact Aid program has been in place since 1940, and is intended to offset lost property tax revenue due to the presence of tax-exempt federal property, including that of federally connected children, including children living on Indian lands. This loss is equivalent to a 0.13-mill areawide levy.

[ii] The per-student figure is calculated using the latest (2012) student count of 2,176 students determined under AS 14.17.600.

[iii] The figure of two-thirds of the areawide levy is strictly for the required local contribution for operation of schools. If the State-mandated local share of school-related debt service (another unfunded mandate) were included, along with the supplemental discretionary funding provided by the Borough under AS 14.17.410(c), the amount is equivalent to 100% of the Borough's areawide property tax levy and nearly 25% of its areawide sales tax levy.

[iv] In November 2007, the Borough Mayor wrote to Governor Palin, Senator Stedman, Representative Johansen, and the mayors of each of the other sixteen organized boroughs then extant to express concern about the required local contribution and the 1963 promise in Chapter 52 SLA 1963 that boroughs would not be penalized.

In 2008, the Assembly adopted Resolution 2117 urging change of the required contribution. A copy of that resolution was sent to Governor Palin, Senator Stedman, Representative Johansen, the Commissioner of the Alaska Department of Education and Early Development (DEED), the Commissioner of the Alaska Department of Commerce, Community, and Economic Development (DCCED, the constitutional "local government agency"), and the State Attorney General. On September 8, 2008, Governor Palin responded that she had "asked the departments of Law; Commerce, Community, and Economic Development; and Education and Early Development to review the material provided and the issues brought forward." The Borough provided to each of the other 33 municipal governments subject to the required local contribution, a copy of the letter in which Governor Palin requested the review by key agencies. On July 3, 2009, Governor Palin resigned from office. The Borough was never advised whether the review by the three agencies noted ever took place, nor the results if such review was conducted.

Also in 2008, the Borough Mayor and Manager met with Lieutenant Governor Sean Parnell regarding the matter. The Borough brought the issue to the fore during the Alaska Municipal League's 2008 annual local government conference, which was held in Ketchikan. That same year, the Ketchikan Gateway Borough School Board also adopted a resolution (#09-03) addressing the matter.

In 2009, the Assembly adopted Resolution 2182 regarding the matter. Also in 2009, the Borough Manager made a presentation on the topic during the Alaska Municipal Management Association's annual meeting. The Bristol Bay Borough Assembly adopted a resolution similar to Ketchikan's Resolution 2182.

In January of 2011, the Ketchikan Gateway Borough Assembly adopted Resolution 2296 calling on the legislature to eliminate the required local contribution penalty. The Assembly also adopted Resolution 2297 opposing the repeal of the 50% Rule which was enacted in 2001 to reduce the annual increase of the required contribution. Both resolutions were sent to Senator Stedman, Representative Johansen, and the Alaska Municipal League.

In June of 2011, the Borough retained the services of Robert Hicks, an esteemed Alaska attorney with 40 years' of experience in municipal and education law to evaluate the Borough's concerns over the required local contribution. On February 17, 2012, Mr. Hicks presented to the Borough his first of three planned volumes of work. Volume I comprised a 61-page analysis of education funding accompanied by 75 pages of appendices.

On February 21, 2012, Mayor Kiffer, Assembly Member Moran, School Board Member Harrington, and the Borough Manager met with the DEED Commissioner to present Mr. Hicks' Volume I report and to discuss the topic. A similar meeting was held the following day with Assembly Member Moran, School Board Member Harrington, the Borough Manager, and the DCCED Commissioner.

On July 25, 2012, the Borough Mayor and Borough Manager met with Lieutenant Governor Mead Treadwell. A prominent topic of discussion was the Borough's concern over the required local contribution.

On November 14-15, 2012, Assembly Member Moran and the Borough Manager met on the topic in separate sessions with officials of the Municipality of Anchorage, Fairbanks North Star Borough, Matanuska-Susitna Borough, and Kenai Peninsula Borough. On December 5, 2012, Assembly Member Moran and the Borough Manager held a follow up meeting collectively with officials of the Municipality of Anchorage, Fairbanks North Star Borough, Matanuska-Susitna Borough, and Kenai Peninsula Borough. Assembly Member Moran and the Borough Manager have also recently communicated on the matter with officials of the City of Hydaburg, City of Klawock, and the Petersburg Borough.

On January 4, 2013, the Mayor and Manager met with Peggy Wilson, the Ketchikan House District Representative regarding the matter. Representative-elect Wilson advised the Borough to litigate the issue rather than pursue legislative reform.

[v] There are many probable reasons for the lack of willingness on the part of State officials to address the Borough's concerns. Some officials may not fully understand the complex issues involved. Others may struggle with persistent but incorrect stereotypes surrounding the issue.

Some may elect to forego reform for fear of "opening the door" to other changes to education funding laws. In terms of fear of opening the door, it is noted, however, that the 2012 Legislature introduced and adopted significant amendments to the required local contribution statute in the final two days of the 2012 legislative session (see legislative history of SB 182, particularly as it relates to Sections 3, 7, and 8 of HCS CSSB 182(FIN)). Those lightning-quick changes included the repeal of the 50% Rule. The changes also included varying degrees of short-term relief with respect to the required local contribution for all but one municipal school district. However, those changes will, over the long term, increase the financial burden on all municipal governments that operate schools.

While the changes to the required contribution statute were first presented to the public and formally carried out only in the last two days of the session, it is evident that the executive branch was aware of the proposal several days before. The legislative record includes a fiscal note completed April 10 (presumably it took a day or more to complete) regarding HCS CSSB 182(FIN)), legislation that was not publically unveiled until April 14.

As noted above, the Assembly had anticipated the potential for such changes when, 15 months earlier, it adopted Resolution 2297 opposing any attempt to repeal the 50% Rule.

Some State officials may also recognize the need for reform but prefer to address what they deem as higher legislative priorities. Additionally, some may simply be unwilling to give up the opportunity to appropriate hundreds of millions of dollars annually – many billions of dollars during the course of one generation of students – in State funds freed up by substituting mandatory municipal contributions for State funds that would otherwise be required to pay "basic need."

vi *Anchorage Daily News*, January 3, 2009.

vii For example, in a joint report prepared by the Alaska Department of Education and Early Development; the Alaska Department of Commerce, Community, and Economic Development; and the Local Boundary Commission, the admission is made that, "organized boroughs are being severely deprived of State services, revenues, or assistance and are being penalized because of incorporation" (*School Consolidation – Public Policy Considerations and a Review of Opportunities for Consolidation*, p. 54, February 2004).

viii The Mandatory Borough Act passed the Alaska State Senate by one vote. *Metropolitan Experiment in Alaska: A Study of Borough Government*, pp. 81-134 (1968) provides a 53-page legislative history of the 1963 Mandatory Borough Act. That history was written by Representative John L. Rader, sponsor of the Mandatory Borough Act (and the State's first Attorney General).

Two decades after the Mandatory Borough Act became law, John Rader commented to me that he had come to regret its passage, explaining that the Mandatory Act failed to achieve the goals he had hoped it would. One of the foremost objectives was to provide tax equalization. In that regard, he stressed:

> [I]f tax equalization was to be meaningful, it could not be piecemeal. Mandatory incorporation of boroughs would be necessary in all areas which could feasibly be included within a borough and which did not incorporate on local initiative. (*Metropolitan Experiment in Alaska: A Study of Borough Government*, p. 94.)

The Mandatory Borough Act failed to achieve that goal from the outset. To gain passage of the 1963 bill, areas included when the bill was introduced were later removed. Moreover, the 1963 Mandatory Borough Act was approved with the understanding among legislators that other unorganized areas would be compelled to organize by subsequent legislatures (*Unorganized Areas of Alaska that Meet Borough Incorporation Standards*, Local Boundary Commission, p. 19 (2003)).

The State has failed to follow up the Mandatory Borough Act with a rational policy to carry out borough formation in the remainder of Alaska. Today, fifty-four years after Alaska became a state, more than half of Alaska remains unorganized. Many of the unorganized areas have fiscal capacity beyond that of the municipalities that are subject to the local contribution requirements. The State has failed to honor its 1963 promise. The framers of our Constitution intended that the State would create incentives for borough incorporation. Instead the State has created penalties.

ix In 2010, the Commissioner of the Alaska Department of Revenue announced that "The state is in the strongest financial position in its history, and has a stable outlook with tremendous opportunities." (Alaska Department of Revenue Press Release No. 10-006, November 23, 2010, available online at:

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http://dor.alaska.gov/Press%20Releases/Moodys%2011-22-2010.pdf or from the Borough Manager.) That announcement was made in the context of action taken by Moody's Investors Service to upgrade the State's bond rating to "Aaa," the highest grade, by Moody's. That was the first Aaa rating in the State's history.

More than a year later, the Alaska Department of Revenue announced that Standard and Poor's Ratings Services had upgraded the State's bond rating to "AAA," the highest grade, by Standard and Poor's. It was stated that the rating reflected the State's practice of maintaining exceptionally large reserves, extensive fiscal flexibility, and despite its deep financial resources, budgetary restraint. (Press Release, Office of the Governor, January 6, 2012, available online at: http://gov.alaska.gov/parnell/press-room/full-press-release.html?pr=6002 or from the Borough Manager.) Presumably, the 2010 claim that "The state is in the strongest financial position in its history" was now true for 2012.

Another year later, On January 8, 2013, Governor Parnell announced that Fitch Ratings had upgraded its financial rating of the State to AAA, the highest grade. Again, the upgrade was attributed to the State's practice of maintaining exceptionally large reserves, extensive fiscal flexibility, and despite its deep financial resources, budgetary restraint. (Press Release, Office of the Governor, January 8, 2013, available online at: http://gov.alaska.gov/parnell/press-room/full-press-release.html?pr=6339 or from the Borough Manager.) Here again, the State's highest public official and respected global rating agency acknowledge that the State continues to be in the strongest financial position in its history.

[x] Any legal challenge of the required local contribution would certainly include a variety of equal protection arguments. In addressing equal protection claims, the Alaska Supreme Court uses a three-step process that was outlined in *Matanuska-Susitna Borough School Dist. v. State*, 931 P.2d 391, (Alaska 1997).

First, the court would determine the weight to be afforded the constitutional interest impaired by the law being challenged – in this case, the required contribution law. The nature of the constitutional interest is the most important variable in fixing the appropriate level of review. Depending upon the importance of the constitutional interest involved, the State would have a greater or lesser burden justifying the required contribution law.

Second, the court would examine the purpose served by the required local contribution law. If, under the first step, the State has a lesser burden in justifying the local contribution law, the State may be required to show only that its objectives were legitimate. However, if the State bears a greater burden of justification, the State must show that the required local contribution law is motivated by a compelling State interest.

Third, the court would evaluate the State's interest in the particular means employed to further its goals in enacting the required contribution law. Again, the State's burden will differ in accordance with the level of scrutiny determined to be appropriate under the first step. If the State has a lesser burden under the first step, the court would hold that a substantial relationship between means and ends is constitutionally adequate. At the higher end of the scale, the match between means and ends must be much closer. If the purpose can be accomplished by a less-restrictive alternative, the classification would be invalidated.

In the 1997 *Matanuska-Susitna Borough* case, the Court concluded in the second-part of the three-stage test, that the entire "public school foundation program" was the "challenged statute." This may have been an overly broad determination resulting in a critical error. The Ketchikan Gateway Borough's concern is far narrower than the entire "public school foundation program" (AS 14.17 in current law called "Financing of Public Schools"). AS 14.17 deals with a vast range of issues relating to funding for public education (public education fund, funding for special needs, funding for correspondence study, funding for state boarding schools, school size factors, district cost factors, base student allocation, public school funding adjustments, student count estimates, fund balances, determination of full and true value, minimum expenditures for instruction, student count periods, etc.).

AS 14.17 is comprised of 5,513 words. The Borough is unconcerned with 5,427 (98.4%) of those words. Rather, the Borough is focused on the 86 words that require it and the 33 other municipal districts to pay the portion of basic need underfunded by the State. AS 14.17.410(b)(2) is the "challenged statute," not all of AS 14.17.

Thus, the question that needs to be asked in evaluating the properly identified "challenged statute" is: "What is the State's purpose in requiring municipal districts to pay a portion of basic need?" Here, the answer is no longer the lofty 1997 conclusion in the *Matanuska-Susitna Borough* case that the purpose of the challenged statute is "to assure an equitable level of educational opportunities for those in attendance in the public schools of the state."

The answer to the narrowly focused legitimate issue becomes much more difficult for a government with more than $16 billion in budget reserves and more than $44 billion in its Permanent Fund, and which, year after year, records a higher level of having the strongest financial position in its history.

