**[Chapter 31](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31)  
School Facility Planning and Construction**

[**Article 1**](http://www.legis.state.ak.us/basis/aac.asp#4.31) **Planning and Construction**

[**4 AAC 31.010. Educational specifications**](http://www.legis.state.ak.us/basis/aac.asp#4.31.010)

The chief school administrator, under the direction of the school board, is responsible for preparation of educational specifications for all new public elementary and secondary schools, and additions to and rehabilitations of existing facilities. These educational specifications must include, as a minimum, the following:

(1) the current year and five-year post-occupancy projected attendance area enrollments in the grades affected by the facility;

(2) a statement of educational philosophy and goals for the facility;

(3) the curriculum to be housed by the facility;

(4) the activities that will be conducted in the facility;

(5) the anticipated community uses of the facility;

(6) the specific and general architectural characteristics desired;

(7) the educational spaces needed, their approximate sizes in square feet, their recommended equipment requirements, and their space relationships to other facility elements;

(8) the size, use, and condition of existing school spaces in the facility;

(9) the recommended site and utility requirements;

(10) the proposed budget and method of financing; and

(11) the technology goals of the curriculum and their facility requirements.

**[4 AAC 31.011. Planning of educational facilities](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.011)**

(a) The chief school administrator, under the direction of the school board, is responsible for preparing a six-year capital improvement plan, including annual updates, for all new public elementary schools, secondary schools, and education-related facilities, as well as for all additions to and rehabilitations of existing facilities, for which state aid is sought under [AS 14.11.011](http://www.legis.state.ak.us/basis/statutes.asp#14.11.011) or for which an allocation of state aid as debt service reimbursement is sought under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100).

(b) The capital improvement plan must include:

(1) a description of the district's fixed asset inventory and its condition;

(2) a description of the district's preventive maintenance program for facilities in the district; and

(3) for each capital project in the six-year plan: a project title, a project scope, and an estimated project cost.

(c) A district requesting approval of a project for state aid under [AS 14.11.011](http://www.legis.state.ak.us/basis/statutes.asp#14.11.011) or [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) shall submit an updated six-year capital improvement plan to the department no later than September 1 of each year. The district's six-year capital improvement plan must list each project for which approval of a project for state aid is sought.

**[4 AAC 31.013. Preventive maintenance and facility management](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.013)**

(a) For a district to be eligible for state aid under AS 14.11.011 or AS 14.11.100, the district must have a facility management program that addresses the following five elements of facility and maintenance management:

(1) a formal maintenance management program that records maintenance activities on a work order basis, and tracks the timing and cost, including labor and materials, of maintenance activities in sufficient detail to produce reports of planned and completed work;

(2) an energy management plan that includes

(A) the recording of energy consumption for all utilities on a monthly basis for each building; for facilities constructed before December 15, 2004, a district may record energy consumption for utilities on a monthly basis when multiple buildings are served by one utility plant; and

(B) regular evaluation of the effectiveness of and need for commissioning existing buildings;

(3) a custodial program that includes a schedule of custodial activities for each building based on type of work and scope of effort;

(4) a maintenance training program that specifies training for custodial and maintenance staff and records training received by each person; and

(5) a renewal and replacement schedule that, for each school facility of permanent construction over 1,000 gross square feet, identifies the construction cost of major building systems, including electrical, mechanical, structural and other components; evaluates and establishes the life-expectancy of those systems; compares life-expectancy to the age and condition of the systems; and uses the data to forecast a renewal and replacement year and cost for each system.

(b) Repealed 12/15/2004.

(c) At the request of a chief school administrator, the department will assist a district in implementing a qualifying preventive maintenance program through consultation, on-site reviews, and training.

(d) Repealed 12/15/2004.

(e) The department will make a determination of a district’s compliance with each element required in (a) of this section, based on evidence of a program acquired by the department, including information gathered by the department during an on-site visit conducted under (f) of this section. The department may change a determination at any time during the year based on new evidence. For purposes of eligibility for an application submitted under AS 14.11.011, on or before June 1, the department will provide preliminary notice of its determination. Districts that are not in full compliance must provide evidence of compliance to the department by August 1. On or before August 15, the department will notify districts of its final determination regarding compliance. The department will deny a grant application submitted under AS 14.11.011 by a district that has received a final determination from the department that the district is out of compliance with this section.

(f) The department will conduct an on-site inspection of a school district preventive maintenance and facility management program at least once every five years; however, if the department issues a finding of noncompliance under (e) of this section and the district does not provide adequate evidence of compliance, the department may postpone an onsite visit beyond the five-year period. The department may make additional inspections as it deems necessary. The department may change its determination of compliance based on information obtained during an on-site inspection.

(g) In this section

(1) "district" has the meaning given in [AS 14.11.135](http://www.legis.state.ak.us/basis/statutes.asp#14.11.135);

(2) "maintenance activities" means all work performed by district staff or contractors on building systems, components, utilities, and site improvements.

(h) Notwithstanding (e) and (f) of this section, the department may make a determination of provisional compliance for a district that provides evidence of a plan that meets all required elements identified in (a) of this section but does not provide documentation of adherence to that plan. A determination of provisional compliance will allow a district to be eligible for state aid until a final determination of compliance or non-compliance is provided.

**[4 AAC 31.014. Codes and regulations for school facilities](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.014)**

(a) The chief school administrator shall assure that a new school facility, addition, or major renovation complies with applicable facility codes and regulations of the state and with those of the municipality in which the facility is located. The chief school administrator may meet the obligation by providing documentation from the appropriate state or municipal official that the facility, addition, or renovation complies with an applicable code or regulation. For purposes of this subsection, the applicable codes and regulations of the state with which facilities, additions, or renovations must comply are the

(1) building code, adopted by [13 AAC 50.020](http://www.legis.state.ak.us/basis/aac.asp#13.50.020);

(2) electrical code, adopted by [8 AAC 70.025](http://www.legis.state.ak.us/basis/aac.asp#8.70.025);

(3) plumbing code, adopted by [AS 18.60.705](http://www.legis.state.ak.us/basis/statutes.asp#18.60.705)(a);

(4) mechanical code, adopted by [13 AAC 50.023](http://www.legis.state.ak.us/basis/aac.asp#13.50.023);

(5) ASME Boiler and Pressure Vessel Code, adopted by [8 AAC 80.010](http://www.legis.state.ak.us/basis/aac.asp#8.80.010);

(6) fire code, adopted by [13 AAC 50.025](http://www.legis.state.ak.us/basis/aac.asp#13.50.025); and

(7) energy efficiency code, consisting of the American Association of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) Standard 90.1, Energy Standard for Buildings Except Low-Rise Residential Buildings, (2010 Edition), and adopted by reference.

(b) If the construction of a new school facility or addition or the making of a major renovation to a school facility affects navigable airspace, the chief school administrator shall assure that the new school facility, addition, or major renovation complies with regulations of the Federal Aviation Administration relating to Objects Affecting Navigable Airspace, as adopted by the Department of Transportation and Public Facilities in regulations applicable to all state airport land leases and permits. The commissioner will, in the commissioner's discretion, require the chief school administrator to provide documentation from the appropriate official that the facility, addition, or renovation complies with this subsection.

**[4 AAC 31.016. Determination of attendance areas for space eligibility](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.016)**

(a) For purposes of calculating the number of unhoused students and the amount of square footage eligible for state school facility funding, each school district is divided into attendance areas. Annually, by February 1, the commissioner will issue a list of the department-established attendance areas within each school district. The list will be based on the criteria set out in (b) and (c) of this section.

(b) Each group of public schools in a school district that meet the following criteria will be established as a single attendance area:

(1) all schools serving students in any of the grades 9-12, and located within a single home rule, first class, or second class city; an attendance area under this paragraph includes all feeder schools, if any, for those schools;

(2) each school serving students in any of the grades 9-12, and located outside of a unified municipality or of a home rule, first class, or second class city; an attendance area under this paragraph includes all feeder schools, if any, for that school;

(3) all schools located within a unified municipality; however, a high school and all of its feeder schools within a unified municipality will be established as a separate attendance area, if the high school

(A) is located more than 13 road miles from the next nearest high school within the unified municipality; and

(B) together with all of its feeder schools has an ADM in excess of 1,000 in grades kindergarten through 12;

(4) all schools located on a military installation, if access to those schools can be limited by security measures of the installation.

(c) The commissioner will establish an attendance area in addition to those described in (b) of this section if the commissioner is satisfied that the schools in that attendance area are geographically separated from the nearest school in the attendance area established under (b) of this section in which the schools of the additional attendance area would otherwise be included.

(d) A school district may request an amendment to the attendance areas established in the annual list specified in (a) of this section. The commissioner will adjust the attendance areas if satisfied that the request is justified under the criteria set out in (b) or (c) of this section. A district request for amendment must be made in writing and received by the commissioner by March 1 following publication of the list to which an amendment is sought. The commissioner will provide notice of approval or denial of a district request under this subsection by certified mail posted on or before April 1.

(e) Except for an exceptional child transferred under [AS 14.30.285](http://www.legis.state.ak.us/basis/statutes.asp#14.30.285), a student who resides in one school district or attendance area but enrolls in and attends school in another school district or attendance area must be counted in the attendance area in which the student is enrolled.

(f) The enrollment calculated for correspondence study students will be excluded from use in calculating eligibility for additional square footage for facilities.

(g) Space in state-operated schools or schools operated on behalf of the state will be excluded from the attendance area in which the space is located.

(h) Once attendance areas are finalized under (d) of this section, a change in grade levels offered by a high school or feeder school must be approved by the commissioner. A request for a change in grade level must be made in writing to the commissioner before the statutory deadline for submission of capital improvement project applications for state aid under [AS 14.11.011](http://www.legis.state.ak.us/basis/statutes.asp#14.11.011) or [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) in order for the change to be considered in the determination of space allocations for that year.

(i) The enrollment calculated for students in leased space will be excluded from use in calculating eligibility for additional square footage for facilities unless

(A) that enrollment is in an attendance area comprised of a single school, or

(B) the lease is due to terminate within two years and the district submits an application for a capital improvement project under AS 14.11 for new school construction to house the student population of the terminating lease space.

**[4 AAC 31.020. Guides for planning educational facilities](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.020)**

(a) The following are the basic guides for educational facility planning adopted by reference:

(1) for a school capital project application submitted to the department, Creating Connections: The CEFPI Guide for Educational Facility Planning, 2004 edition, as published by the Council of Educational Facilities Planners International;

(2) repealed 4/17/98;

(3) repealed 4/17/98;

(4) Guidelines for School Equipment Purchases, as published by the Alaska Department of Education and Early Development, 2016 edition;

(5) deleted 8/31/90;

(6) repealed 4/17/98;

(7) Swimming Pool Guidelines, as published by the Alaska Department of Education and Early Development, 1997 edition; and

(8) Site Selection Criteria and Evaluation Handbook, as published by the Alaska Department of Education and Early Development, 2011 edition.    (b) In the event of a conflict between publications incorporated by reference in (a) of this section, the publication prepared by the Department of Education and Early Development controls.

(c) Notwithstanding (a)(1) of this section, for the purpose of determining funding for a school capital project under [AS 14.11](http://www.legis.state.ak.us/basis/statutes.asp#14.11), the square feet allowable must be determined under this subsection based on the grade levels offered in the school. The base square feet allowable per average daily membership (ADM) and supplemental square feet allowable per ADM are calculated, and additional square footage is approvable, as follows:

(1) the base square feet allowable per ADM for an elementary school is 114 square feet;

(2) the supplemental square feet allowable per ADM for an elementary school is 130 X 10(-ADM/250);

(3) the base square feet allowable per ADM for a secondary school is 165 square feet;

(4) the supplemental square feet allowable per ADM for a secondary school is 300 X 10(-ADM/300);

(5) the base square feet allowable per ADM for a combined elementary and secondary school is 114 square feet per elementary ADM and 165 square feet per secondary ADM;

(6) the supplemental square feet allowable per ADM for a combined elementary and secondary school is 213 X 10(-combined ADM/483);

(7) a district may request the commissioner to approve a variance for additional space for a school; the request for each variance must be in writing; all requested variances, taken together may not exceed 20 percent of the gross square feet allowable for the school; the commissioner will approve the request, subject to (g) of this section, and will apply the variance to both planned and completed schools, if the commissioner finds

(A) that a unique educational program not envisioned by the educational facility planning guides set out in (a) of this section is required to meet the needs of the population to be served by the school; and

(B) at least one of the following:

(i) that the district has demonstrated that additional space is required to adequately house the unique educational program and that the effect of accommodating the additional space without a variance prohibits the remainder of the population served by the school from having sufficient space for standard educational programs;

(ii) that the added space is necessary to meet the needs of the educational program and is in the best interests of the state;

(8) the commissioner, at the request of the district, may approve a variance for additional space of not more than 15 square feet per projected ADM for new projects that propose the rehabilitation of or addition to an existing facility and not more than 20 square feet per current capacity for existing schools that have, at some previous point, experienced a rehabilitation of or addition to an existing facility; the commissioner will approve a request under this paragraph only if the district's request is supported by an explanation of the reasons for the request that demonstrates

(A) the specific cause of each impact;

(B) the square feet affected by the cause of impact; and

(C) the reason for this condition merits an exception;

(9) the base square feet allowable per ADM for a mixed grade school is 114 square feet per elementary ADM and 165 square feet per secondary ADM, except that for a mixed grade school that includes grade six in conjunction with two or more secondary grades located in a separate school facility, the base square feet allowable per ADM is 165 square feet per grade six ADM;

(10) the supplemental square feet allowable per ADM for a mixed grade school is 250 X 10(-combined ADM/250).

(d) The department will reduce a project budget in proportion to the amount that the project's design exceeds the square feet allowable as determined under (c) of this section, until an agreement, as described in 4 AAC 31.023(c), is fully executed. The department may proportionally reduce the project budget under this subsection if a project has not secured the approval of the commissioner under [4 AAC 31.040](http://www.legis.state.ak.us/basis/aac.asp#4.31.040).

(e) For the purposes of this section, the space of a building is the sum of the areas of the floors of a building in gross square feet. The floors of a building include a basement, a mezzanine, an intermediate floored tier, and a penthouse of headroom height. Space is measured from the exterior face of an exterior wall or from the centerline of a wall that separates a building. For the purposes of calculating a building's gross square footage, the

(1) building's gross square footage does not include

(A) a utility distribution area with

(i) a ceiling height below seven feet; and

(ii) a floor assembly not sized to support an occupant load according to applicable state and municipal building codes;

(B) a pipe chase;

(C) an exterior terrace or steps;

(D) a chimney; or

(E) a roof overhang; and

(2) following allowances above the gross square footage calculated in (c) of this section are permitted:

(A) covered exterior areas not conditioned with heating or cooling (i) equal to the greater of 15 percent of a building's gross square footage or 3,000 gross square feet; and (ii) to a maximum of 9,000 gross square feet;

(B) space to support water storage, water treatment, or sewer treatment to a maximum of five percent of a building's gross square footage.

(f) Repealed 6/17/2010.

(g) A request to approve a variance for additional space made and approved under (c)(7) of this section expires on the first day of October following the one-year anniversary of the commissioner's approval of it unless the district certifies to the department, no later than that date, the continued existence of the unique educational program described in (c)(7)(A) of this section for which the additional space was approved.

(h) Notwithstanding (c) of this section, the commissioner will deny or disallow a determination of allowable space under (c)(1) - (6), (9), and (10) of this section and will deny a request to approve a variance for additional space under (c)(7) and (8) of this section if the commissioner finds that the space determination or approval of the request is the result of a choice in educational delivery by the school district that could be eliminated by a redistribution of school age populations between attendance centers in the attendance area.

(i) Notwithstanding (a) - (h) of this section, the commissioner shall approve a variance from the limitations on allowable space in a school set out in this section for space that is jointly used by the school and another entity, if the request meets the requirements of this subsection and the department determines that the sharing entity is able to participate as specified in the agreement. The request must be made by a district, in writing, and meet the following:

(1) the space that is jointly used is subject to a formal binding agreement between the district and the entity sharing use; the agreement must cover allocation and method of sharing between the district and the entity of the following:

(A) the operating costs for the jointly used space for the life of the facility;

(B) future capital costs for the life of the facility;

(C) the initial capital costs for a new or remodeled facility only;

(2) the variance requested is limited to the amount of square footage that the entity sharing space accepts responsibility for in the agreement described in (1) of this subsection;

(3) a copy of the agreement described in (1) of this subsection is submitted with the request for variance.

(j) A variance approved under (i) of this section is no longer valid if the agreement upon which the variance was based is amended or terminated. If the agreement is amended or terminated, the district shall immediately notify the department and submit any new request for a variance in accordance with (i) of this section.

(k) Notwithstanding (a) - (h) of this section, the commissioner will approve a variance from the limitations on allowable space in a school set out in this section for space that is provided in oversized core areas, if the request meets the requirements of this subsection. The request must be made by a district, in writing, and meet the following:

(1) the district requesting the variance has an established standard for educational delivery that

(A) defines a specific school program;

(B) establishes a standard student population to be served by the program; and

(C) has an educational specification approved under [4 AAC 31.010](http://www.legis.state.ak.us/basis/aac.asp#4.31.010) for that program;

(2) the oversized core areas for a future project are sized proportionate to that size required in the project's educational specifications to accommodate a student population projected in accordance with [4 AAC 31.021](http://www.legis.state.ak.us/basis/aac.asp#4.31.021)(c)(3), and projected for an additional five years at the growth rate accepted for the initial projection, not to exceed 130 percent of the initial projection;

(3) the individual core areas of an existing facility, when combined, exceed the square footage of that core area stated in the educational specification to a maximum of 10 percent of the gross square footage of the facility.

**[4 AAC 31.021. Applications for grants for capital improvement projects](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.021)**

(a) A school district, as the term "district" is defined in [AS 14.11.135](http://www.legis.state.ak.us/basis/statutes.asp#14.11.135), may apply for no more than 10 capital improvement grants under [AS 14.11.011](http://www.legis.state.ak.us/basis/statutes.asp#14.11.011) no later than September 1 of the fiscal year preceding the fiscal year for which the request is made. The application shall be made on forms prescribed by the commissioner and be accompanied by the school district's current six-year capital improvement plan prepared under [4 AAC 31.011](http://www.legis.state.ak.us/basis/aac.asp#4.31.011), and the chief school administrator must certify that the application is submitted in accordance with law.

(b) Repealed 3/10/96.

(c) A grant application that includes new construction, addition of space, or replacement of space must include verification that

(1) the enrollment of the attendance area will reach the design capacity of existing school facilities within two years;

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

(3) as demonstrated by commonly accepted demographic techniques resulting in population projections accepted as reasonable by the department, the proposed facility will reach and sustain design capacity within five years after the anticipated occupancy date; and

(4) repealed 4/17/98;

(5) repealed 4/17/98;

(6) repealed 6/17/2010.

(d) If a school district wants to request a waiver of local contribution for a grant allowable under [AS 14.11.008](http://www.legis.state.ak.us/basis/statutes.asp#14.11.008), that district shall make a request in its grant application and include the basis for that request in that application.

(e) Using the criteria set out in [4 AAC 31.022](http://www.legis.state.ak.us/basis/aac.asp#4.31.022)(b), the department will score each application and use the score to assign a priority ranking to the projects approved for eligibility. The department may annually approve a school district’s request to reuse an original application and its score for up to five additional years after the year the original application is submitted, if, for a school capital project listed in the district's six-year capital improvement plan,

(1) the school district identifies, in a letter accompanying the six-year plan, the specific application for which the district requests consideration beyond the initial application period;

(2) the chief school administrator certifies in writing that the district's eligibility for any additional square footage associated with the project has not decreased; and

(3) for requests to reuse the application and score for the first additional year;

(A) the physical condition of a facility included in the project has not deteriorated so as to increase the project's cost to exceed the amount determined by application of the inflation factor under (f) of this section; and

(B) health and life safety conditions and code conditions have not changed so as to affect the project's score under 4 AAC 31.022(b); or

(4) for requests to reuse the application and its score in years two through five after the year of the original application, the project construction must be substantially complete at the time of the original application. An inflation factor under (f) of this section will not be added to the project cost when an application is reused under this paragraph.    (f) If, under (e) of this section, a district requests use of its previous year's application during the second year after application was filed, the department will add an inflation factor based on an industry accepted method.

(f) If, under (e) of this section, the department approves a district’s reuse of its previous year's application and score for one additional year after the year the original application is filed, the department will add an inflation factor based on an industry-accepted method to costs anticipated to occur after the award of the grant.

(g) If, under (e) of this section, a district reuses its original application and score for one or more additional years after the year the original application is filed, the district may not appeal its priority ranking in any of the additional years.

(h) A grant application must include certification that insurance or a program of self-insurance exists under [4 AAC 31.200](http://www.legis.state.ak.us/basis/aac.asp#4.31.200) - [4 AAC 31.225](http://www.legis.state.ak.us/basis/aac.asp#4.31.225) and will be revised, if necessary, to include the proposed facility.

**[4 AAC 31.022. Annual grant application review and capital improvement grant schedule revision](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.022)**

(a) Each year, department staff shall

(1) review the revised six-year capital improvement plans submitted by each school district under [4 AAC 31.011](http://www.legis.state.ak.us/basis/aac.asp#4.31.011); and

(2) recommend to the state Board of Education

(A) a revised six-year capital improvement plan; and

(B) a current-year capital improvement grant schedule, including individual grant amounts; if approved by the state Board of Education, the grant schedule takes effect with the start of the following fiscal year subject to legislative appropriation.

(b) When reviewing the six-year capital improvement plans and the grant applications submitted by school districts, department staff shall separately rank projects in the following classifications in the first year of the plan, in descending order of priority, as serves the state's best interests, where:

(1) school construction projects are those projects the primary purpose of which is to accomplish work under the categories established in [AS 14.11.013](http://www.legis.state.ak.us/basis/statutes.asp#14.11.013)(a)(1)(A), (B), (F), and (G); and

(2) major maintenance projects are those projects the primary purpose of which is to accomplish work under the categories established in [AS 14.11.013](http://www.legis.state.ak.us/basis/statutes.asp#14.11.013)(a)(1)(C)-(E), except that a major maintenance project may not include additional or replacement square footage.