The answer now, it seems, is: the State has enacted the required local contribution to help build its "exceptionally large reserves," and "deep financial resources;" and to help enable the State to carry out its practice of "budgetary restraint" and "conservative financial management." (See Press Release, Office of the Governor, January 8, 2013, available online at: http://gov.alaska.gov/parnell/press-room/full-press-release.html?pr=6339 or from the Borough Manager.) The practice currently gives elected State officials $216 million more per year to spend at their discretion by taking that $216 million away from 34 local governments in the form of required local contributions. All answers to the critical question about the purpose of the required local contribution are financial in nature.

The conclusion that the State's interest in the local contribution requirement is strictly financial is certainly reinforced by the significant changes made to the required local contribution law by the 2012 Legislature. Those changes were initiated and considered by the Finance Committee in the State House in the form of amendments to Senate Bill 182 (the House Finance Committee adopted HCS CSSB 182(FIN), Sections 3, 7, and 8 of which were new and amended the local contribution laws.

The 2012 changes to the required local contribution laws in HCS CSSB 182(FIN) were never even considered by the education committees of either the State Senate or State House, despite the fact that the education committee in each house has "jurisdiction" over "the programs and activities of the Alaska Department of Education and Early Development" (Rule 20 of the Alaska State Legislature Uniform Rules). In the end the legislation was approved by both houses and the governor, but still it was never considered by either of the two education committees with jurisdiction over education policy.

Now, the "means employed" to further the State's goals suffers greatly in the third step of the equal protection review. It can no longer be justified for limited classes (34 of the 53 school districts in Alaska, or taxpayers and citizens in those 34 districts) to further the State's true goals of enhancing its own revenues and financial strength to unprecedented levels.

[xi] Some State officials have argued that it is fitting State public policy to require a significant financial commitment from the Ketchikan Gateway Borough and 33 other municipal governments with respect to schools. By doing so, they assert, the local governments and their taxpayers have a far greater interest in local school performance from both an education and financial standpoint. This "you have to have skin-in-the-game" argument fails to hold up under even cursory examination. Two fundamental flaws are noted below.

First, if the State truly has such a policy, it has neglected to properly implement it over 54 years of statehood. While the State demands "skin in the game" from the Ketchikan Gateway Borough and 33 other municipal governments, it does nothing to implement the policy with respect to the 19 REAAS. This disparate treatment between municipal governments on the one hand and REAAs on the other hand lacks a rational basis such as fiscal capacity. Volume I of the work prepared by Robert Hicks for the Borough concludes that REAAs include "some of the most prosperous regions of the State of Alaska," while a number of borough and city school districts are "economically distressed" (*Local Contributions to Public Education in Alaska*, Robert Hicks, p. 55 (February 2012)). The contrasting treatment between municipalities and REAAs also lacks a rational basis such as the lack of authority to tax in certain districts (city governments that operate schools, borough governments that operate schools, and the state government under which the educational service areas are organized all have the power to tax).

Second, the Ketchikan Gateway Borough would have "skin in the game" regardless of the required local contribution. The Borough has long demonstrated a strong, unwavering commitment to education by providing substantial funding for operation of Ketchikan schools *beyond its current $4,220,699 annual required local contribution*. In FY 2013, the Assembly provided $4,018,819 *in voluntary local funding allowed by AS 14.17.410(c)* over and above the contribution required by AS 14.17.410(b)(2). Additionally, the Assembly has appropriated $2,158,209 for school capital projects and school-related debt service for FY 2013. Together, those figures total $6,177,028, or $2,839 per student. That $6,177,028 is equivalent to 97.3% of the Borough's current areawide property tax levy.

[xii] The State requires organized boroughs, home-rule cities in the unorganized borough, and first-class cities in the unorganized borough to operate school districts. Those municipal districts make up 34 of Alaska's 53 districts. Significantly, State law also mandates that those 34 municipalities pay a local share of the basic need of their municipal districts. The required local share amounts to the equivalent to a 2.65-mill levy on the full and true value of taxable property in the municipality or 45% of basic need, whichever is less. Collectively, the required local contribution for municipal school districts during FY 2013 equals $216,206,095.

The remaining 19 school districts in Alaska – those organized as educational service areas known as regional educational attendance areas or REAAs – have no obligation to pay a share of basic need.

State funding for all districts – municipal districts and REAAs – is reduced by 90% of eligible federal impact aid. Stated differently, the payment of State aid plus 90% of eligible federal impact aid to REAAs will always equal full funding of basic need for those districts. However, that is not the case for municipal school districts because of the additional deduction of the required local contribution. Should federal impact aid end as a result of the ongoing federal fiscal crisis, the State would then pay 100% of basic need for REAAs.

[xiii] The 34 municipal governments that are required by State law to operate school districts are the surrogates who must collect the stealth State tax to pay the required local contribution. To add insult to injury, the State of Alaska requires under AS 29.45.020 that those 34 municipal governments report to local taxpayers how much public school funding the State provides to the municipalities. This creates the impression among taxpayers that it is the municipalities' obligation to fund schools and that the State is generous in providing financial assistance.

[xiv] Only 14 of the 18 organized boroughs and 9 of the 16 home-rule and first-class cities in the unorganized borough levy property taxes. In doing so, those 23 local governments spent a reported $17,151,365 for assessment work in 2011. (*Alaska Taxable* – 2011, p. 61-62.) That expenditure reflects the cost of just one-year's update to a database developed, in most cases, over decades. Thus, the State Assessor has many millions of dollars' worth of data at his disposal to make full value determinations for those 23 municipalities.

In contrast, the State Assessor has no municipal assessment data upon which to make full value determinations in 11 of the 34 (32.4%) municipal governments that operate school districts. Those 11 districts encompass more than 94,000 square miles – an area larger than any of 39 states.

The Office of the State Assessor has a two-person staff – the State Assessor and Assistant State Assessor – with a personnel budget (including benefits) of $289,683. The office of the State Assessor has many duties beyond full-value determinations. Thus, it stands to reason that the foundation for full-value determinations for the 11 municipal governments that do not levy property taxes and therefore have no assessment data is not comparable to the 23 that do levy property taxes.

In one case, concern had existed for years that the formal full value determination for one borough that does not levy property taxes was less than the capital investment in a single fish processing plant in that borough. In an apparent effort to at least partially rectify that glaring circumstance, the full value for that borough recently increased in a single year by 52.6 percent. These circumstances raise significant concerns whether mandatory local contributions for schools, which are based on full value determinations, are equal.

[xv] In July 2011, the Ketchikan Gateway Borough Assembly commissioned a thorough review of public policy concerns over education funding. Alaska attorney Robert Hicks was chosen by the Borough to undertake the review. Mr. Hicks is eminently qualified for the task. A graduate of Harvard Law School, Mr. Hicks served as an Alaska Supreme Court law clerk, first to Justice John Dimond and then to Justice Robert Boochever. He was later appointed the first Executive Director of the Alaska Judicial Council in 1973, conducting many studies of bush justice in Alaska until 1975 when he entered the private practice of law in Anchorage.

During his four decades in private practice of law in Alaska, Mr. Hicks specialized in municipal law, education law, and municipal boundary law. At various times, he served as the city attorney for Nome, Bethel, Dillingham, Unalaska, Seldovia, Emmonak and Kotlik, as special counsel to the North Slope Borough Assembly, and as legal counsel to the Nome City School District, the Delta-Greely REAA, the Alaska Gateway REAA and the Craig City School District.

Mr. Hicks was retained by the Alaska Local Boundary Commission in 1987-88 to perform a comprehensive rewrite of its regulations. On numerous occasions, the Local Boundary Commission has invited him to conduct seminars for newly appointed members. He later served on the Local Boundary Commission as Vice-Chair.

Readers of this memorandum should know that Mr. Hicks has stressed that his analysis for the Ketchikan Gateway Borough should not be read as trying to prompt or promote litigation of the issues. He has stated that, he is retired from litigation, has no interest in being the litigator of these issues, and, if litigation is the chosen route to a solution to the problem, the plaintiffs must retain some attorney other than him.

Concerns Regarding State Underfunding of Basic Need for Schools Operated by Borough and City School Districts

(Prepared by the Ketchikan Gateway Borough to summarize issues addressed in Resolution Number 2451 of the Ketchikan Gateway Borough – February 2013)

1. ***Underfunding of "basic need" for borough school districts penalizes those areas incorporated as boroughs by depriving them of State revenues. This violates a trust between the State and its citizens.***

   a) When the State of Alaska mandated incorporation of 8 boroughs – which today encompass an estimated 619,637 Alaskans (84.6% of Alaska's population) – the following formal statement of intent was included in the Mandatory Borough Act (Chapter 52 SLA 1963, Section 1):

      "No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation."

   b) The statement of intent in the Mandatory Borough Act regarding fair treatment of boroughs has its roots in Alaska's Constitution. The framers of Alaska's Constitution intended that the State would create incentives to encourage borough formation (see, for example, the January 19, 1956, discussion of the Local Government Article on Constitutional Convention floor). However, rather than creating incentives, the State has imposed penalties. This is reflected in the fact that more than half of the geographic area of Alaska remains unorganized after more than a half-century of statehood.

   c) John Rader, Alaska's First State Attorney General who, as a member of the State House sponsored the Mandatory Borough Act, stated with respect to the legislative intent of the Mandatory Borough Act that 'People should be encouraged to form local government. This demands the giving of funds, assets and revenues to local governments.'

   d) Ketchikan Gateway Borough officials have been told repeatedly that a promise by one legislature is not binding on subsequent legislatures – in other words, the State does not have to keep its promise.

   e) The Mandatory Borough Act is, for borough residents, the moral equivalent of the Alaska Statehood Compact.

      i. State officials have rightfully challenged the federal government at times for violating the Alaska Statehood Compact and overreaching.

      ii. In 1993 Governor Hickel sued the federal government, stressing that the federal government must be held to its promise in the Statehood Compact; the Alaska legislature "strongly" supported the suit.

2. The State of Alaska has a constitutional duty to fully fund "basic need."

a) Art. 7, §1 of Alaska's Constitution provides that the State must "establish and maintain a system of public schools."

b) The Alaska Supreme Court (*Macauley v. Hildebrand*, 491 P.2d 120, 122 [Alaska 1971]) held that:
   i. the "constitutional mandate for pervasive state authority in the field of education could not be more clear . . . the language is mandatory, not permissive;"
   ii. Art. 7, §1 "not only requires that the legislature 'establish' a school system, but also gives to that body the continuing obligation to 'maintain' the system;"
   iii. Art. 7, §1 "is unqualified; **<u>no other unit of government shares responsibility</u>** or authority." (emphasis added)

c) Superior Court Judge Sharon L. Gleason held in *Moore, et al. v. State of Alaska*, 3AN-04-9756 CI, p. 174 (June 2007) that the State's constitutional obligation to maintain a system of public schools includes the duty to provide adequate funding.

d) Adequate funding is represented by "basic need."
   i. The Alaska Department of Education and Early Development has defined "basic need" as the level of funding:
      (1) at which "all districts are considered equal;" and
      (2) that "provides all districts with needed resources" (Public School Funding Formula, Alaska Department of Education and Early Development; p. 8, January 15, 2001).
   ii. AS 14.17.410 prescribes many factors to determine the "basic need" for each of Alaska's 53 school districts (enrollment; school size; district cost differentials; special needs in providing special education, gifted and talented education, vocational education, and bilingual education services; secondary school vocational and technical instruction; intensive needs for students with disabilities; and correspondence students.

e) State aid plus 90% of federal impact aid does not fully fund basic need for city and borough school districts but does for REAAs.

3. The required contribution serves no <u>justifiable</u> public purpose.

a) Because of increased State revenues from oil, the State eliminated local effort and fully funded basic need in 1980s (see House Research Agency Report 87-A).

b) The collapse of oil prices in the mid-1980s likely led the State to retrench from full funding of basic need.

c) Today, the State has $16 billion in budget reserves and $44 billion in its Permanent Fund.

d) The State has achieved a higher pinnacle of financial strength in each of last 3 years owing to its "exceptionally large reserves" and "conservative fiscal management."

e) $60 billion in State reserves & permanent fund monies for a population of 732,298 is equivalent to Ketchikan Gateway Borough (population 13,938) having $1,141,994,106 in reserves & permanent fund monies.

f) Reserves of city and borough governments pale by comparison (e.g., the Ketchikan Gateway Borough's General Fund reserve is only $5 million).

g) What possible justification can be offered for a State law mandating that municipal governments with marginal reserves pay significant costs on behalf of the State to carry out a State duty when the State has "exceptionally large reserves?"