(c) When the department staff ranks projects under (b) of this section, the staff shall balance, as applicable to each project, the following considerations:

(1) the priority assigned to a project by a school district in relation to other projects of that district for which grant applications are submitted;

(2) the percentage by which the number of unhoused students exceeds the design capacity of existing facilities in the attendance area;

(3) the relationship of the cost of the project to the annual savings in operational costs and the present worth as an annuity of the projected costs savings over the remaining economic life of the building;

(4) whether the project

(A) is necessary to provide for elementary and secondary instructional program requirements, mandated by state law or regulation, that are not met by existing facilities;

(B) provides for elementary and secondary instructional programs that, although available, are inadequately served by existing facilities; or

(C) will provide for new elementary and secondary instructional programs that, although not presently provided by the school district, will allow new or enhanced opportunities in the local instructional program;

(5) existing regional, community, and school facilities and their condition;

(6) alternative educational program options for accomplishing the project's objectives;

(7) whether the project has been phased for funding under (f) of this section or under [4 AAC 31.023](http://www.legis.state.ak.us/basis/aac.asp#4.31.023)(b);

(8) whether the project has a mixed scope that combines features of projects described in (b)(1) and (b)(2) of this section; if the project has a mixed scope, the department staff shall

(A) separately consider each category in the mixed scope project when evaluating the whole project as proposed by the district;

(B) assign weight to evaluation criteria to consider each distinct mixed-scope element, and apply the evaluation criteria to selected portions of the mixed scope element, where appropriate; and

(C) apportion points appropriate to the consideration of each mixed scope element to the total project scope; and

(9) the inclusion of new square footage to support unhoused students; the department staff shall place projects that add or replace square footage on the school construction list.

(d) The department will, in its discretion, reject a project

(1) that lacks adequate documentation under the provisions of [4 AAC 31.011](http://www.legis.state.ak.us/basis/aac.asp#4.31.011)(b)(3) and [4 AAC 31.021](http://www.legis.state.ak.us/basis/aac.asp#4.31.021);

(2) whose objectives can adequately be served by existing facilities;

(3) whose objectives can be met by an alternative project that is in the state's best interest; or

(4) that is not in the state's best interests.

(e) The department will, in its discretion, approve a grant amount as proposed by the school district, reduce the proposed project's budget in the six-year grant schedule prepared under this section, or grant a waiver of all or a part of the required local contribution if requested under [4 AAC 31.021](http://www.legis.state.ak.us/basis/aac.asp#4.31.021)(a). A proposed project's budget will be reduced

(1) if the costs, as determined by the department, are excessive;

(2) if the space proposed exceeds the maximum allowed under [4 AAC 31.020](http://www.legis.state.ak.us/basis/aac.asp#4.31.020), including any approved variances and any adjustments to student population projections that the department considers necessary to best reflect historic populations and reasonable future growth;

(3) repealed 6/17/2010;

(4) if base square feet allowable will not be used for education purposes for at least 75 percent of the scheduled school day, except that for a school with a small enrollment in a remote location, the department shall grant a variance for specialized classroom space that will be used during at least two years out of any four years;

(5) if the project costs include the cost of repairing or replacing items not essential to the operation of the physical plant or items that are normally scheduled for preventive maintenance, routine repair, or replacement;

(6) if the project costs include items of deferred maintenance work that are normally scheduled as a matter of preventive maintenance or routine maintenance and repair in the operation of the facility; or

(7) if items of cost are included that are not eligible for consideration under the provisions of [AS 14.11.013](http://www.legis.state.ak.us/basis/statutes.asp#14.11.013)(d) as allowable costs for school construction.

(f) For the purpose of funding, when the department prepares its grant schedule it will, in its discretion, divide a project into phases if the project's planned completion permits phasing, if phasing is in the state's best interest, and if phasing will not prejudice the school district in providing its instructional program.

**[4 AAC 31.023. Grant or other financial assistance award, allocations, and conditions](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.023)**

(a) Except as provided in (b) of this section, the department will not award a grant under [AS 14.11.011](http://www.legis.state.ak.us/basis/statutes.asp#14.11.011) - [AS 14.11.020](http://www.legis.state.ak.us/basis/statutes.asp#14.11.020) or allocate other financial assistance under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) unless the application was approved by the State Board of Education and money adequate to complete the project, in the amount approved, is available after making grant awards or allocating other financial assistance to projects that have a higher priority ranking.

(b) If, after providing money for grant or other financial assistance applications that have a higher priority, there is not enough money to pay for the next-priority project in total, a grant or other financial assistance will, in the department's discretion, be awarded or allocated in a lesser amount if

(1) the district consents to a reduction in the scope of the project and the reduction in the scope of the project still results in accomplishing the project's objectives, or

(2) the project is capable of being accomplished in phases. If the district does not consent to a reduction, and the project cannot be accomplished in phases, then the project that is next in order of priority will be considered for award of a grant or allocation of other financial assistance under (a) of this section and this subsection.

(c) The department will, before the disbursement of grant or allocations of other financial assistance to a school district, require the execution of a grant or other financial assistance agreement, on a form prescribed by the commissioner, that contains the following conditions:

(1) the project will be constructed and equipped under the requirements of [4 AAC 31.020](http://www.legis.state.ak.us/basis/aac.asp#4.31.020)(a), within the project budget determined under [4 AAC 31.022](http://www.legis.state.ak.us/basis/aac.asp#4.31.022)(e);

(2) money will be disbursed as the parties agree to allow the accomplishment of stages in the project, such as site acquisition; design and construction; and to reimburse the district for money actually and necessarily spent, before the award of the grant or allocation of other financial assistance,

(A) for application costs, planning costs, design costs, and construction costs incurred not more than 36 months before the initial submission of the grant or other financial assistance application with a substantially identical scope; and

(B) site acquisition costs incurred not more than 120 months before the initial submission of the grant or other financial assistance application with a substantially identical scope for which the department has given its approval under [4 AAC 31.025](http://www.legis.state.ak.us/basis/aac.asp#4.31.025);

(3) the district's performance under the grant or other financial assistance is subject to financial audit at any time; the cost of an audit required by the state is an allowable cost of school construction;

(4) the site for the school facility is approved under [4 AAC 31.025](http://www.legis.state.ak.us/basis/aac.asp#4.31.025);

(5) designers, commissioning agents, and construction managers of the facility shall be selected under [4 AAC 31.065](http://www.legis.state.ak.us/basis/aac.asp#4.31.065);

(6) construction shall be performed by contracts awarded under [4 AAC 31.080](http://www.legis.state.ak.us/basis/aac.asp#4.31.080); and

(7) unless a district provides documented evidence of project-specific indirect administrative costs in excess of these limits, indirect administrative costs may not exceed

(A) three percent of construction costs, if construction costs are $500,000 or less;

(B) the greater of $15,000 or two percent of construction costs, if construction costs are over $500,000 but less than $5,000,000;

(C) the greater of $100,000 or one percent of construction costs, if construction costs are $5,000,000 or more.

(d) If a school district elects to provide the local share of a capital improvement project through an in-kind contribution of labor, material, or equipment, it shall provide notice to the department within 30 days after signing of the grant or other financial assistance agreement between the department and the school district. A description of the labor, material, or equipment must be included with its notice. The department will, in its discretion, approve or require a larger contribution of labor, material, or equipment. Additionally, the local share for new construction may be land if the land was acquired under the provisions of [4 AAC 31.025](http://www.legis.state.ak.us/basis/aac.asp#4.31.025) and the district provides notice as described in this subsection. A school district aggrieved by the department's action under this subsection may appeal the decision under [4 AAC 40.010](http://www.legis.state.ak.us/basis/aac.asp#4.40.010) – [4 AAC 40.050](http://www.legis.state.ak.us/basis/aac.asp#4.40.050).

(e) In (c) of this section,

(1) “indirect administrative costs” means an allocable portion of administrative and operating expenses; and

(2) “construction costs” means the cost of contracted work as well as force account for facility construction, site preparation, site improvements, and utilities.

**[4 AAC 31.025. Site acquisition and selection](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.025)**

(a) Acquisition of an educational facility site must be approved by the Department of Education and Early Development

(1) to be eligible for reimbursement under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100); or

(2) if construction responsibility has been assumed under [AS 14.11.020](http://www.legis.state.ak.us/basis/statutes.asp#14.11.020).

(b) If school construction, for which reimbursement will be sought under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) occurs on a site which has not been approved under this section, the costs of land acquisition are not eligible for reimbursement. If the construction responsibility for a particular facility has been assumed by a school district under [AS 14.11.020](http://www.legis.state.ak.us/basis/statutes.asp#14.11.020), no money may be spent for site acquisition or construction without site approval under this section.

(c) The purchase of a parcel of land identified as a potential school site must be investigated by the appropriate local governing body or the school district to determine its suitability in terms of educational plans, cost of acquisition, impact on cost of construction, size, accessibility, and other appropriate local criteria.

(d) This section applies to projects submitted for approval after December 2, 1983.

(e) For the purposes of this section, the value of land is the current fair market value, by appraisal, not to exceed the amount for land in a project agreement executed under [4 AAC 31.023](http://www.legis.state.ak.us/basis/aac.asp#4.31.023).

(f) Sufficient interest in an approved school site by either long-term lease or deed must be established before advertising for construction bids.

**[4 AAC 31.026. Requests for reconsideration and appeals](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.026)**

(a) By November 5 of each year the department will provide to each school district submitting a grant application notice of its proposed revised grant schedule that commences in the next fiscal year and of its priority ranking under [4 AAC 31.022](http://www.legis.state.ak.us/basis/aac.asp#4.31.022)(b) of all proposed projects for the first year of the six-year capital improvement plan. No later than December 1, with notice provided no later than November 15, the department will conduct a public hearing under [AS 14.11.013](http://www.legis.state.ak.us/basis/statutes.asp#14.11.013)(e) to receive oral and written comments on its priority ranking of proposed projects. A school district aggrieved by the priority ranking assigned to a project, its scope as approved by the department, the denial of a waiver of all or a portion of the required local contribution to the cost of the project or the project's budget shall file, no later than the public hearing, a written request for reconsideration that states

(1) its specific objections;

(2) a summary of the evidence that the department erred in its priority ranking of the project, the scope of the project allowed, the denial of a waiver of all or a portion of the required local contribution to the cost of the project, or the amount of the project budget approved; and

(3) the relief it requests, which may include a higher priority, a broader scope of project, a waiver of all or a portion of the required local contribution to the cost of the project, or a larger project budget.

(b) A request for reconsideration filed by an aggrieved school district under (a) of this section will be considered by the department, and a written decision will be issued not later than 15 working days after the last day of the public hearing conducted under (a) of this section. In reaching its decision, the department will consider

(1) the school district's updated capital improvement plan submitted under [4 AAC 31.011](http://www.legis.state.ak.us/basis/aac.asp#4.31.011);

(2) the grant application, and supporting documentation submitted by the school district under [4 AAC 31.021](http://www.legis.state.ak.us/basis/aac.asp#4.31.021)(c);

(3) oral and written comments received at the public hearing conducted under (a) of this section; and (4) the protest filed by the aggrieved school district.

(c) A school district dissatisfied by the department's reconsideration decision under (b) of this section regarding a project's priority ranking, scope of the project, a denial of a waiver of all or a portion of the required local contribution to the cost of the project, or its budget, may file an appeal with the commissioner within 15 calendar days after the receipt of that decision. The notice of appeal must state the factual and legal basis of the appeal and the specific relief sought. Any issue not raised by the notice of appeal is considered waived in the subsequent proceedings.

(d) Within 10 working days after the filing of an appeal under (c) of this section, the chief administrative law judge of the office of administrative hearings shall appoint a hearing officer to hear the case. The hearing officer shall consider the issues raised in the appeal on the basis of

(1) the school district's updated capital improvement plan submitted under [4 AAC 31.011](http://www.legis.state.ak.us/basis/aac.asp#4.31.011);

(2) the grant application, and supporting documentation submitted by the school district under [4 AAC 31.020](http://www.legis.state.ak.us/basis/aac.asp#4.31.020)(c);

(3) the comments received at the public hearing conducted under (a) of this section;

(4) the decision rendered by the department on the request for reconsideration under (b) of this section; and

(5) the appeal filed by the school district under (c) of this section.

(e) Within five working days after appointment, the hearing officer shall determine whether the appeal raises issues of law or fact. If the hearing officer determines that the appeal does not raise an issue of law or fact, the hearing officer shall render a written decision that denies the appeal. This decision is a final decision under [AS 14.11.015](http://www.legis.state.ak.us/basis/statutes.asp#14.11.015)(b) and Alaska Rules of Appellate Procedure 601 - 611. (f) If the hearing officer determines, under (e) of this section, that the appeal presents questions of law or fact, the hearing officer shall establish the date, time, and place of the hearing, which shall occur not more than 15 working days after appointment of the hearing officer, to supplement the record.

(g) The hearing shall be recorded and shall be conducted according to the following rules of evidence:

(1) oral evidence may be taken only on oath or affirmation;

(2) each party or party's counsel, but not both, may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on matters relevant to the issues even though those matters were not covered in the direct examination, impeach a witness regardless of which party first called the witness to testify, and rebut the evidence against the party;

(3) the hearing need not be conducted according to technical rules relating to evidence and witnesses; however, relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a court rule that makes improper the admission of the evidence over objection in a civil action; hearsay evidence may be used to supplement or explain direct evidence but is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action; the rules of privilege are effective to the same extent that they are recognized in a civil action; irrelevant and unduly repetitious evidence may be excluded;

(4) the burden of proof is on the district; the burden of persuasion is by a preponderance of the evidence.

(h) The hearing officer shall determine whether the department had a reasonable basis for deciding as it did. Using "reasonable basis" as a standard of review, the hearing officer shall decide the issues in the appeal on the basis of the record specified in (d) of this section and the evidence taken at the hearing. The hearing officer shall prepare proposed findings of fact and conclusions of law. Within 60 calendar days after the filing of the school district's appeal under (c) of this section, the hearing officer shall deliver the proposed findings of fact, conclusions of law, and proposed decision to the state Board of Education, with copies to the aggrieved school district and the department. Either party may file a response to the proposed decision not later than five working days after receipt of the copy of the proposed decision.

(i) At its next regularly scheduled meeting after receipt of the proposed findings of fact and conclusions of law, the state Board of Education will, in its discretion, adopt all, part, or none of the recommended decision, or remand the issue back to the hearing officer for further hearing. The board's decision will be in writing. The decision is the final decision on the issues presented in the appeal under the provisions of [AS 14.11.015](http://www.legis.state.ak.us/basis/statutes.asp#14.11.015) and Alaska Rules of Appellate Procedure 601 - 611.

(j) A school district may not (1) challenge the award of points to another district's projects except to show application of an arbitrary standard of evaluation; and (2) raise in any appeal filed under (c) of this section an issue not raised by the written request for reconsideration; and issue not raised is considered waived in the subsequent proceedings.

**[4 AAC 31.030. Review of school construction plans](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.030)**

(a) A school district shall submit the elements of a plan for a school capital project, including new construction, additions, demolitions, and rehabilitations, to be undertaken by the school district that are to be funded under [AS 14.11.011](http://www.legis.state.ak.us/basis/statutes.asp#14.11.011) or for which reimbursement is to be sought under AS 14.11.100. The elements of the plan must be submitted to the commissioner for the commissioner's review and approval as the elements are developed and before any construction contract solicitation or construction activity is initiated.

(b) For purposes of this section, "plan" includes the following:

(1) educational specifications;

(2) site investigation report;

(3) schematic design documents;

(4) design development documents;

(5) final construction contract documents;

(6) estimated cost and proposed means of financing the project;

(7) proposed method of construction; and

(8) estimated completion date of the project.

(c) Upon request from a school district's chief school administrator, the commissioner may,

(1) waive submission of those elements of a plan that are not applicable to the school district's proposed school project; and

(2) grant a variance to square footage allocations as permitted in [4 AAC 31.020](http://www.legis.state.ak.us/basis/aac.asp#4.31.020) when fully supported by the plan.

**[4 AAC 31.040. Approval of school construction plans](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.040)**

(a) Before commencing construction contract solicitation or construction activity under [AS 14.11.011](http://www.legis.state.ak.us/basis/statutes.asp#14.11.011)or construction contract solicitation or construction activity for which reimbursement will be sought under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100), a school district or a regional school board shall secure the approval of the commissioner of the documents for the project as follows:

(1) the school district or regional school board shall submit to the commissioner 95 percent construction documents at least 20 work days before a bid invitation is made;

(2) if construction contract bids are to be invited for the project, the school district or regional school board shall submit the construction bid documents, excluding the construction plans and specifications if the 95 percent construction documents submitted under (1) of this subsection were stamped and signed by the professionals in responsible charge, to the commissioner at least five work days before the bid invitation is made;

(3) if the project will not be advertised for bids, the school district or regional school board shall submit the final stamped and signed construction documents to the commissioner no later than 15 work days before commencing each construction phase; and

(4) a municipality or a school district may request, in writing, a waiver to the construction document approval process set out in (1) - (3) of this subsection for a project based on the ability of the municipality or school district to provide a thorough and complete independent review.

(b) The commissioner's approval under this section is void after two years unless construction of the project has been initiated within that time.

**[4 AAC 31.050. Portable and temporary facilities](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.050)**

(a) If a regional school board or a municipality that is a school district proposes to purchase or construct one or more portable facilities for which state aid under [AS 14.11.011](http://www.legis.state.ak.us/basis/statutes.asp#14.11.011) or [14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) will be sought, the regional school board or municipality must secure the approval of the commissioner before acquisition or construction of the portable facility.

(b) The commissioner may not approve portable facilities for state aid under [AS 14.11.011](http://www.legis.state.ak.us/basis/statutes.asp#14.11.011) or [14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) unless the department determines that

(1) the portable facilities are designed to meet construction standards as set out in this chapter;

(2) the design and construction of the portable facilities will allow for their cost-effective relocation; to determine cost-effective relocation, the department will consider the costs of disconnection and connection of facility systems and site infrastructure requirements as part of its review of costs; and

(3) the regional school board or municipality has complied with (a) of this section.

(c) Portable buildings that are of temporary construction and temporary buildings may not be counted in calculating the square footage allowable under [4 AAC 31.020](http://www.legis.state.ak.us/basis/aac.asp#4.31.020).

**[4 AAC 31.060. State financial assistance](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.060)**

(a) A municipality that is a school district, or a regional school board, submitting a capital improvement project request for construction to the department under [AS 14.11.011](http://www.legis.state.ak.us/basis/statutes.asp#14.11.011) or 14.11.100 shall make the request on a form prescribed by the commissioner.

(b) In accepting state aid from the department, the municipality or school district receiving the grant or debt reimbursement shall comply with all pertinent state statutes, codes, standards, and regulations related to construction of a public facility. Further, the recipient shall comply with conditions, requirements, and stipulations in the forms prescribed by the commissioner for the capital improvement project agreement.

(c) A school facility for which state aid is sought under [AS 14.11.011](http://www.legis.state.ak.us/basis/statutes.asp#14.11.011) or 14.11.100 may be built jointly with municipal and state offices, health clinics, community libraries, and other spaces if approved by the commissioner as to compatibility and separation of funds. The commissioner has final authority to determine the proration of space and cost in a jointly built project.

(d) For a school construction project approved for debt retirement under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100), a school district shall

(1) provide for each incomplete project, by October 15 of each year during its life until completion, completed annual project summary, on a form prescribed by the department, that details all activity on the project from its inception to the preceding June 30; and

(2) for a project completed after June 30, 1989, that costs more than $300,000, submit as part of its annual report under [4 AAC 06.120](http://www.legis.state.ak.us/basis/aac.asp#4.06.120), a statement from its auditors that the annual project summaries are consistent with the annual report.

(e) A municipality or school district shall submit a request for an allocation for debt retirement under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) on a form prescribed by the commissioner. The request for allocation must be received by the department not later than October 15 of the fiscal year preceding the fiscal year in which reimbursement will be sought. A request for allocation must contain at least the following:

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

(2) bond redemption schedule;

(3) education facility portion of the bond;

(4) department's project approval number;

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

(6) certification as to accuracy of request for allocation by a bonded official of the municipality; and

(7) a completed annual project summary form prepared under the provisions of this section.

(f) State aid under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) to eligible municipalities will be calculated on the basis of applications received by the deadline imposed by this section and, upon receipt of a notice of payment by the municipality from the bond holder or paying agent, state aid will be issued except for the amount attributable to projects for which (1) the department has withdrawn its approval under [4 AAC 31.075](http://www.legis.state.ak.us/basis/aac.asp#4.31.075); (2) repealed 6/17/2010; (3) the bond election occurs after June 30, 1988 and the ballot proposition does not include the estimated total cost of the project, including total interest; estimated annual operating and maintenance costs; the estimated amounts that will be paid by the state and the municipality on the bonds that finance the project; and the estimated amount due in annual taxes on $100,000 in assessed value to retire the debt.

(g) Only cash disbursements from locally generated revenues are eligible for reimbursement under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100).

(h) Unless a claim is supported by financial schedules or prior year audit reports identifying the original source of revenue, only disbursements from revenues generated in the year for which the claim is made are eligible for reimbursement.

(i) Reimbursement for rehabilitation costs under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) is limited to projects exceeding $200,000.

(j) The department will approve the cost of planning, design, and construction of a facility for debt retirement under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) if

(1) the department verifies that the enrollment of a district or attendance area within a district will reach the design capacity of existing school facilities within two years;

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

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

(k) A request for debt retirement under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100)

(1) must contain

(A) documented evidence, acceptable to the department, supporting enrollment, projections that are based upon the average survival method or an equivalent methodology offering equal validity; and

(B) other demographic information prepared by the district, the municipality, the Department of Commerce, Community, and Economic Development, the Department of Transportation and Public Facilities, the Department of Labor and Workforce Development, the Department of Revenue, or other state or federal agencies that have prepared demographic information on the attendance area; and

(2) may include any additional information supporting the enrollment projection, including economic and social conditions affecting local growth patterns, school and preschool census, and business or industrial forecasts indicating increased population growth.