4. *The required local contribution is a stealth State tax, which is unlawfully dedicated.*

a) City and borough school districts are required to pay a significant portion of State's bill for adequate education funding.

b) The required local contribution is a "stealth" tax by the State:
   i. State requires the contribution;
   ii. State exclusively benefits from that contribution;
   iii. tax levied according to the taxable value of property or percentage of basic need.

c) The stealth State tax is dedicated to funding education; however, Art. IX, § 7 of Alaska's Constitution prohibits dedication of State taxes.

d) Stealth State tax is critically flawed in other respects:
   i. Tax equity was a principal goal of the Mandatory Borough Act; however, today:
      (1) 19 of Alaska's 53 school districts (36%) are exempt from the *de facto* tax;
      (2) REAAs include "some of the most prosperous regions of the State of Alaska," while a number of borough and city school districts are "economically distressed."
   ii. There is disparity in terms of the "full and true value," the basis for the tax applied to the 34 municipal school districts subject to the required local contribution:
      (1) 23 of the 34 municipalities subject to the *de facto* tax spend $17 million locally for property value assessments which, in turn, are used by State to determine "full value" for those 23 municipalities;
      (2) 11 of the 34 municipalities (whose combined area is larger than any of 39 states) do not levy property taxes; a small State office with a personnel budget of $290,000 estimates the full value for those 11 municipalities.

5. The System Results in Unequal Treatment.

a) Art. I, §1 of Alaska's Constitution provides that "all persons are equal and entitled to equal rights, opportunities, and protection under the law; <u>and that all persons have corresponding obligations to the people and to the State</u>" (emphasis added).

b) Of 53 districts:
   i. 19 districts (REAAs) receive full funding of basic need;
   ii. 34 municipal districts receive basic need less $216 million in required local contributions.

c) Of the 34 municipal districts:
   i. 31 pay proportional tax rate of 2.65 mills of full value;
   ii. 3 (the ones with largest tax base) pay regressive tax rates of 0.7 to 1.5 mills.

d) Litigated in Matanuska-Susitna Borough case:
   i. Bob Hicks: MatSu "is a weak and vulnerable precedent."

6. The required local contribution impairs local self-government.

a) Art. X, §1: "The purpose of [the local government] article is to provide for maximum local self-government . . ."

b) Authority & discretion of borough assemblies and city councils to exercise fiscal policy – an essential component of "maximum local self-government" – is greatly diminished by required local contribution. Local governments are far less able to provide adequate funding for essential needs.

2013

ALASKA MUNICIPAL LEAGUE

Alaska Conference of Mayors

POLICY STATEMENT

Adopted: November 16, 2012

Alaska Municipal League
217 2nd Street, Suite 200
Juneau, Alaska 99801
(907) 586-1325

PART II

EDUCATION, LOCAL GOVERNMENT AND PUBLIC SERVICES

EDUCATION

The goal is to ensure the level of state support required by the Alaska Constitution, so that all residents of Alaska have access to high-quality educational opportunities.

A. Basic Education Support

1. Alaska's constitutional mandate regarding education

a. Education is a state responsibility, funding for education shall not be a consideration when comparing state aid to municipalities with the budget for state operations.

b. In MacCauley v. Hildebrand (1971), the Alaska Supreme Court states: *The constitutional mandate for pervasive state authority in the field of education, could not be clearer. First, the language is mandatory, not permissive. Second, the section not only requires that the Legislature "establish" a school system, but also gives to that body the continuing obligation to "maintain" the system. Finally, the provision is unqualified; no other unit of government shares responsibility or authority.* The Alaska Supreme Court reaffirmed this position in subsequent rulings

2. State education funding formula

a. The League urges the Governor and Legislature to continually fully fund the education funding formula and monitor the allocation of funds to promote equity in educational opportunities across the state, emphasizing cost differentials and the effects of inflation. The state should fully fund the basic needs of all school districts.

b. Area cost differentials: The League supports program funding adjusted by the Area Cost Differential (the ISER study) to mitigate the economy of scale to offset increased heating and energy costs, travel costs, cost of rural transportation, increased operating costs in all rural areas of the state, and lack of access to goods and services. The League supports funding for a periodic update of the ISER study to ensure currency.

3. Early funding for education

a. The League urges the Legislature to continue to forward funding so that school districts know the amount of funding available prior to the deadline for submission of school budgets.

4. Basic education and adequacy standards

a. An adequate education shall provide all students opportunities to acquire the knowledge and skills necessary to prepare them to take a productive role in society by creating a prepared workforce for Alaska's future.

b. The necessary components of an adequate education are:

- A locally adopted curricula that meet or exceed Alaska state standards;
- Qualified educators who are provided the time and support for professional development;
- A safe and healthy environment, in well-maintained facilities that are capable of supporting appropriate technology for programs;
- Facilities:
    1. Adequate construction and condition per Department of Education and Early Development (DEED) standards, including lighting and ventilation.
- Operations and Maintenance: Adequate funding to:
    1. Provide required heat, light, etc. with costs adjusted regionally;

PUBLIC SCHOOL FINANCING
IN ALASKA

Jay Livey
Gretchen Keiser
House Research Agency
Alaska State Legislature
February 1987

House Research Agency Report 87-A

SUMMARY

In reviewing the history of education organization and funding in Alaska, several trends become apparent. The most striking is the steadily increasing level of State support for education. After statehood, the reimbursement system was replaced by a foundation formula which required local districts to pay a portion of local education costs, but also made the State a more active participant in funding education. The second foundation formula, fueled by revenue from Prudhoe Bay, eventually eliminated required local effort and increased State aid to 100 percent of basic need.

Even as the State was increasing its share of education support, a trend toward local district autonomy was occurring. During the early statehood years, the Department of Education reimbursed school districts only for allowable expenditures, including limited compensation for teachers and administrators. The introduction of instructional units, which lumped the costs of educating groups of students, allowed districts more flexibility in applying education resources. The creation of REAAs established autonomous school districts in areas of the state that had previously been under the direct management of either the Department of Education or the Bureau of Indian Affairs.

However, some educators note that recent budget reductions experienced by most school districts have tended to lessen the importance of local school district autonomy. In a report prepared for the State Board of Education, Ernie Polley suggests that some school districts want the Department of Education to be more explicit in mandating the types of education programs that districts should offer.[4] Mr. Polley also notes that several school district administrators with whom he spoke were in favor of a statewide salary schedule for district personnel as a means for transferring the burden of salary negotiations to the State and equalizing salaries among school districts. Mr. Polley concludes that in light of the school districts' severe budgetary problems, the issue of local control may be less important than in the past.

A third trend in the history of public school financing in Alaska is equalization of State support. Since territorial days, there has been wide disparity in wealth among school districts. Some districts--most notably rural districts with limited tax bases--have been funded entirely by the State while others have raised local taxes to supplement State support. Various schemes--required local contributions, supplemental equalization and equalized percentage--have been used as methods to equalize education funds among local districts that have wealth disparities.

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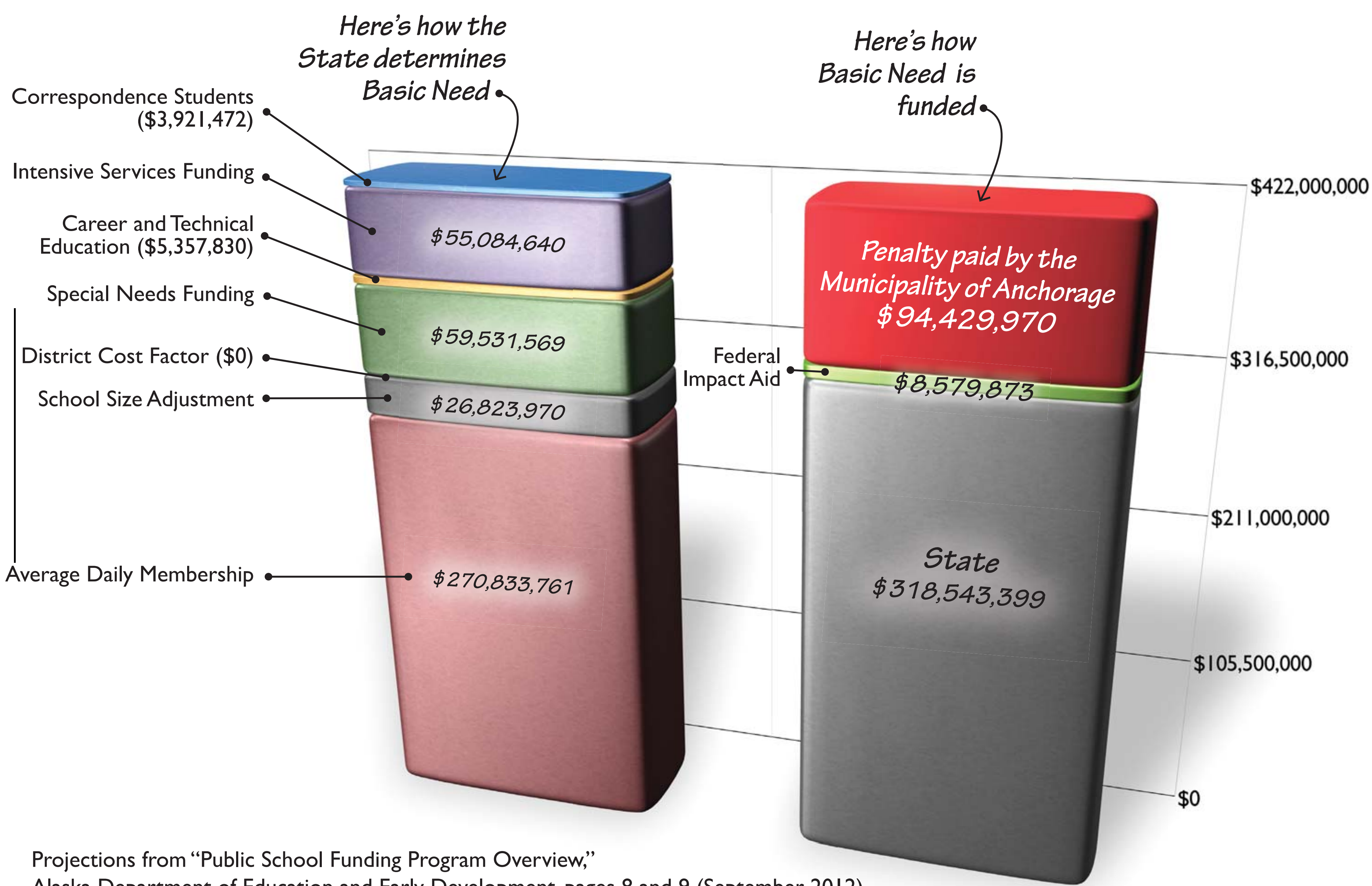
[4] "Alaska School Districts, the State Board of Education and Declining Revenues," Ernest Polley, January 6, 1987.

FY 2013 REQUIRED AND DISCRETIONARY LOCAL CONTRIBUTIONS FOR SCHOOLS

School District	Required Local Contribution Mandated by State Law (AS 14.17.410(b)(2))	Required Local Contribution Paid (AS 14.17.410(b)(2))	Discretionary Supplemental Funding Allowed by State Law (AS 14.17.410(c))	Discretionary Supplemental Contribution Budgeted (10/12/2012)	Budgeted Supplemental Contribution as a Percentage of the Maximum Allowed by Law
Alaska Gateway REAA	$0	$0	$0	$0	-
Aleutian Region REAA	$0	$0	$0	$0	-
Aleutians East Borough	$620,274	$620,274	$1,394,700	$800,726	57.41%
Municipality of Anchorage	$94,429,970	$94,429,970	$96,957,246	$96,957,246	100.00%
Annette Island REAA	$0	$0	$0	$0	-
Bering Strait REAA	$0	$0	$0	$0	-
Bristol Bay Borough	$706,796	$706,796	$621,154	$585,751	94.30%
Chatham REAA	$0	$0	$0	$0	-
Chugach REAA	$0	$0	$0	$0	-
Copper River REAA	$0	$0	$0	$0	-
City of Cordova	$740,388	$740,388	$1,001,826	$1,001,826	100.00%
City of Craig	$336,159	$336,159	$1,313,428	$336,416	25.61%
Delta-Greely REAA	$0	$0	$0	$0	-
Denali Borough	$649,988	$649,988	$1,440,515	$1,419,732	98.56%
City of Dillingham	$446,138	$446,138	$1,565,524	$803,862	51.35%
Fairbanks North Star Borough	$25,585,072	$25,585,072	$34,614,414	$21,414,928	61.87%
City of Galena	$79,432	$79,432	$4,475,530	$1,303,393	29.12%
Haines Borough	$846,964	$846,964	$959,864	$709,902	73.96%
City of Hoonah	$192,261	$192,261	$512,462	$176,970	34.53%
City of Hydaburg	$39,778	$39,778	$261,162	$148,287	56.78%
Iditarod Area REAA	$0	$0	$0	$0	-
City and Borough of Juneau	$11,909,678	$11,909,678	$11,925,707	$11,766,822	98.67%
City of Kake	$74,459	$74,459	$365,870	$156,321	42.73%
Kashunamiut REAA	$0	$0	$0	$0	-
Kenai Peninsula Borough	$22,097,401	$22,097,401	$22,530,370	$20,902,599	92.78%
Ketchikan Gateway Borough	$4,220,699	$4,220,699	$5,318,237	$4,018,819	75.57%
City of Klawock	$137,531	$137,531	$519,856	$37,469	7.21%
Kodiak Island Borough	$3,652,381	$3,652,381	$6,736,007	$6,597,969	97.95%
Kuspuk REAA	$0	$0	$0	$0	-