(*l*) Notwithstanding the provisions of (j) and (k) of this section, the cost of planning, design, and construction for a new facility, or the repair, rehabilitation, or remodeling of an existing facility will be approved for debt retirement under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) if at least one of the following conditions exists, the means selected by the district to cure the condition is the most cost-effective method, and the department determines that the conditions, if unabated, might require that the facility cease being used to provide the educational program or in support of the educational program:

(1) a condition that is in violation of one or more of the nationally recognized building codes, fire codes, health or safety codes, or state or federal statutes or regulations, and the condition is verified by a means acceptable to the department; or

(2) a condition that, if unabated, presents an unreasonable risk to the structural integrity of the facility, or to an essential portion, significant purpose, or structural element of the facility.

(m) Nothing in [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100)(j)(4) exempts a school facility that proposes to construct new space, add space, or replace existing space from having to meet the eligibility requirements of [4 AAC 31.020](http://www.legis.state.ak.us/basis/aac.asp#4.31.020)(c). (n) A district requesting financial assistance for a new school must demonstrate a minimum of 25 unhoused students in the attendance area during the five-year post-occupancy projection prepared under [4 AAC 31.010](http://www.legis.state.ak.us/basis/aac.asp#4.31.010), unless the commissioner approves a smaller number in accordance with [AS 14.11](http://www.legis.state.ak.us/basis/statutes.asp#14.11) and this chapter.

**[4 AAC 31.061. Criteria for amounts allowed for debt retirement](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.061)**

(a) A facility will be approved for debt retirement under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) if the project meets the requirements established in [4 AAC 31.060](http://www.legis.state.ak.us/basis/aac.asp#4.31.060)(j) - (l) and the requirements of this section.

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

(1) the facility was planned in accordance with [4 AAC 31.020](http://www.legis.state.ak.us/basis/aac.asp#4.31.020) and [4 AAC 31.030](http://www.legis.state.ak.us/basis/aac.asp#4.31.030)(c); and

(2) repealed 11/28/2019;

(3) base square foot allowable must be used for educational purposes for at least 75 percent of the scheduled school day.

(c) The department will, in its discretion, deny a request for debt retirement under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) or limit its approval to the costs for that portion of a facility which complies with the provisions of this section.

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

(1) costs of change orders, contract amendments, contractor's claims, or other modifications that enlarge the scope of a project, or that increase the total cost of the project budget above an amount that is the lesser of the amount approved by the voters at the bond election required under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100)(j), the amount approved by the department, or the initial contract amount, except for unavoidable or unforeseeable circumstances that are not the result of imprudent management;

(2) the cost of repairing or replacing items that the department determines are not essential to operation of the physical plant or not normally scheduled for routine maintenance or replacement unless the repair or replacement extends the useful life of the building and the cost exceeds $100,000; or

(3) the payment of accrued interest to bond holders.

**[4 AAC 31.062. Approvals, allocations, disallowance of costs, audits, and appeals](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.062)**

(a) A project approved for debt retirement under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) is subject to review and approval for site selection and acquisition under [4 AAC 31.025](http://www.legis.state.ak.us/basis/aac.asp#4.31.025), and the construction plans are subject to review and approval under the provisions of [4 AAC 31.030](http://www.legis.state.ak.us/basis/aac.asp#4.31.030) and [4 AAC 31.040](http://www.legis.state.ak.us/basis/aac.asp#4.31.040).

(b) A school district may, until October 15 of each year, submit to the department a request for an allocation of money for bond payments eligible for debt retirement under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) for the following fiscal year, as provided in [4 AAC 31.060](http://www.legis.state.ak.us/basis/aac.asp#4.31.060)(e). Failure to submit a request for an allocation by October 15 will result in the denial of an allocation of money for an otherwise eligible facility regardless of whether allocations had been made for previous years. Reimbursement under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) for cash payments will be based on an audited report submitted under [4 AAC 31.060](http://www.legis.state.ak.us/basis/aac.asp#4.31.060)(d) during the preceding fiscal year.

(c) The department will, in its discretion, deny or limit reimbursement for costs associated with a facility's construction if (1) it fails to meet the requirements of [4 AAC 31.020](http://www.legis.state.ak.us/basis/aac.asp#4.31.020) or [4 AAC 31.061](http://www.legis.state.ak.us/basis/aac.asp#4.31.061); or (2) the department has withdrawn its approval of the project under [4 AAC 31.075](http://www.legis.state.ak.us/basis/aac.asp#4.31.075).

(d) The department will, in its discretion, at any time, require an audit of a project approved for the debt retirement under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100). The cost of any audit the department requires is an allowable cost of school construction.

(e) If the department denies or limits reimbursement of costs, the district may appeal the decision in accordance with the provisions of [4 AAC 40.020](http://www.legis.state.ak.us/basis/aac.asp#4.40.020) - [4 AAC 40.050](http://www.legis.state.ak.us/basis/aac.asp#4.40.050).

(f) If approval of a project is withdrawn under [4 AAC 31.075](http://www.legis.state.ak.us/basis/aac.asp#4.31.075), the municipality shall provide an audit of the project to determine, by generally accepted accounting practices agreed upon by the department and the municipality, any entitlements of the municipality for costs of school construction, or the amount of reimbursements under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) that exceed the costs of school construction and the which the state is entitled. An audit of a project under this subsection shall detail all costs incurred for school construction, the proceeds from debt incurred to finance the project, and interest earned on the proceeds of debt incurred to finance the project. This audit is separate from an audit that might be required under (d) of this section and its cost is an allowable cost of school construction.

**[4 AAC 31.063. Use of interest earned on grant proceeds](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.063)**

Interest on proceeds of grant money appropriated for approved projects shall be held by the district to pay for project cost overruns, change orders, contract amendments, contractor's claims, or other modifications necessary because of unavoidable or unforeseeable circumstances that are not the result of imprudent management, as determined by the commissioner. If at the completion of the project, any money earned as interest remains, the district shall transfer that amount to a district capital account for school capital projects.

**[4 AAC 31.064. Redirection of bond proceeds](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.064)**

If a municipality has bond proceeds remaining after termination of all design, construction, and equipment contracts for a project approved by the department for debt retirement under 4 AAC 31.060 and by local voters under AS 14.11.100(j), and the municipality seeks to construct a project different from the one approved by the department, the municipality may only receive reimbursement for the project if the new project is approved by the department and

(1) the bond proposition originally approved by the local voters authorized the use of any excess money for school capital projects such as the new project; or

(2) the municipality meets the requirements of AS 14.11.100(j), including the requirement for a municipal election to approve the new use of the money.

**[4 AAC 31.065. Selection of designers and construction managers](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.065)**

(a) If a school district determines that it is necessary to engage the services of a private consultant to provide design, commissioning, or construction management services for an educational facility with money provided under [AS 14.11.011](http://www.legis.state.ak.us/basis/statutes.asp#14.11.011) - [AS 14.11.020](http://www.legis.state.ak.us/basis/statutes.asp#14.11.020), or for a project approved for reimbursement of costs under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100), and the estimated cost of the contract is more than $50,000 the contract shall be awarded to the most qualified proposer after evaluating proposals submitted in response to an approved solicitation. The selection of the consultant shall be accomplished by soliciting written proposals by advertising at least 21 days before the proposals are due by providing notice through publication in a newspaper of general circulation. The department may approve an alternate means of notice through publication on the Internet if the website has the express purpose of advertising similar solicitations, has unrestricted public access, and is equally likely to reach prospective proposers.

(b) Nothing in this section precludes a school district from retaining the services of a consultant on an as-needed basis under a multi-year contract, if the term of the contract is not more than five years.

(c) The school district shall provide a procedure for administrative review of complaints by aggrieved offerors which allows them to appeal, within 10 days after the notice of intent to award, requesting a hearing with notice to interested parties, for a redetermination and final award in accordance with law.

(d) The department may deny or limit its participation in the costs of design, commissioning, or construction management for a project eligible for grant funding under [AS 14.11.011](http://www.legis.state.ak.us/basis/statutes.asp#14.11.011) or for reimbursement under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) if the school district does not comply with the requirements of this section.

**[4 AAC 31.070. Reimbursement of restructured or refinanced indebtedness](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.070)**

(a) Except as provided in (b) of this section, reimbursement under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) for payment of restructured or refinanced school construction indebtedness may not exceed the amount that would have been payable on the indebtedness in the year for which reimbursement is claimed had the indebtedness not been restructured or refinanced.

(b) Refunding bonds issued after June 30, 1987 and before January 1, 1989, may have an annual debt service exceeding the annual debt service of the refunded bonds, if the refunded bonds had more than five years remaining on their term and the term of the refunding bonds is not more than 20 years.

(c) This section applies to bonds, notes, and other indebtedness restructured or refinanced after December 30, 1982.

**[4 AAC 31.075. Withdrawal of project approval](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.075)**

(a) The approval granted under [4 AAC 31.060](http://www.legis.state.ak.us/basis/aac.asp#4.31.060) that authorizes a project for debt retirement under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) expires five years after the approval is given unless a local bond election that meets the requirements of [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100)(j) occurs during that period and authorizes the sale of bonds to finance the project.

(b) If, after the department approves the project for debt retirement and local voters approve the project in a bond election required by [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100)(j), no activity, as evidenced by annual project summaries that meet the requirements of [4 AAC 31.060](http://www.legis.state.ak.us/basis/aac.asp#4.31.060)(d), occurs during a fiscal year, the department will withdraw its approval of the project.

(c) If, during the life of the project, the voters of a municipality by referendum choose to cancel a project that had previously been approved by the department, and by the local electorate in an election meeting the requirements of [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100)(j), the department will withdraw its approval of the project, effective on the date of the referendum.

(d) The withdrawal of approval of a project under (a) or (b) of this section is effective only if the department first gives notice and allows the municipality not less than 30 days to give adequate assurances that the appropriate action will be taken to move the project toward completion. The department will determine whether the assurances are adequate and will, in its discretion, extend its approval in writing for a period of not less than 180 days to enable the school district to make progress on the project under the conditions the department considers appropriate. If the department determines that adequate assurances have not been given, it will withdraw its approval of the project. Nothing in this section requires or prescribes the withdrawal of project approval for a school facility constructed by phased stages. A school district dissatisfied with a determination made under this subsection may appeal the decision under [4 AAC 40.010](http://www.legis.state.ak.us/basis/aac.asp#4.40.010) - [4 AAC 40.050](http://www.legis.state.ak.us/basis/aac.asp#4.40.050).