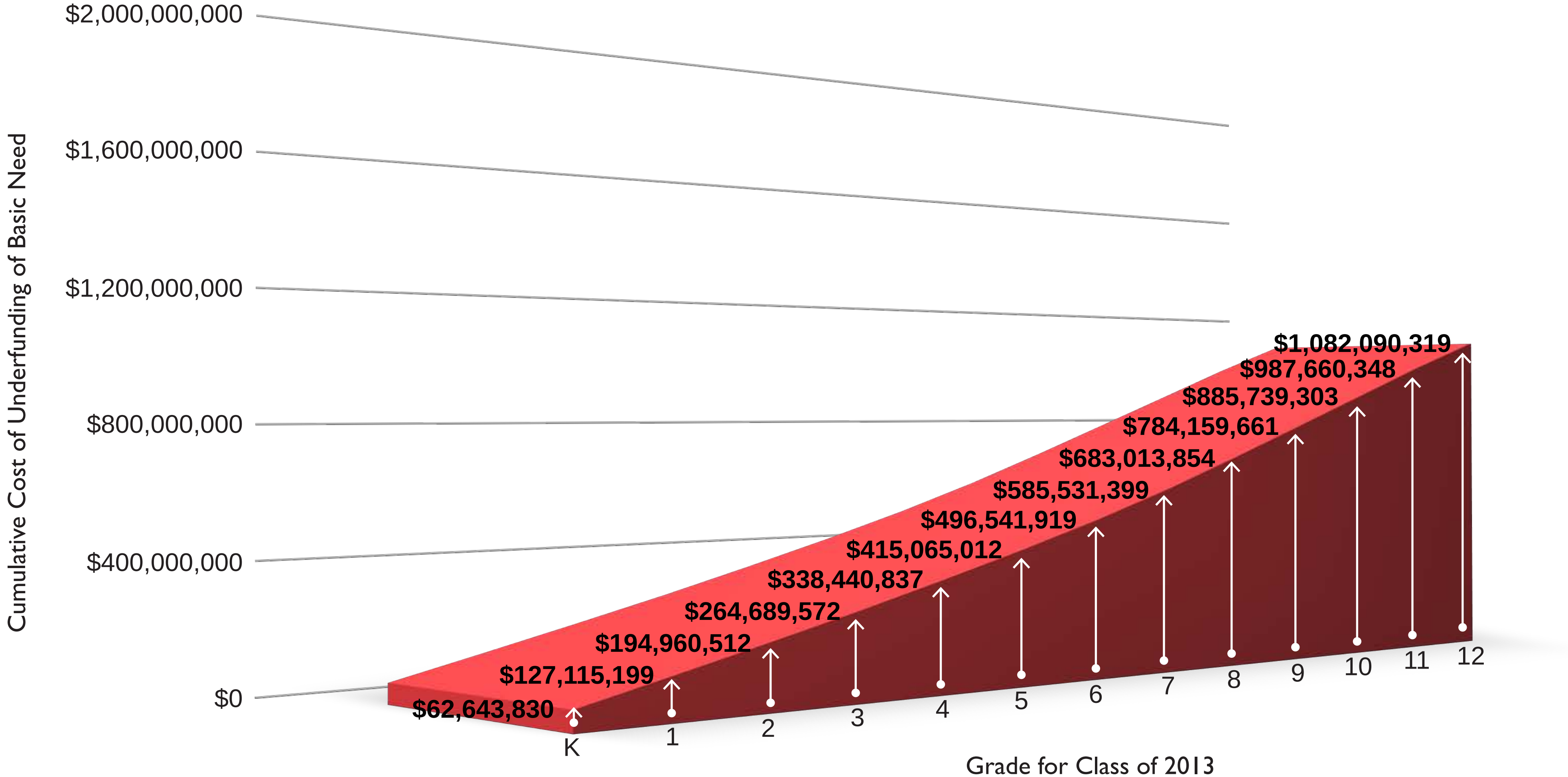
School District	Required Local Contribution Mandated by State Law (AS 14.17.410(b)(2))	Required Local Contribution Paid (AS 14.17.410(b)(2))	Discretionary Supplemental Funding Allowed by State Law (AS 14.17.410(c))	Discretionary Supplemental Contribution Budgeted (10/12/2012)	Budgeted Supplemental Contribution as a Percentage of the Maximum Allowed by Law
Lake and Peninsula Borough	$384,730	$384,730	$2,249,725	$787,783	35.02%
Lower Kuskokwim REAA	$0	$0	$0	$0	-
Lower Yukon REAA	$0	$0	$0	$0	-
Matanuska-Susitna Borough	$24,018,753	$24,018,753	$37,141,788	$25,779,033	69.41%
City of Nenana	$74,326	$74,326	$1,448,079	$0	0.00%
City of Nome	$866,390	$866,390	$2,181,740	$992,980	45.51%
North Slope Borough	$12,164,847	$12,164,847	$34,079,706	$20,960,779	61.51%
Northwest Arctic Borough	$1,818,033	$1,818,033	$8,594,779	$0	0.00%
City of Pelican	$37,865	$37,865	$93,068	$15,293	16.43%
Petersburg Borough	$927,102	$927,102	$1,570,907	$872,898	55.57%
Pribilof REAA	$0	$0	$0	$0	-
City of Saint Mary's	$33,992	$33,992	$738,051	$8	0.00%
City and Borough of Sitka	$3,054,025	$3,054,025	$3,597,682	$2,272,950	63.18%
Municipality of Skagway	$439,172	$439,172	$691,964	$691,964	100.00%
Southeast Island REAA	$0	$0	$0	$0	-
Southwest Region REAA	$0	$0	$0	$0	-
City of Tanana	$24,589	$24,589	$235,936	$0	0.00%
City of Unalaska	$1,473,392	$1,473,392	$1,365,266	$1,356,408	99.35%
City of Valdez	$3,428,798	$3,428,798	$4,602,598	$4,735,918	102.90%
City and Borough of Wrangell	$510,520	$510,520	$1,085,710	$1,034,767	95.31%
City and Borough of Yakutat	$184,192	$184,192	$391,136	$256,808	65.66%
Yukon Flats REAA	$0	$0	$0	$0	-
Yukon/Koyukuk REAA	$0	$0	$0	$0	-
Yupiit REAA	$0	$0	$0	$0	-
Totals	$216,206,095	$216,206,095	$292,582,007	$228,896,627	

FY 2013 Basic Need Funding for the Municipality of Anchorage School District

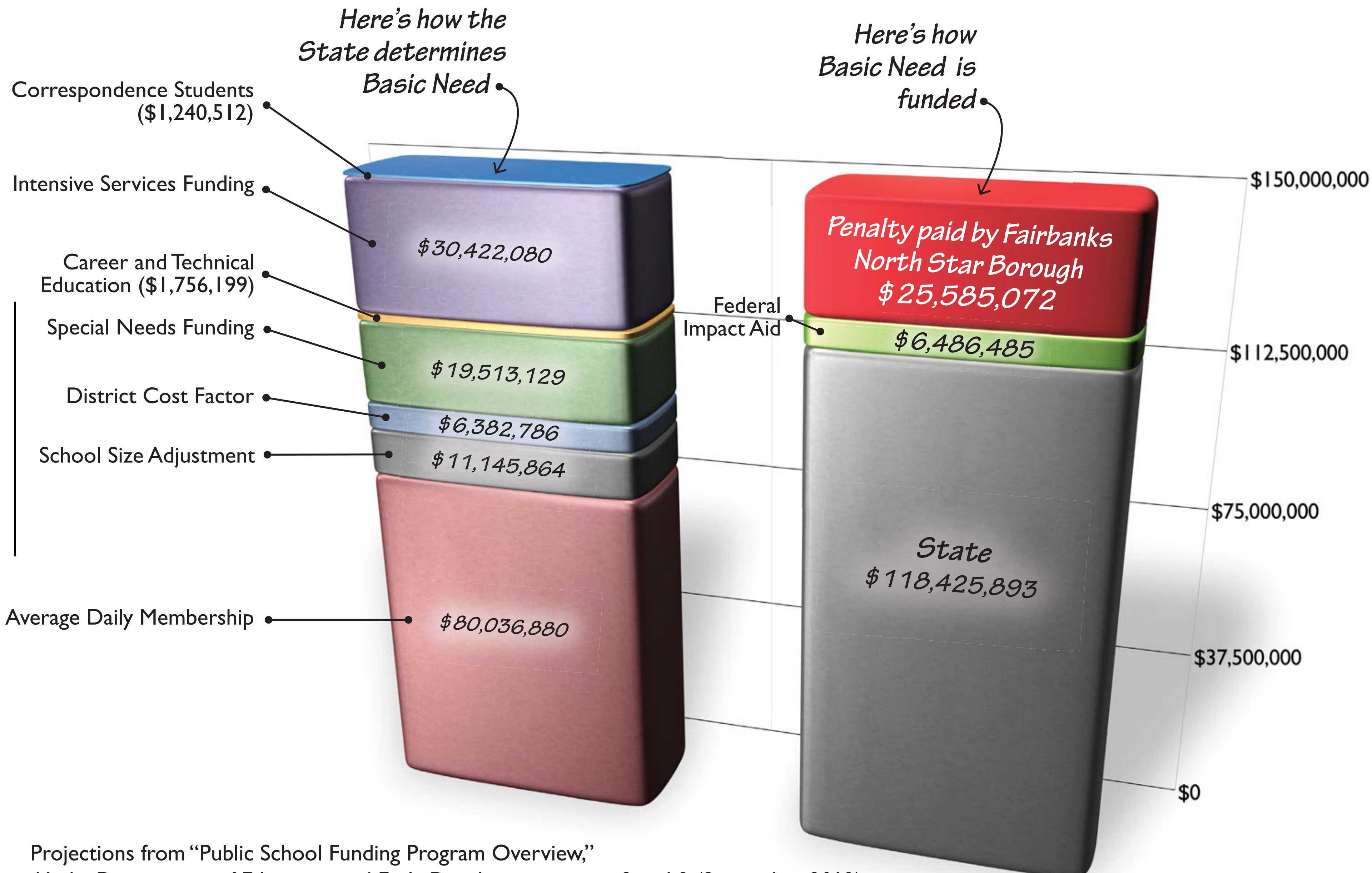


Projections from "Public School Funding Program Overview," Alaska Department of Education and Early Development, pages 8 and 9 (September 2012)

Cumulative Cost to the Taxpayers of the Municipality of Anchorage to Compensate for the Underfunding of "Basic Need" by the State of Alaska during the Years that the Class of 2013 has been in School (2000 to the Present)