(e) If the approval of a project is withdrawn under (b) or (c) of this section, and bonds eligible for debt retirement have been sold and debt retirement payments have been made, the department will direct the school district to prepare a project audit that meets the requirements of [4 AAC 31.062](http://www.legis.state.ak.us/basis/aac.asp#4.31.062)(f). The department will determine the amount of any additional money to which the school district is entitled or the amount of money that the state is entitled to recover from the municipality. A school district dissatisfied with the determination may appeal the determination under [4 AAC 40.010](http://www.legis.state.ak.us/basis/aac.asp#4.40.010) - [4 AAC 40.050](http://www.legis.state.ak.us/basis/aac.asp#4.40.050).

(f) When all eligible debt-retirement funds authorized under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) have been allocated, all previous project approvals are automatically withdrawn. If additional funds become available, a school district shall reapply and its projects will be re-evaluated.

**[4 AAC 31.080. Construction and acquisition of public school facilities](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.080)**

(a) A school district shall construct a public educational facility with money provided through a grant under [AS 14.11.011](http://www.legis.state.ak.us/basis/statutes.asp#14.11.011) - [AS 14.11.020](http://www.legis.state.ak.us/basis/statutes.asp#14.11.020) or shall construct a public educational facility that is eligible for reimbursement under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) under a written contract awarded on the basis of competitive sealed bids. If the estimated construction cost is less than $100,000 or if it is in the best interests of the state, the school district may, with the approval of the commissioner, construct the educational facility itself using its own employees.

(b) The school district shall provide notice of its solicitation by advertisement in a newspaper of general circulation in this state at least three times before the opening of the offers. The first printing of the advertisement must occur at least 21 days before opening the offers. The department may approve a solicitation period shorter than 21 days when written justification submitted by the school district demonstrates that a shorter solicitation period is advantageous for a particular offer and will result in an adequate number of responses. A school district may provide additional notice by mailing its solicitation to contractors on any list it maintains, and any other means reasonably calculated to provide notice to prospective offerors.

(c) The school district shall provide for the administrative review of a complaint filed by an aggrieved offeror that allows the offeror to file a bid protest, within 10 days after notice is provided of intent to award the contract, requesting a hearing for a determination and award of the contract in accordance with the law. The school district shall provide notice to all interested parties of the filing of the bid protest.

(d) The award of a contract for the construction of an educational facility under this section must be made without regard to municipal ordinances or school board resolutions granting a preference to local offerors.

(e) The department may deny or limit its participation in the costs of construction for a project eligible for grant funding under AS 14.11.011 or for reimbursement under AS 14.11.100 if the school district does not comply with the requirements of this section.

(f) Nothing in this section precludes a school district from using an alternative construction delivery method as defined and described in the *Project Delivery Method Handbook*, 2017 edition, adopted by reference, if the department approves the method in advance of any solicitation, the proposed method is in the state's best interest, and the school district concurs in any directives the department makes concerning the type of selection and award of the contract. The department may deny or suspend use of an alternative construction delivery method by a school district if the department concludes, based on substantial evidence, that use or repeated use of a delivery method by the school district has resulted or will result in limited competition or higher costs.

(g) A school district may, with prior approval by the department, enter into a lease or purchase agreement for, or accept a donation of, an existing facility or land for use as an education-related facility if

(1) for the purchase, lease or accepted donation of an existing facility, a cost saving over new construction is achieved;

(2) the purchase or lease price is arrived at through impartial negotiation and is supported by a real estate appraisal that meets accepted standards; and

(3) the purchase, lease, or donation is in the best interests of the state and the school district.

(h) Notwithstanding (a) of this section, a school district may use any competitive procurement methodology for its solicitation for a public educational facility that is practicable under the circumstances to procure construction services that are estimated not to exceed $100,000, inclusive of labor and materials. A school district may not artificially divide or fragment a procurement so as to constitute a purchase under this subsection or to circumvent the selection procedures otherwise required by this section.

(i) A school district shall perform commissioning of the systems included in a school capital project if the school capital project is an addition of over 5000 square feet or new construction of an education-related facility that is over 5,000 square feet. If the school capital project is a rehabilitation of an education-related facility over 10,000 square feet, a school district shall perform commissioning of each system substantially upgraded in the school capital project. A school district may perform commissioning for a rehabilitation of an education-related facility for each system impacted by the project but not substantially upgraded in the rehabilitation. Commissioning required under this subsection must include the services of a commissioning agent. Commissioning permitted under this subsection for a system that is impacted by a rehabilitation project but not substantially upgraded in the rehabilitation may use the services of a commissioning agent or may use a qualified facility professional, including a school district employee. The cost of commissioning, including the cost of a commissioning agent, required or permitted under this subsection is an allowable cost of school construction.

(j) The department may deny or limit its participation in the costs of a school capital project if the real property for the project is acquired by a school district through purchase, lease, or donation without the approval of the department under (g) of this section.

**[4 AAC 31.081. Project approval for certain projects](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.081)**

(a) If a school construction project for which reimbursement of debt service costs under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100)(a)(6) or (7) is requested meets the requirements of [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100)(a)(6) or (7) and of [4 AAC 31.060](http://www.legis.state.ak.us/basis/aac.asp#4.31.060)(j), (k), and (l), the department will approve the project as eligible for reimbursement of principal and interest. Approval of eligibility is effective for one year. At the end of one year, the department will again review the project and will approve the project as eligible for reimbursement only if the project continues to meet the requirements of [4 AAC 31.060](http://www.legis.state.ak.us/basis/aac.asp#4.31.060)(j) - (l).

(b) Under [4 AAC 31.082](http://www.legis.state.ak.us/basis/aac.asp#4.31.082), the department will score each project and use the score to assign a priority ranking to the projects approved for eligibility under (a) of this section. A school district may request to use the original project's score for one additional year after initial approval if the project remains eligible under (a) of this section, but the use of the score under this subsection is limited to two years.

    (c) If a school district elects to use the score as specified in (b) of this section, the district may not appeal the project's priority ranking in the second year.

**[4 AAC 31.082. Project ranking and issuance of reimbursement authorization for certain projects](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.082)**

(a) The department will rank projects, approved under [4 AAC 31.081](http://www.legis.state.ak.us/basis/aac.asp#4.31.081)(a), within the applicable class in [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100)(n)(2).

(b) The department will use the following criteria to evaluate and rank projects approved under [4 AAC 31.081](http://www.legis.state.ak.us/basis/aac.asp#4.31.081)(a):

(1) the factors set out in [AS 14.11.102](http://www.legis.state.ak.us/basis/statutes.asp#14.11.102)(b)(1) - (6) and [AS 14.11.014](http://www.legis.state.ak.us/basis/statutes.asp#14.11.014)(a) and (b);

(2) whether existing facilities in the district are in violation of state or local laws;

(3) the percentage by which the number of unhoused students exceeds the design capacity of facilities in the attendance area;

(4) whether the project is necessary to provide for program requirements mandated by state or federal law.

(c) Within the limitations of [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100)(n), the department will issue a reimbursement authorization for each project ranked under (b) of this section. A reimbursement authorization issued under this subsection is conditioned on the provisions of (d) of this section.

(d) For a project for which the bond election was not held before 8/12/93, the reimbursement authorization issued under (c) of this section is void if

(1) the local bond election is not held within 180 days after, or at the first regularly scheduled municipal election after issuance of the reimbursement authorization, whichever is later; or

(2) the ballot proposal fails to pass at an election that is held within 180 days after issuance of the reimbursement authorization.

(e) If a reimbursement authorization for a project within a class in [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100)(n)(2) becomes void under (d) of this section, the department will review any projects ranked within that class under [4 AAC 31.082](http://www.legis.state.ak.us/basis/aac.asp#4.31.082)(a) for which a reimbursement authorization was not issued under (c) of this section. If one or more of those projects can be fully financed by the amount represented by the voided reimbursement authorization, the department will issue a reimbursement authorization for that project or projects. The provisions of (c) and (d) of this section apply to a reimbursement authorization issued under this subsection.

(f) In evaluating and ranking projects under (a) of this section, the department will not consider whether bonds for the project already have been sold or whether construction of the project already has begun or been completed.

**[4 AAC 31.083. Determination of project amount eligible for reimbursement](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.083)**

The amount of the costs of school construction for a project eligible for reimbursement under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100)(a)(6) or (7) is determined by including all costs, except for the interest on the bonds sold to finance the project, and deducting all money from grants made under [AS 14.11](http://www.legis.state.ak.us/basis/statutes.asp#14.11) or [AS 37.16.010](http://www.legis.state.ak.us/basis/statutes.asp#37.16.010) for the project and the amount of any local share determined under [AS 14.11.008](http://www.legis.state.ak.us/basis/statutes.asp#14.11.008).

**[4 AAC 31.084. Appeals](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.084)**

A municipality aggrieved by a department decision under [4 AAC 31.081](http://www.legis.state.ak.us/basis/aac.asp#4.31.081) - [4 AAC 31.083](http://www.legis.state.ak.us/basis/aac.asp#4.31.083) may appeal the decision under [4 AAC 40.010](http://www.legis.state.ak.us/basis/aac.asp#4.40.010) - [4 AAC 40.050](http://www.legis.state.ak.us/basis/aac.asp#4.40.050).

**[4 AAC 31.085. Disposal of abandoned or obsolete property](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.085)**

    (a) The department may dispose of state-owned school buildings and other facilities under this section if it determines that the buildings or facilities are no longer needed to provide the educational program in the community in which they are located. The determination will be made in writing after consultation with the regional educational attendance area (REAA) in which the property is located, and the reasons for the determination will be documented. The department will not make a determination under this section unless the regional school board that was given a use permit under [4 AAC 31.090](http://www.legis.state.ak.us/basis/aac.asp#4.31.090) for the property provides, in support of the determination, a resolution requesting termination of the use permit and declaring that the property, both land and buildings, is no longer needed for the purpose of providing education services. In addition, the regional school board must give notice of its excess property on a form provided by the department, and must agree that the conditions and responsibilities contained under [4 AAC 31.090](http://www.legis.state.ak.us/basis/aac.asp#4.31.090) in the use permit will remain valid for a one-year period after the date of the notice or the date of last occupancy, whichever is later, unless the department, in writing, relieves the regional school board of responsibility in whole or in part. Nothing in the section relieves a regional school board of its ongoing responsibilities or liabilities arising out of its interest in or use or operation of the property.

(b) If a facility is determined no longer needed for educational purposes under (a) of this section, the department will determine whether any other state agency needs the facility. If more than one state agency requests the facility, the department will determine, after consultation with the agencies involved and the governor's office, which agency has the greater need, and will assign the facility to that agency. If the department determines that use of the facility by another agency is consistent with the educational program conducted on the premises, the department will, in its discretion, allow that use under a revocable use permit. Otherwise, the department will convey the facility to the other agency, but will require its removal from land being used for educational purposes.

(c) If the department determines that another state agency does not have need for the facility, the department will advertise in a newspaper of general circulation that it intends to dispose of the facility under this section and will, in its discretion, solicit proposals for its use from municipalities and non-profit entities in the community, allowing at least 30 calendar days for proposals to be received.

(d) If a municipal government proposes a use for the facility, the department may convey the facility to the municipality without charge. Removal from state-owned land, of the facility conveyed under this subsection is required, unless the department determines that no state agency has use for the land upon which the facility is located and approves conveyance of the land to the municipality.