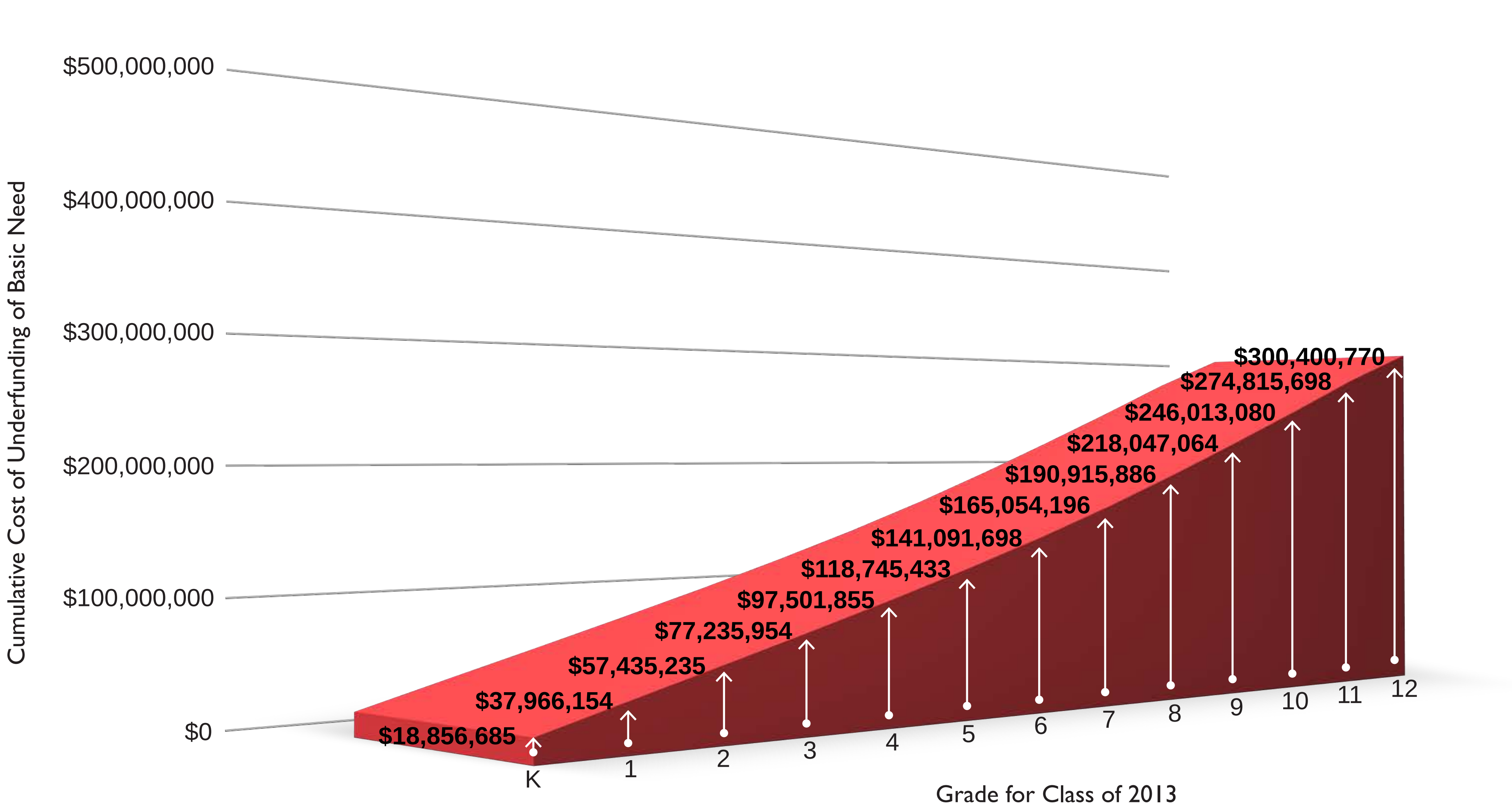


FY 2013 Basic Need Funding for the Fairbanks North Star Borough School District

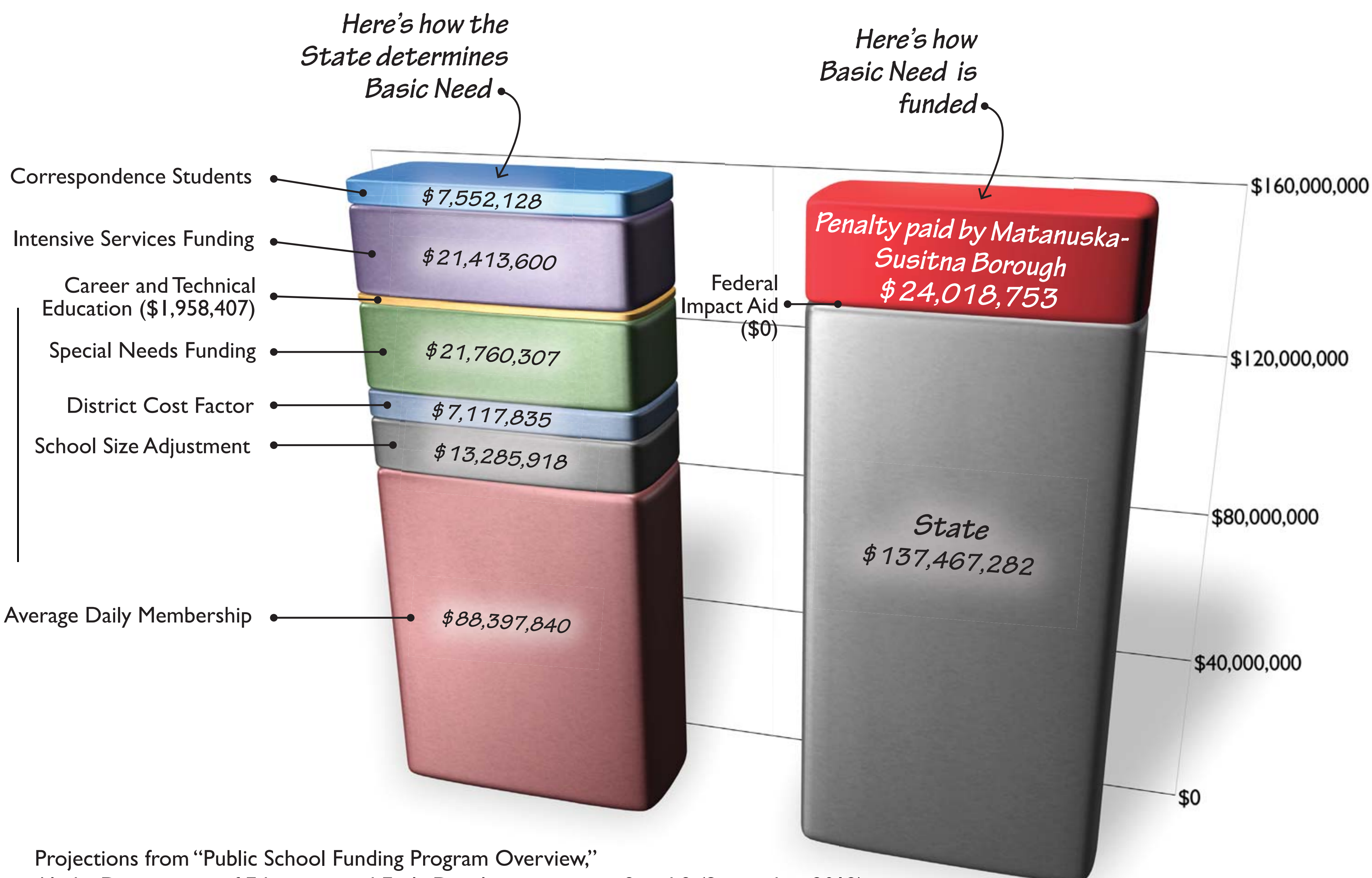


Projections from "Public School Funding Program Overview," Alaska Department of Education and Early Development, pages 8 and 9 (September 2012)

Cumulative Cost to the Taxpayers of the Fairbanks North Star Borough to Compensate for the Underfunding of "Basic Need" by the State of Alaska during the Years that the Class of 2013 has been in School (2000 to the Present)

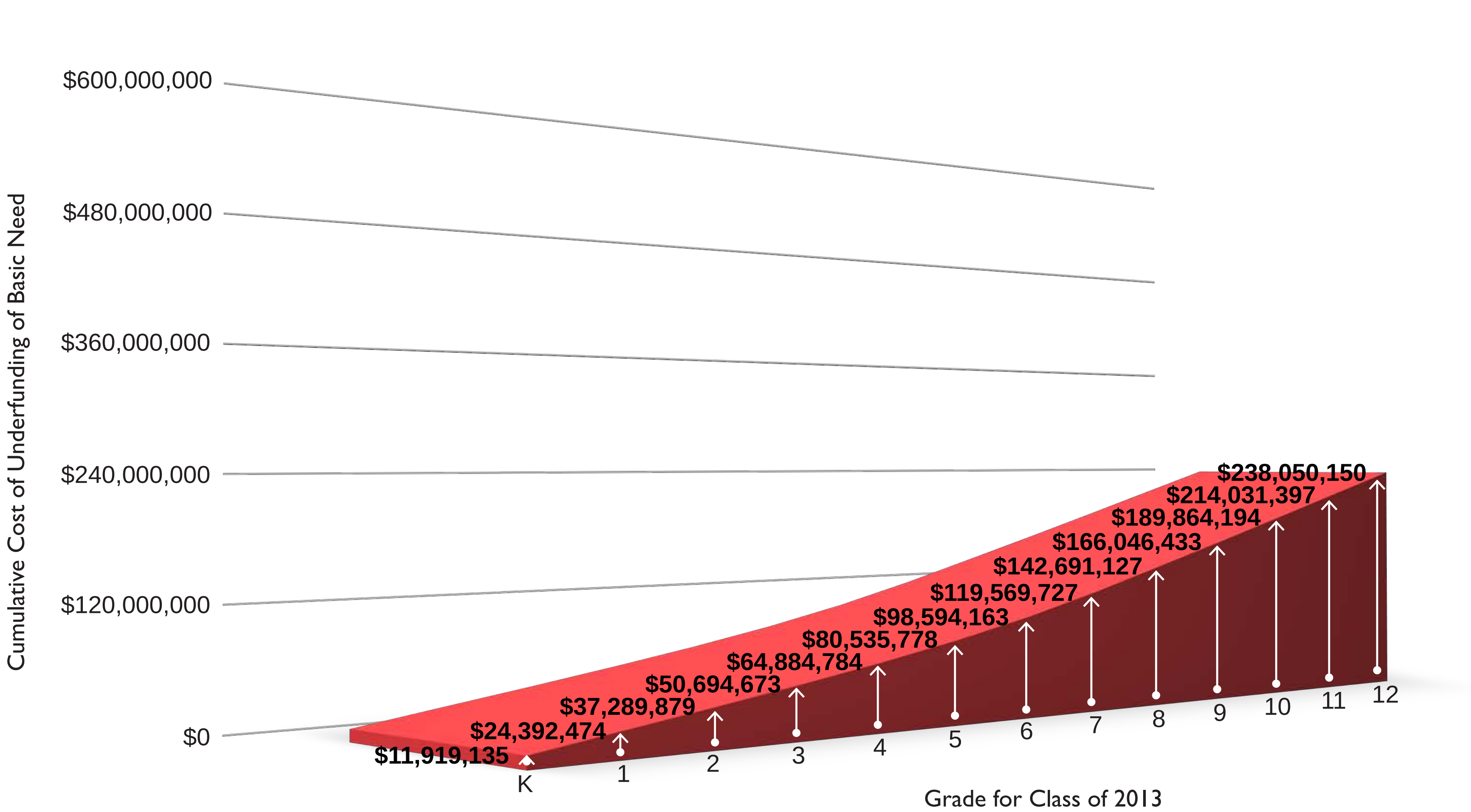


FY 2013 Basic Need Funding for the Matanuska-Susitna Borough School District

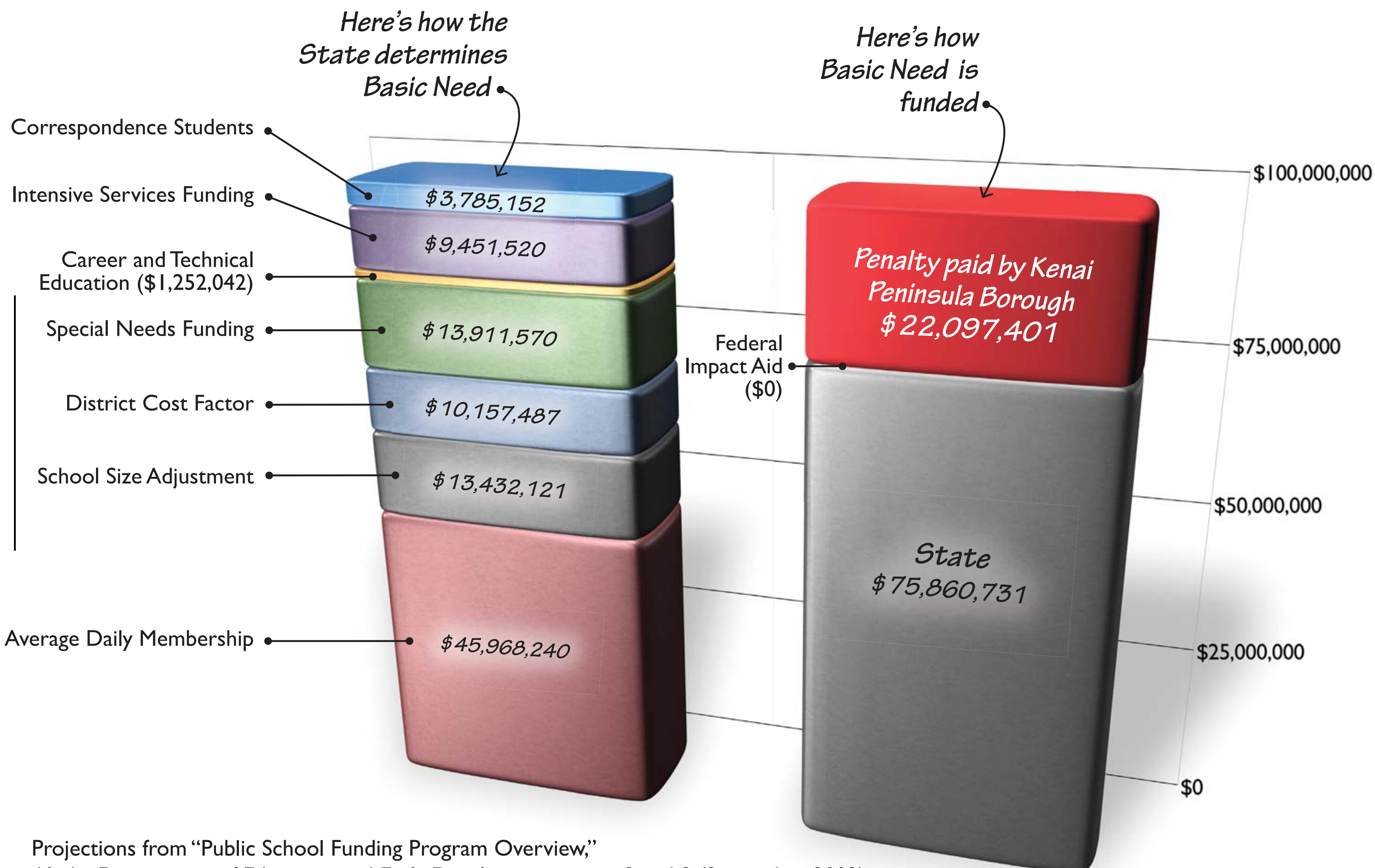


Projections from "Public School Funding Program Overview,"
Alaska Department of Education and Early Development, pages 8 and 9 (September 2012)