(e) If no municipal government requests conveyance of the facility, the department will determine whether sale under (f) of this section is likely to provide a qualified purchaser. If the department determines that a qualified purchaser is likely to exist, the department will attempt to sell the facility under (f). Otherwise, it may convey the facility without charge to a nonprofit entity under (g) of this section.

(f) If a qualified purchaser is likely to exist, the department will, in its discretion, dispose of the facility by sealed bids, advertised in a newspaper of general circulation not less than 30 days before bid opening, under such terms and conditions as are in the state's best interests. Removal, from state-owned land, of the facility conveyed under this subsection is required.

(g) If it is determined under (e) of this section that a sale under (f) of this section is unlikely to provide a qualified purchaser, or if sale is attempted under (f) of this section but no bids are received, the department may convey the facility to a non-profit entity that proposes a use for the facility, if the use serves a public purpose and the non-profit entity provides satisfactory assurances that the facility will be available to all members of the public without regard to race, religion, color, creed, or national origin. Removal, from state-owned land, of the facility conveyed under this subsection is required.

(h) If the department determines that disposal under other subsections of this section is not feasible, it may provide for the demolition or other removal of the facility from state land, and restoration of the site to a safe condition.

(i) If removal of a facility disposed under (g) of this subsection is not feasible, the commissioner may determine that it is in the best interest of the state to approve the granting of a long-term lease with the non-profit entity that has been approved for use of the facility.

**[4 AAC 31.087. Terms and conditions of office for members of bond reimbursement and grant review committee](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.087)**

(a) A person seeking appointment under [AS 14.11.014](http://www.legis.state.ak.us/basis/statutes.asp#14.11.014)(a)(1) - (3) to the committee may submit a resume and letter of interest to the commissioner.

(b) A term of office under AS 14.11.014(a)(1) - (3) for a member of the committee begins on March 1 and expires on the last day of February.

(c) Members of the committee appointed under [AS 14.11.014](http://www.legis.state.ak.us/basis/statutes.asp#14.11.014)(a)(1) - (3).

(1) shall serve overlapping four-year terms commencing on March 1 following the date of the member's appointment; and

(2) may serve not more than two consecutive terms.

(d) The commissioner's designee and the six committee members selected by commissioner under [AS 14.11.014](http://www.legis.state.ak.us/basis/statutes.asp#14.11.014)(a)(1) - (3) serve at the pleasure of the commissioner notwithstanding a committee member's term of office under (c) of this section.

(e) A vacancy on the committee occurring during a term of office is filled in the same manner as the original appointment and is filled for the balance of the unexpired term.

(f) Five members of the committee constitute a quorum for the transaction of business. The vote of a majority of the members present at a meeting of the committee at which a quorum is present is necessary for any action taken by the committee.

(g) A committee member serving under [AS 14.11.014](http://www.legis.state.ak.us/basis/statutes.asp#14.11.014)(a)(1) - (3) on September 20, 2015 may be appointed to a term of office established under this section. A committee appointment under [AS 14.11.014](http://www.legis.state.ak.us/basis/statutes.asp#14.11.014)(a)(1) - (3) in effect on September 20, 2015 continues until the last day of the following February. A term of office established under this section takes effect on March 1 following September 20, 2015. Members of the committee initially appointed under this section and [AS 14.11.014](http://www.legis.state.ak.us/basis/statutes.asp#14.11.014)(a)(1) - (3) will be appointed for the following terms:

(1) the longer-serving member in each category under [AS 14.11.014](http://www.legis.state.ak.us/basis/statutes.asp#14.11.014)(a)(1), (2), and (3) will be appointed for a three-year initial term;

(2) the other three members will be appointed for a one-year initial term. (h) In this section, "committee" means the bond reimbursement and grant review committee established under [AS 14.11.014](http://www.legis.state.ak.us/basis/statutes.asp#14.11.014).

**[4 AAC 31.090. Regional school board use permits](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.090)**

(a) The department will issue a use permit to a regional school board that uses, occupies, or requests permission to use or occupy state owned or leased property for a public school, subject to the provisions of this section.

(b) A use permit provides the regional school board with full use and control of the property, subject to

(1) applicable law and other legal standards; and

(2) any restrictions of the underlying state interest in the land.

(c) A regional school board that receives a use permit shall

(1) use the property primarily for public elementary and secondary education purposes; the regional school board may also use the property for other community uses that are not inconsistent with the law and other legal standards and the purpose of the use permit;

(2) upon request, provide to the department access to all records regarding the property and the regional school board's use of the property;

(3) use the property subject to federal and state law and other legal standards regarding ingress, egress, security, and non-school use;

(4) maintain the property in good repair and operating condition, including implementing maintenance and preventive maintenance programs; to the extent provided by law, financing for capital improvement projects remains the responsibility of the state;

(5) permit the department to enter upon and inspect, on the department's behalf, the property at all reasonable times; the duty to inspect and maintain the property remains with the regional school board;

(6) pay all expenses for utilities and other services furnished to the property;

(7) purchase and maintain the following insurance for the property:

(A) workers' compensation coverage as required under [AS 23.30](http://www.legis.state.ak.us/basis/statutes.asp#23.30);

(B) property loss insurance required under [4 AAC 31.200](http://www.legis.state.ak.us/basis/aac.asp#4.31.200) - [4 AAC 31.205](http://www.legis.state.ak.us/basis/aac.asp#4.31.205); the insurance must include the state as an additional insured;

(C) comprehensive general liability insurance in an amount not less than $1,000,000 combined single limit to cover all claims for damages from the regional school board's use and occupation of the property, including any contemplated provision of excess utility under (e) of this section; the insurance must include the state as an additional insured;

(8) comply with 40 C.F.R. 112.3(a) (revised as of January 1, 1996), including preparing and implementing the plan required thereunder; if the property contains a facility that meets a criterion described in 40 C.F.R. 112.20(f)(1) (revised as of January 1, 1996), the regional school board shall comply with 40 C.F.R. 112.21 (revised as of January 1, 1996), including preparing and implementing the plan required thereunder;

(9) indemnify, hold harmless, and defend the state and its officers, employees, and agents from any claim, suit, judgment, or other cost, including attorney's fees and court costs, arising out of the use of occupation of the property including the ownership or use of a hazardous substance on or in connection with the property;

(10) promptly notify the department, in writing and by other means as appropriate, of any significant damage to the property, including damage caused by a hazardous substance; this notice is in addition to other notice requirements imposed by law;

(11) promptly notify the department in writing of any claim, suit, or judgment filed against the regional school board arising out of the regional school board's use or occupation of the property; this notice is in addition to other notice requirements imposed by law;

(12) comply with all applicable federal and state civil rights laws;

(13) refrain from performing any of the following actions without the prior written consent of the department:

(A) assign or transfer a part of the use permit;

(B) transfer possession of, remove, abandon, or dispose of any portion of the property, except as necessary to maintain the property;

(C) create or permit a lien or charge upon or against any portion of the property;

(D) install or permit to be installed any structure or infrastructure development; and

(14) deliver possession of the property, including improvements, to the department upon termination of the use permit in the same condition that the property was delivered to the regional school board, except for reasonable wear and tear.

(d) The department shall take all reasonable steps to ensure compliance with this section, including withholding state funds from an REAA under [AS 14.07.070](http://www.legis.state.ak.us/basis/statutes.asp#14.07.070) or deducting from an REAA's state aid an amount equal to the amount spent by the department to ensure that the REAA complies with this section. Before taking action under this subsection, the department shall provide the regional school board with 30 days prior written notice so that the regional school board may comply with this section.

(e) A regional school board may provide an excess utility produced by the property, such as electricity, to a third party so long as in so doing the regional school board does not become a public utility subject to regulation under [AS 42.05](http://www.legis.state.ak.us/basis/statutes.asp#42.05). The regional school board shall collect from the third party an amount sufficient to meet the regional school board's increased expenses for providing the utility. An agreement to provide an excess utility under this subsection must include a provision that terminates the agreement if the use permit for the property is terminated.

(f) The department may modify or terminate a use permit upon

(1) mutual written agreement by the department and the regional school board;

(2) a change in law that prevents either the department or the regional school board from remaining party to the use permit;

(3) a change in the organizational status of the regional school board or the attendance area served by the property that affects the governance of the regional school board or the attendance area, such as would occur if part of the REAA became part of a first class city or borough; or

(4) a determination by the department that reasonable cause exists to modify or terminate the use permit; reasonable cause includes

(A) the regional school board not using the property in the best interests of the residents of the REAA;

(B) the regional school board not using the property primarily for public elementary and secondary purposes;

(C) the regional school board not using the property in a manner consistent with law, including its use permit;

(D) a change in land ownership status that does not provide sufficient interest or title to support continuation of the use permit;

(E) an imminent and substantial endangerment to the public health, safety, or the environment; and

(F) a request by the regional school board to receive title to the property under [AS 14.08.151](http://www.legis.state.ak.us/basis/statutes.asp#14.08.151)(b).

(g) If the department intends to modify or terminate a use permit, the department will send a written notice of its intention to the regional school board. The notice must specify the reasonable cause for the proposed modification or termination.

(h) A decision by the department to modify or terminate a use permit does not relieve the regional school board of its responsibilities or liabilities arising out of its use or operation of the property during the period before the modification or termination of the use permit, including the responsibility to defend, indemnify, and hold harmless certain parties under (c)(9) of this section.

(i) Upon issuance of a use permit under this section, the commissioner shall take all steps necessary to terminate a use permit issued to a regional school board before the effective date of this section. The commissioner's actions must be consistent with the terms of the use permit and all applicable law.

(j) As used in this section

(1) "commissioner" means the commissioner of education and early development or the commissioner's designee;

(2) "department" means the Department of Education and Early Development;

(3) "hazardous substance" has the meaning given the term in [AS 46.03.826](http://www.legis.state.ak.us/basis/statutes.asp#46.03.826);

(4) "property" means

(A) land and facilities named or described in the use permit;

(B) land and facilities owned or leased by the state and used or occupied by an REAA; and

(C) if not described with specificity, state owned or leased land and facilities surrounding or adjacent to an REAA school facility that would reasonably be expected to be identified as supporting the school facility, including playground space and storage space;

(5) "REAA" means a regional educational attendance area established under [AS 14.08.031](http://www.legis.state.ak.us/basis/statutes.asp#14.08.031);

(6) "regional school board" means a regional school board described in [AS 14.08.041](http://www.legis.state.ak.us/basis/statutes.asp#14.08.041);

(7) "use permit" means a use permit given to a regional school board under this section.

[**Article 2**](http://www.legis.state.ak.us/basis/aac.asp#4.31) **Loss Protection**

**[4 AAC 31.200. Loss protection required](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.200)**

(a) By July 1, 1997, a district shall comply with [AS 14.03.150](http://www.legis.state.ak.us/basis/statutes.asp#14.03.150) by maintaining all risk property insurance coverage for the replacement cost of all school facilities and equipment. A district shall carry flood coverage for school facilities and equipment in a flood plain or flood-prone area. The coverage shall include necessary code upgrade costs and additional extra expenses incurred by a district carrying on routine operations during a period of repair or replacement of the school facility and equipment.