Cumulative Cost to the Taxpayers of the Matanuska-Susitna Borough to Compensate for the Underfunding of "Basic Need" by the State of Alaska during the Years that the Class of 2013 has been in School (2000 to the Present)

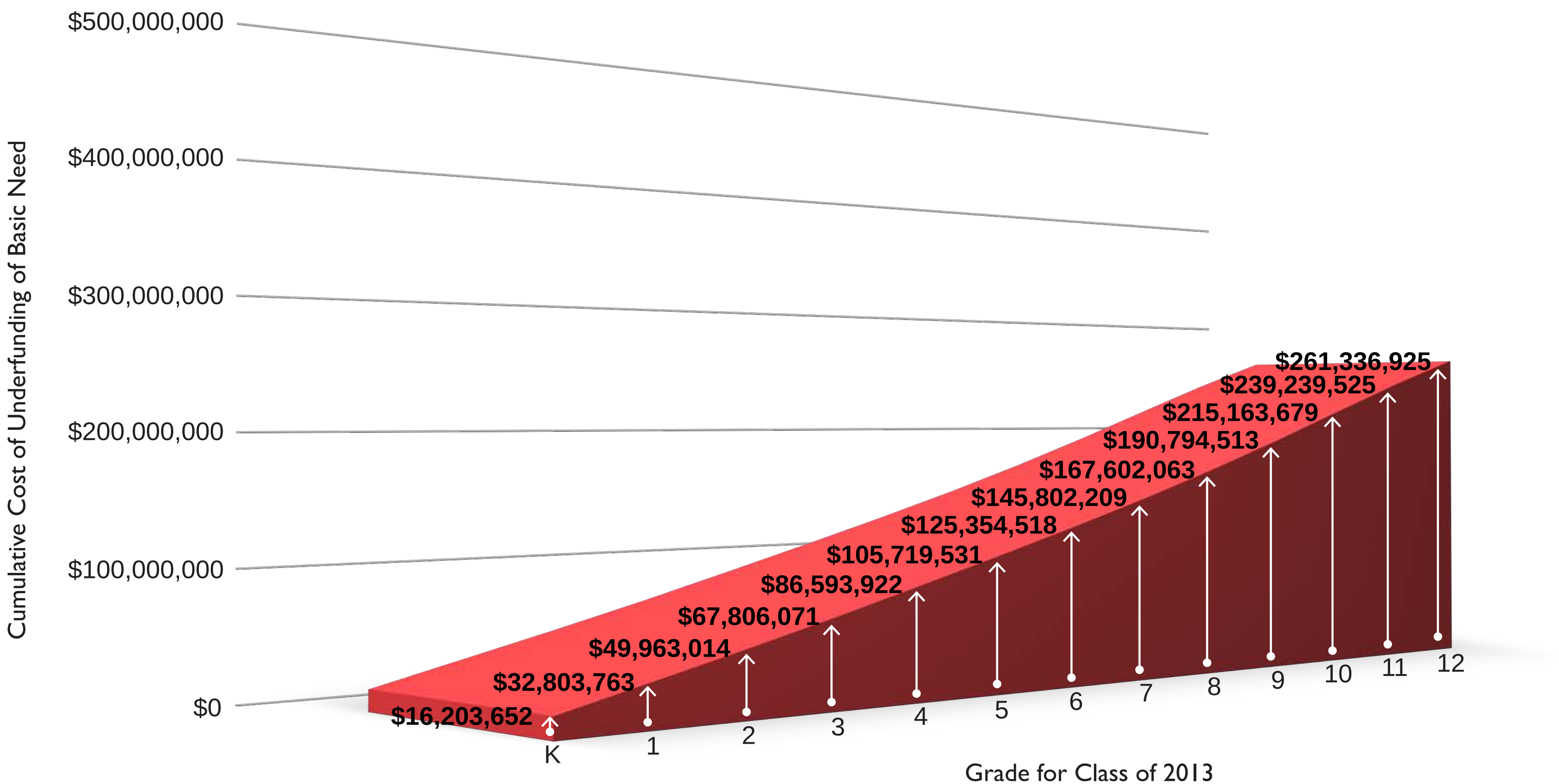


FY 2013 Basic Need Funding for the Kenai Peninsula Borough School District

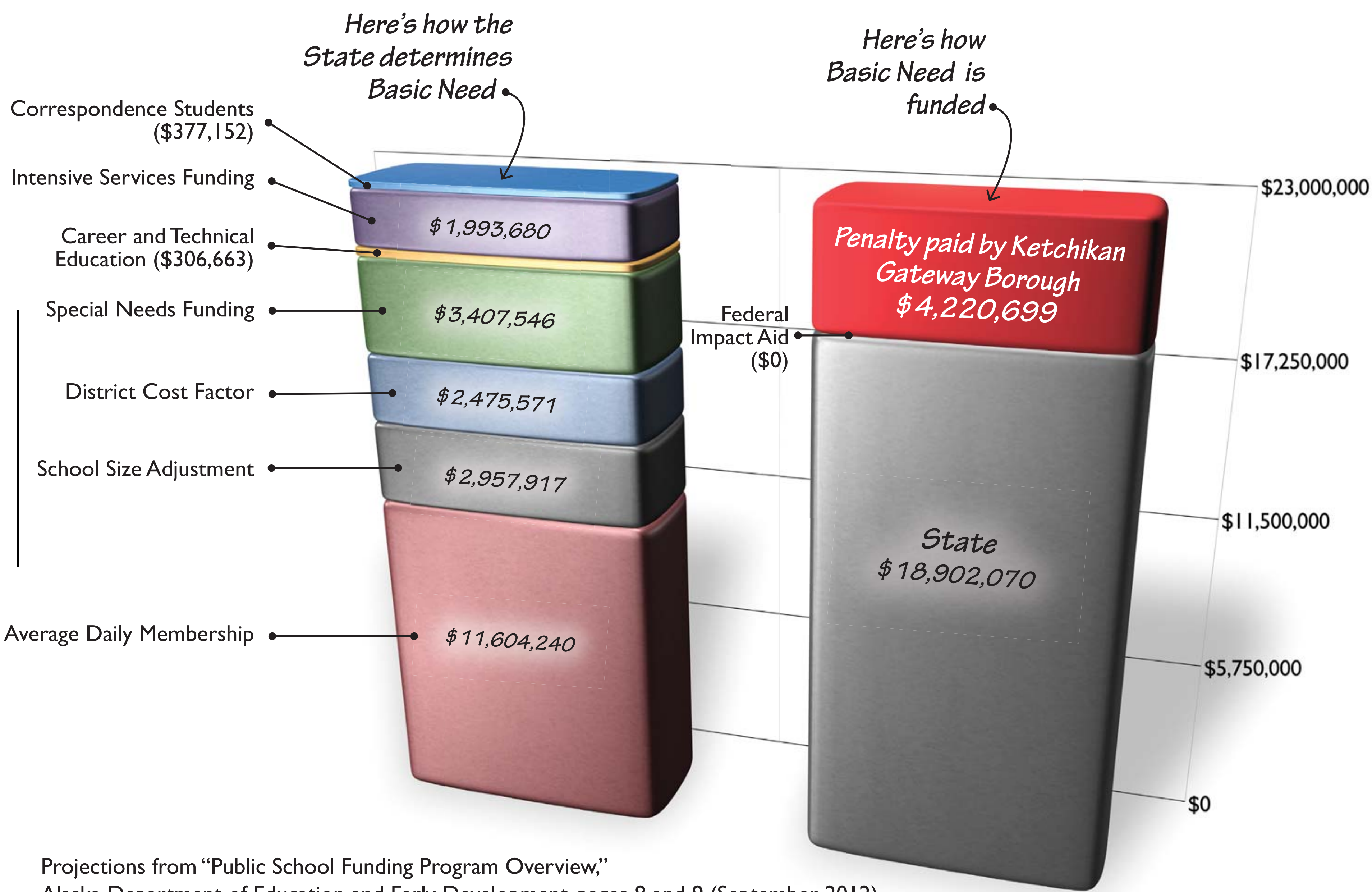


Projections from "Public School Funding Program Overview,"
Alaska Department of Education and Early Development, pages 8 and 9 (September 2012)

Cumulative Cost to the Taxpayers of the Kenai Peninsula Borough to Compensate for the Underfunding of "Basic Need" by the State of Alaska during the Years that the Class of 2013 has been in School (2000 to the Present)

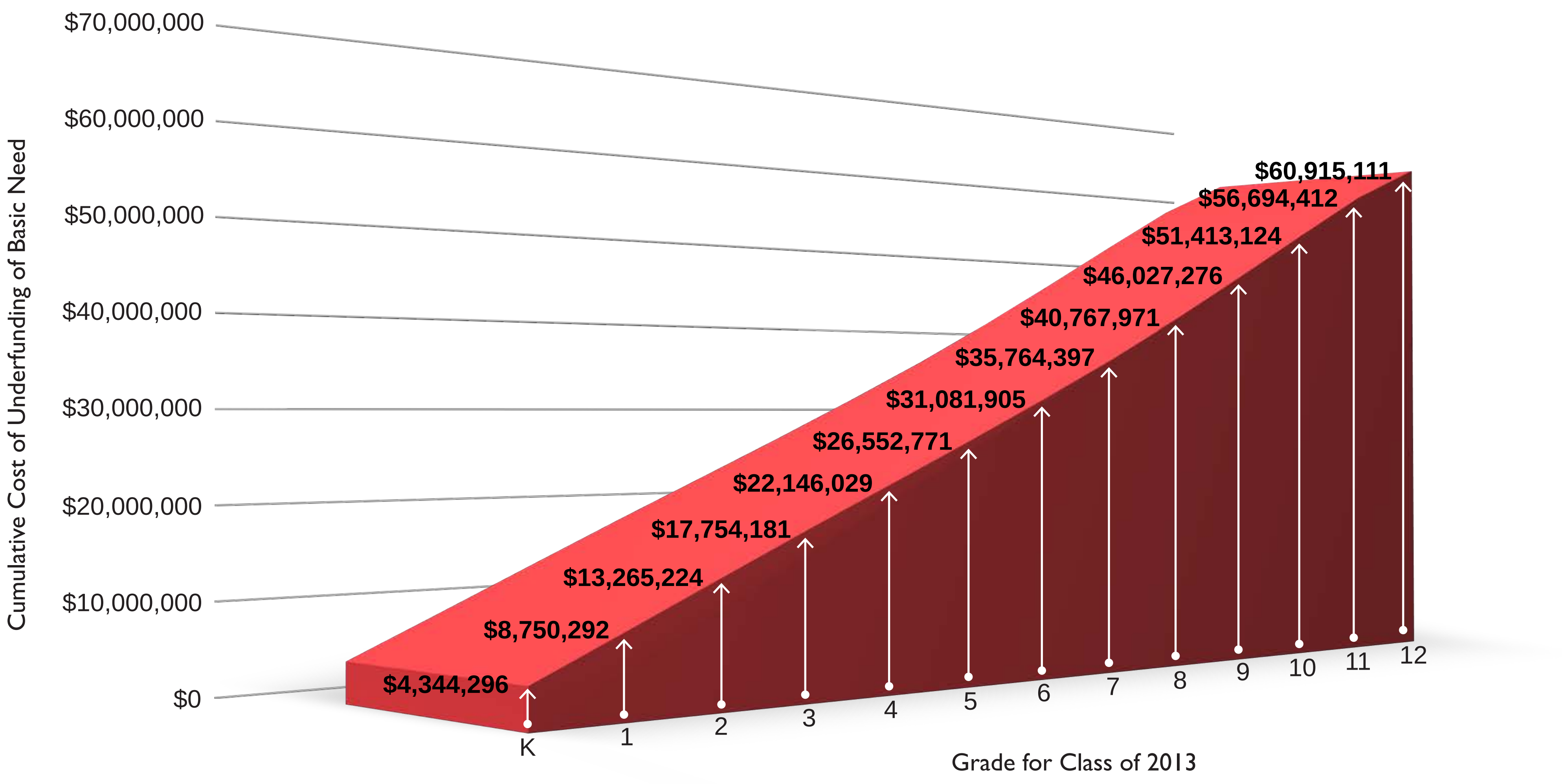


FY 2013 Basic Need Funding for the Ketchikan Gateway Borough School District

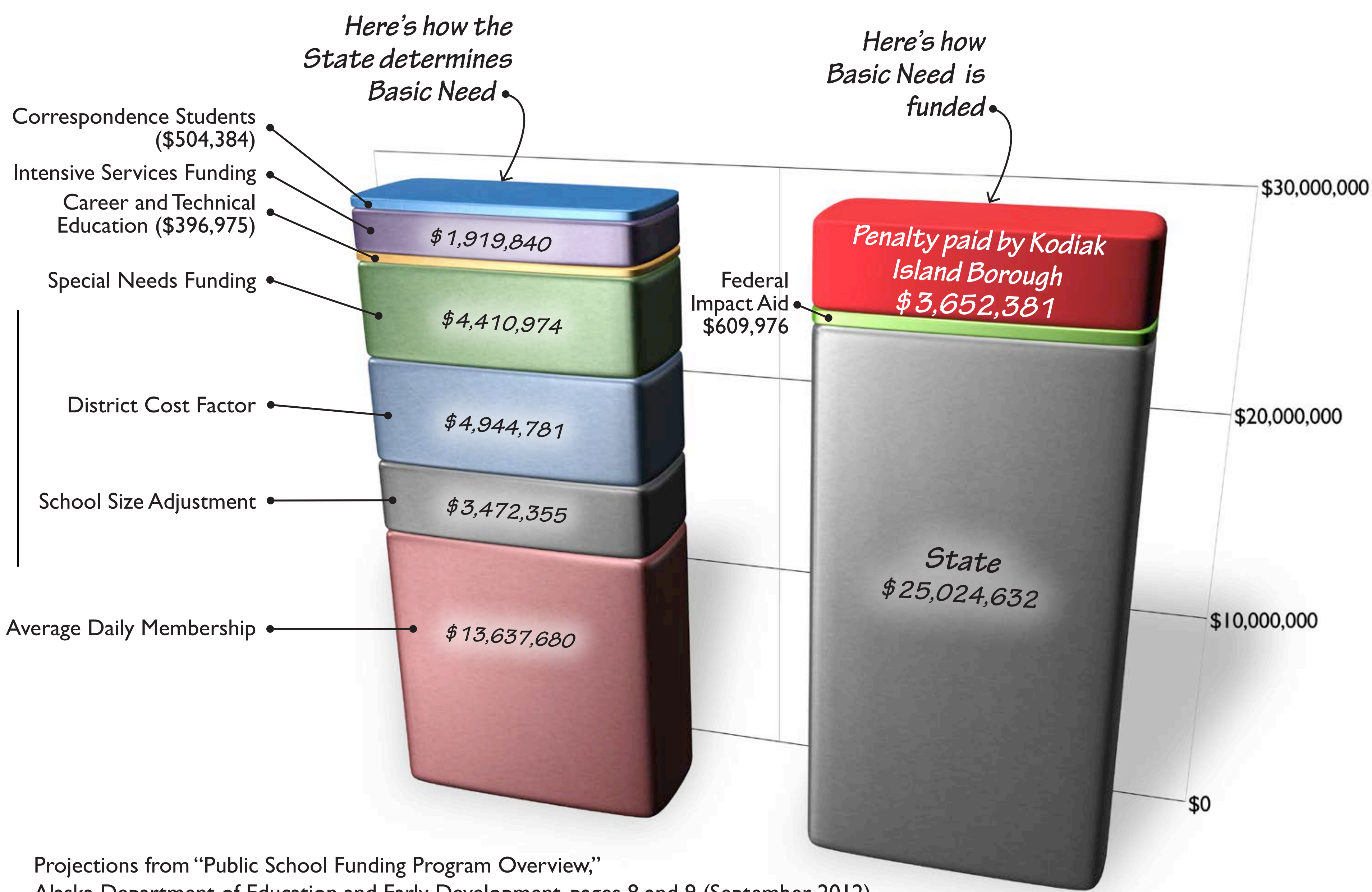


Projections from "Public School Funding Program Overview,"
Alaska Department of Education and Early Development, pages 8 and 9 (September 2012)

Cumulative Cost to the Taxpayers of the Ketchikan Gateway Borough to Compensate for the Underfunding of "Basic Need" by the State of Alaska during the Years that the Class of 2013 has been in School (2000 to the Present)

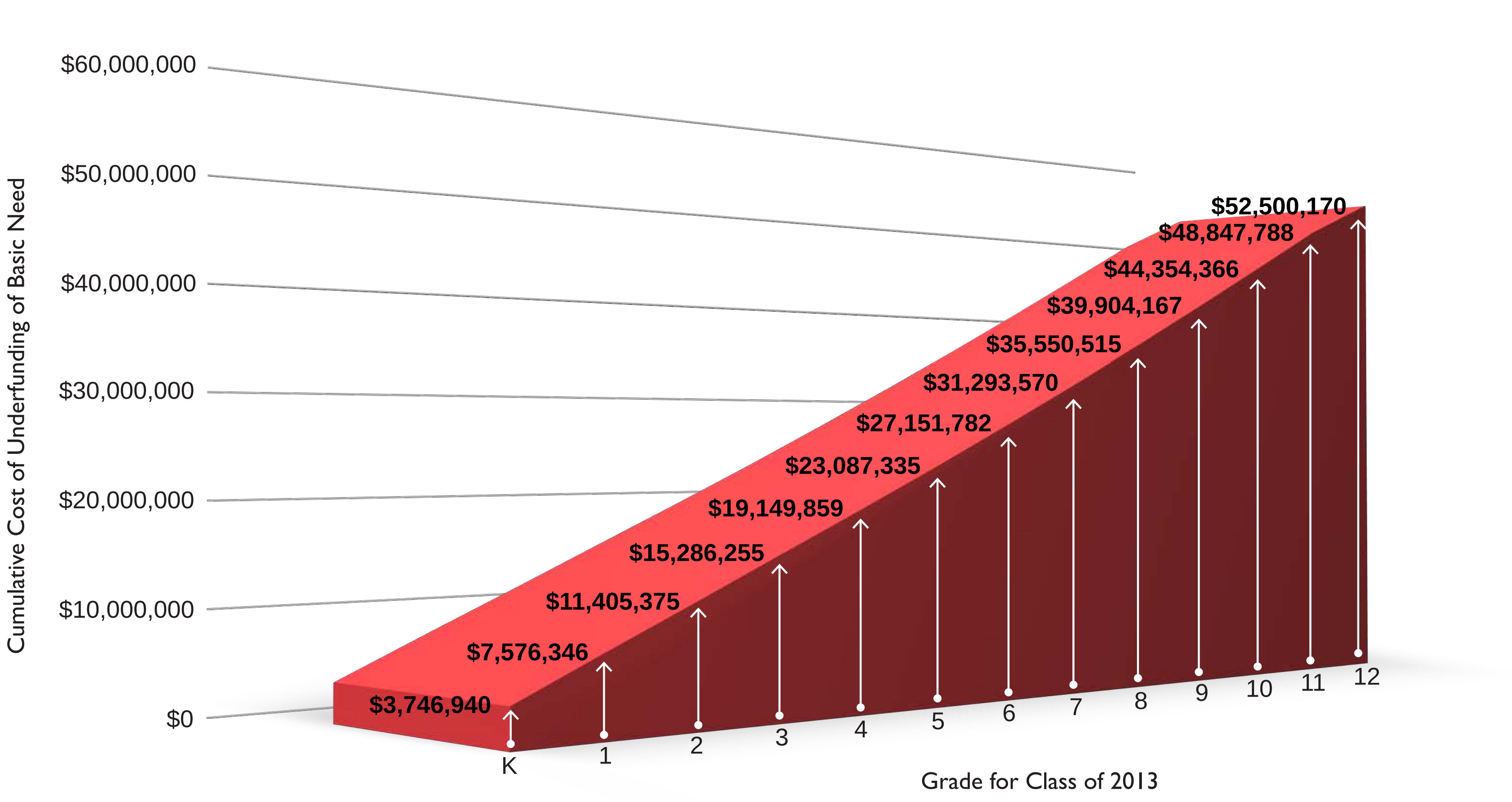


FY 2013 Basic Need Funding for the Kodiak Island Borough School District



Projections from "Public School Funding Program Overview,"
Alaska Department of Education and Early Development, pages 8 and 9 (September 2012)

Cumulative Cost to the Taxpayers of the Kodiak Island Borough to Compensate for the Underfunding of "Basic Need" by the State of Alaska during the Years that the Class of 2013 has been in School (2000 to the Present)



SUGGESTED ADDITIONAL READING

***LOCAL CONTRIBUTIONS TO PUBLIC EDUCATION IN ALASKA: A REPORT TO THE KETCHIKAN GATEWAY BOROUGH ASSEMBLY* by Robert Eldridge Hicks (February 2012)**

VOLUME I: STATEMENT OF THE PROBLEM available online at:
http://www.borough.ketchikan.ak.us/documents/LocalContributionstoEducationVolumeI_000.pdf

APPENDICES FOR VOLUME I: STATEMENT OF THE PROBLEM

Appendix A – Public School Funding in Alaska
Appendix B – Ketchikan Gateway Borough Resolution No. 2296
Appendix C – Agnes Moran Letter
Appendix D – Ingrid Zaruba Racial Census Analyses
Appendix E – Denali Commission Distressed Community Update
Appendix F – Economic Status Cities and Unincorporated Communities
Appendix G – Economic Status of School Sites
Appendix H – Basic Need and Required Local Contributions

available online at:
http://www.borough.ketchikan.ak.us/documents/AllAppendicesCombined2-17-12Bookmarked.pdf

Alaska Public School Funding Formula Overview (Presentation to the Senate and House Education Committees by Elizabeth Nudelman, Director of School Finance & Facilities of the Alaska Department of Education and Early Development, January 21, 2013) available online at:
http://www.legis.state.ak.us/basis/get_documents.asp?chamber=SEDC&session=28&bill=&date1=1/21/2013&time2=0801

Minutes of Joint Meeting of Senate and House Education Committees, January 21, 2013 available online at:
http://www.legis.state.ak.us/pdf/28/M/SEDC2013-01-210801.PDF

Public School Funding Program Overview, Alaska Department of Education and Early Development (September 2012) available online at:
http://education.alaska.gov/news/Funding_Program_Overview_2012.pdf

_________ BILL NO. ___

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE – FIRST SESSION

BY ________________________

Introduced: _________
Referred:

Sponsor(s):

A BILL

FOR AN ACT ENTITLED

"An Act repealing the required local contribution of city and borough school districts for public school funding and related provisions; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA

* **Section 1.** AS 14.17.410(b) is amended to read:

(b) Public school funding consists of state aid [, A REQUIRED LOCAL CONTRIBUTION,] and eligible federal impact aid determined as follows:

[(1)] state aid equals basic need minus [A REQUIRED LOCAL CONTRIBUTION AND] 90 percent of eligible federal impact aid for that fiscal year; basic need equals the sum obtained under <u>**(4)**</u> [(D)] of this <u>**subsection**</u> [PARAGRAPH], multiplied by the base student allocation set out in AS 14.17.470; district adjusted ADM is calculated as follows:

(1) [(A)] the ADM of each school in the district is calculated by applying the school size factor to the student count as set out in AS 14.17.450;

(2) [(B)] the number obtained under **(1)** [(A)] of this **subsection** [PARAGRAPH] is multiplied by the district cost factor described in AS 14.17.460;

(3) [(C)] the ADMs of each school in a district, as adjusted according to **(1)** [(A)] and **(2)** [(B)] of this **subsection** [PARAGRAPH], are added; the sum is then multiplied by the special needs factor set out in AS 14.17.420 (a)(1) and the secondary school vocational and technical instruction funding factor set out in AS 14.17.420(a)(3);