(b) A district shall carry insurance that provides for the full replacement cost of all school facilities damaged or destroyed, and may be written on a loss limit basis, limited to the maximum probable loss per occurrence of any school facility clusters. Equipment shall be insured for its full replacement cost, but a school district may insure equipment for its depreciated value or actual cash value if the equipment is more than 10 years old. Any loss not within the mandatory insurance requirements of this section shall be borne by the district.

(c) In addition to the requirements of (a) and (b) of this section, an insurance policy purchased by a regional educational attendance area for any school facility or equipment owned by the state shall include

(1) the state as an additional insured;

(2) earthquake coverage; and

(3) flood coverage, regardless of whether the school facilities or equipment are in a flood plain or flood-prone area.

(d) In this section,

(1) "code upgrade" means upgrades required by applicable building and fire codes or other law for the occupancy of the school facility;

(2) "flood plain" or "flood-prone area" has the meaning given in 44 C.F.R. 59.1 (Oct. 1, 1996);

(3) "replacement cost" includes all costs associated with replacement of the facility including construction management, design, equipment, technology district overhead, and art costs under [AS 35.27](http://www.legis.state.ak.us/basis/statutes.asp#35.27) necessary to insure that the facility is fully operational at no additional cost to the district. (e) If a school facility operated by a regional educational attendance area and owned by the state is damaged or destroyed, the district shall include the department in all insurance negotiations.

**[4 AAC 31.205. Self-insurance programs](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.205)**

An authorized self-insurance program is one that the department annually determines adequately protects the public's investment in a school district's facilities. In rendering its determination, the department will consider annually at least the following factors for each school district applying for approval of a self-insurance program:

(1) cash reserves and dedicated funding;

(2) loss history;

(3) individual loss retention;

(4) excess property coverage;

(5) age and condition of facilities;

(6) the current undepreciated replacement cost of the facilities; and

(7) risk management or loss prevention programs conducted by the municipality or school district.

**[4 AAC 31.210. Deductible amounts](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.210)**

A school district will not be reimbursed under [AS 14.11.011](http://www.legis.state.ak.us/basis/statutes.asp#14.11.011) - [AS 14.11.020](http://www.legis.state.ak.us/basis/statutes.asp#14.11.020) or under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) for any deductible amounts paid for damage to or destruction of a school facility.

**[4 AAC 31.215. Proceeds](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.215)**

(a) In the event of damage to or destruction of a school facility owned by a municipality, or a regional educational attendance area that holds title to its facilities under [AS 14.08.151](http://www.legis.state.ak.us/basis/statutes.asp#14.08.151), the insurance proceeds shall be used to repair or replace the facility. If the facility is not repaired or replaced, and a grant application is not pending under (c) of this section for a similar facility in the approximate attendance area, the school district may use the insurance proceeds, as it deems appropriate, to pay for other proposed district projects that have been ranked, by the department, in the categories in [4 AAC 31.022](http://www.legis.state.ak.us/basis/aac.asp#4.31.022)(b)(1) or (b)(2).

(b) In the event of damage to or destruction of a school facility operated by a regional educational attendance area and owned by the state, the insurance proceeds shall be used to repair or replace the facility, but only with the department's prior approval. If the facility is not repaired or replaced, the proceeds shall be paid to the state.

(c) If a grant under [AS 14.11](http://www.legis.state.ak.us/basis/statutes.asp#14.11) is sought to repair or replace a facility, the project amount will be reduced by the amount of insurance proceeds received by the district, and, as provided in [4 AAC 31.210](http://www.legis.state.ak.us/basis/aac.asp#4.31.210), by the amount of the deductible paid.

**[4 AAC 31.220. Proof of insurance](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.220)**

Except for a district that has an authorized self-insurance program under [4 AAC 31.205](http://www.legis.state.ak.us/basis/aac.asp#4.31.205), each school district shall provide to the department a certificate of insurance, by July 15 of each year, that provides notice of the per occurrence and aggregate limits of coverage, and shall provide for 45 days' notice to the department of cancellation, termination, or any material change in policy conditions.

**[4 AAC 31.225. Failure to procure insurance](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.225)**

(a) If, within 30 days after the department provides notice under [AS 14.03.150](http://www.legis.state.ak.us/basis/statutes.asp#14.03.150)(b), a school district fails to maintain adequate insurance or a program of self-insurance required by [4 AAC 31.200](http://www.legis.state.ak.us/basis/aac.asp#4.31.200), the department will procure insurance through the division of risk management in the Department of Administration, and the state's property insurance broker, from an insurance company authorized to do business in Alaska. The insurance will meet the requirements of [4 AAC 31.200](http://www.legis.state.ak.us/basis/aac.asp#4.31.200)(b), with deductible amounts of not less than $10,000 nor more than $100,000.

(b) If the department purchases a policy of insurance for the benefit of a school district, it will deduct from the entitlement of the school district under [AS 14.17.021](http://www.legis.state.ak.us/basis/statutes.asp#14.17.021) the amount of the premiums and any commissions or charges from the state's insurance broker.

**[Article 3](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31)  
General Provisions**

**[4 AAC 31.900. Definitions](http://www.legis.state.ak.us/basis/aac.asp" \l "4.31.900)**

As used in this chapter and in [AS 14.07](http://www.legis.state.ak.us/basis/statutes.asp#14.07), [AS 14.08](http://www.legis.state.ak.us/basis/statutes.asp#14.08), and [AS 14.11](http://www.legis.state.ak.us/basis/statutes.asp#14.11), unless the context requires otherwise,

(1) "addition" means new space for expanded educational programs or new programs or space that replace substandard or destroyed space, by connection to an existing school facility; the term includes capital equipment;

(2) "capital equipment" means built-in and movable equipment used to furnish a newly constructed or rehabilitated space; it includes first-time purchase of library books, reference material, and media to furnish a new or renovated library; it does not include supply items such as textbooks and expendable commodities; the term is further defined in the Guidelines for School Equipment Purchases, 2016 edition;

(3) "commissioner" means the commissioner of the Department of Education and Early Development;

(4) "elementary and secondary schools" means buildings that have been built or converted predominantly for instruction of students in grades kindergarten through 12, and buildings for the support of that instruction; for purposes of this paragraph,

(A) elementary students are those in grades kindergarten - six;

(B) secondary students are those in grades 7 - 12;

(5) "locally generated revenues" means all revenue of the municipality excluding state and federal money provided to the municipality except money provided under [AS 14.11.100](http://www.legis.state.ak.us/basis/statutes.asp#14.11.100) and [AS 43.50.140](http://www.legis.state.ak.us/basis/statutes.asp#43.50.140);

(6) "new school construction" means space for educational programs which have not been previously offered, space that replaces a substandard or destroyed school building, or space for an expanded enrollment in the facility, by construction or reconstruction of a detached school facility of any size, with related capital equipment;

(7) "rehabilitation" means adapting an existing facility to improve the opportunity to provide a contemporary educational program; and includes major remodeling, repair, renovation, and modernization with related capital equipment;

(8) repealed 12/2/83;

(9) "education related facility" means any capital project designed to provide support services for students and for staff, but does not include employee or student housing;

(10) "facility" means, for the purpose of state aid under [AS 14.11.011](http://www.legis.state.ak.us/basis/statutes.asp#14.11.011) or 14.11.100, the buildings and grounds needed to

(A) house and support the educational program; or

(B) provide a centralized support service which is required to effect an efficient and cost effective operation of the district's education program;

(11) "preventive maintenance program" means the annual activities to be conducted throughout a school district under [AS 14.14.090](http://www.legis.state.ak.us/basis/statutes.asp#14.14.090)(10);

(12) "maintenance" means an activity conducted on a routine basis to a facility, or a component of a facility, to ensure that the facility remains in operation, and includes the replacement of components with a short physical life and repairing normal wear and tear to the facility;

(13) "service area" means a geographic area within a school district which is locally established to determine which elementary or secondary school within the school district a student is to attend;

(14) "applicable legal standards" or "legal standards" means statutes, codes, or regulations enacted or adopted by competent legal authority;

(15) "accrued interest" means interest for the period between the date of issue of a bond and settlement;

(16) "average daily membership" or "ADM" has the meaning given in [AS 14.17.250](http://www.legis.state.ak.us/basis/statutes.asp#14.17.250);

(17) "base square feet allowable" means space that is needed to provide for standard instructional programs and any support spaces ancillary to those programs, including building operations;

(18) "space" means the gross square feet of the floors of a building;

(19) "supplemental square feet allowable" means space that is provided to address the varying levels of efficiency, on a per student basis, of accommodating static space requirements, including those needed to meet applicable state and municipal building codes and applicable building operations standards;

(20) repealed 7/13/2000;

(21) "school capital project" means a school construction or major maintenance project for which state aid is requested or provided when the costs of the construction or maintenance exceed $50,000;

(22) "temporary" as applied to facilities means facilities, typically providing classroom or administrative space, of temporary construction, intended for use for a limited period of time, and installed with minimal site support and without water or sewer services or a foundation of permanent construction;

(23) "combined elementary and secondary school" means a school that serves students in all elementary and secondary grades, including kindergarten, offered in a community;

(24) "mixed grade school" means a school, including a middle school, that serves some, but not all, elementary and secondary grades offered in a community;

(25) "attendance area" means an attendance area established under [4 AAC 31.016](http://www.legis.state.ak.us/basis/aac.asp#4.31.016);

(26) "feeder school" means a school that does not serve students through grade 12 and that feeds students to another school serving grades higher than those served by the feeder school;

(27) "geographically separated" means (A) lacking year-round, publicly-maintained road access to other district schools; or (B) separated by more than 20 road miles from the closest other school in the district;

(28) "high school" means a school serving grades 9-12;

(29) "long-term lease" means a lease with a term

(A) of at least 50 years; or

(B) that can be extended to at least 50 years, by the lessee's exercise of a written right to renew the lease;

(30) "core areas" means (A) those spaces identified in the planning guides described in [4 AAC 31.020](http://www.legis.state.ak.us/basis/aac.asp#4.31.020)(a) and listed as "activity or specialized subject areas"; and (B) supplementary spaces identified in the application made under [4 AAC 31.020](http://www.legis.state.ak.us/basis/aac.asp#4.31.020)(a).

(31) “commissioning” means functional testing activities for a mechanical, electrical, fuel oil, controls, and building envelope system to ensure that a facility or a system operates as the owner and designers intended and that prepares an owner to efficiently operate its systems and equipment;

(32) “commissioning agent” means an individual who is certified with a recognized standards organization approved by the department to provide commissioning services, who may be an employee of the school district or an independent design consultant hired on behalf of the school district to

(A) create a commissioning plan, checklists, and functional performance tests for each commissioned system;

(B) coordinate the commissioning team for the mechanical, electrical, fuel oil, controls, and building envelope systems;

(C) coordinate the work of the construction contractor, school district, and design team as it pertains to the commissioning process;

(D) witness the functional performance testing;

(E) assist in resolution of issues found during commissioning; and

(F) verify the training of owner maintenance personnel on commissioned systems;

(33) “construction manager” means a private consultant contracted by the school district during any phase of a school capital project to manage the project’s scope, quality, and budget.