(4) [(D)] the number obtained for intensive services under AS 14.17.420(a)(2) and the number obtained for correspondence study under AS 14.17.430 are added to the number obtained under **(3)** [(C)] of this **subsection** [PARAGRAPH];

(5) [(E)] notwithstanding **(1) - (3)** [(A) - (C)] of this **subsection** [PARAGRAPH], if a school district's ADM adjusted for school size under **(1)** [(A)] of this **subsection** [PARAGRAPH] decreases by five percent or more from one fiscal year to the next fiscal year, the school district may use the last fiscal year before the decrease as a base fiscal year to offset the decrease, according to the following method:

(A) [(i)] for the first fiscal year after the base fiscal year determined under this **paragraph** [SUBPARAGRAPH], the school district's ADM adjusted for school size determined under **(1)** [(A)] of this **subsection** [PARAGRAPH] is calculated as the district's ADM adjusted for school size, plus 75 percent of the difference in the district's ADM adjusted for school size between the base fiscal year and the first fiscal year after the base fiscal year;

(B) [(ii)] for the second fiscal year after the base fiscal year determined under this **paragraph** [SUBPARAGRAPH], the school district's ADM adjusted for school size determined under **(1)** [(A)] of this **subsection** [PARAGRAPH] is calculated as the district's ADM adjusted for school size, plus 50 percent of the difference in the district's ADM adjusted for school size between the base fiscal year and the second fiscal year after the base fiscal year;

(C) [(iii)] for the third fiscal year after the base fiscal year determined under this **paragraph** [SUBPARAGRAPH], the school district's ADM adjusted for school size determined under **(1)** [(A)] of this **subsection** [PARAGRAPH] is calculated as the district's ADM adjusted for school size, plus 25 percent of the difference in the district's ADM adjusted for school size between the base fiscal year and the third fiscal year after the base fiscal year;

(6) [(F)] the method established in **(5)** [(E)] of this **subsection** [PARAGRAPH] is available to a school district for the three fiscal years following the base fiscal year determined under **(5)** [(E)] of this **subsection** [PARAGRAPH] only if the district's ADM adjusted for school size determined under **(1)** [(A)] of this **subsection** [PARAGRAPH] for each fiscal year is less than the district's ADM adjusted for school size in the base fiscal year;

(7) [(G)] the method established in **(5)** [(E)] of this **subsection** [PARAGRAPH] does not apply to a decrease in the district's ADM adjusted for school size resulting from a loss of enrollment that occurs as a result of a boundary change under AS 29;

[(2) THE REQUIRED LOCAL CONTRIBUTION OF A CITY OR BOROUGH SCHOOL DISTRICT IS THE EQUIVALENT OF A 2.65 MILL TAX LEVY ON THE FULL AND TRUE VALUE OF THE TAXABLE REAL AND PERSONAL PROPERTY IN THE DISTRICT AS OF JANUARY 1 OF THE SECOND PRECEDING FISCAL YEAR, AS DETERMINED BY THE DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT UNDER AS 14.17.510 AND AS 29.45.110, NOT TO EXCEED 45 PERCENT OF A DISTRICT'S BASIC NEED FOR THE PRECEDING FISCAL YEAR AS DETERMINED UNDER (1) OF THIS SUBSECTION.]

* **Sec. 2.** AS 14.17.410(c) is amended to read:

(c) [IN ADDITION TO THE LOCAL CONTRIBUTION REQUIRED UNDER (b)(2) OF THIS SECTION, A] **A** city or borough school district in a fiscal year may make a local contribution of not more than the greater of

(1) the equivalent of a two mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year, as determined by the Department of Commerce, Community, and Economic Development under AS 14.17.510 and AS 29.45.110 ; or

(2) 23 percent of the district's basic need for the fiscal year under (b)[(1)] of this section.

* **Sec. 3.** AS 14.17.410(d) is repealed.

* **Sec. 4.** AS 14.17.410(e) is repealed.

* **Sec. 5.** AS 14.17.410(f) is repealed.

* **Sec. 6.** AS 14.17.420(a) is amended to read:

(a) As a component of public school funding, a district is eligible for special needs and secondary school vocational and technical instruction funding and may be eligible for intensive services funding as follows:

(1) special needs funding is available to a district to assist the district in providing special education, gifted and talented education, vocational education, and bilingual education services to its students; a special needs funding factor of 1.20 shall be applied as set out in AS 14.17.410(b)[(1)];

(2) in addition to the special needs funding for which a district is eligible under (1) of this subsection, a district is eligible for intensive services funding for each special education student who needs and receives intensive services and is enrolled on the last day of the count period; for each such student, intensive services funding is equal to the intensive student count multiplied by 13;

(3) in addition to the special needs and intensive services funding available under (1) and (2) of this subsection, secondary school vocational and technical instruction funding is available to assist districts in providing vocational and technical instruction to students who are enrolled in a secondary school; a secondary school vocational and technical instruction funding factor of 1.015

shall be applied as set out in AS 14.17.410(b)[(1)]; in this paragraph, "vocational and technical instruction" excludes costs associated with

(A) administrative expenses; and

(B) instruction in general literacy, mathematics, and job readiness skills.

* **Sec. 7.** AS 14.17.460(a) is amended to read:

(a) For purposes of calculating a district's adjusted ADM under AS 14.17.410 (b)[(1)], the district cost factor for a school district is (1) for the fiscal year ending June 30, 2009, the factor set out under column (A) of this subsection, (2) for the fiscal year ending June 30, 2010, the factor set out under column (B) of this subsection, (3) for the fiscal year ending June 30, 2011, the factor set out under column (C) of this subsection, (4) for the fiscal year ending June 30, 2012, the factor set out under column (D) of this subsection, and (5) for fiscal years ending on or after June 30, 2013, the factor set out under column (E) of this subsection:

DISTRICT	(A)	(B)	(C)	(D)	(E)
Alaska Gateway	1.443	1.481	1.519	1.557	1.594
Aleutians East	1.707	1.778	1.849	1.920	1.991
Aleutians Region	1.838	1.864	1.890	1.916	1.939
Anchorage	1.000	1.000	1.000	1.000	1.000
Annette Island	1.175	1.216	1.257	1.298	1.338
Bering Strait	1.762	1.821	1.880	1.939	1.998
Bristol Bay	1.370	1.397	1.424	1.451	1.478
Chatham	1.348	1.405	1.462	1.519	1.576
Chugach	1.395	1.420	1.445	1.470	1.496
Copper River	1.246	1.264	1.282	1.300	1.316
Cordova	1.165	1.182	1.199	1.216	1.234
Craig	1.108	1.133	1.158	1.183	1.206
Delta/Greely	1.174	1.191	1.208	1.225	1.241
Denali	1.323	1.326	1.329	1.332	1.332
Dillingham	1.300	1.312	1.324	1.336	1.346

Fairbanks	1.055	1.059	1.063	1.067	1.070
Galena	1.370	1.376	1.382	1.388	1.391
Haines	1.104	1.128	1.152	1.176	1.200
Hoonah	1.227	1.270	1.313	1.356	1.399
Hydaburg	1.295	1.348	1.401	1.454	1.504
Iditarod	1.658	1.705	1.752	1.799	1.846
Juneau	1.075	1.093	1.111	1.129	1.145
Kake	1.242	1.296	1.350	1.404	1.459
Kashunamiut	1.504	1.533	1.562	1.591	1.619
Kenai Peninsula	1.088	1.109	1.130	1.151	1.171
Ketchikan	1.085	1.106	1.127	1.148	1.170
Klawock	1.160	1.196	1.232	1.268	1.302
Kodiak Island	1.191	1.216	1.241	1.266	1.289
Kuspuk	1.584	1.622	1.660	1.698	1.734
Lake and Peninsula	1.776	1.831	1.886	1.941	1.994
Lower Kuskokwim	1.577	1.599	1.621	1.643	1.663
Lower Yukon	1.650	1.703	1.756	1.809	1.861
Matanuska-Susitna	1.040	1.048	1.056	1.064	1.070
Mt. Edgecumbe	1.098	1.123	1.148	1.173	1.195
Nenana	1.304	1.313	1.322	1.331	1.338
Nome	1.385	1.402	1.419	1.436	1.450
North Slope	1.648	1.684	1.720	1.756	1.791
Northwest Arctic	1.686	1.720	1.754	1.788	1.823
Pelican	1.384	1.408	1.432	1.456	1.477
Petersburg	1.122	1.153	1.184	1.215	1.244
Pribilof	1.555	1.589	1.623	1.657	1.691
Sitka	1.098	1.123	1.148	1.173	1.195
Skagway	1.159	1.163	1.167	1.171	1.174
Southeast Island	1.264	1.299	1.334	1.369	1.403
Southwest Region	1.554	1.587	1.620	1.653	1.685
St. Mary's	1.488	1.522	1.556	1.590	1.624

Tanana	1.641	1.677	1.713	1.749	1.786
Unalaska	1.343	1.368	1.393	1.418	1.441
Valdez	1.133	1.143	1.153	1.163	1.170
Wrangell	1.080	1.100	1.120	1.140	1.159
Yakutat	1.229	1.275	1.321	1.367	1.412
Yukon Flats	1.892	1.948	2.004	2.060	2.116
Yukon/Koyukuk	1.669	1.711	1.753	1.795	1.835
Yupiit	1.596	1.628	1.660	1.692	1.723.

* **Sec. 8.** AS 14.17.490(b) is repealed.

* **Sec. 9.** AS 14.17.490(c) is amended to read:

(b) [(c)] For the purposes of the reduction required under AS 14.17.400(b), funding authorized under (a) of this section is treated the same as the state share of public school funding under AS 14.17.410.

* **Sec. 10.** AS 14.17.490(d) is amended to read:

(c) [(d)] Beginning in fiscal year 2000, if a district receives more public school funding under AS 14.17.410 than the district received in the preceding fiscal year, any amount received by the district under this section shall be reduced. The amount of the reduction required under this subsection is equal to the amount of increase from the preceding fiscal year in public school funding multiplied by 40 percent. In this subsection, "public school funding" does not include funding under this section.

* **Sec. 11.** AS 14.17.490(e) is amended to read:

(d) [(e)] Beginning in fiscal year 2000, in each fiscal year, the department shall compare each district's ADM with the district's ADM in fiscal year 1999. If the current fiscal year ADM is less than 95 percent of the district's ADM in fiscal year 1999, the department shall reduce the district's public school funding calculated under (a) of this section by a percentage equal to the percentage of decrease in the district's ADM.

* **Sec. 12.** AS 14.17.490(f) is amended to read:

<u>(e)</u> [(f)] For purposes of this section, "state aid" means state aid distributed under the provisions of AS 14.17, as those provisions read on January 1, 1998, and additional district support appropriated by the legislature for fiscal year 1998.

* **Sec. 13.** AS 14.17.510(a) is amended to read:

(a) To [DETERMINE THE AMOUNT OF REQUIRED LOCAL CONTRIBUTION UNDER AS 14.17.410 (B)(2) AND TO] aid the department and the legislature in planning, the Department of Commerce, Community, and Economic Development, in consultation with the assessor for each district in a city or borough, shall determine the full and true value of the taxable real and personal property in each district in a city or borough. If there is no local assessor or current local assessment for a city or borough school district, then the Department of Commerce, Community, and Economic Development shall make the determination of full and true value guided by AS 29.45.110 and based on a determination of full and true value made by the state assessor at least every two years using the best information available, including on-site inspections made by the state assessor in each of those districts at least once every four years. For purposes of this subsection, the full and true value of taxable real and personal property in any area detached shall be excluded from the determination of the full and true value of the municipality from which the property was detached for the two years immediately preceding the effective date of the detachment. Also, in making the determination for a municipality that is a school district, or for a city that is within a borough school district, the assessed value of property taxable under AS 43.56 shall be excluded if a tax is not levied under AS 29.45.080 by the municipality that is the school district. The determination of full and true value shall be made by October 1 and sent by certified mail, return receipt requested, on or before that date to the president of the school board in each city or borough school district. Duplicate copies shall be sent to the commissioner. The governing body of a city or borough that is a school district may obtain judicial review of the determination. The superior court may modify the determination of the Department of Commerce, Community, and Economic Development only upon a finding of abuse of discretion or upon a finding that there is no substantial evidence to support the determination.

*** Sec. 15.** AS 14.17.990(3) is amended to read:

(3) "district adjusted ADM" means the number resulting from the calculations under AS 14.17.410(b)[(1)];

*** Sec. 16.** AS 14.20.177(a) is amended to read:

(a) A school district may implement a layoff plan under this section if it is necessary for the district to reduce the number of tenured teachers because

(1) school attendance in the district has decreased; or

(2) the basic need of the school district determined under AS 14.17.410(b)[(1)] decreases by three percent or more from the previous year.

*** Sec. 17.** This Act takes effect July 1, 2013.